IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 34207 OF 2018

IN THE MATTER OF:

Zakia Ahsan Jafri & Anr. …PETITIONERS

VERSUS

State of Gujarat & Anr. …RESPONDENTS

SUBMISSIONS ON BEHALF OF THE PETITIONERS

VOLUME IX

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE-ON-RECORD FOR THE PETITIONERS: MS. APARNA BHAT

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MOST RESPECTFULY SHOWETH:

A. THE REMIT OF THE COURT IN DEALING WITH THE DOCUMENTS FILED ALONGWITH THE CLOSURE REPORT.

1. The Counsel for the SIT has contended that the Complaint of 08.06.2006 is not an FIR. Assuming this to represent the correct statement of the Law, since there was no direction by the Supreme Court to register the complaint as an FIR, the Complaint becomes a piece of information that was filed before the Director General of police who chose not to take action by registering an FIR. The Petitioner filed Special Criminal Application before the Hon'ble High Court of Gujarat. After the Hon'ble High Court rejected the petition, a special leave petition being SLP (crl) No. 1088 of 2008 was filed. In this SLP notice was issued on 3.3.2008, the matter was tagged to an ongoing petition filed by the

the National Human Rights Commission (NHRC) which had taken the unprecedented step to move for the transfer of nine trials. The Supreme Court in its order dtd 3.3.2008 issued notice in the matter observed,

> "The High Court's order does not render the petitioners remedyless. But, various important aspects arise for consideration. In a given case, a person who has knowledge of the commission of a crime may not be examined by the police. The question is what is the remedy available to such person? We, therefore, issue notice only to respondent Nos. 1 and 2 and the Union of India. Though, in the proceedings, the Central Bureau of Investigation is respondent No.3, there is presently no need for issuing any notice to the CBI, as we would like to have the views of the Union of India also. Mr. Prashant Bhushan, learned counsel has agreed to assist the Court as an Amicus- Curiae. We would also request other learned senior members of the Ba r to assist the Court, as the question is of vital importance in the administration of criminal justice."
>
> (Pages 862-873, Vol XIV, SLP Record)

2. Thereafter, on 27.04.2009 the Supreme Court directed the SIT which had already been constituted in respect of nine other cases to also look into the complaint of Zakia Jafri. Even in the Supreme Court, therefore the court, upon

a perusal of the complaint, contents of which clearly were not limited to the Gulberg Carnage directed the SIT to examine the contents thereof.

3. It is therefore clear that the contents of the Complaint are in the nature of information derived by the complainant, much of which was available in the public domain, on the basis of which, a direction was issued by the Supreme Court. The complaint, therefore being just a piece of information, the contention of the Counsel for the SIT that all the allegations beyond the Complaint cannot be looked at is both legally erroneous and cannot be equated with, or limited to, a plaint in a civil suit wherein in the plaintiff is bound by the averments/contents of the plaint.

4. Submissions have been made by the SIT that the Hon'ble Supreme Court merely directed the SIT by virtue of Order dated 27.04.2009 to "look into" the complaint, limited the jurisdiction to direct any scrutiny of allegations and investigation made beyond what is stated in the complaint. Such a contention has no legal basis for the simple reason that even with regard to an FIR -- which, is regarded in Law-- as a piece of information, the investigating authorities cannot contend that the investigation will be limited only to what is stated in the FIR.

5. The legal principle that has commended itself to courts is, that, the moment an offence is disclosed to have been committed, as set out in the FIR, the Investigating Authorities officers will collect evidence in

respect thereof, investigate the matter further, examine witnesses, arrest accused, as well as potential accused, make searches, record statements under Section 161 CrPC and discover all elements related to the offence, including the possibility of any conspiracy, even if Section 120B is not part of the FIR.

6. The SIT's contention therefore that the scrutiny must be limited to the complaint is against all cannons of criminal jurisprudence. Even otherwise, the contention of the SIT has no relevance considering the fact that when the SIT was ask to look into the complaint on the 27.4.2009, the SIT went about it's task by filing a Preliminary Report before thisHon'ble Court which was monitoring the matter, as well as further investigation reports (Page 606-616, Vol XII, SLP Record Page 78-159 Vol III of the SLP). This is how the matter stood when the Supreme Court passed it final order on 12.09.2011. In other words the complaint of 8.6.2006 being a piece of information containing allegation of commission of offences was investigated by the SIT and material collected beyond the allegations in the complaint was before the court when it passed its order on 12.09.2011.

7. The Supreme Court, in its order of 12.09.2011, directed that all the material collected by the SIT, including material collected after the SIT was directed to "look into" the complaint, was to be considered by SIT for two purposes –

i. In the event that the SIT were to come to the conclusion that offences had been committed, a final report would have been filed before the Ld. Magistrate who would have earlier handled the Gulberg Carnage FIR, being Crime No. 67/2002, and the Magistrate would deal with the matter in accordance with law during the course of trial. Further. If the Magistrate were to decide on further investigation under Section 173(8) Cr P C, he was entitled so to do under the Cr P C;

ii. The Supreme Court opined that in the event that the SIT were to file a closure report based on materials that had been collected by it and placed before the Supreme Court on which the order of 12.09.2011 was passed, in that event, the Complainant would have the right to file a protest petition, which too would be considered in accordance with law.

8. The Order of the Supreme Court of 12.09.2011 clearly does not limit the jurisdiction of the Magistrate to the content of the complaint. Nor does the order limit the scrutiny by the Magistrate of all the documents filed before the Magistrate as directed by the Supreme Court. The Magistrate

is required to decide upon a perusal of such material in accordance with law to either issue process or to order further investigation,

9. Therefore, the contention of the SIT that the Supreme Court has asked the SIT only to look at the complaint of 8.6.2006 and nothing more, is contrary to the Order passed by the Supreme Court on 12.09.201. Indeed not only is it a misinterpretation of the Order but any such interpretation by the Magistrate or by any Court would be contrary to the direction of Supreme Court, being a bench of 3 distinguished Judges.

10. The SIT has also contended that the complaint of 8.6.2006 was not in the nature of a private complaint, since the liberty granted by the High Court (in its judgment dated 2.11.2007) to the Complainant to move the Magistrate and file a complaint will be dealt with in accordance with law, that not having been done, the Complaint cannot be regarded as a private complaint. Nothing turns on this submission because the Petitioners have never contended that the Complaint be treated as a private complaint. Consequently the contention of the SIT that nothing beyond the complaint can be considered by the Court is legally untenable.

11. The SIT has contended that the Supreme Court had directed, by virtue of its Order dated 12.09.2011 that the examination by the Magistrate must be restricted to FIR 67 of 2002, relating to the Gulberg society, and that any evidence other than that relating to Gulberg

Society does not fall within the jurisdiction of the Magistrate to examine. There are two fallacies in this argument –

(i) First, that it is in contradiction with the submission of the SIT that the Supreme Court asked the SIT to "look into" the Complaint even prior to the final order of 12.09.2011. Clearly this Complaint dtd 8.6.2006 is not limited to Gulberg society, it contains allegations and information that go far beyond allegations relating to the case of Gulberg society Consequently the submission of SIT is self-contradictory. If it was indeed limited to the Gulberg society then the SIT cannot argue that the Supreme Court directed the SIT to look into the Complaint and, if it is not limited to Gulberg Society then the SIT cannot argue that the scrutiny of the Magistrate must be limited to the allegations in the Gulberg society case.

(ii) These mutually contradictory positions, evidences, not just lack of clarity, but are clearly an attempt to obfuscate issues before the Court.

(iii) The second reason why this contention is untenable, is that the order of the Supreme Court of 7.2.2013 clarifies

the position beyond doubt. The Order, inter alia, states the following:

ORDER (7.2.2013) **(Pages 933-936, Volume XIV of the SLP)**

> "Ongoing into the earlier direction of this Court as well as the impugned order passed by the Magistrate, we issue the following directions. The appellant is entitled to have copies of the report dated May 12, 2010 in two volumes, excluding the Chairman's comments forwarded to this Court. The appellant is also entitled to have copies of reports dated November 17, 2010 and April 24, 2011 filed under Section 173(8) of the Criminal Procedure Code, 1973.
>
> "Since the statements recorded contain signature, it is clarified that if the signed statements are supplied, the same shall be treated as statements made under Section 161 of the Code of Criminal Procedure, 1973.

"It is further clarified that the statements recorded in the inquiry shall only be used in the proceedings relating to the complaint dated June 8, 2006 filed by the appellant and shall not be used for any other purpose or in connection with any other case. We also clarify that the present order is confined to the facts and circumstances of the complaint dated 8th June, 2006 and shall not be treated as a precedent, in any other case."

In view of the above conclusion and direction, the impugned orders of the learned Magistrate dated 16.07.2012 and 27.11.2012 are set aside to the extent mentioned above. The appeal is disposed of in the above terms.

(P. SATHASIVAM) (AFTAB ALAM)(RANJANA PRAKASH DESAI)"

12. Therefore the material collected by the SIT could not have been used in the case arising out of FIR 67/ 2002 relating to the Gulberg case.

13. Even otherwise, at the time when the Supreme Court passed the order on 27.4. 2009 directing the SIT to "look into" the Complaint dated 8.6.2006, the trial relating to FIR 67 of 2002 which had been stayed by this Hon'ble Court on 23.11.2003, commenced after 1.5.2009 when the stay was lifted. The trial had been ongoing in the Sessions Court. **(See Annexure of Chart that shows the parallel Trajectories in both cases, the Gulberg Society Case and Zakia Jafri Case.**

14. The Supreme Court that was monitoring these nine cases was aware of the fact that the trial was pending in the Sessions Court. Yet, the Supreme Court, if it intended to limit the ambit of its order of September 12 2011, would have directed the Sessions Court to deal with the matter, which, in law, was not possible.

15. Therefore the Order of 7.2.2013, advisedly uses the expression, "**proceedings relating to the Complaint dated June 8, 2006**" which were far beyond the Gulberg society carnage (emphasis supplied) and on the basis of which investigations had been conducted by the SIT resulting in the direction of the Supreme Court in its order of September 12 2011. Consequently the submission of SIT, that the investigation

was to be limited to the events relating to Gulberg is also ex facie, legally erroneous.

16. Therefore, the only conclusion to be drawn consistent with the events that transpired resulting in the order of 12.09.2011 is, that the entire material collected by the SIT of which this Court was cognizant was to be sent to the Magistrate to be dealt with in accordance with law in terms of the Order of the Supreme Court. Therefore, it is our submission that the entire material before the Magistrate was required to be looked at when deciding the course of action to be adopted by the Magistrate in dealing with this material.

17. There is another submission which is consistent with the interpretation of the Petitioners. When the Closure Report was filed by the SIT before the magistrate on 8.2.2012, the Petitioners were not given access to the material filed by SIT. The Petitioner filed applications before the Magistrate Court for access to that material (9.2.2012, 15.03.2012). The Magistrate gave access but to a limited extent (10.04.2012). Since the Magistrate did not give complete access to all the documents filed by the SIT, the Petitioners had to move the Supreme Court seeking a direction for the Magistrate to hand over all the documents filed along with the Closure Report filed by the SIT before the Magistrate Court. Such a direction was granted by this Court on 7.2.2013.

18. The Order of this Court dated 7.2.2013 is consistent with its Order of 12.09.2011 in terms of which, the Complainant was entitled to file a Protest Petition by allowing for access to all the documents as filed along with the Closure Report. The Supreme Court obviously allowed for a Protest Petition which went far beyond the Gulberg tragedy and far beyond the Complaint. The SITat no stage protested before the Supreme Court that no such access can be granted because the direction of this Court was limited to the GulbergSociety, or limited to FIR 67/2002. The Court having made this direction, the Petitioner cannot be limited in law, either to the Complaint, or to FIR 67/2002. This of course, is even otherwise clear from the Order of this Court of 12.09.2011.

B. <u>Nature of Material filed by the SIT in its Closure Report dtd 8.2.2012</u>

19. The material filed by the SIT along with the Closure Report can be broadly divided into:

i. Documentary Evidence (officially received)

ii. Documentary Evidence otherwise collected by the SIT

iii. Video-Audio Recordings of a Sting Operation authenticated at the instance of the NHRC by the CBI and relied upon by the SIT in various prosecutions

iv. Extra judicial confessions evidenced by the Sting Operation

v. Witness Statements in respect of individuals in relation to the events that took place prior to February 27 2002 until Order of the Supreme Court dated 12.09.2011.

20. The Magistrate, in law, is obliged to apply his mind to the voluminous documentary and other evidence available to determine whether or not there is sufficient reason to issue process in some matters where there is a strong suspicion of offenses having been committed, and in other matters where a further investigation may be required. In dealing with the documentary and other evidence available. The Magistrate's jurisdiction is not to make a determination of facts but to limit his scrutiny as to whether process should be issued and whether a further investigation should be directed, given the nature of the evidence placed before the Magistrate.

(See State of Gujarat versus Afroze Mohd. Hasanfata 2019 (20) SCC 539)

21. Whichever course the SIT adopts, whether to file a charge sheet or a Closure Report neither involves a determination of facts which a Court can render as its findings. It merely represents an opinion on the materials collected through investigation. The investigating authority may opine based on the material collected on whether or not offences have been committed. At this stage in the absence of a trial there is no determination of the truth or otherwise in respect of the material

submitted before the Magistrate. Such truth can only be established in the course of a trial when documents are produced and witnesses appear in court attempting to prove the facts in issue. Consequently, nothing set out in any part of a charge sheet or a Closure Report is evidence as contemplated by the Evidence Act and cannot be given the status of anything more then material collected during investigation which may be required to be proved in the event the matter goes to trial.

22. If that is the limit of the remit of the jurisdiction of the Magistrate, surely the nature of that jurisdiction cannot be expanded by any Appellate Court. The jurisdiction of this Court in passing a final Order is also circumscribed by the law.

Undisputed Documents on the SIT Record

23. The Petitioners at the outset had limited their submissions to undisputed documents for the purposes of persuading this Court that the Magistrate ought to have issued summons for offenses which may emerge from documents that are either sourced from official sources or otherwise authenticated as to their veracity. The Petitioners had further contended that any reasonable person let alone a Magistrate when confronted with such material would come to a conclusion that there is a strong suspicion that cognizable offenses have been committed. The petitioners believe that the Magistrate failed to exercise such jurisdiction by not issuing summons to the persons with respect of whom such evidence is available on record.One part of Undisputed Documentary

evidence, which was relied upon related to **State Intelligence Bureau** messages relating to the Prelude and Build-Up before the national tragedy of CoachesS6 and S7 of Sabarmati Express being set on fire. These constitute the **Other Documentary Evidence** which was relied upon by the Petitioner:

24. The SIT cannot and is not in a position to deny the messages on record. The statements in the Sting Operation by some of the accused in fact corroborate the build-up prior to Godhra. In fact there was intrinsic and corroborative material which also discloses the commission of offences which again the SIT chose to ignore. Neither the Magistrate nor the High Court have dealt with this undisputed documentary evidence.

25. The clear indication of the Prelude and Build-Up of Communal tensions as recorded in these messages is also corroborated by some extra judicial confessions in the Sting Operation. This documentary evidence that is corroborated by parts of the Sting Operation also discloses the commission of offences that the SIT chose to ignore. The SIT is not in a position to deny the SIB Messages on record. Neither the Magistrate nor the High Court have dealt with this undisputed documentary evidence.

26. In fact the affidavits (with extensive annexures containing SIB Messages, VHP hate pamphlets, his Reports and Communications with the Government) of former ADGP-Int. R B Sreekumar filed before the

Nanavati - Shah Commission also represent corroborative evidence of the build-up done at the instance of the VHP and as evident from these official communications and in the Sting Operation. This Hon'ble court is aware that these official communications of the SIB are admissible under the Evidence Act as part of official records kept in the usual course of business and have only to be proved by the production of the originals in Court.

27. In fact, this is a unique case where the official documentary evidence is corroborated by the documents and Affidavits produced by Additional DGP Sreekumar who accessed these documents when he became Addl DGP-Int in April 2002. There are also SIB records available after the Godhra incident relating to events after the burning of coach S-6 and 7, after 28.02.2002, right through March and April 2002 upto June-July 2002 which also speak of both the violence and the fear of riots and build up which were known to the authorities who chose not to act in time to take preventive measures to stem the possibility of violence. The inaction by the state and the official machinery if investigated thoroughly would have thrown light on the extent of conspiracy alleged by Zakia Jafri in her complaint. This will bedealt with later in this note.

28. In fact, the Reports of Addl ADGP-Intelligence RB Sreekumar to the government (Between April-August 20002) also constitute such official, documentary evidence. The SIT has chosen to dismiss this

lightly revealing a perfunctory investigation. The Magistrate and High Court too have not looked at this substantive evidence with the seriousness it deserves given the fact that it is related to the issue of not just a failure of the Constitutional machinery but leaving entire sections of the people at the mercy of mobs by which their fundamental rights stood completely trampled.

29. In fact, unable to explain the manner in which it has ignored this official documentary evidence, the SIT chose instead to indulge in hyperbole, putting words into the Petitioners' mouth on the national tragedy that occurred at Godhra on 27.2.2002. What the SIB Messages within Gujarat itself and some of those from Uttar Pradesh too do show is that there was palpable communal tensions prior to the burning down of Coaches 6-7 of the Sabarmati Express and if these official communications from ground level intelligence officials had been heeded and preventive action taken, there is a strong possibility that the ghastly aftermath could have been avoided.

CDR Records

30. Apart from the SIB records, material is available in respect of CDR records during those crucial days which if investigated would have revealed or could have revealed not only the nature and extent of conspiracy but also the involvement of politicians, bureaucrats and others belong to the VHP, RSS and political parties and other individuals involved in actively participating and targeting a community

with intent to commit acts of violence or being in conspiracy with individuals who chose to perpetrate such acts of violence or who chose to create an environment to perpetrate such acts of violence. The fact that the CDRs were available with the SIT when it took over the investigation on 26.03.2008, and chose not to investigate the matter further, again shows the attitude of the SIT in dealing with evidence that may have led them to individuals who were involved in the commission of various offences and those conspiring so to do.

31. The SIT contended that these records were produced for the first time in 2008. However, it is a matter of record that these CDRs were available in 2004 as reflected in the statement of Rahul Sharma (Statement of Rahul Sharma to SIT, dated 2.7.2009, Pages 106-114, Convenience Compilation Vol II). The Petitioner had also in her original complaint dtd 8.6.2006 and thereafter in CRA 421/2007 and SLP 1088/2008 before this Hon'ble Court also annexed Rahul Sharma's statement and deposition before the Nanavati Commission.This is part of the SIT record. (Annexure A-N of SLP 1088. 2008, File XXXIX, Annexure III, D-189 in SIT Record). Additional Commissioner of Police (Crime), Ahmedabad AK Surolia has also stated in his statement before the SIT that it was he who had instructed ACP Crime Branch SS Chudasama to obtain the relevant Call details from the relevant Cellular Service Providers, AT & T and Cellforce. (Statement to SIT dated

19.04.2011, Sr Nos 125, Annexure II, Vol II of the SIT Record)Consequently, it is a matter of record that no investigation was done by the local police and the SIT has chosen not to investigate the matter ever since it took over the investigation on 26.03.2008.

32. **Hate Materials:** The other undisputed evidence relates to the hate material that was in circulation at the time, of which the SIT had knowledge. This is in citeful and hate-ridden material that were present and available and which the SIT did not investigate and analyse at all. **(See Convenience Compilation IV, G-P and actual documents at Pages 91-21, Pages 97-110, Pgs 116-161 in same Compilation)**

33. The undisputed hate material is part of Volumes IV of Convenience Compilation, some of the salient documents of this hate material is as follows:

(a) (a)Incendiary and blatantly false reporting by regional media outlets like Sandeshon 28.02.2002 of the kind that claimed that “15 Hindu women dragged away from the railway compartment by a fanatic mob” at Godhra to selective reporting of attacks only on the majority community. The Gujarat police denied that any such incident took place. Worse still, when mob attacks were

reported at all, this newspaper did not mention the identity when the victim belonged to the minority community.

(b) On 01.03.2002, Sandesh falsely reported again with a front page prominent heading that “dead bodies of the kidnapped young women from Sabarmati Express, have been recovered with their breasts chopped off” when in fact no such incident took place. The police denial of any such incident finds no mention in the report.

(c) Sandesh newspaper stated that Gujarat is aflame because of ‘Muslim fundamentalists’ taking its lies and canards to the extent of falsely reporting about former parliamentarian Ahsan Jafri and the Gulberg incident. An exhaustive list of such newspaper headlines is mentioned in the Protest Petition from the Editors Guild Report of May 2002 *[List of Sandesh’s inflammatory articles are listed in Para 233 - 238 of Protest Petition]*.

(d) Incidentally, the Editor’s Guild Report, extensively relied upon by the Petitioner both before the Learned Magistrate and before the Hon’ble Gujarat High Court, has been simply not dealt with when it comes to widespread hate speech. **(Pgs 19-21 &Pgs 69-88 from Convenience Compilation IV)**

(e) The State Intelligence Bureau headed by ADGP RB Sreekumar recommended prosecution of provocative writings by the VHP in published and anonymous pamphlets through communications dtd 16.4.2002, (**Pages 91-21, Pages 97-110, Pgs 116-161(Pgs 19-21 &Pgs 69-88 from Convenience Compilation IV)**

(f) State functionaries like ACS Home Ashok Narayan admit in his statement to the SIT that this grave matter had been brought to the state government's attention and yet the state govt chose not to act. **(Pgs 19-21 &Pgs 69-88 from Convenience Compilation IV)**

(g) Other police officers like then Commissioner of Police, D.D. Tuteja, had recommended action against Sandesh newspaper in 2002.

(h) IPS officer Rahul Sharma, then SP, Bhavnagar had,in March 2002, sought permission to register a criminal case against the Sandesh under the provisions of Rule 53(10) of the Gujarat Police Manual Volume III.

(i) State Intelligence Bureau (SIB), Gujarat, had through DCP (Int.), P. Upadhaya (communication dated 01.04.2002) recommended grant of sanction for the prosecution of Sandesh as recommended by Rahul Sharma.

(j) The Edtor's Guild Report and the contemporaneous VHP pamphlets sent suggesting prosecution by ADGP-Sreekumar that are also available in translation with the Concerned Citizens Tribunal contain writings that were both incendiary and provoking cadres to violence. For examplethe Editor's Guild states that

(i) "A pernicious piece of hate propaganda, officially disseminated by the VHP, calls for the economic boycott of Muslims. This was admitted to the Indian Express by Mr Chinubhai Patel, the Parishad's Gujarat treasurer. (Annexure 18 of the Guild Report). A more recent four page pamphlet circulating in Ahmedabad by this same organisation carries an appeal for funds to provide security for Hindus. It reads: Your life is in danger, you can be murdered any time... We are collecting funds for securing the interests of the Hindus...there are thousands of more Godhra carnages being planned". Mr Chinubhai Patel has confirmed that these pamphlets are in circulation. (Times of India, April 26, 2002).

(ii) The Express, March 24 (Delhi edition) reports the police seizure of a pamphlet urging Hindus to create a "jagrut Hindu rashtra", allegedly circulated by the Bajrang Dal president. Hastimal, who is said to have been arrested. The theme: "Don't purchase anything from Muslim shops, don't travel in their vehicles or visit their garages; don't watch films which feature Muslim stars. In this way we can break their financial backbone". The same news item says that the police seized a pamphlet in tribal-dominated Banswara, exhorting Hindus to hang a saffron flag outside their homes to help identification during Moharram.

(iii) A Hindi leaflet attributed to the Bharat Bachao Sangh, Allahabad and said to have been found in Coach No S-6 of the Sabarmati Express (Annexure 20).

(iv) Gruesome coloured photographs depicting the charred and mutilated remains of Sabarmati Express victims are reportedly being circulated at meetings, accompanied by fiery speeches. (Hindustan Times, April 9). The Guild Team

was officially given a set of such photographs with provocative captions at the VHP office. This evoked extreme horror and disgust.

(v) In Ahmedabad we were told of the seizure a booklet titled "In Defence of Hindus" purporting to be a "riot manual" from Nagpur containing a list of do-it-yourself brutalities.

Corresponding reports have appeared of pamphlets allegedly circulated by Muslims. One of these, titled "Give Challenge to Open Terrorism by Covert Terrorism", is said to have been distributed at the Shah Alam refugee camp in Ahmedabad, a charge denied by organisers of the camp.

34. The SIT has chosen to turn a complete blind eye to this official documentary material and other materials on its record despite the fact that the publication of such material, the contents and propagation thereof clearly constitute offences under law and if investigated and analysed as emanating from the same organisation that was holding meetings, making and distributing weapons –the VHP as evidenced in the Sting Operation—could well have established the existence of a larger conspiracy.

35. **TEHELKA STING OPERATION**: In respect of the Sting Operation, the offences that emerge from a careful perusal of the

Transcripts are listed here.**(Convenience Compilations V-A and V-B** contain the entire transcripts and tables thereof. In addition, Petitioners have prepared two charts annexed as part of this Compilation:

(i) Chart Titled "Offences Revealed from Tehelka Transcripts"

(ii) Other Offences Revealed from Babu Bajrangi's Tehelka Transcripts

Name	Date	Content
Anil Patel, VHP Vibhag Pramukh Sabarkantha	Recorded on 13.06.2007 Page 91, Vol V-A Page 92, Vol V-A Page 96, Vol V-A	Speaks of Setting Villages ablaze, Maulvis head was cut off after Godhra; Speaks of 123 properties burnt in Dhansura How he would do everything to ensure that 500 Muslims were killed

No statement recorded by SIT		More than 30 Muslims killed in Dhansura, including a MAulvi. Speaks of how he was "in charge" of three to four talukas(Dhabsura, Bayad, Meghraj, Malpur, Modasa) in Sabarkantha district to ensure that such offences were committed
Deepak Shah, Vadodara Unit Member of the BJP; also a member of the MS University Syndicate	Page 289 Vol V-A	Speaks of the swift organization in burning selective Muslim shops and attacking Muslim property even in areas where riots had never happened. Speaks of such actions in Manzarpur and

		Alkapuri where people who had never lifted a stone in their life were provoked into joining the mob in targeted attacks
Haresh Bhatt, VHP and Bajrang Dal member. Elected MLA in December 2002	Recorded on 19.05.2007 414-417, 420, 421 Vol V-B 416 Vol V-B	Talks of sending the charred dead bodies to villages with the intention to shock and instigate people; Use of PVC pipes to attack; How crowds were destroying selectively Muslim property in Ahmedabad and how he was part of this mob Attacks (similar) in Dahod, (Panchmahals)

		Note: This is close to the Ramol Crematorium where some of the unidentified persons who had been killed in the arson in Godhra were cremated. And SIT closure report depending on the 161 statements says Funeral processions were peaceful?
Rajendra Vyas, VHP Ahmedabad City President SIT statement dtd 10.04.2011	Recorded on 8.6.2007 496-503 @ 498 Vol V-B 502-503	Says he burnt nine of "their" houses and murdered four of "them" as revenge for attacking his daughter-in-law Says they killed 3

Pgs 678-681 (Eng) 682-684 (Gujarati) Vol V-B	Vol V-B	people with a dagger and burnt a garage in Godhra
Ramesh Dave, Kalupur Zilla Mantri, VHP SIT 161 Statement dtd 10.04.2011 Pgs 685-686 eng 687-688 Gujarati Vol V-B	504-518 Vol V-B 507 Vol V-B 507-598 Vol V-B	Says that he was given charge of Madhopura and they picked and killed all those who had been in their sights for 20-25 years Speaks of how provocative videos were used to provoke anger Says that Gadvi shot and killed 5 people in front of him and the police: Collaboration between the VHP

		ZillaMantri and Police gives details of the modus operandi and collaboration (Raju Rathod is a name)

These examples are illustrative and more details of serial heinous crimes have been listed with the documentary evidence at the Convenience Compilation V-A ad V-B.

36. Can any Court confronted with this material not hold that there is a strong suspicion that cognizable offenses were committed. It is the Petitioners' contention that the Magistrate chose not to examine each of the above and both the Magistrate and High Court failed to examine each of the above pieces of evidence that ex facie revealed the commission of offences. The explanation given by the Magistrate in respect of the Sting operation is limited to BabuBajrangi in the NarodaPatiya massacre case wherein he observes that having been convicted in that case, this matter need not be taken any further.

37. The Magistrate goes further and says the complaint does not talk about the Sting Operation.Relying on Pyara Singh (1978 SCR 1 597) he states that the extra-judicial confession need corroboration.The issue of

extra judicial confession cannot be gone into at this stage, it can only be adduced at the stage of Trial.(**Pages 281-283, Volume II of the SLP Record**).

38. Clearly therefore, none of the evidence available was looked at in accordance with established principles of law thereby refusing to issue summons.

39. In some of the prosecutions, the SIT actually relies on the Sting Operation and Ashish Khetan the author of the Sting is examined as Prosecution Witness. Even in the case of the Gulberg (Meghaninagar case) the Order of which was read out by Ld Counsel for the SIT, it is clear that the SIT had relied on the Sting. (See Pages A-U, Convenience Compilation V-A).

40. Now, coming to the statements of those in the Sting Operation recorded by the SIT. (Ashish Khetan statement to SIT dtd Page 618-625 and the Protagonists in the Sting have their statements at Page 624-689 of Convenience Volume V-B.) It isnot understood by the Petitioners under what provisions of the law were those who were in the Sting Operation examined, especially when they could not be regarded as witnesses because of the extra-judicial confessions made by them. It is important here to note that on 7.2.2013, the this Court consisting of a

bench of three judges -- when referring to the documents filed by the SIT before the Supreme Court from time to time while monitoring this case stated with reference to these statements recorded by the SIT since the statements recorded contain signatures and if the signed statements are supplied, the same shall be treated as statements made under 161. of the Code of Criminal Code, 1973. Therefore, there can be only two kinds of statements that could be recorded in the facts and circumstances of this case:

(i) One, a disclosure statement in respect of the commission of an offense (Section 25 of the Evidence Act and

(ii) Witness Statements under Section 161 of the CRPC.

41. The statements recorded by the SIT, in respect of all those who are perceived to have committed cognizable offenses pursuant to the Sting Operation cannot be in the nature of 161 statements nor can they be regarded as disclosure statements under Section 25 of the Evidence Act.

42. In fact it is a matter of great concern that the SIT, having been in possession of such statements of the Sting Operation instead of arresting the accused for custodial interrogation and confronting them with each other chose to seek an explanation from the accused, a procedure unknown to law. The fact that in the following cases the SIT accepted the explanation given by an accused seen to have committed an offence and in that process chose not to arraign him as an accused

person is something that itself is evidence of the nature of this investigation and the SIT's attempt to protect the accused.

43. It is not the case of the Petitioner that the contents of the Sting Operation represents proof of offenses committed but it is undisputed material on the basis of which the SIT should have arraigned them as accused and in the absence of that, the Magistrate when confronted with such material should have summoned such accused for offenses committed as determined by the Magistrate.

44. The SIT chose instead to question the Sting Operation itself by stating that the SIT did not find this to be reliable. It is unthinkable how a prosecuting agency can so conclude or come to this conclusion without any legal basis. This itself suggests a biased investigation meant to protect the accused.

45. In any event, it does not lie in the mouths of the Investigation Agency to not rely upon the tapes when all along in several other proceedings where the Sting Operation came to be used in the course of trial, the SIT has placed reliance on the veracity of the Sting and has obtained (except for the Gulberg case) convictions. In the NarodaPatiya Case the Sessions Judge relied on the authenticated Sting (Pages 83-106, Convenience Compilation, Volume I). The High Court in the appeal judgement too did not reject the Sting accepting it as secondary evidence. Even in the FIR 67/ 2002, the Gulberg Case, the prosecution held by the SIT, relied upon the Sting Operation. Nowhere at any stage,

except by way of an oral submission before this Court has the SIT chosen to discard the Sting Operation which, too, is an attempt to protect the accused and this sudden volte face is without any legal basis.

46. It is also somewhat surprising that the SIT has chosen not to file an appeal against the Gulberg carnage acquittals in FIR 67/2002 nor in the case of Naroda Patiya where the High Court acquitted certain individuals. It is also relevant to note here that the Naroda Gam trial is being unduly delayed and the SIT has shown no enthusiasm in completing the trial.

47. The local police, in any event, never conducted a fair investigation in respect of the material that is on record and was, to some extent available even prior to the Sting Operation (2007). Even in the case of the commission of hate crimes, no investigation was done by the local police. SIT also chose not to investigate and prosecute. Even after 12.09.2011, they chose not to prosecute anyindividual hate crimes..The SIT has chosen not to respond to any of this material. The SIT in its closure report also chooses to ignore this material by stating that it is aware of the fact that over 2000 cases of hate crime are pending, the progress of which they were not aware of. In any event the 2000 cases referred to is a statement made by the SIT which has nothing to do with the ex facie hate crime material in their possession

for which the individuals concerned should have been made accused by the SIT, and in absence this, the Magistrate should have issued summons to the accused.

48. In the case of the sting operation, the buildup corroborated by the Sting operation and Annexures to Sreekumar's affidavit, the commission of hate crimes are all materials on which the magistrate ought to have taken cognizance of the offences and wherever possible summoned the accused. The Magistrate has chosen not to exercise jurisdiction, the SIT has chosen not to make them an accused which makes the nature of its investigation highly suspect. The Magistrate has chosen not to take cognizance of offences which is an erroneous non-exercise of his jurisdiction. The High Court has also chosen to ignore the wealth of evidence to ignore the commission of cognizable offence.

49. The other official records which do not per se amount to the commission of an offence but indicates delay in response, for which the SIT should have carried out a thorough investigation to find out why the authorities chose not to act given the situation on the ground and the network of individuals who may be involved in the commission of offences by ensuring that the official machinery should wantonly delay in acting and thereby allow those committing acts of violence to target a particular community. This conclusion may not emerge from the facts. However, the Petitioners contends that this required investigation by the SIT for the purposes for finding out why there was inaction on the part

of the authorities which the Petitioners will demonstrate by referring to the proceedings before the Supreme Court which had stayed the trials way back on 23.11.2003 only because of the NHRC bringing to the notice of the SC and the victims complaining that the bulk FIRs were being recorded without naming of the accused though named by the victims and the accused were being released on bail at the instance with no opposition of the State Government. This along with other facts which will be presented to the court will demonstrate beyond doubt that the State Machinery had chosen to look the other way and was actively involved in protecting the accused and denying the victims the process of law they were entitled to. These are matters which required investigation by the SIT and in this context in the light of the closure report, the Magistrate should have exercised his powers under 156 (3) to order further investigation.

50. The Magistrate should have ordered further investigation in matters pertaining to official records not just evidencing dereliction of duty, but raising a strong suspicion that the state machinery was acting in unison to ensure that the victims do not get justice. For example, no response from the fire brigades despite the wireless messages sent to the Police Control rooms who in turn call the fire brigade for response where help was needed. There are over 45 messages that the fire brigades did not respond to.

51. The SIT cannot be seen to give an oral explanation of this phenomenon. The SIT gave an explanation unrelated to any material on the ground, as if the SIT was wanting to explain an extraordinary situation which required to be investigated by SIT. The fact that they did not choose to investigate also shows their lack of intent to make such an investigation.

52. The least that the SIT could have done was to record statements of those in charge of the Fire Brigade Stations, find out why they did not respond, ascertain whether there was any direction given to them not to respond or seek a plausible reason why in those circumstances they could not respond. An investigating agency is meant to investigate not to provide explanations without an investigation.

53. That also is reflective of the quality of the investigation and the modus operandi of the SIT when it went about discharging the responsibility which was its obligation under the orders passed by the Supreme Court. The same logic applies to the PCR messages when the bodies arrived at the Sola Civil Hospital at Ahmedabad. Again it was for the SIT to have investigated as to why no cognizance was taken of these messages in the light of the fact that a crowd of 3000 had started gathering at the Sola CivilHospital since 4 a.m. in the morning.

54. The CDR records in the possession of Rahul Sharma would have also indicated the calls made from various mobile numbers during that period- 28.02.2002-04.03.2002 of the city of Ahmedabad when the

violence in Gujarat was at its peak. It may well be that in the course of investigation, the SIT may well have found CDR records which link the accused with the bureaucracy and senior functionaries and with other members of the VHP/ RSS. The frequency of calls made from a particular phone number to a particular individual, their analysis, their corroboration by recording statements were all steps that could have been adopted by the SIT in order to do justice to the victims. None of this was done by the SIT. The Magistrate should have directed further investigation in these matters itself.

55. **Material that Required Further Investigation** : In order to deal with requirement of further investigation in respect of matters in which there were conflicting material, the SIT should have followed a procedure which required it to arrive at the truth by investigating the facts, rather than arriving at conclusions without investigation and by accepting the version of one individual and rejecting the version of another individual without any basis. Some of the examples which require further investigation are as follows:

1. **Handing Over Bodies to Jaideep Patel, VHP:** the handing over of the dead bodies pursuant to the burning of Coaches 6 and 7 of the Sabarmati Express. The SIT submitted before the court that it has come to the conclusion that the bodies were not handed over to Jaideep Patel. There is no evidence on the

basis of which the SIT has made this submission. The evidence is to the contrary. The following is part of the record:

(i) The Mamlatdar Mahendrabhai Nalvaya has through an official communication (Statement to SIT dtd 28.10.2009, Pages 99-100,Convenience Compilation-VII) handed over the bodies to one Hasmukh Patel that is proven by the document on record. Jaideep Patel in his testimony states in great detail that the bodies were received by Hasmukh Patel and himself and that he accompanied the bodies alongwith Hasmukhpatel to be taken to the Sola Civil Hospital(Statement to SIT dated 15.2.2010, Pages 84-88, Convenience Compilation II). The Collector Godhra, Jayanti Ravi, in her statement dated 15.09.2009(Pages 74-78, Convenience Compilation Vol II), states that it was an unanimous decision to take the bodies to Ahmedabad and that Jaideep Patel accompanied the bodies. There is nothing on record contrary to this, even in the records of the SIT. Therefore how can the SIT orally argue before this Hon'ble Court that the bodies were not handed over to a VHP functionary, a private individual? In fact that bodies were handed over to Hasmukh Patel and Jaideep Patel accompanied the bodies to Sola Civil hospital, Hasmukh

Patel handed over the bodies to Sola Civil Hospital (Hasmukh Patel's statement to SIT is dated 4.9.2010 and is available at Annexure II, Vol I of the SIT Record). The question for investigation is why bodies were handed over to a private person? Why was it necessary to have a member of VHP and Hasmukh Patel to take bodies to the Sola Civil Hospital? Why was an official of the state government not handed over the bodies, why was a high functionary of the police not accompanying the bodies? These are matters that should have been investigated. The explanation given by the SIT is that bodies were "escorted" to Sola Civil Hospital, but an escort to bodies put into trucks requisitioned by the Collector is not an explanation for the fact that the bodies were not handed over to a government functionary. An escort accompanies those escorted for protection during the course of the journey. An escort is not given possession of the bodies, he travels along with the bodies for their protection, that is all an escort does. The handing over of bodies to a private party had to be investigated to figure out whether it was done under the instructions of a government official, when such instructions were given, why were they given, these are

matters for investigation. Consequently the SIT has failed to investigate this aspect of the matter.

2. **Post Mortems out in the Open at the Railway Yard:** The second relates to the crowd being present at the railway yard when post mortems were performed. Any police personnel in Godhra taking care of law and order would have known that allowing a post mortem in front of a crowd in an open railway yard is a recipe for emotional outbursts the natural consequence of which would be the possibility of violence being perpetrated. The issue to be investigated was

   (i) as to why a crowd was allowed to be gathered and a post mortem being done in sight of the crowd

   (ii) and the fact that photographs of bodies of charred remains are prohibited by police manual, why were precautions not taken to ensure that crowd not gathered, and photos not allowed to be taken. This too was not investigated.

   (iii) None of this asked by SIT to the Collector or Superintendent of Police (SP)/ police personnel positioned at Godhra.

   (iv) Photographs were being taken by members of the organisations like Vishwa Hindu Parishad (VHP) present at the railway yard and released to the media which is

an abetment to the offence allowing hate crimes. Yet no investigation was done in this regard, nor were those functionaries like Jaideep Patel or HasmukhPatel who were present at the railway yard ever interrogated in this regard.

3. Parading of Bodies/Funeral Processions & Mob Attacks:

(ii) SIT further argued that the Petitioner had contended that the bodies were paraded in fact this is contrary to the record. The contention of the Petitioner was not that the bodies were paraded from Godhra to Ahmedabad but that parading of bodies were allowed when funeral processions were taken out from Ahmedabad and Godhra (and other locations) for arousing communal passions. SIT further argued that there was no evidence that crowds had gathered at Sola Civil hospital. This too is contrary to the facts on record as a crowd of 3000 started gathering at 4 a.m. in the morning of 28.2.2002 while bodies reached Ahmedabad with Hasmukh Patel and Jaideep Patel from Godhra. This issue too was not investigated by the SIT, nor did the magistrate order further investigation.

(iii) This is an analysis just on aspect of post mortem on railways yard and events that took place thereafter. That

bodies were handed over to Hasmukh Patel are based on a document which cannot be countered by oral evidence, as per evidence.

(iv) The version of the Mamlatdar by way of an affidavit to the Nanavati Commission was contrary to the statement of the collector, Jayanti Ravi (Refers to Affidavit dtd 5.9.2009 in first Statement to SIT available at Pages 99-100 dtd 28.10.2009; Second statement to SIT at 3.4.2011, Pages 101-102 Convenience Compilation VolVII).

4. The other issue with respect to oral evidence thatrequired proper investigation by the SIT was in relation to the presence of the two Ministers who had nothing to do with law and order both in the office in the Commissioner of Police(CP), Ahmedabad, PC Pandey and the State Control Room at Gandhinagar. While CP, Ahmedabad, PC Pande has stated (First Statement to SIT dated 24.3.2010, Pages 197-208, See Page 199, Convenience Compilation IV) that Ashok Bhatt's presence in his office was perfunctory because the Union defence Minister George Fernandes was present. As far as Ashok Bhatt minister of Health is concerned he himself admits that "he might have been in the Control Room at Ahmedabad

for 5-10 minutes" but that he "did not interfere because he had to keep in mind his dignity and status." He denies he had given any instructions when he was in the control room(Statement at Pages 93-95, Convenience Compilation Volume VII). Why a minster for Health would be required to be visiting in the Control Room without an agenda is something which should have been investigated. Whether or not any calls were made by Ashok Bhatt sitting in in the control room room were matters that needed to be investigated.

5. As far as IK Jadeja the Minister for Urban Development and Housing is concerned he has himself stated that he had been instructed by MOS Home Gordhan Zadaphiya to be present at the State Control Room at Gandhinagar and that he was present at the office of DGP for 3-4 hours that day.GordhanZadaphiya has denied giving him such instructions. (Jadeja's Statement to SIT, Pages 110-111, Convenience Vol VII & Pages 112-114 of Convenience Compilation VII).
6. Since the facts in relation to the presence of Ministers had nothing to do with law and order is established the normal course of code of conduct of SIT should have been to discover any further facts which may or may not point towards commission of offences.

7. While some perfunctoryinvestigation has taken place visvis wireless messages visTandon and Gondia, there has been no investigation or probe into crucial issues for example:

(i) attacks launched in Ahmedabad against targeted sections of the population from the afternoon of 27.2.2002 onwards; (ii) Agitated and Violent Mobs gathering in the early morning of Sola Civil Hospital, Ahmedabad when the bodies of the Godhra Victims were transported here by Jaideep Patel of the Vishwa Hindu parishad (VHP); (iii) Funeral processions of the Godhra Victims in Ahmedabad and other parts of Gujarat turning violent because organisations like the VHP were allowed to take control of them; (iv) corroborations and confirmations of the non-response of the Fire Brigade.

8. (i) The other matter that required investigation was the fact that the Commissioner of Police, Ahmedabad, PC Pande who was in possession of the Police Control Room Records (PCRand Other Official Log Data Records right from 2002 onwards chose not to disclose that fact to any authority including the SIT for a significant period of time and kept it as a protected secret is inconsistent with the responsibilities with the Co missioner of Police who was duty bound to investigate the data available during the riots; to discover the communications by key persons in the bureaucracy, with those

in the VHP, the political functionaries, the Bajrang Dal and the police who were allegedly seeking to curb the violence that broke out.This is not just a serious lapse but was done with intent not to allow this material to be in the public domain knowing fully well it will lose its relevance after the passage of time.

(ii) The SIT records six statements of the Commissioner of Police PC Pande. This Court has recorded in an Order while the Preliminary Enquiry was on (See Page 885, Volume IV of the SLP) that the SIT experienced difficulties accessing contemporaneous official records (PCR messages, Log Books) etc. Despite this background, when Pande perfunctorily during the recording of his *fourth statement before the SIT at the end of 2010 suddenly produces CDs with several thousand pages of scanned PCR messages,* the SIT does not probe the matter further. Pande's statements to SIT are dated 24.03.2010, 07.05.2010, 05.10.2010, 23.11.2010, 23.03.201 and 14.01.2012. (Pages 197-225, Convenience Compilation Volume IV)

(iii) It was during the recording of the short, *fourth* statement of the Commissioner of Police who finally disclosed that he was in possession of the CDs with Scanned PCR messages to Mr. Himanshu Shukla of SIT in late 2010 (See Pande's fourth

statement to the SIT dated 23.11.2010; Convenience Compilation Volume IV at Page 219) SIT (Himanshu Shukla) has not asked him to clarify as to why these records were kept for so long without an investigation and without disclosing it to the Supreme court or the SIT who had commenced investigation in these matters on 26.3.2008. This is in fact prima facie proof of the attitude of the SIT in not interrogating key functionaries in the manner in which a normal investigating officer would do. In fact,on the basis of this fact alone the Commissioner of Police PC Pande is culpable of not just withholding documentary evidence in respect of matters under investigation but actively protecting potential accused. Why were such records withheld, at who's instance they were withheld, was this fact known to the political establishment and were these recordswithheld with the full knowledge of establishment are questions that need to be answered.Why was no analysis was done by him for all these years? These anomalies have not been explained. If properly investigated, they would have thrown light on commission of offences and conspiracies that may have been revealed based on the investigation of such records.

(iv) On these facts alone the Commissioner of Police should have been taken into custody because ex facie such an act

proactively helped in thwarting the investigation, protecting potential accused and keeping the most vital documents away from the investigating authorities. This ensured that no analysis and investigation pursuant thereto based on either the PCRs, Log Details of Officials and the CDR was conducted. This should have persuaded the magistrate to direct a further investigation to enable the facts to emerge. Even the SIT which received these records in late 2010 did not analyse the Police Control Room Messages, investigate them and place this analysis with the material before the Magistrate.

9. The SIT, when forwarding these records to magistrate should have provided a reason why these records were irrelevant and why investigation of these records was extraneous to the investigation which was being carried out. The Magistrate on his own should have also questioned the SIT as to why no reason had been provided by the SIT in this regard and why the PCR records were not analysed pursuant to the investigation.

10. Preventive Measures: The other matter that required through investigation was why preemptive steps were not taken to curb the violence within the jurisdictions of the entire state (DGP, Gujarat, K Chakravarthi), Commissioner of Police Ahmedabad, PC Pande and Commissioners and SPs of other

jurisdictions likeMehsana, Panchmahalsetc where violence was widespread. In all these locations violence was widespread. These jurisdictional officers should have anticipated what would happen since the State Intelligence Bureau was sending warning messages. The official documentation in this regard about the build up after Godhra of emotions and possibility of violence is all reflected in the SIB messages to which reference has already been made in this note. (Chakravarti's statements dated 16-17.12.2009, 24.03.2011, 30.01.2011, Pages 172-196, Convenience Compilation IV)

11. **Delayed Imposition of Curfew:** Why curfew was delayed to be imposed as late as 12:45 on 28.2.2002 in Ahmedabad and 1.3.2002 in the rest of Panchmahas district where Godhra town is located has till date not been explained. The delayed imposition of Curfew in Ahmedabad on 28.2.2002 is particularly worthy of a thorough Investigation as there is evidence in the form of SIB Messages and other documentary data on record to show of violence had erupted in Ahmedabad from the forenoon of 28.2.2002 itself. (See Convenience Compilation II, Pages E to P and Pages 1-6 and 16-22 for SIB warnings of Mob Mobilisations and Pages Q to V and Pages 8-15, Convenience Compilation II for Fatal Attacks that began

on 27.2.2002 at Anand, Vadodara and Ahmedabad). The Commissioner of Police would have known that by4 a.m. on 28.2.2002, when the charred remains of the burned victims of Godhra arrived at Sola Civil Hospital, a crowd of 3000 RSS workers had already gathered there. Those in the crowd were not families of victims but VHP, RSS persons which is also reflected in the investigation record. (See PCR Messages listed and analysed at Pages N-S and Pages 3-24 of Convenience Compilation III).

12. The statements recorded by the SIT of DGP, Gujarat Chakravarthi, SP Godhra, Raju Bhargav and CP Ahmedabad, PC Pande reflect no attempt by the SIT at investigating this crucial evidence on record.

13. **Bandh Call:** It is in this context of the above that the all-Gujarat Bandh call given by the Vishwa Hindu Parishad (VHP) and supported by the ruling party should be viewed. (See Pages 1-3 and Pages 4-42, Convenience Compilation VII).Pages 4-42 Convenience Compilation VII are samples of dozens of SIB Messages from the SIT Record that reveal the violent mobilisations being undertaken with precision by the VHP in several locations in the state which were clearly either ignored or not acted upon. Senior Police Officials, the DGP and Commissioners of Police –especially of Ahmedabad and

Godhra --should have known and must have been aware of the following: (i) that the bodies were being transported to Ahmedabad and would reach by 4 am in the morning; (ii)that violence had already erupted on 27.2.2002 claiming lives; (iii) A meeting was called in which the VHP RSS and Bajrang Dal, supported by ruling party and that a decision was taken calling for an all Gujarat Bandh; (iv) that photographs of the charred Godhra bodies were taken by the media and the VHP workers present at the railway yard which would necessarily be used to spread communal hatred bycirculating such photographs contrary to the police manual. (Section 223, (3)(b)(ii) of the Gujarat Police Manual at Pages 96-97, Convenience Compilation VII)(v) that in the convoy that would follow pursuant to the remains of the dead received in Ahmedabad, violence would occur. On these matters the authorities could have had no doubt, In this environment, the presence of Giriraj Kishore of the VHP, would have certainly have aggravated the situation. (PCR Message 5865 dtd 28.2.2002, Annexure IV File XIV of the SIT Record compiled on Pages 3-5, Convenience Compilation III) Why Curfew was not imposed till 12.45 p.m. in Ahmedabad is something that has not been investigated or answered.

56. The SIT submitted before this Court that there was no violence before 1 pm. This is contrary to the record and inconsistent with the warnings communicated by the SIB messages as well as movement of senior police officials in the Gulberg and NarodaPatiya area.

57. Fourteen FIRs recorded in the Ahmedabad itself on 27.2.2002.These are part of the SIT Record at Annexure IV, File XIV (PCR Messages 5731-6140 in SIT Record& Para 451, Page 386-394 of Vol IV of the SLP that has the Tabular Evidence from the SIT Record

(i)Mob Attacks on the Muslim Minority in Ahmedabad city from about 2.30 p.m. onwards on 27.02.2002 as evidenced in the SIB record. They include:

a. Bapunagar, Ahmedabad, 27.2.2002: Between 14:30 to 15:00 a mob of 200 persons was pelting stones and set fire to a bus & shop.

b. A mob attacked a rickshaw and injured 4 persons near Ratnasagar Cross Road, Meghaninagar, Ahmedabad, at 22:00 on dt. 27/2/02.

c. A mob injured one Muslim with sharp weapons near the Express Highway at 21:45 on 27/2/02 and

TaushifShaeb Ali Saiyed has died.

d. Unknown persons burnt a rickshaw and injured one Muslim with sharp weapons near C.T.M., Ramol, Amraiwadi, Ahmedabad at 21:45 on dtd. 27/2/02.

e. A mob attacked and injured one Muslim near Mahalaxmi Cross Road, Paldi, at 20:30 on dt. 27/2/02.

f. A mob attacked and injured one Muslim near Law Garden at 20:15 on dt. 27/2/02.

g. Unknown persons attacked and injured one Muslim near Kathwada Road, Naroda, at 19.30 on dt. 27/2/02.

h. Jafarbhai who was injured near Rameshwar Cross Road at 13:10 yesterday died at 18:45 yesterday i.e. on dt. 27/2/02.

58. Since the police was aware that minorities were being targeted why did the senior police officers, including the Commissioner of Police,

Ahmedabad not take action? This line of interrogation is absent in the 161 statements of the Commissioner of Police recorded by the SIT not once but on six different occasions. This line of interrogation was not adopted qua other senior police officers whose statements were recorded by the SIT. This also reflects a one-sided partisan investigation by the SIT. The submission of the SIT that in Gulberg there was no violence till 1 pm 28.2002 is also contrary to the record. It would have been better, if the SIT had looked into the record and then made a statement in Court. At least this is what is expected of it when making submissions in the Supreme Court.

59. It would have been fair for the SIT to read from the Gulberg judgement dtd 17.06.2016 that violence had already commenced from 9 am in the morning and intensified by 11/11.30 a.m.. It is one thing not to investigate matters, it is another for the SIT to make statements contrary to the record. First of all, in situations as volatile as those existed pursuant to the inhuman acts of the burning of Coaches S6 and S7 of the Sabarmati Express, the Commissioner of Police and the political establishment of the state, including the Commissioner of Police should have ensured that the Bandh was not allowed to be called. In fact, Section 144 CRPC should have been imposed forthwith not just in Ahmedabad but throughout the state for a day or so and preventive arrangements should have been made to respond to any

possible attempts to instigate violence. This should have been anticipated by the police. The fact that it was not anticipated suggests the fact that the state was not willing to take strong measures to protect innocent people who had nothing to do with the burning of S 6 S7 of the Sabarmati Express.

60. The fact is that only two preventive arrests were made and that too of members of the minority community on 27.2.2002. This shows that the police authorities were not ready to make any preventive arrest even though they should have known that those elements or those trouble makers, trouble shooters whose record they would have have known of would create serious law and order problems.

61. And why such incidents were not investigated and persons prosecuted has not yet come to light.There is also no investigation qua those who burnt mosques destroyed properly burned commercial and residential buildings other than 9 cases which were investigated. Such acts of violence are also serious offences which required the police to act. The SIT has not interrogated any police officer as to why investigations were not conducted in respect of the such offences. The national tragedy at Godhra resulted in another tragedy where revenge and retribution not only claimed innocent lives of women, children, young and old, but destroyed property and businesses and rendered hundreds of thousands displaced from their homes.

62. Apart from offences committed prima facie established from the sting operation further investigations should have been done to ascertain the following

(i) **Partisan Public Prosecutors:** The role of the PPs being part of the VHP should have been investigated. The Sting Operation reveals their collusive activity in protecting the accused and they were members of organisations involved in the violence. The SIT should have prosecuted the VHP PPS who made such extra judicial confessions.

(ii) Further investigation should have been done qua those who were manufacturing bombs supplying and transporting weapons of offence, supplying them to individuals who used them and the network behind these activities, if there was any. None of this was ever investigated.

(iii) For each offence that is ex facie demonstrated to have been committed further investigation was required to unearth a conspiracy at hand and the network involved in the cult of violence that spread throughout Gujarat pursuant to a national tragedy. Again,no senior officers of the law and order establishment, the DGP, nor Commissioners of Police or SPs

where the worst violence occurred were asked a single question in this regard.

(iv) There are statements made by the prosecutors belonging to the VHP to the effect that in several of these cases were resolved by money paid to the family of the victim who were prosecuting matters. The money trail should have been followed as part of the investigation but the SIT chose not to investigate any of this.

63. **Delay in Calling the Army:** The SIT has submitted that the decision tocall for seeking the help of the army was taken on the afternoon of 28.2.2002 itself is an indication that the government knew well in advance that the state police were not in a position to handle the situation. This realization came before 2 PM on 28.2.2021. If the argument of the SIT that there was no violence before 1 PM is accepted, there was no reason to call the army at 2 PM. It also does not address the fact the curfew was not imposed till 12.45 PM.

64. While there was widespread violence, curfew was imposed only in Godhra city and not in the most sensitive districts. where violence had erupted. This too was not investigated by the SIT as to why there was necessity to call army at 2 (Bhargava statement at Pages 120-121, Jayanthi Ravi's statements dtd 15.09.2009, Pages 74-76 & statement dtd 26.10.2009 & 03.11.2009 at Pages 77-78, Convenience Compilation, Volume II; Raju Bhargava's statements dtd 26.10.2009

and 3.11.2009 at Pages 79-81 &Pgs 82-83 respectively, Convenience Compilation Vol II; and statement dtd 27.10.2009, Pages 120-121, Convenience Compilation, VolVII)

65. The SIT neither sought possession of the data to establish the allegations made in this regard nor question the political establishment based on such statement, this is yet another example of this cover up investigation that was done by the SIT.

66. It is also of some relevance to state that because the Gujarat government was unable to handle situation, KPS Gill was thereafter sent by the central government as late as May 6, 2002. Clearly because even by that time the situation continued to be volatile. SIT chose not to record even his statement. He would have had deep insight into what had happened in Gujarat since 27.2.2002 and how the situation was sought to be handled by the Gujarat police since he would have been advised in his interaction with the police officials. Had they recorded his statement, they would have accessed vital material required for their investigation. Considering the fact that he was not part of the Gujarat state police, he would have been a neutral person to provide evidence.

67. The same comment can be made with respect to SIT's inaction in collecting material which would have been available to the NHRC as well as with the CEC during the course of their visits.They may have

had in their possession statements of victims and families of victims in the course of their visits to Gujarat. No statements have been recorded of those who were part of these missions in Gujarat within the NHRC as well as CEC. This only reflects that the SIT was not keen to collect any material which may have ultimately resulted in implicating individuals for either dereliction of duty or commission of offence.

68. Here again a direction for further investigation was required to be given by the magistrate. It is rather disturbing that the Concerned Citizens Tribunal (CCT, Crimes Against Humanity, 2002) that consisted of highly respected Supreme Court and High Court judges who too unofficially ascertained the goings on in Gujarat and the plight of the victim's family and who had collected material which would be relevant for the purposes of conducting further investigation has been dismissed by the SIT. The arguments made for counsel of SIT is, to say the least, inconsistent with the duties of SIT. The issue is not whether Citizen's Tribunal is a non- investigative body; the issue is, that an investigating authority should collect material from wherever available for the purposes of investigation. There are unofficial sources who may have helped in a genuine investigation for example (i) Newspaper reports; Iii) statements of journalists who were eye witnesses to the events; data available on electronic media; The Citizen's Tribunal would have had no ulterior motives, given the members were Justices VR Krishna Iyer, PB Sawant and Hosbet Suresh. Surely the SIT could not have doubted the

integrity of the material collected by them. This would have helped the SIT in its investigation. The citizen's tribunal collected over 3000 victim's statements which would have helped SIT in their investigation.

69. It is important to note that in the entire investigation there is no media person's statement recorded by the SIT. There was no attempt made to access contemporaneous material in their possession. This shows that the SIT was not keen at all to collect material but was more interested in recording 161 statements of accused and of potential accused a method of investigation that would hardly commend itself to this Court.

70. The only victim statements recorded by the SIT were of those statements which stated that Addl CP, Ahmedabad, ShivanandJha protected them which helped in exonerating him. While the Petitioners do not dispute that Mr.Jha may have protected those persons, it is infact strange that the SIT chose not to speak to other witnesses/victims who could have corroborated the violence faced by them.

71. It is important to place on record that, though, the SIT had, through public notices sought material in respect of the Nine trials that were going on, no such public notice was given while investigating the Complaint dated 8.6.2006 that related to crimes committed across the state. Many of the families of the victims or the victims themselves would have come forward and handed over material to the SIT in respect of acts of violence which may not have directly related to a

particular trial but which might otherwise have been relevant for the purposes of the present proceeding.

72. For example the depictions of violent acts which emerged from the Sting Operations should have been investigated and prosecution should have been launched. The investigation should have been victim centric. Instead the SIT sought to protect the miscreants and are seen to be collaborators in their endaevour to protect the state and its functionaries..

73. It has been the submission of the SIT before this Hon'ble Court that the state government did everything they could and it was overwhelmed with spontaneous violence and the police establishment in Gujarat acted in a matter consistent with their Constitutional Duties. SIT contended that there may have been lapses but no criminal intent could be established since the state did everything in their power. The following establishes beyond doubt that the state of Gujarat chose not to deal with the situation consistent with its constitutional obligations. This is reflected by the following

74. **The NHRC Case and Related Cases related to the Gujarat 2002 Carnage**

75. 2002 and 2003: Pursuant to the NHRC's Interim and Final Report (2002), public spirited citizens petitioned this Court for Transfer of Investigation to the CBI. Among the petitions were those filed by

Mrinalini Sarabhai, Mahashweta Devi, DN Pathak, TeestaSetalvad&Ors.

76. In June 2003, in one of the nine cases that the NHRC had recommended transfer of investigation, the Best Bakery Case, the local Court at Vadodara resulted in an acquittal. Fourteen persons had lost their lives in this act of targeted violence. The circumstances of the hearings where none except the Habibullah Shaikh family were examined as prosecution witness caused outrage. By July 2003, the star witness and her family approached the Citizens for Justice and Peace (CJP) and Zahira Shaikh the star witness revealed that she had been intimidated by a member of the ruling party in Vadodara. She thereafter recorded her statement before the National Human Rights Commission (NHRC) and NHRC thereafter moved the Supreme Court for transfer and re-trial of the Best Bakery Case. NHRC also soon thereafter moved the Supreme Court for transfer and re-trial in the nine others cases including the Godhra tragedy, the NarodaPatiya massacre in Ahmedabad (96 persons massacred according to the charge sheet on 28.2.2002), the Gulberg Massacre in Ahmedabad (69 persons lost their lives brutally on 26.2.2002) and the Sardapura carnage case (In Mehsana, 33 persons burnt alive on 1-3-2002). Later the Odh (Anand district) carnage cases (two where 26 persons had been killed on 1.3.2002), the DeepdaDarwaza case (14 persons killed in Mehsana)

and the British Nationals case in Sabarkantha were also included. The Naroda Gam case in Ahmedabad was also joined in this case.

77. The happenings in Gujarat 2002, that continued beyond the acts of mass targeted violence and extended to subversion of the deliverance of justice leading this Court to not only take unusual and extreme steps of transferring two cases (the Best Bakery Case and the BilkisBano case) but to monitor these trials which it still continues to do. For the SIT to today suggest that the incidents of violence were in the normal course and the government and police were overwhelmed is to not just dilute the happenings on the ground but to obfuscate the history of these cases. The very appointment of the SIT arose out of these facts that continued to be contested before this Court.

78. **09.10.2003:** In fact on 19.03.2003, the DGP, Gujarat and Chief Secretary were cross examined before this Court on conditions that Victim-Witnesses were turning hostile. Supreme Court then appointed Mr. Harish Salve, Senior Advocate as Amicus Curiae in W. P. (Cri.) No. 109 of 2003, he continued to serve as Amicus Curiae till the disposal of the said Writ Petition. (Pages 847-852, Volune XIV of the SLP)

79. Pursuant to the manner in which cases were being handled in the state of Gujarat, where prosecutions were failing to prosecute effectively

and given that apart from the NHRC, Victim Survivors had approached this Court pointing out lapses in Investigation, intimidation etc, this Court took the unusual and extreme step of staying the trials on 23.11.2003

21.11.2003 – Supreme Court issued notice in T.C. (Crl) No. 194-202/2003 filed by NHRC which sought transfer of trials. Supreme Court stayed 8 major trials, including Gulberg Society Case arising out of CR No. 67 of 2002. Though there was no stay on investigation, between 2003 and 2008 when the SIT was appointed, little was done by the Gujarat state police to set the investigation to right, to get the statements of the Victim Witnesses recorded etc. (Order dated 23.11.2003 at Pages 853-855, Volume XIV of the SLP Record)

26.03.2008 – Supreme Court in W. P. (Cri.) No. 109 of 2003 appoints SIT qua the 9 trials stayed by the Supreme Court by its order dated 21.11.2003. (Pages 874-880, Volume XIV of the SIT)

1. Meanwhile the trajectory of the Best Bakery Case that led to a landmark judgement of this Court on 12.4.2004 need to be recalled as what is evident is that there was a wilful failure of the political establishment, appointment of partisan public prosecutors who acted more as defence counsel, something that was commented upon strongly by this Court.
2. **Extracts of NHRC Orders from 11.7.2006 to 26.03.2008:** The reasons why these dates have been earmarked is because prior to Amicus Curaie Harish Salve presenting those Charts and Notes on 30.03.2007, this matter where the Trials had been stayed (23.11.2003) had gone

through a tortuous trajectory. Over 40 affidavits of Victim Survivors were filed by Citizens for Justice and Peace (intervenors) and various facts including bail orders of accused etc had been filed and discussed before the Hon'ble Supreme Court. The original prayer of NHRC was for handing over the Investigation of the Nine Cases to the CBI. See Pages 20, 31 of Vol X of the SLP that is the NHRC Order that lists cases that need to be handed over to the CBI. Five cases were listed: Godhra, Gulberg, NarodaPatiya, Best Bakery). Later while arguments for stay etc were on four more were added: Odh (two cases), DeepdaDarwaza and the British Nationals Case.The 30.3.2007 Notes and Table given by Amicus Harish Salve were preceded by this Hon'ble Court directing that this voluminous material should be examined by a sitting District Judge. (Order dtd 11.07.2006). Thereafter, Judge ML Mehta was appointed (Order dtd 28.08.2006). This review takes four-to six months and it is in the context and background of this that the Amicus Harish Salve files his extensive notes on 30.03.2007. Then the matter finally goes over to 26.03.2008 wherein the SIT is appointed, finally. So it can be said that the grave issues raised in the Charts presented by Amicus Harish Salve on 30.3.2007 resulted, finally in the appointment of an Independent Investigating Agency.

3. After some further investigation on **01.05.2009,** the stay on trials as per order dated 21.11.2003 is vacated. Even after the appointment of the SIT some issues of concern did emerge post the filing of charge sheets

in August-September 2009 leading complaints to be filed by victims and also prayers for a reconstitution of the SIT.

4. On **25.2.2010,** Special Public Prosecutor in the Gulberg Society Case (Meghaninagar), RK Shah and his colleague, Assistant PP Nayana Shah resigned and this was brought to the attention of this Court. The contents of this letter are telling since it raises questions about the conduct of the Prosecution in the Gulberg case conducted by the SIT and a Judge who was thereafter administratively removed, (Letter by RK Shah may be read at Pages No. 74-78, Volume III of the SLP).
5. **6.05.2010 –** Given serious issues and allegations around the investigation by the SIT and the resignation of the Public Prosecutor RK Shah in the Gulberg Trial, the Supreme Court stays pronouncement of judgements in the ongoing cases. Thereafter on **26.10.2010 –** Supreme Court vacates stay on pronouncement of judgements in all trials except the Gulberg Trial (Cr No 67 of 2002, Meghaninagar, Gulberg Society Case). Finally, on **22.02.2016 –** Supreme Court vacates stay on pronouncement of judgement in the trial arising from Cr Nos 67/2002, Meghaninagar, Gulberg Case.

6. Finally, on 17.6.2016, Trial Court in Cr Nos 67/2002, MeghaninagarGulberg Society case passed its judgement, convicting 24 accused. Matter is pending in appeal in the High Court.

7. The trajectory of many of the criminal trials related to the Gujarat Carnage of 2002 is indicative of an establishment more concerned and

interested in subverting due process and denying justice to the Victims of Mass Crimes. For the SIT today, appointed by this Court, to correct investigations gone wrong, to say that all was well, is not a cruel irony but a travesty of the truth.

C. STATEMENTS OF 161

1. It is of great legal significance to note that what is before this court is the following

   (i) Documentary evidence in the form of Tehelka tapes

   (ii) Official documentary evidence as part of official records

   (iii) Documentary evidence of Reports in the print media,

   (iv) Documentary evidence of documents circulated both officially and unofficially at the time. Apart from this documentary evidence, we have statements of those whose extra judicial confession has been recorded in the tapes and statements of others under section 161 of the CRPC
2. Under the Evidence Act documents have to be proved only in a court of law during trial. At this stage all that the magistrate is required to do is to look at the documentary evidence and come to the conclusion, prima facie, that there is strong suspicion of a commission of an offence and if such a conclusion is reached, the magistrate takes cognizance and summons the accused by issuing process.

3. The Magistrate on the basis of other documentary evidence where he believes that the issuance of summons at that stage may not be appropriate but that the documentary evidence is sufficient to require further investigation to ascertain material for the purposes of prima facie coming to a finding that from the facts a strong suspicion can be inferred that the offences have been committed.
4. The documentary evidence in relation to the Tehelka tapes has been authenticated by the CBI pursuant to the procedure followed by sending it to FSL Labs to establish its authenticity and as reflected in the 188 pagereport of the CBI.This having been done at the instance of the NHRC.
5. The SIT at no stage questioned the authenticity of the tapes and on the contrary has relied upon it on some of the prosecutions launched by it
6. The other documentary evidence relates to official records in the custody of the authorities which kept in the normal course of business, are required to be produced and in law when produced are admissible in evidence. This relates to PCR records, the SIB records. The CDR records are also required to be proved by the authority obliged in law to maintain them in the normal course.
7. Other than this all other material on record consists of statements under 161 of CRPC which can only in law be used for the purposes of corroboration or contradiction as and when the matter goes to trial.

8. That stage having not been reached, statements under section 161 Cr.PC do not represent proven facts. The material collected can only be used for the purposes of forming an opinion that either an offence has ben committed or no offence has been committed. In the former case, a charge sheet would be filed and in the latter, a closure report would be filed but the material collected has to be proved in a course of trial absent which it has no evidentiary value.
9. Similarly material produced in the Closure Report and statements made and produced along with Closure report cannot be given the status of truthfulness. The limited purpose for which they can be relied upon is only to either launch a prosecution or file a closure report.
10. If the Magistrate chooses not to agree with the closure report, the magistrate may(a) either to accept the report and close the case, (b) reject it and on the material produced take cognisance and summon the accused, (c) take cognisance on the basis of material produced and order further investigation and (d) Direct further investigation in the matter.
11. The submissions of the SIT made before this court is contrary to all canons of law in relation to 161 statements. Documentary evidences issought to be dscarded by relying on 161 statements, a procedure unknown to law, as if the statement made under 161 represent the truth.
12. The statements under 161 are believed to be true by the SIT when choosing not to investigate the matter. Where there is a contradiction in

the statement of two individuals in relations to an incident or an episode, the SIT chooses to believe one over the other without an investigation. Apart from this conclusions of fact are arrived at only by accepting the 161 statementseven in relation to offences that are prima facie seem to have been committed; This bizarre procedure adopted by the SIT and accepted by the court is, with greatest respect unknown to law.

13. The High Court should have interfered by relying upon established legal principles and not endorsed the findings of the Magistrate. Neither the Magistrate nor the High Court nor this Court has the jurisdiction to arrive at the veracity of the truthfulness of statements under 161 without a trial. It is the remit of the High Court and this Court to either accept the Closure Report or reject it, but no court can give a render finding on facts until these facts have been established in the course of a trial. It is both unfortunate and surprising that the SIT which is expected to have a great know of processes of the law has adopted a process unknown to law and place before this court 161 statements as if they represent the gospel truth.

14. That the statements recorded even though signed would be treated as statements under 161 as reflected in the order of Supreme court dated 7.2.2013. No Court can, therefore, record a findings of facts by relying upon statements under 161 as proof of facts stated therein.

15. It is for this reason the counsel for the Petitioner only made submissions on undisputed documents/official records for the purposes of persuading this court to interfere with the magistrate's order and

directed the magistrate to take cognisance of offences committed as ex facie established in the Tehelka tapes and order further investigation because of the conflicting versions.

16. Findings of facts recorded by the Magistrate when accepted the closure report and affirmed by the High Court is impermissible as a matter of law.

17. In fact in the High Court Judgement in the Naroda Patiya Case (PARAS 323, 323.1, 323.2, 323.3 of the Gujarat High Court in the Naroda Patiya Case dated 20.4.2018, Chapter XXIII, Investigation by the SIT there is an adverse finding on the method of the SIT Investigation:

"XXIII INVESTIGATION BY THE SIT:

"323. The Investigating Officer (SIT) has recorded statements of witnesses in blatant breach of the provisions of section 161 of the Code, inasmuch he has obtained signatures of the witnesses on such statements and more particularly on the statements of the police officers, which is clearly borne out from the testimonies of the witness and the police witnesses whose statements were recorded by him. 323.1 Section 161 of the Code provides for "Examination of witnesses by police" and inter alia lays down that any officer making an investigation under that Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case. Section 162 of the Code, bears the heading "Statements to

police not to be signed – Use of statements in evidence". Sub-section (1) thereof, inter alia, provides that no statement made by any person to a police officer in the course of an investigation under the Chapter, shall, if reduced to writing, be signed by the person making it. Thus, section 162 of the Code expressly bars a statement recorded by the police being signed by the person making it. Despite such express provision in the Code, Page 2882 of 3422 R/CR.A/1713/2012 estigating Officer has obtained signatures of the persons whose statements he had recorded on such statements. Even in case of high ranking police officers, such signatures have been obtained. One wonders whether the Investigating Officer (SIT) and such high ranking officers were not aware of these basic provisions of law.

"323.2 Upon a query to the learned Special Public Prosecutor as to why such course of action was adopted, the response was that many allegations were being made against the Investigating Officer regarding not recording the statements correctly, thus, out of umpteen caution, their signatures were taken on their statements. In the opinion of this court, fear of such allegations being levelled, is no reason to commit breach of the specific provisions of the Code, more so, when such statements have been recorded by the Investigating Officer of the Special Investigation Team constituted under the orders of the Supreme Court for carrying out proper investigation into the offences. The police officers are expected to discharge their duties in

accordance with law, and there can be no excuse from deviating therefrom, more so, when the Supreme Court had reposed faith in the SIT and entrusted the investigation of the case to it. The flagrant breach of the provisions of section 162 of the Code, therefore, cannot be countenanced. 323.3 Moreover, it is during the course of investigation by the SIT that the name of accused No.37 MayabenKodnani was revealed. From the evidence of the witnesses who have named MayabenKodnani, it emerges that many of them have referred to her having come in a white Page 2883 of 3422 R/CR.A/1713/2012 CAV JUDGMENT MarutiFranti car. However, no efforts have been made to ascertain as to whether the said accused owned any white Maruti car at the relevant time. No investigation has been conducted to establish whether accused No.37 MayabenKodnani used to travel in a white Maruti car, nor has any exercise been undertaken to establish that accused No.62 KirpalsinghChhabra was her P.A. There are several other shortfalls in the investigation conducted by the SIT, reference to which has been made at the particular stage in the judgment.

D. Finality of Criminal Proceedings

I. During the course of the hearing, submissions were made in regard to finality to criminal proceedings. Finality to criminal proceedings can only come about pursuant to a trial, where facts are sought to be proved by documentary or oral evidence upon cross-examination of witnesses, and after the defence

has led its evidence. It is only thereafter that a court comes to a conclusion as to whether or not an offence has been committed. Once an accused is convicted by the Magistrate, upheld by the High Court, as well as the Supreme Court, the accused cannot be prosecuted again on the same facts for the same offence, under Article 20 of the Constitution. Article 20 does not apply in cases of acquittal.

Fresh discovery of facts may result in a fresh trial after cognizance is taken by the Magistrate. This is why for offences punishable with a sentence for over 3 years, the CrPC does not provide for limitation.

II. In any event, this principle cannot apply in a case where a court has not taken cognizance of an offence. In other words, where a closure report is filed, and a court chooses not to take cognizance of an offence, in the explanation to Section 300 CrPC, it is specified that the dismissal of a complaint, or the discharge of an accused, is not an acquittal for the purposes of this Section. We are at a stage much prior to the dismissal of a complaint or the discharge of an accused. The complaint referred to is a complaint under Section 200 read with 2(1)(d) of the CrPC, of which dismissal takes place only after cognizance has been taken. Discharge also takes place at a stage after cognizance has been taken. None of this applies to the present case. Therefore the concept of finality has no relevance in the facts and circumstances in this case.

III. In any event there is no accused except for BabuBajrangi and Jaideep Patel, Maya Kodnani (since acquitted by the High Court) who are being tried

for different offences. In any case the stage for dealing with this issue has not arisen. As and when the two accused are tried, one having being convicted, and Jaideep Patel being tried in Naroda Gam, the issue of finality qua them will only arise after cognizance is taken of an offence which they may be charged with at a later point in time. This court cannot assume before cognizance is taken against them which may relate to different offences that there is a finality in relation to their prosecution as far as the present proceedings are concerned.

IV. Theprotection enshrined under Article 20 is available to the accused. In the absence of any facts, a submission is sought to be made that finality must be given to proceedings, keeping in mind the rights of the accused. It has not been demonstrated as to rights of which accused are sought to be protected by the SIT.

V.Notwithstanding the above, this court cannot render findings of fact with reference to 161 statements. In any event the concept of finality sought to be applied has no legal basis since neither the Magistrate, nor the High Court, nor this Court, can render findings of fact before trial, on the basis of documents and 161 statements, in the absence of cross examination, in a court of law. .Any attempt to enthusiastically protect accused in the proceedings of this nature, is unknown to law.

E. Whistleblower Official Witnesses

I. No contentions were raised in respect of Sanjeev Bhatt, therefore despite the submissions of the SIT, the Petitioner does not wish to respond to those

submissions. As far as Sreekumar is concerned, the contention raised was that the affidavits before the Nanavati Commission and reports to the State Govt filed by Sreekumar(with extensive annexures consisting of contemporaneous official records) are consistent with the official documentary evidence available on record, and to that extent, Sreekumar's testimony cannot be disbelieved on the ground that he stood superseded in 2005.

2. Yet, the SIT seeks to undermine and deprecate the evidence provided by RB Sreekumar, former Director General of Police (DGP), Gujarat because of his subsequent supersession. The supersession of Sreekumar has nothing to do with the documentary evidence as it is consistent with the records available from 2002 much before his supersession in 2005

Documentary Evidence provided by RB Sreekumar	**Content**	**Date**
First Affidavit Filed by RB Sreekumar	The affidavit narrates the entire duties of the SIB with detailed annexures	July 2002
Annexures to First Affidavit contain SIB messages of Prelude	Contemporaneous messages of Warning Build Up and Communal Mobilisation, Mobs gathering, Hate Speeches etc	Messages begin from prior to 27.2.2002, right upto July-Aug 2002
Communication to the State Govt	Pointing out with over 45 pages of evidence of actual Incendiary material how Pamphlets were spewing communal poison. The ADGP requests urgent action and prosecution	16.4.2002
First SIB report to the state Govt of 24.4.2002 authored by RB Sreekumar (Pages 176-182, Convenience	This Report is a comprehensive assessment and provides information of how the VHP-Bajrang Dal were intimidating citizens especially the minorities	24.4.2002

Volume III)		
Second SIB report dtd 15.06.2002 (Pages 183-185 Convenience Volume III)	Speaks of how the VHP and BAjrang Dal have gotten emboldened with a sense of impunity, hate speech and tensions abounf	15.06.2002
Third SIB report to the state Govt authored by E. Radhakrishnan Pages 187-190 is the SIB Report	Report comprehensively of the widespread nature of violence even in Aug 2002; the deep social rift between the majority and minoeity; the need for paramilitary forces even then	20.8.2002
Fourth SIB Report Convenience Volume III; Pages 191-193	Calls for restrictions of gathering and movement due to the widespread tensions and violence	28.8.2002
Actionable Points presented to KPS Gill	Recommends transfers of delinquent officials; says VHP-BD may plan mass actions against minorities	May 2002

3. The SIT submitted that the register maintained by Sreekumar was a fabricated document as it was so found by the Nanavati Commission. The Petitioner did not rely on the register as it was not an undisputed document. The SIT relied upon the findings of the Nanavati commission qua the register.

The Commission's findings as a matter of law cannot be used in any civil or criminal proceedings by virtue of Section 6 of the Commissions of Inquiry act 1956. Consequently the SIT cannot in law contend that the register was fraudulent. An investigating agency should know by now especially one appointed by SC that findings of the Commission cannot be the basis of a legal argument that the register made was fraudulent, in fact that submission can only be made after a trial in which the said register is produced and found to be fabricated. That stage has not arisen. It is because of this that the Petitioner chose to disregard the register when making submissions, limiting the reliance on the statements of Sreekumar only when they corroborate official documentary evidence on record and as indicated above. The submission by the SIT that Sreekumar testimony should be disregarded because he was superseded in 2005 is mala fide since his testimony is clearly supported by official documents.

4. The extent to which the Ld Counsel has gone to discredit not only the substantial official and unofficial documentary evidence as well as discredit witnesses who have provided material that substantiates and discloses commission of serious crimes is also evident in oral references to another case launched by the State/CBI against this witness, RB Sreekumar. It is most unfortunate that SIT is seeking to prejudice the court with reference to proceedings arising out of a prosecution sought to be launched by the CBI in another case. In that particular case the High Court has found as a matter of fact that there is no material available against Sreekumar before the CBI. In

fact counsel for CBI contended before the HC that there is no material and custodial investigation is sought because CBI want to discover material. This fact shows that the conduct of the prosecution agency is itself mala fide and nothing to do with facts of this case.

Evidence of Witness Rahul Sharma

Much was made as to why Sharma did not produce CDRs till 2008 when he had infact produced them before the Nanavati Commission in 2004 a fact that the SIT is also aware of from Rahul Sharma's own statement before the SIT. The intent of the SIT was to discredit Rahul Sharma who brought on record vital documentary evidence which if investigated at an appropriate time would have led to discovery of facts. In fact the submission of the SIT before this Hon'ble Court are in contradiction to its own Closure Report vis a vis Rahul Sharma and the CDR. Infact the SIT had concluded that PI Crime Branch, Tarun Barothad failed in his duty by not collecting the CDRs from Rahul Sharma and recommended departmental action against them. The relevant part of the SIT closure report reads:

> "This appears to be an intentional lapse on the part of Shri Tarun Barot, the then PI and now ACP, SOG, Ahmedabad and Shri G.L. Singhal, the then ACP, Crime Branch and now SP, ATS, Ahmedabad and the same deserves to be dealt with major penalty departmental proceedings against them. However, no criminal offence is made out against

them.ALLEGATION XXIII, “CD Regarding Phone Call Records”, (See Pgs 1409-1411, Imp PARA at Pg 1411, Volume VIII of the SC SLP Record)

Rahul’s 161 statement before SIT ((Statement of Rahul Sharma to SIT, dated 2.7.2009, Pages 106-114, Convenience Compilation Vol II). clearly indicates how in the jurisdiction which he operated (February to mid-March 2002, Bhavnagar) he attempted to, and succeeded in controlling the violence perpetrated and did a commendable job pursuant to which he was transferred. Rahul Sharma, is also a police officer who recognized the dangers of inciteful hate propaganda in the Print Media and in fact through an official communication contemporaneously suggested to his superiors that Sandesh should be prosecuted. Instead of complimenting him for seeking to douse the fires at the time, Rahul Sharma is being attacked for doing the right thing and till date, the Sandesh newspaper, which spread communal hatred, has not been prosecuted.

1. In fact this submission of the SIT seeking to discredit the witness who brought on record vital documentary evidence which if investigated at the appropriate time would led to discovery of vital facts shows the attempt of the SIT to malign officers who did a commendable job.

G. Issue of Conspiracy: 1. Finally, the issue of conspiracy needs to be addressed in the light of the submissions of the SIT that the entire material collected by the SIT should only be looked at with reference to the larger conspiracy alleged. First of all, this stand is belied by the directions of the Supreme Court of 12.09.2011 which required the SIT to place before the Magistrate the entire material collected by it. It was not limited to the issue of conspiracy. Consequently the submission of the SIT that the Complainanttalked of a larger conspiracy should be the only issue that needs to be addressed is factually and legally erroneous.

2. The fact that the complaint is only a piece of information as referred to above on the basis of which the SIT did its investigation was only a starting point for the discovery of facts. There are several offences disclosed in the verified, authenticated tapes with reference to several persons on which cognizance ought to have been taken by the magistrate and which have nothing to do with the conspiracy. There are also several disclosures made in the authenticated tapes which clearly establish the elements of a conspiracy for which further investigation was required for which may have led to the discovery of a larger conspiracy.

3. In the light of the above, there is enough material for the magistrate to have taken cognizance of the conspiracy in relation to the above. In the absence of an investigation by the SIT based on this material, a larger conspiracy may or may not have been established, but that was the legal duty of the SIT to investigate.

4. In light of these facts the court should take note of the judgments of the SC on conspiracy.

(2001) 7 SCC 596

Firozuddin Basheeruddin & Ors v. state of kerala

(2020) 2 SCC 290

State (NCT Delhi) v shiv charan Bansal &ors.

(2009) 11 SCC 737

R. Venkatkrishnan v CBI

Suspicion of offence enough for magistrate to take cognisance

(1977) 4 SCC 39

State of Bihar v Ramesh SIngh

(1980) 1. SCC 258

State (Delhi Admn) v. I.K. Nangia and Anr.

2. The fault lies with the SIT in not investigating these issues pursuant to which they may have established a much larger conspiracy involving policemen, bureaucrats and key personnel in the administration. This shows an attempt to protect the accused instead of prosecuting the accused, not investigating the cover up by the state police and administration and collusion at various levels by the accused. It is our submission beforethis Hon'blecourt that these are matters for further investigation in light of the direction of the HC in the high court.

F. Animus against Petitioner no. 1

The Complainant appeared as a prosecution witness as PW 337 on 22.10.2010. This was not a private complaint, in terms of which the matter was pending in the Sessions Court. This did not require the complainant to come to court as a witness as a complainant. This submission is of no consequence. As a prosecution witness, the SIT required the witness to prove certain facts, which were required to be proved by the prosecution. She was not appearing as a complainant in the Gulberg trial. Appearing as prosecution witness, she could have only given evidence with respect to what she was required to prove in that case and nothing beyond that. A prosecution witness cannot rely on a complaint which is not relied upon in the charge sheet. However all this is irrelevant since the Supreme Court order directed that the SIT look into her complaint and the facts collected by SIT should be placed before a Magistrate for the purposes of either prosecuting the accused or by filing a closure report. That order cannot be diluted by contending that she should have raised the issue of her complaint as a prosecution witness in the Gulberg trial. Any such attempt would be in effect seeking to nullify the order of the Supreme Court. Even the prosecution in the Gulberg trial could not have brought the complaint on record since it was not relied upon during the course of the Gulberg trial. For that reason as well PW337 could not be burdened with providing evidence which the SIT could not have introduced in the court.

4. In any event, this is an academic issue, unrelated to the issues arising in the case, nor has the SIT ever raised this contention either before the Magistrate or before the High Court. Notwithstanding the above, this Hon'ble Court, by virtue of its Order dated 12.09..2011 directed SIT to place all the material that it had collected before the Magistrate's court in Gulberg, who had taken cognizance of FIR 67/2002. Any reliance sought to be made in respect of a procedural issue, relating to Zakia as PW 337 (given before the Sessions Court on 22.10.2010), is of no relevance, in light of the order of the Supreme Court. Notwithstanding this, on 07.02.2013, three judges of this Hon'ble Court passed another order, wherein it was categorically spelt out that the material collected by the SIT will not be used in any other trial. Indeed, it could not have been used in any other trial even as a matter of law.

5.That the SIT has submitted that the Petitioner/ Complainant has approached this court with unclean hands. This is based on statements made in the complaint about Rahul Sharma and Satish Verma, wherein it has been stated that they are both witnesses and accused., and that after the dismissal of the protest petition, in the revision filed before the High Court, they are referred to only as witnesses. It may be clarified at this stage that this came about by virtue of a mistake, which was clarified at the instance of the Petitioners, to the SIT [Point f., Page 153, Vol XI of the SLP], which was informed that indeed they are not accused but witnesses.

6.This, in fact, is referred to in the closure report [[Point f., Page 153, Vol XI of the SLP]. This fact was clarified in the protest petition itself[Para 1092 of

Protest Petition, Page 689, Volume V of the SLP). Thereafter, when the revision/ SLP was filed, in the list, they were not mentioned as accused because in both the Closure Report and protest petition the issue had been clarified and therefore when the appeal was filed, they were not referred to as accused.

7,Consequently, the comments of the conduct of the Petitioner, which was sought to be deprecated, should be rejected. It cannot, therefore, be concluded that the Petitioner has approached this Court with unclean hands.

8. The allegation that the original complaint of 2006 should have been filed, and that a tampered complaint was filed in the revisional court, or before this Hon'ble Court, is of no consequence because this issue had been clarified as far back as in 2010 before the SIT during its Inquiry and thereafter in the affirmed copy of the Protest Petition Itself (PARA 1092) . In fact, if after clarification, the original complaint had still been filed, a submission could have been made as to why such persons are still being treated as an accused. Consequently, there can be no mens rea in the conduct of the Petitioner, or any intention to mislead any Court. The complaint, in the version, as it was filed before this Hon'ble Court, along with the SLP paperbook is a copy of what was filed before the Hon'ble High Court. The SIT was conscious of this development and has at no point in proceedings and lengthy submissions before either the Magistrate or the Gujarat High Court raised this contention.

9. Such a submission, raised for the first time, without taking any objection before the High Court should not be countenanced by this Hon'ble Court.

Animus against Petitioner No.2

I. The objection taken to the locus of the Petitioner 2 at the last hearing of this matter on December 2, 2021 relates to unsubstantiated allegations on financial misdemeanors that are under challenge and pending before this Hon'ble Court. Any objection is contrary to the obligation cast on a citizen of India pursuant to Section 39 of the Code of Criminal Procedure, 1973. It is therefore urged that the allegations of the State of Gujarat are neither referred to nor find mention in any Order/ Judgment impugned before this Hon'ble Court in the present proceedings, nor are they part of the record in the case before the Hon'ble High Court. Accordingly, such allegations against the Petitioner No.2 ought not to be agitated before this Hon'ble Court in the present proceedings for the very first time. While quoting at length from an Order of the Gujarat High Court (12.2.2015), the State of Gujarat has conveniently chosen not to bring to the notice of this Hon'ble Court, an Order of this Court dated 19.3.2015 . It is after this Order that the matter is now pending before a bench of three Hon'ble Judges. As far as the other judgement annexed in the compilation as filed by the

State of Gujarat is concerned, the same related to findings of a division bench of this Hon'ble Court on an application for de-freezing of accounts, and is unrelated to the present case. This is an argument of prejudice unrelated to the issue at hand and should not be entertained by this Hon'bleCourt..

II. Further, Petitioner-2 is the representative and chief functionary of an organisation that has an active Board of Trustees since its inception in April 2002. Its founder President was noted Maharashtrian playwright, Vijay Tendular and thereafter Presidents have been IM Kadri noted architect, Anil Dharker, noted journalist and littérateur (until his death in March 2021) and currently NandanMaluste, philanthrophist and financial consultant. Other Trustees that were trustees in 2015 and continue to be presently Trustees are Cyrus Guzder, philanthrophist and businessman, IM Kadri, renowned architect, Cedric Prakash, a human rights activist, Shakuntala Kulkarni, artist, ChitraPalekar, writer and theatre personality, Ghulam Pesh Imam, businessman. It needs to be pointed out that when these wild and unfounded allegations were hurled in 2012-2015, in other proceedings, including in proceedings before this Hon'ble Court, three trustees had independently filed interventions stating that they were active members, fully conversant with the financial functioning of the trust and rebutting all the motivated allegations in detail. It is also noteworthy that after the judgment of the Gujarat

High Court in February 2015 that is under challenge before this Court none of the Trustees resigned from the Trust but steadfastly stood by not just Petitioner 2 and her husband but the activities that Trust engages in. The issues being raised here in the present proceedings were not canvassed at all before that forum and it is the contention of the Petitioners that they are being brought in only to digress from the grave issues under consideration here.

III. As far as the Zakia Jafri Complaint dtd 8.6.2006 and subsequent legal challenges are concerned (SCRA 421/2007), SLP 1088/2008 and proceedings before the Magistrate in 2013 and High Court between 2014-2017, it was always known to the parties concerned that the Petitioner 2'sorganisation had been assisting Petitioner 1 in not just filing of the Complaint but subsequent legal interventions. There was no "sinister agenda". The issue was that of a civil rights group, working tirelessly from 2002 onwards doing so. Whether it be in the proceedings before the High Court in 2007, before this Court between 2008-2012 and thereafter before the Magistrate (2013) and Gujarat High Court (2014-2017), the presence and involvement of Petitioner 2 is a matter of fact and record.

IV. Besides, it is the case of the Petitioner No.2 that ever since they/she as representative of a civil rights organisation have raised their voice against the State of Gujarat and its political establishment, the State of Gujarat has created opportunities to persecute the Petitioner No.2

with intent to silence them. Since 2002, when the ghastly mass carnage took place in Gujarat, Teesta Setalvad and her organisation have been canvassing the cause of the victims for justice. In fact, Teesta Setalvad and her organisation had also filed applications and affidavits on behalf of the families of the Godhra tragedy and mass arson when they felt that the Vishwa Hindu Parishad (VHP) had been misusing them politically. At the time, Praveen Togadia (November 2003) had issued a barely veiled threat saying that Teesta Setalvad would not be allowed to enter Gujarat after which she was given police protection (http://www.telegraphindia.com/1031117/asp/nation/story_2579590.asp).

V. It is a matter of irony and tragedy even that the very SIT appointed at the behest of petitions filed by the NHRC and Victims who placed their faith in the organisation that the Petitioner No.2 represents, appeared to have turned, as the investigations wore on, and acted in a manner that was hostile to the interests of both the Victims and Justice. Today, it is clear that the interests of the SIT, an independent agency appointed by this Hon'ble Court and the State of Gujarat have coalesced into one. To target the Petitioner No.2, who has always stood for the cause of justice by extraneous matters, and raising such issues for the very first time before this Hon'ble Court, and which have nothing to do with the present proceedings,

itself shows the animus of the State of Gujarat qua the Petitioner No. 2.

VI. The Ld. Counsel for the SIT that has sought to place reliance on certain insinuations, ostensibly in an attempt to prejudice this Court in the course of their hearings beginning November 24, 2021. At the outset, it would be pertinent to note that the SIT has not canvassed this argument in either in the Closure Report (8.12.2012), neither in arguments before the Magistrate's Court nor the High Court. For the first time in any judicial proceeding arising out the Complaint of 2006, in an all-out and brazen effort to prejudice the substantive arguments on undisputed facts where the SIT investigation has sorely failed, the SIT has stooped to making personal allegations on the Petitioners and not deal with their submissions.

VII. The SIT has sought to place reliance on the sealed cover report filed by one IO Suthar in the hearings of this matter (in which the date is not clearly mentioned), stating that witness who came to SIT came with pre-prepared statements at the behest of Petitioner No.2 and an advocate. This is yet again an attempt to obfuscate facts before this Hon'ble Court. The fact that Ld. Counsel for the SIT chose to pick out one of the reports filed in sealed cover during the course of the Further Investigations into the Nine Trials (post 26.03.2008) is prejudicial to the Petitioners. To get a full picture this Hon'ble Court must look at all the sealed cover reports presented between March

2008 and September 2011, which in the Petitioner's submission would betray the baselessness of the proposition sought to be put forth by the SIT. Such piecemeal reliance on sealed cover reports, to which the Petitioners have no access,

VIII. It is submitted that during the Gulberg Trial where the Sessions Court delivered its judgement in June 2016, it was the defence for the accused that used this line of argument. Today this very line of arguments is being used by the SIT. Nowhere in the judgement of the Sessions Court that Ld Counsel for the SIT has been at pains to quote *other* sections from, is there any mention of any tutoring of witnesses. The entire judgement has been produced here by the SIT. In fact, in the Sardarpura trial where a former employee of the Petitioner No.2 organisation was the front used to push a mala fide agenda, there have been positive findings exonerating Petitioner No.2. In the Judgement convicting 31 accused, delivered on 9.11.2011, (Sessions Case Nos 235/2002, 120/2008, 7/2009 and 72/2010) the Ld Judge held:

> *"56. It is submitted on behalf of accused that, eyewitness are tutored by Smt.Teesta Setalvad. The interest of Teesta Setalvad and her organization in the present case is obvious. The witnesses have specifically denied that, Teesta Setalvad has told them as to what evidence was to be given in a case. Considering the evidence and fact in*

this regard when we consider this fact mere discussion about the case would not necessarily indicate tutoring. It is not an accepted proposition that, the witnesses are never to be contacted by any one or spoken to about the matter regarding which they are to depose. A number of things can be told to the witnesses such as not to be nervous, carefully listen to the question put to them, state the facts before the Court without fear, therefore it does not appear any objectionable morally or legally. Tutoring a witness is quite different from guiding him as to his behaviour. In the present case, the injured witnesses were in such a state of mind that without the active support of someone they might not have come before the court to give evidence at all. The encouragement and the advice if provided by Citizen for Peace and Justice that cannot be considered as tutoring and simply because of that, we cannot infer that the witnesses are tutored. From the matter it transpires that Citizen for Justice and Peace have made allegations before the Hon'ble Supreme Court of India against the State authorities but on that strength it cannot be said that, NGOs. have worked with bad motives. If they had fought for truth what was believed by them as truth. It does not

mean that they have tutored the witnesses to falsely identify the accused in the Court."

This is the Sardarpura Special Sessions Court Judgement (relevant paras 55-59 at Pages 835-840 has decisive findings against any tutoring). Petitioners crave leave to produce this judgement if the need arises.

IX. It also appears that in regard to such insinuations against the Petitioners the SIT and State of Gujarat's arguments qua the Petitioner No.2 have been in sync. The State of Gujarat in its submissions referred to in Case No.2/2011, PS Navrangpura, registered under sections 193-196, 197, 200 and 120B [filed by Registrar BG Somani on allegations by Raees Khan that false affidavits were created by Petitioner No.2. <u>This is the only case that is pending of the nine cases with the SIT and Petitioner No.2 has not only appeared before the IO, but challenged this before the Hon'ble Gujarat High Court where the matter is pending.</u>

X. It needs to be clarified that when these affidavits were filed, in all five cases that the Petitioner No.2 assisted Victim Survivors and the same were filed in the physical presence of Raees Khan, who was then a field coordinator with Petitioner No.2 organisation. None of the witnesses in the trials including the ongoing one have denied affirming the affidavits.

XI. The targeted animus displayed by the State of Gujarat digresses from the matter at hand and seeks to bring in matters extraneous to the Closure Report of the SIT which is the subject matter of the present proceedings. The facts in such proceedings, some of which are pending before this Hon'ble Court, ought not to be relied upon to divert from the very pertinent issues raised based on admitted official records. Not only are these matters being selectively quoted and presented (rather misrepresented before the highest judicial forum), but the same are being placed without even clarifying that such issues are pending before this Hon'ble Court.

XII. Before elaborating and rebutting every element of the arguments of the State, which arguments appear to have been made to distract from the underlying issue in the present proceedings, the Petitioner No.2 would like to point out that in October 2020 toosimilar tactics were sought to be exercised (as explained hereinbelow). The Citizens for Justice and Peace (CJP) is a respected trust with close to a dozen active Trustees and has been engaged in several activities that are being detailed here to ensure fair representation on Gujarat. The aim and objective of the organisation to aid the furtherance of constitutional rights of the marginalised is not something that should be so contemptuously dealt with. The following table briefly states the work that has been undertaken by Petitioner No.2:

Programme	Particulars (Location, Objectives and Action)	Petitions to Judicial and Non-Judicial authorities
Hate Watch	Location: Nation-wide Objective: To spot instances of hate speech (by politicians, social media trolls and news broadcasters/publications) and and report it to relevant authorities. (Special focus on Hate Speech against religious minorities, Dalits, Adivasis, Women, Children and LGBTQIA+) Actions: Petitions to National Commission for Minorities (NCM), National Human Rights Commission	1. Petition to NBDSA: News Nation ordered to take down videos of “Conversion Jihad” show. (Link: https://cjp.org.in/nbdsa-orders-news-nation-to-take-down-video-of-conversion-jihad-show/) 2. Complaint to Twitter: 21 accounts threatening Muslim women with sexual violence removed. (Link: https://cjp.org.in/cjp-impact-twitter-suspends-21-accounts-threatening-muslim-women-with-sexual-violence/) 3. Complaint to NCM: DGP asked to submit report on action taken against

	(NHRC), National Broadcasting and Digital Standards Authority (NBDSA), National Commission for Scheduled Tribes (NCST), National Commission for Women (NCW), Facebook, Twitter etc.	Kamlendu Sarkar's hate speech where he had alleged that Prophet Mohammed was a rapist. (Link: https://cjp.org.in/ncm-seeks-report-from-dgp-assam-on-cjps-complaint-against-kamlendu-sarkar/) 4. Intervention Application (Crl. M.P. No. 102148 of 2020) before Supreme Court: CJP had prayed for a judicial monitoring of the Hathras rape and forced cremation investigation, and the protection of witnesses by Central paramilitary forces. The SC directed that CRPF provide security to the victim's family and the witnesses. The court also directed the Allahabad High

		Court to monitor the CBI probe into the case. (Link: https://cjp.org.in/sc-entrusts-witness-protection-of-hathras-victims-family-to-crpf/)
Citizenship	Location: Assam (Legal and Paralegal Aid) and nation-wide (Training and Workshops) Objectives: To help Indian citizens defend their citizenship. Actions: Helped Indian citizens compile documents and file applications for inclusion of names in the National Register of Citizens	1. Petition on Legal Aid before Gauhati High Court: The HC asked the Centre and the State of Assam to indicate stand on funding, observing proper funding could help provide competent legal aid. (Link: https://cjp.org.in/cjps-assam-legal-aid-petition-gauhati-hc-asks-centre-and-state-to-indicate-stand-on-funding/) 2. Intervention Application before Supreme Court: The court passed an interim order directing the Assam

	(NRC). CJP also helped them defend their citizenship during the Claims and Objections stage. Helped close to 50 eligible inmates of detention camps get released on bail. Trained volunteers to offer paralegal assistance to people during the citizenship crisis. Assisting people move Gauhati High Court against ex parte orders by Foreigners' Tribunals.	government to ensure that children whose parents' names are included in the NRC in Assam are not sent to detention camps. (Link: https://cjp.org.in/the-cjp-effect-sc-orders-no-children-be-sent-to-detention-camps-in-assam/) 3. Memorandum to Deputy Commissioner (Bongaigaon district, Assam), Principal Secretary to the Government of Assam and Superintendent of Police (Border) about Foreigners' Tribunal notices being pasted on electricity poles in Bongaigaon instead of being served to people. (Link: https://cjp.org.in/ft-notices-pasted-on-electric-poles-cjp-

	Helping migrant labourers from other states who have been declared “foreigners” in Assam and thrown behind bars. Conducting studies and surveys to ascertain if existing legal aid structure is sufficiently competent to tackle expected deluge of applications from people excluded from the NRC. Strategic legal interventions to defend rights and freedoms of our fellow Indians in Assam.	petitions-assam-authorities/) 4. CJP helped Gangadhar Pramanik, a man from West Bengal declared foreigner in Assam, get released from a detention centre and be reunited with his family. Later, the West Bengal government also confirmed his citizenship. (Link: https://cjp.org.in/this-is-my-son-my-ganga-is-back/) 5. CJP has also created a resource for al legal and paralegal matters concerning the citizenship crisis in Assam: https://cjp.org.in/assam-paralegal-training-workshop/
Forest Rights	Location: Sonbhadra and Dudhwa National Park (Uttar	1. Habeas Corpus Petition before Allahabad HC: Court orders Sokalo and

	Pradesh), Chitrakoot (Madhya Pradesh), and nation-wide (Training and Workshops) Partner organisation: All India Union of Forest Working People (AIUFWP) Objective: To empower Adivasis, forest-dwellers and forest workers defend their rights under the Forest Rights Act 2006. To also defend Forest Rights activists against malicious prosecution and incarceration on trumped up charges.	KismatiyaGond be produced before it. They had been detained in a clandestine manner from the Chopan railway station in UP by the police and their whereabouts remained unknown, which is why CJP moved court. Both women were eventually released on bail. (https://cjp.org.in/adivasi-leader-sokalo-gond-released-on-bail-today/) 2. Petition in Supreme Court against ouster of Adivasis from Forest Land: CJP and AIUFWP have backed a petition by SokaloGond and NivadaRana in the SC. The petition was admitted by the SC. (Link:https://cjp.org.in/breaki

	Action: Training Adivasi and forest working people file Community Forest Rights claims as per FRA 2006. Support them in filing Community Forest Rights Claims and follow-ups. Moving NCST, NHRC etc. to help get justice for Adivasis and forest dwellers who are harassed by the Forest Department or local police. Move court to help secure release of Forest Rights Defenders detained on	ng-all-intervention-applications-defending-fra-2006-admitted-by-sc/) 3. CJP Webinar on FRA 2006: (Link:https://cjp.org.in/forest-rights-act-2006-training/) 4. CJP Webinar on Forest Rights during Covid-19: (Link:https://cjp.org.in/forest-rights-and-covid/)

	trumped up charges. Mentoring Adivasi women to take up leadership of grassroots movements.	
CJP Grassroots Fellow	Location: Uttarakhand, West Bengal and Maharashtra Objective: CJP's Grassroots Fellowship Program is a unique initiative aiming to give voice and agency, as well as mentor youth leaders from among the communities with whom we work closely. These presently include migrant workers, Dalits, Adivasis and forest workers.	IMPACT: 1. Woman accused of being a witch, now called "didi" out of respect after CJP published a report by a Grassroots Fellow about her work as a Covidwarrier. (Link: https://cjp.org.in/cjp-impact-churki-hansda-goes-from-being-called-dayan-to-di/) 2. It has helped open up a window for Van Gujjars, whose stories are now being shared widely. CJP Grassroots Fellow Meer Hamza is a Van Gujjar himself who has been

		travelling with this nomadic community as they migrate with their cattle when seasons change. (Link: https://cjp.org.in/cjp-impact-a-fellowship-that-encouraged-communities-to-cross-communication-barriers/)
2005	Objective: Flood Relief in the MMRDA Region after the ghastly floods in Mumbai and its environs took over 450 lives	CJP and its entire Team for a period of six months prioritised this work in Mumbai, Kalyan, Thane, Mumbra and Chiplin areas of Maharashtra
2008	Objective: Providing ready medical aid to commuters traveling in Mumbai's Trains (CST and Churchgate and other station)	CJP raised funds and ran two Ambulances after the ghastly terror Attacks in Mumbai on 26.11.2008. These Ambulances ran for close to a decade and only recently have been handed over to a Voluntary

		organisation to continue the work. The reason for this was that it was found that when the Terror attacks happened, hapless commuters died from lack of prompt facilities to take them to hospital. https://cjp.org.in/26nov09/ https://cjp.org.in/cjps-impact/
2006-2008	Compensation for Victims of Terror Attacks	In Malegaon, Maharashtra and Ahmedabad Gujarat, CJP raised amounts for Survivors of the Bomb Attacks
Gujarat Violence 2002	Zakia Jafri and CJP moved Supreme Court to ask for a proper investigation into allegations made in Zakia Jafri's complaint from June 2008 and the Protest Petition. The SIT probing the Gujarat 2002 violence had failed to take into account several key pieces	1. SLP before Supreme Court: Hearings ongoing (Link:https://cjp.org.in/zakia-jafri-case-all-we-want-is-an-investigation-argues-senior-counsel-kapil-sibal/) 2. CJP via its secretary TeestaSetalvad is the second petitioner in the

	of evidence and filed a closure report that was accepted by a Magistrate's court. The court also claimed it had no power to direct further investigation, and we have sought clarification on the same. While Zakia Jafri is the first petitioner, CJP via its secretary TeestaSetalvad is the second petitioner in the Zakia Jafri Case. CJP has also helped survivors in trials related to NarodaPatiya, Naroda Gam, Sardarpura, Ode (1 and 2) and Gulberg massacre.	Zakia Jafri Case. (Link: https://cjp.org.in/zakia-jafri-case/)
Khoj	Location:	

	All over Mumbai in BMC Schools, Mumbra, Malad, Jogeshwari (Maharashtra) Objective: To give an opportunity to school children to understand diversity, peace and harmony. We teach students to be critical in their approach to knowledge and decision making. We encourage children to go beyond the narrow confines of their syllabus, and foster an open atmosphere of learning and sharing within the classroom.	

	The emphasis is on pluralism and inclusion.	
Relief Work during COVID lockdown	Location: Maharashtra (Mumbai, Marathwada), Assam, Uttar Pradesh (Varanasi, Purvanchal) During the Covid lockdown CJP organised procurement, packaging and delivery of foodgrains and other essentials to people such as migrant workers, daily wage earners, transgender people, commercial sex workers, etc. We also put together and distributed medical kits	Some links: 1. CJP's booklet on COVID management at home: https://cjp.org.in/keep-calm-and-combat-covid/ 2. CJP's COVID relief work: https://cjp.org.in/cjp-combating-covid-19-members-continue-mission-to-help-vulnerable-communities/ 3. CJP's special portal on COVID related resources and relief programmes: https://cjp.org.in/cjp-against-covid/ 4. CJP's Migrant Diaries: https://cjp.org.in/tag/migrant-

	with thermometers, oximeters, masks, sanitizers, paracetamol and B-complex tablets in low-income neighbourhoods. In Assam we delivered foodgrains and essentials to people who had been recently released from detention camps and did not have any source of income. We also documented their journeys back home. Feedback received from them laid the foundation for our #LetMigrantsVote campaign.	diaries/ 5. CJP's Let Migrants Vote campaign: https://cjp.org.in/let-migrant-vote/

XIII. In October 2020, CJP Intervened through Crl MP No 102148 of 2020 (Citizens for Justice and Peace through Secretary Seeking intervention and directions for: 1. Transfer of the investigation to CBI 2. Protection of witnesses by central para military). This has been mentioned in the Order of this Hon'bleCourt [S*atyama Dubey&Ors v/s Union of India &Ors,* (2020) 10 SCC 694 dtd October 27,2020] During a hearing of the said matter before this Hon'ble Court on an earlier occasion, derogatory and defamatory statements were made about Petitioner No.2 leading to five active trustees of the organisation to write a letter containing their objections addressed to the Hon'ble Chief Justice of India on October 19,2020. It is imperative and crucial that the august forum of this court is not used to further pernicious and vindictive agendas and that too those perpetrated by an all-powerful state and its functionaries.

XIV. The targeting of Petitioner No.2 organization and its chief functionary, started in 2004. Hereunder is the list of proceedings that have been initiated by State of Gujarat:

FIRs against Appellant No.2	Details	Status
	Registered in Best Bakery case 2004 FIR in Vadodara	Quashed by the Gujarat High Court

CR 1-3-2006	Filed by an officer of the government at 1.30 am on 2.1.2006. This is a FIR filed following some digging of the ground by some persons seeking to retrieve some debris of their dead relatives who were buried hurriedly. The FIR was filed after the High Court ordered the CBI to enquire into the matter and the victims were directed to give samples for DNA testing. Teesta Setalvad was added as an accused in this case in 2011	Petitioner No.2 has filed a Quashing of FIR Petition in Gujarat High Court which is pending
M.Case No.2/2011, PS Navrangpura, under sections 193-196, 197, 200 and 120B	Filed by the Registrar of the Court following an application made by Raees Khan that Teesta Setalvad created false affidavits.	A petition by Petitioner No.2 is pending in the Gujarat HC. challenging the proceedings Teesta Setalvad has recorded her statement before the IO.

Defamation case filed by Raees Khan (37/12 dtd 20.6.2012 10/12 dtd 23/07/2012)	A defamation case was used to conduct a roving Inquiry by the DCB Crime Branch, Ahmedabad	This roving Inquiry has been challenged in a petition before this Hon'ble Court (SCA No 2825/2012). Pending
FIR CR 1/2014	Firoz Khan Saeed Khan Pathan in which Raees Khan is a witness	ABA refused by the Gujarat HC. Hon'ble SC passed a speaking Order 19.02.2015 granting interim protection that remains in force till date.
CR. No. I-45/2014 lodged by Crime Branch Ahmedabad On August 23,	An image on twitter with no reference to anyone but a computer generated picture where ISIS person was shown to have arms which appeared like a Hindu goddess. Within 40 minutes of this	

2014 u/s 153-A, 295A of IPC and S.66 of the Information Technology Acton August 23, 2014.	tweet, the Appellant no.2, removed the tweet. However, two FIRs have been registered in the State of Gujarat. Following news reports regarding the registration of the FIR Teesta Setalvad had sent by fax and email the Apology that she had issued following my inadvertent action on twitter to 1) Shri ShivanandJha, Commissioner of Police, Ahmedabad 2) Shri P C Thakur, Director General of Police, Ahmedabad 3) Shri D H Desai, Police Inspector, Gomtipur Police Station, Ahmedabad 4) Shri A G Gohil, Police Inspector, Ghatodia Police Station, Ahmedabad 5) 'C' Division Police Station, Ref: FIR by VHP Leader Kirit Mistry. ABA was resisted and every attempt made to seize her laptop. Teesta Setalvad appeared and	

	recorded her statement before the Crime Branch.	
CR Nos. I. 162/2014. Lodged by the Bhavnagar Police Station “C” Division	Gujarat Police Bhavnagar lodges another FIR on the same tweet by Appellant No 1 despite her deletion of the tweet and apology for the same. Even here ABA is contested and every effort made to harass the Appellant.	
C.R. No. I/2018, with the DCB Police Station, Ahmedabad City, Gujarat	Teesta Setalvad has joined the investigation as per the directions of the Bombay High Court.	Transit Bail granted by Bombay High Curt, confirmed by this Hon’ble Court. Eventually Anticipatory Bail granted by the Gujarat High Court.

Ms. Setalvad has taken place even before. In 2004 an FIR was filed against Teesta Setalvad in Gujarat (Nov 2004) after star witness Zahira Shaikh turned hostile during her deposition before

the Court hearing the re-trial in Mumbai. This was the first time she had sought protection from arrest from Bombay High Court. These allegations were enquired into by this Hon'ble Court through Mr. B. M. Gupta, Registrar (as His Lordship then was) and the Petitioner No. 2 was fully exonerated and Ms. Shaikh was found guilty. The Inquiry took place on an application filed here by Petitioner No.2. The re-trial where Ms. Shaikh turned hostile actually finally ended in a convictions of the accused. Ms. Shaikh was also ordered to serve one-year simple imprisonment for perjury by a Final Judgement dtd 8.6.2004 [(2006) 3 Supreme Court Cases 374, Zahira Habibullah Shaikh &Anr vs State of Gujarat &Ors]:

"42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must

be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play.

"43. In the aforesaid background, we direct as follows:

(1) Zahira is sentenced to undergo simple imprisonment for one year and to pay costs of Rs 50,000 and in case of default of payment with two months, she shall further imprisonment of one year.

(2) Her assets including bank deposits shall remain attached for a period of three months. The Income Tax Authorities are directed to initiate proceedings requiring her to explain the sources of acquisition of various assets and the expenses met by here during the period from 1-1-2002 till today. It is made clear that any observation made about her having not satisfactorily explained the aforesaid aspects would not be treated as conclusive. The proceedings shall be conducted in accordance with law. The Chief Commissioner, Vadodara is directed to take immediate steps for initiation of appropriated proceedings. It shall be open to the Income Tax Authorities to direct continuance of the attachment in accordance with law. If so advised, the Income Tax Authorities shall also require Madhu Srivastava and Bhattoo Srivastava to explain as to why

the claim as made in the VCD of paying money shall not be further enquired into and if any tangible material comes to surface, appropriate action under the income tax law shall be taken notwithstanding the findings recorded by the inquiry officer that there is no acceptable material to show that they had paid money, as claimed, to Zahira. We make it clear that we are not directing initiation of proceedings as such, but leaving the matter to the Income Tax Authorities to take a decision. The trial court shall decide the matter before it without being influenced by any finding/observation made by the inquiry officer or by the fact that we have accepted the report and directed consequential action."

The FIR registered by the State of Gujarat at the behest of a member of the VHP regarding the aforesaid incident finally came to be quashed by the Gujarat High Court.

b. The Petitioner No.2 states that just before this development, in April 2004, this Hon'ble Court passed a judgement expunging remarks passed against Petitioner No.2 and her advocate. [(2004) 10 SCC 88, Teesta Setalvad & Ors v/s State of Gujarat, dated 12.04.2004] The following paras are relevant:

"7. It is beyond comprehension as to how the learned Judges in the High Court could afford to overlook such a basis and vitally essential tenet of "Rule of Law" that no one should be condemned unheard and risk themselves to be criticized for injudicious approach and/or render their decisions vulnerable for challenge on account of violating judicial norms and ethics. The observations quoted above do not prima facie appear to have any relevance to the subject matter of dispute before the High Court. Time and again this court has deprecated the practice of making observations in judgement, unless the persons in respect of whom comments and criticisms were being made were parties to the proceedings, and further were granted an opportunity of having their say in the matter, unmindful of the serious repercussions they may entail on such persons. Apart from that, when there is no relevance to the subject matter of adjudication, it is certainly not desirable for the courts to make any comments or observations reflecting on the bona fides or credibility of any person or their actions. Judicial decorum requires dispassionate approach and the importance of issues involved for consideration is no justification to throw to winds basic judicial norms on mere personal perceptions as saviours of the situation.

8. Learned counsel for the State of Gujarat also cannot successfully substantiate their relevance or necessity for the case

on hand and virtually had to concede that the observations really have no proximate or even remote link with the subject matter of adjudication which was involved in the cases before the High Court.

9. Observations should not be made by Courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort courts are temples of justice and such respect they also deserve because they do not identify themselves with the causes before it or those litigating for such causes. The parties before it and the counsel are considered to be devotees and pandits who perform the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine."

10. Courts are not expected to play to the gallery or for any applause from anyone or even need to take cudgels as well against any one, either to please their own or any one's fantasies. Uncalled for observations on the professional competence or conduct of a counsel, and any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case."

c. One of the witnesses examined in the inquiry conducted regarding Ms. Shaikh's allegations was Mr. Raees Khan who was employed by Petitioner No.2. There were serious allegations against his conduct made by certain victim-witnesses which compelled the Petitioner to terminate his services in early 2008. The mala-fides of the State are reflected by the fact that the State then used Raees Khan, for the purposes of foisting false cases against the Petitioner. While such facts have no bearing to the present case, the same are being provided below to complete the narrative, and are therefore without prejudice to the submission that these issues ought not to be agitated in the present proceedings:-

(i) That Raees Khan is being now used by the police to prosecute the Petitioner No.2 is also reflected in the representation made by Sabrang Trust to the Police Inspector, Juhapura, dated March 26, 2013. In the annexure to that representation, the pernicious intent of Raees Khan is revealed to persecute the Petitioner. The animus of Raees Khan towards Teesta Setalvad is reflected by the following: -

1. From January 2008 to September, 2010, Raees Khan never raised his voice but as soon as the critical trials relating to Zakia Jafri case in which

senior functionaries of the State were implicated bore fruition, Raees Khan became visible declaring that his aim was to "send Setalvad to Jail" *(Times of India – December 30, 2010)*. The nexus between Raees Khan and the State of Gujarat is demonstrated and compounded by the strictures of Court against Raees Khan.

2. In April 2010, State of Gujarat filed an affidavit in the Supreme Court in response to the Petition of the Trust seeking re-constitution of the SIT, in which vicious allegations were made against the Secretary of the Trust.
3. On September, 2010, Raees Khan filed an application before the SIT appointed by the Supreme Court making baseless and mala-fide allegations against Teesta Setalvad. The allegations made in the affidavit of the Government and those made by Raees Khan bore curious similarities.
4. On September 9, 2010 and September 17, 2010, Raees Khan, through a letter to the Commissioner of Police, leveled allegations against Teesta Setalvad to safeguard the interests of the accused to which the police did not respond.

5. On October 19, 2010, Raees Khan again filed an affidavit, this time before the Nanavati Shah Commission, to which a response was filed.
6. On October 28, 2010 and December 3, 2011, an application was moved by Raees Khan under Section 311 of the CrPC before the Session Court, Ahmadabad conducting trials in the Naroda, SardarPura and Gulbarg case seeking to be examined as a witness, stating that he was privy to the information as to how the affidavits of the witnesses and victims in the present case were prepared.
7. In November, 2010 onwards, Raees Khan along with 1 to 3 witnesses of the Pandharwada Mass Graves made wild allegations against the Secretary of the Organisatioin seeking arrest of Teesta Setalvad. It is submitted that in this case, Raees Khan was an accused. However, after his services were terminated and he became pliable for the State to be used to advance their interests, the name of the Teesta Setalvad was sought to be added allegedly on the basis of information given by Raees Khan.

Interestingly, this is a case where FIR was registered in 2006.

8. In fact, not only Raees Khan's application in the Sadarpura case (9.11.2011) was rejected, but the court issued notice under Section 195(1) CrPC against Raees Khan. The court ordered the following: *"The application filed by the applicant Raees Khan Azia Khan Pathan invoking the power of the Court under Section 311 of the CrPC stands rejected and it is hereby ordered to issue show-cause notice to the applicant under Section 340(1) of the CrPC in respect of the offence made under Section 177 of the IPC with reference to Section 195(1) of the CrPC returnable on or before 27.12.2010."*

   The Learned Sessions Court by its Final Order convicting 31 accused of the heinous crimes, dated 9.11.2011, has decided the Section 195(1) CrPC issue and found that the Rais Khan was indulging in acts, for which he should be prosecuted under Section 177 and 182 IPC.

9. Raees Khan was given a plum position as Member of the Central Wakf Board by the current ruling dispensation in Delhi.

10. In 2012, a criminal defamation complaint was filed by Raees Khan, which is used by the Gujarat Police as a means to indulge in a roving financial inquiry in which again the activities of the Trust are investigated. The matter is challenged and pending in the Gujarat High Court. It is submitted that this was a case of defamation. However, the IO of the case asked for all the financial documents, wrote to the donors of the Petitioners in a process of intimidating them.

11. Raees Khan has also made a complaint against the Trust on January 4, 2013 for having violated provisions of the FCRA, wherein action has also been sought by a BJP MP against Teesta Setalvad.

12. Having used Raees Khan on many occasions, the State found a new person, Feroz Saeed Khan the brother of one of the eye-witnesses in the Gulberg Society case. Interestingly, even though the first informant in this case is Feroz Khan, the allegations in respect of the so called Resolutions made by the Trust and the role of Teesta Setalvad are all matters which are referred to by Raees Khan, and in that

context, he will be a witness who has already been discredited in other proceedings in which he tried to implicate the Appellant.

13. Unlike the misinformation supplied to this Hon'ble Court by Ld SG, the complainant therein is a different person from Feroz Gulzar Pathan who is a Witness in the Zakia Jafri Complaint.

XV. Petitioner No.2 has faced many pronged attacks believing not just in the quest for justice but in the unfaltering belief that eventually, despite long drawn out processes and the vindictive power at times exercised by the State truth and justice will prevail.

XVI. This attempt by the state and SIT to prejudice this Hon'ble Court to bring in factors extraneous to the proceedings before it only exposes the malice against someone who contributed to the proceedings in court which led to the prosecutions in the 9 cases, and to the Supreme Court passing the Order of 12.09.2011. The Petitioner No.2 through CJP worked closely and assisted both the NHRC and the amicus Mr. Salve.

K. Conclusion

The Petitioners finally submit that under Article 21 of the Constitution, no person can be deprived of his life and liberty except under procedure established by law. The corollary to this is that one can be deprived of his life

or liberty through that very procedure established by law. The CrPC seeks to bring the guilty to justice, and seeks to protect the innocent. In this particular case, the SIT has sought to protect those who may have been found to be guilty by not investigating or analyzing the wealth of material, from which a strong suspicion arises that serious offences have been committed. A national tragedy of the magnitude of Godhra, in which 59 people lost their lives pursuant to the burning of Coaches S-6 and S-7, was followed by a national tragedy in which many more died, including children, women, the young and the elderly. There is closure to the first national tragedy because the guilty have been brought to book. There can be no closure to the subsequent national tragedy when the SIT chooses not to investigate and bring the guilty to book consistent with the CrPC. This itself is a tragedy of monumental proportions. This court should ensure that consistent with the Constitution and the CrPC, that the guilty be brought to book and direct that the Magistrate take cognizance of certain matters on the basis of material before it.