

**(2011) 7 Supreme Court Cases 69**

(BEFORE G.S. SINGHVI AND A.K. GANGULY, JJ.)

*a* AMAR SINGH . . . Petitioner;

*Versus*

UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petition (C) No. 39 of 2006<sup>†</sup>, decided on May 11, 2011

- b* **A. Constitution of India — Arts. 21 and 19(1)(a) — Right to privacy — Interception of telephone conversation (phone tapping) — Service provider's duty to act promptly and in public interest on request received from Government agencies for interception, but at the same time to be vigilant about fake requests — Held, interception is an invasion of privacy which is protected as a fundamental right, and therefore it can be resorted to, only on the basis of a genuine official communication — Doubtful communication may also be acted upon initially but its authenticity must be verified at the earliest — On facts held, service provider who intercepted petitioner's conversations on the basis of request which on the face of it aroused suspicion about its genuineness, failed in its public duty — There are a large number of discrepancies in interception order purported to have been received from Delhi Government — Service provider, held, ought to have verified order by referring it back to source from which it purportedly emanated — While dismissing writ petition seeking various reliefs against the State, liberty given to petitioner to seek appropriate legal remedy against service provider for unauthorised phone tapping — Central Government directed to frame guidelines so as to avoid recurrence of such instances in future — Telegraph Act, 1885, S. 5**

- e* **B. Telecommunications Laws — Service Provider — Public nature of its functions — Highlighted — Telegraph Act, 1885, S. 5**

- f* The petitioner filed a petition under Article 32 of the Constitution on the ground that his fundamental right to privacy was being breached by intercepting his conversations on telephone services provided by Respondent 8. The petitioner prayed that the Court may declare the orders for interception unconstitutional and therefore void, and initiate a judicial inquiry into the issuance and execution of these orders, and prayed that damages be awarded to him. The petitioner had also prayed for a gag-order injunction restraining the media from publishing the said intercepts, which injunction had been granted vide order dated 27-2-2006, (2011) 7 SCC 90.

- g* The petitioner alleged that this illegal interception was being done at the behest of Respondent 7, the ruling political party at the Centre. The petitioner's case was based on copy of letter dated 22-10-2005 purported to have been written by the Joint Commissioner of Police (Crime), New Delhi to Respondent 8 for interception of to-and-fro calls relating to petitioner's telephone. Besides, there was an Order dated 9-11-2005 from Principal Secretary (Home), Government of National Capital Territory of Delhi, authorising the said request. On investigation, these communications turned out to be fake. There were a large number of spelling mistakes and other discrepancies in the Order dated 9-11-2005 raising doubts about its genuineness, yet service provider (Respondent 8)
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<sup>†</sup> Under Article 32 of the Constitution of India

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acted upon it. The petitioner sought to withdraw his petition later on when he was convinced that Government agencies had not made any request for phone tapping.

Dismissing the writ petition and vacating the gag-order injunction, with liberty to the petitioner to move against the service provider before an appropriate forum, the Supreme Court

*Held :*

The service provider has to act on an urgent basis and has to act in public interest. But in a given case, like the present one, where the impugned communication dated 9-11-2005 is full of gross mistakes, the service provider while immediately acting upon the same, should simultaneously verify the authenticity of the same from the author of the document. The service provider has to act as a responsible agency and cannot act on any communication. Sanctity and regularity in official communication in such matters must be maintained especially when the service provider is taking the serious step of intercepting the telephone conversation of a person and by doing so is invading the privacy right of the person concerned and which is a fundamental right protected under the Constitution. While there is urgent necessity on the part of the service provider to act on a communication, at the same time, Respondent 8 is equally duty-bound to immediately verify the authenticity of such communication if on a reasonable reading of the same, it appears to any person, acting bona fide, that such communication, with innumerable mistakes, falls clearly short of the tenor of a genuine official communication. Therefore, the explanation of the service provider is not acceptable. (Paras 39 and 40)

*People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301; *Amar Singh v. Union of India*, (2011) 7 SCC 90, referred to

In view of disclosures made in the affidavit of the police authorities as also in the affidavit filed on behalf of Delhi Government, it is strange how the service provider, Respondent 8 could act on the basis of communications dated 22-10-2005 and 9-11-2005. Any reasonable person or a reasonable body of persons or an institution which is discharging public duty as a service provider, before acting on an order like the one dated 9-11-2005, would at least carefully read its contents. Even from a casual reading of the purported communication dated 9-11-2005, containing so many gross mistakes, one would reasonably be suspicious of the authenticity of its text. (Para 36)

If the service provider could have shown, which it has not done in the present case, that it had tried to ascertain from the author of the communication, its genuineness, but had not received any response or that the authority had accepted the communication as genuine, the service provider's duty would have been over. But the mere stand that there is no provision under the rules to do so is a lame excuse, especially having regard to the public element involved in the working of the service provider and the consequential effect it has on the fundamental right of the person concerned. In view of the public nature of the function of a service provider, it is inherent in its duty to act carefully and with a sense of responsibility. In discharging the said duty, Respondent 8, the service provider has failed. (Paras 41 and 42)

It is not being suggested that in the name of verifying the authenticity of any written request for interception, the service provider will sit upon it. The service provider must immediately act upon such written request but when the communication bristles with gross mistakes, as in the present case, it is the duty

- a of the service provider to simultaneously verify its authenticity while at the same time also act upon it. The Central Government must, therefore, frame certain statutory guidelines in this regard to prevent interception of telephone conversation on unauthorised communication, as has been done in this case.

(Para 43)

- b The petitioner has withdrawn his case against Respondent 7. In that view of the matter it is made clear that the petitioner, if so advised, may proceed against the service provider, Respondent 8, before the appropriate forum, in accordance with law. It is further made clear that no observation on the merits of the case has been made in the event the petitioner initiates any proceeding against Respondent 8.

(Para 63)

- c **C. Constitution of India — Art. 32 — Affidavit in support of petition under Art. 32 — Held, must conform to Or. 19 R. 3 CPC — Failure to file proper affidavit — Held, petition ought not to be entertained — Petitioner making a serious allegation in his petition about encroachment of his fundamental right to privacy (telephone tapping) by police for extraneous reasons and at the behest of political party ruling at Centre — Petition based on communications purported to have been issued by Delhi Police and Delhi Government to service provider (Respondent 8) — Affidavit not categorically stating that facts stated in petition were based on his personal knowledge — Held, petition in the absence of proper affidavit, was defective and therefore should not have been entertained — Perfunctory and slipshod affidavits should not be entertained by the Supreme Court — Civil Procedure Code, 1908 — Or. 19 R. 3 — Supreme Court Rules, 1966, Or. 11 Rr. 5 and 13**

(Paras 29 and 64)

- e *State of Bombay v. Purushottam Jog Naik*, AIR 1952 SC 317 : 1952 Cri LJ 1269 : 1952 SCR 674; *Barium Chemicals Ltd. v. Company Law Board*, AIR 1967 SC 295; *A.K.K. Nambiar v. Union of India*, (1969) 3 SCC 864; *Virendra Kumar Saklecha v. Jagjiwan*, (1972) 1 SCC 826; *Sukhwinder Pal Bipan Kumar v. State of Punjab*, (1982) 1 SCC 31; *Savithramma v. Cecil Naronha*, 1988 Supp SCC 655, *relied on*  
*Padmabati Dasi v. Rasik Lal Dhar*, ILR (1910) 37 Cal 259, *approved*  
*State of Bombay v. Purushottam Jog Naik*, AIR 1952 SC 317 : 1952 Cri LJ 1269 : 1952 SCR 674; *Barium Chemicals Ltd. v. Company Law Board*, AIR 1967 SC 295; *A.K.K. Nambiar v. Union of India*, (1969) 3 SCC 864, *relied on*

- f **D. Supreme Court Rules, 1966 — Or. 11 Rr. 5 and 13 — Purpose of filing proper affidavit — Held, is to guard against frivolous litigation — Such requirement should not therefore be diluted — Fresh directions issued to Supreme Court Registry for strict scrutiny of affidavits and to reject petitions/applications not supported by proper affidavits — Practice and Procedure — Litigation — Frivolous litigation — Means for weeding out — Constitution of India — Art. 32 — Directions issued to Registry — Civil Procedure Code, 1908, Or. 19**

*Held :*

- h The Rules regarding filing of proper affidavits which have been reiterated time and again, are aimed at protecting the Court against frivolous litigation, must not be diluted or ignored. However, in practice they are frequently flouted by the litigants and often ignored by the Registry of the Supreme Court. The instant petition is an illustration of the same. If the Rules for affirming an affidavit according to the Supreme Court Rules were followed, it would have

been difficult for the petitioner to file this petition and so much of judicial time would have been saved. This case is not an isolated instance. There are innumerable cases which have been filed with affidavits affirmed in a slipshod manner. It is therefore directed that the Registry must henceforth strictly scrutinise all the affidavits, all petitions and applications and will reject or note as defective all those which are not consistent with the mandate of Order 19 Rule 3 CPC and Order 11 Rules 5 and 13 of the Supreme Court Rules.

(Paras 65 and 66)

**E. Constitution of India — Arts. 32 and 226 — Conduct of petitioner — Petitioner, held, must come with clean hands — He cannot prevaricate and take inconsistent stands because law is not a game of chess — Suppression of material fact in petition — Dismissal of writ petition — Petitioner suppressing a material fact that he had given a statement under S. 161 CrPC, in respect of a document which formed the very basis of petitioner's case in writ petition — Held, material fact had been suppressed — Petition liable to be dismissed — In any case, no case had been made out against authorities concerned as alleged in writ petition — Criminal Procedure Code, 1973, S. 161**

(Paras 44 to 53, 61 and 62)

**F. Constitution of India — Arts. 32 and 226 — Frivolous and speculative writ petition — Held, serious issue like phone tapping cannot be gone into on the basis of writ petition which was based on shaky grounds**

(Para 52)

**G. Constitution of India — Arts. 21, 32 and 226 — Right to privacy — Gag-order injunction — Interim order restraining print/electronic media from publishing contents of illegally/unauthorisedly tapped phone conversations — Vacation of gag-order — Considerations — Due to improper conduct of petitioner whose conversations had been tapped, suppression of facts, resort to falsehood and unethical means and abuse of process of court by him, restraining order vacated**

(Paras 7, 8 and 53 to 62)

*Amar Singh v. Union of India*, (2011) 7 SCC 90, referred to

**H. Practice and Procedure — Injunction — Equitable nature of remedy — Held, must be governed by principle of *uberrima fides* — An injunction which is sought by pleading wrong facts is therefore liable to be vacated — Civil Procedure Code, 1908 — Or. 39 R. 1 — Equity — Specific Relief Act, 1963, Ss. 36 to 42**

(Paras 53 to 62)

**I. Practice and Procedure — Pleadings — Clarity and candour — Held, must be observed in pleadings — Civil Procedure Code, 1908, Or. 6 R. 2**

(Para 58)

*Dalglisch v. Jarvie*, (1850) 2 Mac & G 231 : 42 ER 89; *Castelli v. Cook*, (1849) 7 Hare 89 : 68 ER 36; *Republic of Peru v. Dreyfus Bros. & Co.*, 38 Ch D 348 : 55 LT 802; *R. v. Kensington Income Tax Commr., ex p Princess de Polignac*, (1917) 1 KB 486 (CA); *Hari Narain v. Badri Das*, AIR 1963 SC 1558; *Welcome Hotel v. State of A.P.*, (1983) 4 SCC 575 : 1983 SCC (Cri) 872; *G. Narayanaswamy Reddy v. Govt. of Karnataka*, (1991) 3 SCC 261; *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1; *A.V. Papayya Sastry v. Govt. of A.P.*, (2007) 4 SCC 221; *Prestige Lights Ltd. v. SBI*, (2007) 8 SCC 449; *Sunil Poddar v. Union Bank of India*, (2008) 2 SCC 326 : (2008) 1 SCC (Civ) 558; *K.D. Sharma v. SAIL*, (2008) 12 SCC 481; *G. Jayashree v. Bhagwandas S. Patel*, (2009) 3 SCC 141; *Dalip Singh v. State of U.P.*, (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324, relied on

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Advocates who appeared in this case :

- a* Ms Indira Jaising, Additional Solicitor General, Dr. A.M. Singhvi, Pravin Parekh, J.S. Attri, Harish Chander, C.S. Vaidyanathan, Anoop G. Chaudhari and Ram Jethmalani, Senior Advocates [Ajay Kr. Jha, Pradeep Rai, Shashank Kunwar, Ms Shweta Sharma (for M/s Parekh & Co.), Sonam Anand, Aditya Sharma, Mukesh Verma, A.K. Sharma, Ms Supriya Jain, Manjul Bajpai, Ankur Saigal, Ms Bina Gupta, Abhay Anand Jena, Rishi Malhotra, Ms Mrinmayee Sahu, M/s Equity Lex Associates, Nikhil Nayyar, T.V.S. Raghavendra Sreyas, Swapnil Verma, Prashant Bhushan, Pranav Sachdeva, Ms Manali Singhal, Santosh Sachin, Abhijat P. Medh, Vivek Kishore, Ms Ruchi Gour Narula, S.R. Setia, Vivek Verma, Ms Sushma Suri, Gyan Shyam Vasisht, Rajiv Mehta, Navin Chawla, Gaurav Kaushik, E.C. Agrawala, Ms Sumita Hazarika, Ms Nidhi, Ms Madhu Sikri and Saket Sikri, Advocates] for the appearing parties.
- b*

**Chronological list of cases cited**

**on page(s)**

1. (2011) 7 SCC 90, *Amar Singh v. Union of India* 74g-h, 81c, 85a-b
2. (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324, *Dalip Singh v. State of U.P.* 88b, 88b-c
- c* 3. (2009) 3 SCC 141, *G. Jayashree v. Bhagwandas S. Patel* 88b
4. (2008) 12 SCC 481, *K.D. Sharma v. SAIL* 88b
5. (2008) 2 SCC 326 : (2008) 1 SCC (Civ) 558, *Sunil Poddar v. Union Bank of India* 88b
6. (2007) 8 SCC 449, *Prestige Lights Ltd. v. SBI* 88b
7. (2007) 4 SCC 221, *A.V. Papayya Sastry v. Govt. of A.P.* 88a-b
8. (1997) 1 SCC 301, *People's Union for Civil Liberties v. Union of India* 74d, 76a, 76f-g
- d* 9. (1994) 1 SCC 1, *S.P. Chengalvaraya Naidu v. Jagannath* 88a-b
10. (1991) 3 SCC 261, *G. Narayanaswamy Reddy v. Govt. of Karnataka* 88a-b
11. 1988 Supp SCC 655, *Savithramma v. Cecil Naronha* 80d, 80f-g, 80g-h
12. (1983) 4 SCC 575 : 1983 SCC (Cri) 872, *Welcome Hotel v. State of A.P.* 88a-b
13. (1982) 1 SCC 31, *Sukhwinder Pal Bipan Kumar v. State of Punjab* 80b-c
14. (1972) 1 SCC 826, *Virendra Kumar Saklecha v. Jagjiwan* 79g, 80a-b
- e* 15. (1969) 3 SCC 864, *A.K.K. Nambiar v. Union of India* 79d-e, 89d
16. AIR 1967 SC 295, *Barium Chemicals Ltd. v. Company Law Board* 78g, 89d
17. AIR 1963 SC 1558, *Hari Narain v. Badri Das* 88a-b
18. AIR 1952 SC 317 : 1952 Cri LJ 1269 : 1952 SCR 674, *State of Bombay v. Purushottam Jog Naik* 78d-e, 79c, 80g-h, 89d
19. (1917) 1 KB 486 (CA), *R. v. Kensington Income Tax Commr., ex p Princess de Polignac* 87e-f
- f* 20. ILR (1910) 37 Cal 259, *Padmabati Dasi v. Rasik Lal Dhar* 78b-c, 78f-g, 79d
21. (1850) 2 Mac & G 231 : 42 ER 89, *DalGLISH v. Jarvie* 87a-b
22. (1849) 7 Hare 89 : 68 ER 36, *Castelli v. Cook* 87b-c
23. 38 Ch D 348 : 55 LT 802, *Republic of Peru v. Dreyfus Bros. & Co.* 87d

The Judgment of the Court was delivered by

- g* **A.K. GANGULY, J.**— In this writ petition, filed under Article 32, the petitioner is seeking to protect his fundamental right to privacy under Article 21 of the Constitution of India. The petitioner's case is that on the basis of his information from various sources, he had learnt that the Government of India and the Government of National Capital Region of Delhi, being pressurised by Respondent 7, had been intercepting the petitioner's conversations on phone, monitoring them and recording them. The petitioner had been availing
- h* of the telephone services of M/s Reliance Infocomm Ltd., impleaded herein as Respondent 8.



2. The petitioner further referred to similar cases of interception of phone conversations of other people, including some of the country's leading political figures, who were using services provided by M/s Reliance Infocomm Ltd. and other service providers. Such interception of conversation, according to the petitioner, amounts to intrusion on the privacy of the affected people, and is motivated by political ill-will and has been directed only towards those who are not aligned with the political party in power at the Centre. He submitted that this infringement of his fundamental rights was symptomatic of the erosion of the democratic values in the country.

3. The petitioner prayed that the Court may declare the orders for interception unconstitutional and therefore void, and initiate a judicial inquiry into the issuance and execution of these orders, and prayed that damages be awarded to him.

4. It was further prayed that all the telecom service providers including M/s Reliance Infocomm Ltd., along with all the others who had been impleaded, be directed to disclose all the relevant details with respect to the directions of interception issued to them by the authorities, and this Court may lay down guidelines on interception of phone conversations in addition to the ones laid down by this Court in its judgment in *People's Union for Civil Liberties v. Union of India*<sup>1</sup>.

5. The petitioner's case is that a request dated 22-10-2005 was issued from the Office of the Joint Commissioner of Police (Crime), New Delhi to the Nodal Officer, Reliance Infocomm Ltd., Delhi, for the interception of all the calls made from or to the telephone numbers of the petitioner. This request was subsequently followed by an Order dated 9-11-2005, from the Principal Secretary (Home), Government of National Capital Territory of Delhi, authorising the said request.

6. The case of Respondent 8 is that the said orders were acted upon by it, and the petitioner's conversations were intercepted. However, the Union of India, and the National Capital Territory of Delhi denied the allegations. They submitted that the said orders annexed to the petition, purporting to be issued by the Joint Commissioner of Police (Crime), New Delhi, and the Principal Secretary (Home), Government of National Capital Territory of Delhi are fabricated with forged signatures and they are not genuine. Alleging forgery, a criminal case in that respect had already been initiated.

7. In the course of the hearing, by filing an interlocutory application (No. 2 of 2006) the petitioner submitted that the recordings of the said conversations had been made available to some journalists/news agencies. In view of these submissions, this Court directed the electronic and the print media not to publish any part of the said conversations, vide Court's order dated 27-2-2006<sup>2</sup>.

8. Various applications for intervention were preferred, especially by civil society groups. These applications were allowed. The interveners argued that the conversations by the petitioner were mostly made in his capacity as a

<sup>1</sup> (1997) 1 SCC 301

<sup>2</sup> *Amar Singh v. Union of India*, (2011) 7 SCC 90

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- a public functionary and, therefore, were public in nature, and the citizens of the country have a right to know their contents under Article 19(1)(a) of the Constitution. A prayer was therefore made by them to vacate the order of injunction.

- b 9. In this matter pursuant to the direction of this Court, a detailed affidavit has been filed by one R. Chopra, Joint Secretary (Home Department) of the Government of National Capital Territory of Delhi, in which it has been clearly stated that the Principal Secretary (Home) in the Government of National Capital Territory of Delhi, is authorised by the Lieutenant Governor of Delhi to exercise powers to order interception of phone conversation for a period specified in such orders in accordance with the provisions of Section 5 of the Telegraph Act, 1885\* (the said Act).

- c \* **Ed.:** It may be noticed that in law, telephone is considered as telegraph though technologically, telephone and telegraph are based on different scientific principles. The question whether telephone can be treated as telegraph was raised in UK way back in the nineteenth century in *A-G v. Edison Telephone Co. of London*, (1880) 6 QBD 244, and the court, in the following words, held that telephone was telegraph for the purpose of the two Telegraph Acts of 1863 and 1869: (QBD pp. 253-55)

- d "... it does not appear to us that the fact, if it is a fact, that sound itself is transmitted by the telephone establishes any material distinction between telephonic and telegraphic communication, as the transmission if it takes place is performed by a wire acted on by electricity. We are of the opinion, then, that, fully admitting all that has been, or indeed can be said as to the novelty and value of the telephonic transmitter and receiver, the whole apparatus, transmitter, wire and receiver taken together form a 'wire used for the purpose of telegraphic communication; ... that is, they are a telegraph within the definition of the Act of 1863, which is embodied by reference in the Act of 1869. The wire is a wire. The transmitting and receiving instruments are apparatus connected therewith for the purpose of conveying information by electricity; and this, as it seems to us, is telegraphic communication. Indeed, though for scientific purposes it may, no doubt, be necessary to distinguish between telegraphs and telephones, it seems to us that the word 'telegraph', as defined in the Telegraph Acts, is (to use Professor Stokes's words) 'wide enough to cover every instrument which may ever be invented which employs electricity transmitted by a wire as a means for conveying information.' Indeed, looking to the extension of the definition inserted in the Act of 1869, the words 'transmitted by a wire' might probably be left out of this definition.

- f ... Of course no one supposes that the legislature intended to refer specifically to telephones many years before they were invented, but it is highly probable that they would, and it seems to us clear that they actually did, use language embracing future discoveries as to the use of electricity for the purpose of conveying intelligence. The great object of the Act of 1863 was to give special powers to telegraph companies to enable them to open streets, lay down wires, take land, suspend wires over highways, connect wires, erect posts on the roofs of houses, and do many other things of the same sort. The Act, in short, was intended to confer powers and to impose duties upon companies established for the purpose of communicating information by the action of electricity upon wires, and absurd consequences would follow if the nature and extent of those powers and duties were made dependent upon the means employed for the purpose of giving the information. Suppose a company found it essential to erect posts along a highway, and suppose the body having control of the highway gave their consent, would the validity of the consent, and therefore the liability of the parties concerned to an indictment for obstructing the highway, notwithstanding such consent, be dependent on the question whether the messages were sent by an Edison's transmitter or by a Morse key?"

- g The above legal position has continued in India also, as is clear from the Supreme Court judgment in *Delhi Science Forum v. Union of India*, (1996) 2 SCC 405, wherein the question regarding grant of licences to telephone companies was considered under the Telegraph Act, 1885. However, the definition of "telegraph" in India has been sufficiently widened to include telephone also, whether it is a landline or cellular phone, *see* Section 3(1-AA) of the Telegraph Act, 1885.

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10. From the order of authorisation dated 10-12-1997, it appears that the same was issued pursuant to the judgment of this Court dated 18-12-1996 in *People's Union for Civil Liberties*<sup>1</sup> and also Section 5(2) read with Government of India, States Ministry Notification No. 104-J dated 24-10-1950. a

11. In the said affidavit it has been clearly stated by the deponent that no request for interception is examined by the Home Department unless it is accompanied by a confirmation that the same has the prior approval of the Commissioner of Police, Delhi. It was clarified that no Joint Commissioner of Police or police officer of any other rank can directly request for an interception, without first obtaining the prior approval of the Commissioner of Police. It was also clarified that no phone interception order is suo motu issued by the Principal Secretary (Home) without a request from the government agency. Majority of interception requests, received by the Principal Secretary (Home), are from Delhi Police. b  
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12. In respect of the petitioner's telephone number (011 39565414), the deponent specifically stated that no order for interception of the said number was ever issued either on 9-11-2005, or earlier, or for that matter, even later. The categorical denial in this respect in the said affidavit is set out below:

(v) ... This categorical denial is being submitted after careful scrutiny of all the relevant records. Also it is respectfully stated on the basis of careful scrutiny of records, that no request for interception of the petitioner's telephone number (011 39565414) was received by Respondent 4/Principal Secretary (Home) from any police officer or for that matter any agency, governmental/police or otherwise. d

(vi) In view of this, the Order bearing No. F.5/1462/2004-HG dated 9-11-2005, a copy of which is appended to the writ petition at p. 28 as Annexure B, and having an Endorsement No. F.5/1462/2004-HG/7162 of the same date, and purportedly issued under the signature of the then Principal Secretary (Home), is forged and fabricated document. e

13. An affidavit has also been filed on behalf of the Union of India by one Mr J.P.S. Verma, Deputy Secretary, Ministry of Home Affairs, North Block, New Delhi, in which reference was made to certain orders passed by this Court in this petition, and thereafter, reference was also made to the judgment of this Court in *People's Union for Civil Liberties*<sup>1</sup> and the various provisions of the Telegraph Act. The Central Government made it very clear that it was fully aware of the sensitivity relating to the conversations on telephone, and the privacy rights thereon. Reference was also made to technological measures to avoid unauthorised interceptions and the changed security scenario. f  
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14. In this matter an additional affidavit has been filed by Shri Alok Kumar, Deputy Commissioner of Police, Headquarters. In that affidavit it has been stated, that on inquiry by the Additional Police Commissioner (Crime), it was discovered that the purported order of Joint Commissioner of Police h

<sup>1</sup> *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301



(Crime) and Principal Secretary (Home) on the basis of which interceptions were alleged by the petitioner were forged documents.

a     **15.** Consequent on the same report, FIR No. 152 of 2005 had been lodged under Sections 419, 420, 468, 471 and 120-B IPC read with Sections 20, 21 and 26 of the Telegraph Act, on 30-12-2005. In the said investigation the statement of the petitioner was also recorded under Section 161 CrPC.

b     **16.** In a subsequent affidavit filed by Mangesh Kashyap, Deputy Commissioner of Police, Headquarters on 8-2-2011, it has been stated by the deponent that the final report in connection with the said investigation was filed before the competent court on 15-2-2006 and the charges were framed on 6-2-2010. Four accused persons in the said case were charged under Section 120-B read with Sections 420 and 471 IPC and Section 25 of the Telegraph Act. In addition, Bhupender Singh had been charged under Section 201 IPC and Anurag Singh was charged under Section 419 IPC. The trial in  
c     the said case has commenced and one witness, Shri Ranjit Narain, the then Joint Commissioner of Police was examined.

d     **17.** Here we may point out the casual manner in which the petitioner approached the Court. The affidavit filed by the petitioner in support of his petition, and relying on which this Court issued notice on 24-1-2006, is not at all modelled either on Order 19 Rule 3 of the Code of Civil Procedure, or Order 11 of the Supreme Court Rules, 1966. The relevant portion of the petitioner's affidavit runs as under:

“1. That I am the petitioner in the above writ petition and am conversant with the facts and circumstances of the case. As such, I am competent to swear this affidavit.

e     2. That I have read the contents of Paras 1 to 9 on pages 1 to 24 of the accompanying writ petition and have understood the same. I state that what is stated therein is true to my knowledge and belief.

3. That I have read the accompanying list of dates and events from pages B to D and have understood the same. I state that what is stated therein, is true to my knowledge and belief.”

f     **18.** The provision of Order 19 of the Code of Civil Procedure, deals with affidavits. Rule 3(1) of Order 19 which deals with matters to which the affidavit shall be confined provides as follows:

g     “**3. Matters to which affidavits shall be confined.**—(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.”

**19.** Order 11 of the Supreme Court Rules, 1966 deals with affidavits. Rule 5 of Order 11 is a virtual replica of Order 19 Rule 3(1). Order 11 Rule 5 of the Supreme Court Rules is therefore set out:

h     “5. Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated.”

**20.** In this connection Rule 13 of Order 11 of the aforesaid Rules is also relevant and is set out below:

“13. In this Order, ‘affidavit’ includes a petition or other document required to be sworn or verified; and ‘sworn’ includes affirmed. In the verification of petitions, pleadings or other proceedings, statements based on personal knowledge shall be distinguished from statements based on information and belief. In the case of statements based on information, the deponent shall disclose the source of his information.” a

**21.** The importance of affidavits strictly conforming to the requirements of Order 19 Rule 3 of the Code has been laid down by the Calcutta High Court as early as in 1910 in *Padmabati Dasi v. Rasik Lal Dhar*<sup>3</sup>. An erudite Bench, comprising Lawrence H. Jenkins, C.J. and Woodroffe, J. laid down: (ILR p. 262) b

“We desire to impress on those who propose to rely on affidavits that, in future, the provisions of Order 19 Rule 3, *must be strictly observed* and every affidavit should clearly express how much is a statement of the deponent’s knowledge and how much is a statement of his belief, and the grounds of belief must be stated with sufficient particularity to enable the Court to judge whether it would be safe to act on the deponent’s belief.” (emphasis supplied) c

**22.** This position was subsequently affirmed by a Constitution Bench of this Court in *State of Bombay v. Purushottam Jog Naik*<sup>4</sup>. Vivian Bose, J. speaking for the Court, held: (AIR p. 319, para 16) d

“16. We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order 19 Rule 3 of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed. We draw attention to the remarks of Jenkins, C.J. and Woodroffe, J. in *Padmabati Dasi v. Rasik Lal Dhar*<sup>3</sup> and endorse the learned Judges’ observations.” e

**23.** In *Barium Chemicals Ltd. v. Company Law Board*<sup>5</sup> another Constitution Bench of this Court upheld the same principle: (AIR p. 319, para 57) f

“57. The question then is: what were the materials placed by the appellants in support of this case which the respondents had to answer? According to para 27 of the petition, the proximate cause for the issuance g

<sup>3</sup> ILR (1910) 37 Cal 259

<sup>4</sup> AIR 1952 SC 317 : 1952 Cri LJ 1269 : 1952 SCR 674

<sup>5</sup> AIR 1967 SC 295

a of the order was the discussion that the two friends of the 2nd respondent had with him, the petition which they filed at his instance and the direction which the 2nd respondent gave to Respondent 7. But these allegations are not grounded on any knowledge but only on ‘reasons to believe’. Even for their reasons to believe, the appellants do not disclose any information on which they were founded. No particulars as to the alleged discussion with the 2nd respondent, or of the petition which the said two friends were said to have made, such as its contents, its time or to which authority it was made are forthcoming. It is true that in a case of this kind it would be difficult for a petitioner to have personal knowledge in regard to an averment of mala fides, but then where such knowledge is wanting he has to disclose his source of information so that the other side gets a fair chance to verify it and make an effective answer. In such a situation, this Court had to observe in *Purushottam Jog Naik*<sup>4</sup>, that as slipshod verifications of affidavits might lead to their rejection, they should be modelled on the lines of Order 19 Rule 3 of the Civil Procedure Code and that where an averment is not based on personal knowledge, the source of information should be clearly deposed. In making these observations this Court endorsed the remarks as regards verification made in the Calcutta decision in *Padmabati Dasi v. Rasik Lal Dhar*<sup>3</sup>.”

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24. Another Constitution Bench of this Court in *A.K.K. Nambiar v. Union of India*<sup>6</sup>, held as follows: (SCC p. 867, para 8)

e “8. ... The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant’s petition were also not verified. The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence.”

f

g 25. In *Virendra Kumar Saklecha v. Jagjiwan*<sup>7</sup> this Court while dealing with an election petition dealt with the importance of disclosure of source of information in an affidavit. This Court held that non-disclosure will indicate that the election petitioner did not come forward with the source of

4 *State of Bombay v. Purushottam Jog Naik*, AIR 1952 SC 317 : 1952 Cri LJ 1269 : 1952 SCR 674

3 ILR (1910) 37 Cal 259

6 (1969) 3 SCC 864 : AIR 1970 SC 652

7 (1972) 1 SCC 826

information at the first opportunity. The importance of disclosing such source is to give the other side notice of the same and also to give an opportunity to the other side to test the veracity and genuineness of the source of information. a

26. The same principle as in *Saklecha case*<sup>7</sup> also applies to the petitioner in this petition under Article 32 which is based on allegations of political motivation against some political parties in causing alleged interception of his telephone. The absence of such disclosure in the affidavit, which was filed along with the petition, raises a prima facie impression that the writ petition was based on unreliable facts. b

27. In *Sukhwinder Pal Bipan Kumar v. State of Punjab*<sup>8</sup> a three-Judge Bench of this Court in dealing with petitions under Article 32 of the Constitution held that under Order 19 Rule 3 of the Code it was incumbent upon the deponent to disclose the nature and source of his knowledge with sufficient particulars. In a case where allegations in the petition are not affirmed, as aforesaid, it cannot be treated as supported by an affidavit as required by law. (See SCC p. 38, para 12.) c

28. The purpose of Order 11 Rules 5 and 13 of the Supreme Court Rules, set out above, has been explained by this Court in *Savithramma v. Cecil Naronha*<sup>9</sup>. This Court held, in AIR para 2 at p. 1988, as follows: (SCC p. 657, para 2) d

“2. ... In the case of statements based on information the deponent shall disclose the source of his information. Similar provisions are contained in Order 19 Rule 3 of the Code of Civil Procedure. Affidavit is a mode of placing evidence before the Court. A party may prove a fact or facts by means of affidavit before this Court but such affidavit should be in accordance with Order 11 Rules 5 and 13 of the Supreme Court Rules. The purpose underlying Rules 5 and 13 of Order 11 of the Supreme Court Rules is to enable the court to find out as to whether it would be safe to act on such evidence and to enable the court to know as to what facts are based in the affidavit on the basis of personal knowledge, information and belief as this is relevant for the purpose of appreciating the evidence placed before the court, in the form of affidavit.” e f

In the same paragraph it has also been stated as follows: (*Savithramma case*<sup>9</sup>, SCC p. 657, para 2)

“2. ... If the statement of fact is based on information the source of information must be disclosed in the affidavit. An affidavit which does not comply with the provisions of Order 11 of the Supreme Court Rules, has no probative value and it is liable to be rejected.” g

In laying down the aforesaid principles, this Court in *Savithramma*<sup>9</sup> relied on a Full Bench judgment in *Purushottam Jog Naik*<sup>4</sup>.

7 *Virendra Kumar Saklecha v. Jagjiwan*, (1972) 1 SCC 826

8 (1982) 1 SCC 31

9 1988 Supp SCC 655 : AIR 1988 SC 1987

4 *State of Bombay v. Purushottam Jog Naik*, AIR 1952 SC 317 : 1952 Cri LJ 1269 : 1952 SCR 674 h

- 29.** In the instant case, the petitioner invoked the extraordinary writ jurisdiction of this Court under Article 32, without filing a proper affidavit as required in terms of Order 19 Rule 3 of the Code. Apart from the fact that the petitioner invoked Article 32, the nature of the challenge in his petition is very serious in the sense that he is alleging an attempt by the Government of intercepting his phone and he is further alleging that in making this attempt the Government is acting on extraneous considerations, and is virtually acting in furtherance of the design of the ruling party. It is, therefore, imperative that before making such an allegation the petitioner should be careful, circumspect and file a proper affidavit in support of his averment in the petition. In our judgment, this is the primary duty of a petitioner who invokes the extraordinary jurisdiction of this Court under Article 32.

- 30.** It is very disturbing to find that on the basis of such improper and slipshod affidavit, notice was issued on the petition, as stated above, and subsequently a detailed interim order was passed on 27-2-2006<sup>2</sup> to the following effect: (SCC p. 91, paras 6-7)

- “6. Mr Mukul Rohatgi, learned Senior Counsel, on behalf of the petitioner submits that till this Court decides the guidelines in respect of tapping of telephones, a general order of restraint may be passed restraining publication by either electronic or print media of unauthorised tape recorded versions. We have asked the viewpoints and assistance of Mr Goolam E. Vahanvati, learned Solicitor General and Mr Gopal Subramaniam, learned Additional Solicitor General. Both the learned counsel submit that they see no prejudice for the order of restraint as sought for by Mr Rohatgi being made.

7. Having regard to the facts and circumstances, we direct that electronic and print media would not publish/display the unauthorisedly and illegally recorded telephone tapped versions of any person till the matter is further heard and guidelines issued by this Court.”

That interim order has continued for about four years and is continuing till now.

- 31.** Then when in the course of hearing of this case, it was pointed out by this Court on 2-2-2011 that the affidavit filed by the petitioner is perfunctory, defective and not in accordance with the mandate of law, a prayer was made by the learned Senior Counsel for the petitioner to file a proper affidavit as required under the law. Similar prayer was made by the learned Solicitor General for the official respondents, and the case was adjourned. Thereupon a detailed affidavit has been filed by the petitioner.

- 32.** It appears from the detailed affidavit filed by the petitioner, pursuant to the order of this Court dated 2-2-2011, that the main documents on which the writ petition is based, namely, Annexures A and B, the orders dated 22-10-2005 and 9-11-2005 were obtained by him from Mr Anurag Singh, who is one of the accused and was arrested in the aforesaid criminal case. It also appears that the petitioner’s averments in Paras 2(v), 2(vii), 2(viii) and

<sup>2</sup> *Amar Singh v. Union of India*, (2011) 7 SCC 90



2(ix) are based on information derived from the same Anurag Singh and that part of the information relating to the averments in Para 5 of the writ petition was also obtained from the same Mr Anurag Singh. The petitioner, therefore, largely relied on information received from an accused in a criminal case while he filed his petition under Article 32. a

**33.** The affidavit filed by Mr R. Chopra on behalf of the Government of National Capital Territory, New Delhi is of some relevance in connection with the part played by Respondent 8.

**34.** In Para I sub-para (iv), while giving para wise reply to the writ petition, it has been reiterated that in the order dated 9-11-2005 (Annexure B to the writ petition) there are glaring discrepancies. Those discrepancies which have been noted are as follows: b

“(iv) It is vehemently denied that the interception order dated 9-11-2005 was issued by the Principal Secretary (Home) or any other officer of the Home Department of Government of NCT of Delhi in respect of Phone No. 011 39565414 belonging to the petitioner, at any time. The order dated 9-11-2005 is forged and fabricated. That prima facie on close scrutiny of the purported Order No. F.5/1462/2004-HG dated 9-11-2005 issued by the Principal Secretary (Home), Government of NCT of Delhi and Endorsement No. F.5/1462/2004-HG/7162 of the same date purportedly issued by the Deputy Secretary (Home) which has been annexed as Annexure B to the writ petition, the following discrepancies can be noted and they are as follows: c

(a) The number on the file i.e. No. F.5/1462/2004-HG cited on the left hand top of the order, is on the fact of it, erroneous, as a letter mentioning the year 2004 cannot be issued in the year 2005, as the forged/fabricated order of 9-11-2005 purports to do. d

(b) It is further submitted that Interception File No. F.5/1462/2004-HG in Home Department pertains to interception of some other telephone number, which does not mention the petitioner’s number. It is pertinent to mention that the interception order in the above file was issued on 22-12-2004 i.e. nine months earlier than the purported interception of the petitioner’s telephone number. e

(c) This shows that the aforementioned file number was simply written on the fabricated or forged order of 9-11-2005 referred to above, which has been cited by the petitioner in his writ petition. f

(d) It is respectfully submitted that signatures of the then Principal Secretary (Home) and those of then Deputy Secretary (Home) have been forged and fabricated. g

(e) It is respectfully submitted that the file endorsement number in the purported interception order dated 9-11-2005 there is mention of No. F.5/1462/2004-HG/7162. This dispatch number 7162 is itself wrong and fake as the dispatch number 7162 was given to a communication issued on 10-11-2005 and this concerned the h

forwarding of a dismissal order against a Deputy Superintendent of the Central Jail, Tihar.

*a* **35.** Apart from the various discrepancies, the deponent also pointed out in clause (f) of Para I(iv) the following gross spelling mistakes in the purported order dated 9-11-2005:

(i) In the first line the words “satisfied” and “interest” have been misspelt as “setisfied” and “intrest”.

*b* (ii) In the second line the word “interest” has been misspelt as “intrest”.

(iii) In the fifth line the word “disclosure” has been misspelt as “dicloser”.

(iv) In the eighth line the word “the” has been misspelt as “te”. The word “Rules” has been misspelt as “Ruls” and word “exercise” has been misspelt as “exercies”.

*c* (v) In the eleventh line the word “message” has been misspelt as “massage”, while in the twelfth line the word “messages” has been misspelt as “massage”.

*d* (vi) In the endorsement forwarding the copies the purported order of 9-11-2005 the word “Additional Commissioner” has been misspelt as “Addi commissioner” and in the following line words “Chairman” and “Committee” have been misspelt as “Cairman” and “Committe” respectively.

*e* **36.** In view of such disclosures in the affidavit of the police authorities as also in the affidavit filed by Mr Chopra on behalf of Delhi Administration, it appeared strange to this Court how the service provider, Respondent 8 could act on the basis of communications dated 22-10-2005 and 9-11-2005. To this Court, it appeared that any reasonable person or a reasonable body of persons or an institution which is discharging public duty as a service provider, before acting on an order like the one dated 9-11-2005, would at least carefully read its contents. Even from a casual reading of the purported communication dated 9-11-2005, containing so many gross mistakes, one

*f* would reasonably be suspicious of the authenticity of its text.

*g* **37.** A query in this respect, made by the Court, was answered in a subsequent affidavit, filed on behalf of Respondent 8, by one Col. A.K. Sachdeva, working as its Nodal Officer. In the said affidavit it has been stated that similar orders containing comparable mistakes were issued by Respondent 4 and that it was impossible for the service provider to devise a practice on the basis of which the service provider could postpone interception on the ground of gross mistakes instead of taking an immediate action which is required for the safety of general public and in public interest.

*h* **38.** It is further stated that when a request is made to the service provider, it is duty-bound to comply with the same and there is no provision in the rule under which the service provider could send back the written request pointing out the mistakes contained therein. Reference has also been made to

Licence Condition No. 42 which provides that the service provider is to give assistance, as per request, to the law enforcement agencies and any violation of the said condition may lead to imposition of a heavy penalty on the service provider. a

**39.** Considering the materials on record, this Court is of the opinion that it is no doubt true that the service provider has to act on an urgent basis and has to act in public interest. But in a given case, like the present one, where the impugned communication dated 9-11-2005 is full of gross mistakes, the service provider while immediately acting upon the same, should simultaneously verify the authenticity of the same from the author of the document. This Court is of the opinion that the service provider has to act as a responsible agency and cannot act on any communication. Sanctity and regularity in official communication in such matters must be maintained especially when the service provider is taking the serious step of intercepting the telephone conversation of a person and by doing so is invading the privacy right of the person concerned and which is a fundamental right protected under the Constitution, as has been held by this Court. b  
c

**40.** Therefore, while there is urgent necessity on the part of the service provider to act on a communication, at the same time, Respondent 8 is equally duty-bound to immediately verify the authenticity of such communication if on a reasonable reading of the same, it appears to any person, acting bona fide, that such communication, with innumerable mistakes, falls clearly short of the tenor of a genuine official communication. Therefore, the explanation of the service provider is not acceptable to this Court. d

**41.** If the service provider could have shown, which it has not done in the present case, that it had tried to ascertain from the author of the communication, its genuineness, but had not received any response or that the authority had accepted the communication as genuine, the service provider's duty would have been over. But the mere stand that there is no provision under the rules to do so is a lame excuse, especially having regard to the public element involved in the working of the service provider and the consequential effect it has on the fundamental right of the person concerned. e

**42.** In view of the public nature of the function of a service provider, it is inherent in its duty to act carefully and with a sense of responsibility. This Court is thus constrained to observe that in discharging the said duty, Respondent 8, the service provider has failed. f

**43.** Of course, this Court is not suggesting that in the name of verifying the authenticity of any written request for interception, the service provider will sit upon it. The service provider must immediately act upon such written request but when the communication bristles with gross mistakes, as in the present case, it is the duty of the service provider to simultaneously verify its authenticity while at the same time also act upon it. The Central Government must, therefore, frame certain statutory guidelines in this regard to prevent interception of telephone conversation on unauthorised communication, as has been done in this case. g  
h

**44.** In this case very strange things have happened. At the time of filing the writ petition, the petitioner impleaded the Indian National Congress as Respondent 7 and also made direct allegations against it in Paras 2(1), 2(10), 2(11) and 2(12). In Para 2(12) and in Para 5 of the writ petition, there are indirect references to the said respondent. In various grounds taken in support of the petition, allegations have been specifically made against the seventh respondent. Even though in the order of this Court dated 27-2-2006<sup>2</sup>, there is an observation that Respondent 7 has been impleaded unnecessarily, the said respondent has not been deleted and in the amended cause-title also, Respondent 7 remains impleaded. The averments against the said respondent were not withdrawn by the petitioner.

**45.** In the month of February 2011, towards the closing of the hearing, an additional affidavit, which makes for very interesting reading, was filed by the petitioner. All the three paragraphs of that affidavit are set out:

*"I, Amar Singh, son of late Shri H.G. Singh, aged 54 years residing at 27, Lodhi Estate, New Delhi, do hereby solemnly swear on oath as under:*

*1. That I am the petitioner in the above matter and am conversant with the facts and circumstances of the case and as such competent to swear this affidavit. The petitioner craves leave of this Hon'ble Court to place the following additional facts on record before this Hon'ble Court which has a bearing on the matter.*

*2. That the petitioner was informed by one Mr Anurag Singh alias Rahul, who is one of the accused in FIR No. 152 of 2005, registered in Delhi that his phone was being tapped at the behest of political opponents. However, later Delhi Police investigated the matter and the said Anurag Singh alias Rahul, was arrested by Delhi Police for forging and fabricating the orders on the basis of which the phone line of the petitioner was tapped. Further, Anurag Singh alias Rahul, edited and tampered certain conversations of the petitioner.*

*3. It is stated that the petitioner was the complainant in the instant case. It is stated that the petitioner is satisfied with the investigation of Delhi Police, and therefore withdraws all averments, contentions and allegations made against Respondent 7."*

All the aforesaid paragraphs were verified by the petitioner as true to his knowledge.

**46.** The said affidavit of the petitioner filed in February 2011, completely knocks the bottom out of the petitioner's case, inasmuch as by the said affidavit the petitioner seeks to withdraw all averments, allegations and contentions against Respondent 7. The main case of the petitioner is based on his allegations against Respondent 7. The burden of the song in the writ petition is that Respondent 7, acting out of a political vendetta and exercising its influence on Delhi Police administration caused interception of the telephone lines of various political leaders of the opposition including that of

<sup>2</sup> *Amar Singh v. Union of India*, (2011) 7 SCC 90

the petitioner. The subsequent affidavit also acknowledges that the petitioner is satisfied with the investigation by Delhi Police in connection with the forgery alleged to have been committed, namely, the fabrication of orders on the basis of which the phone lines of the petitioner were tapped. The petitioner also makes a statement that the said Anurag Singh edited and tampered some of the conversations of the petitioner. a

**47.** It is very interesting to note that when the petitioner filed a detailed affidavit in support of his writ petition, pursuant to the order of this Court, the petitioner admitted that he relied on the information from the same Anurag Singh, and the main annexures to the petition, namely, A and B were received by him from the same Anurag Singh. Paras 2(2), 2(3), 2(4) and 2(6) are based on the information received from Mr Anurag Singh. But he did not say all these in his affidavit when he filed the writ petition on 21-1-2006. b

**48.** It may be noted that when the writ petitioner filed the petition on 21-1-2006, he was aware of an investigation that was going on by Delhi Police in connection of the forgery of Annexures A and B. Even then he filed the petition with those annexures and without a proper affidavit. It therefore appears that the petitioner has been shifting his stand to suit his convenience. c

**49.** In 2006, the gravamen of the petitioner's grievances was against Respondent 7, and the basis of his petition was the information that he derived from the said Anurag Singh. On the basis of such a petition, he invoked the jurisdiction of this Court and an interim order was issued in his favour, which is still continuing. Now when the matter has come up for contested hearing, he suddenly withdraws his allegations against Respondent 7 and feels satisfied with the investigation of the police in connection with the aforesaid case of forgery and also states that the same Anurag Singh "edited and tampered certain conversations of the petitioner". d

**50.** This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions. e

**51.** Apart from the aforesaid, in the writ petition which was filed on 21-1-2006, there is no mention of the fact that the petitioner gave a statement under Section 161 of the Code of Criminal Procedure in connection with the investigation arising out of FIR lodged on 30-12-2005. From the records of the case it appears the petitioner gave Section 161 statement on 13-1-2006. In the writ petition there is a complete suppression of the aforesaid fact. A statement under Section 161 is certainly a material fact in a police investigation in connection with an FIR. The investigation is to find out the genuineness of those very documents on the basis of which the writ petition was moved. In that factual context, total suppression in the writ petition of the fact that the petitioner gave a Section 161 statement in that investigation is, in our judgment, suppression of a very material fact. f

**52.** It is, therefore, clear that the writ petition is frivolous and is speculative in character. This Court is of the opinion that the so-called legal questions on tapping of telephone cannot be gone into on the basis of a petition which is so weak in its foundation. g



**53.** Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with “unclean hands” and are not entitled to be heard on the merits of their case.

**54.** In *Dalglish v. Jarvie*<sup>10</sup> the Court, speaking through Lord Langdale and Rolfe B., laid down: (Mac & G p. 231: ER p. 89)

“It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward.”

**55.** In *Castelli v. Cook*<sup>11</sup> Vice-Chancellor Wigram, formulated the same principles as follows: (Hare p. 94: ER p. 38)

“... a plaintiff applying ex parte comes (as it has been expressed) under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go.”

**56.** In *Republic of Peru v. Dreyfus Bros. & Co.*<sup>12</sup> Kay, J. reminded us of the same position by holding: (LT p. 803)

“...If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made.”

**57.** In one of the most celebrated cases upholding this principle, in the Court of Appeal in *R. v. Kensington Income Tax Commr., ex p Princess de Polignac*<sup>13</sup> K.B. Scrutton, L.J. formulated as under: (KB p. 514)

“... and it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.”

**58.** It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when

<sup>10</sup> (1850) 2 Mac & G 231 : 42 ER 89

<sup>11</sup> (1849) 7 Hare 89 : 68 ER 36

<sup>12</sup> 38 Ch D 348 : 55 LT 802

<sup>13</sup> (1917) 1 KB 486 (CA)

it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by the principles of “uberrima fides”.

**59.** The aforesaid requirement of coming to court with clean hands has been repeatedly reiterated by this Court in a large number of cases. Some of which may be noted, they are: *Hari Narain v. Badri Das*<sup>14</sup>, *Welcome Hotel v. State of A.P.*<sup>15</sup>, *G. Narayanaswamy Reddy v. Govt. of Karnataka*<sup>16</sup>, *S.P. Chengalvaraya Naidu v. Jagannath*<sup>17</sup>, *A.V. Papayya Sastry v. Govt. of A.P.*<sup>18</sup>, *Prestige Lights Ltd. v. SBI*<sup>19</sup>, *Sunil Poddar v. Union Bank of India*<sup>20</sup>, *K.D. Sharma v. SAIL*<sup>21</sup>, *G. Jayashree v. Bhagwandas S. Patel*<sup>22</sup> and *Dalip Singh v. State of U.P.*<sup>23</sup>.

**60.** In the last noted case of *Dalip Singh*<sup>23</sup>, this Court has given this concept a new dimension which has a far-reaching effect. We, therefore, repeat those principles here again: (SCC pp. 116-17, paras 1-2)

“1. For many centuries Indian society cherished two basic values of life i.e. ‘satya’ (truth) and ‘ahimsa’ (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

However, this Court is constrained to observe that those principles are honoured more in breach than in their observance.

**61.** Following these principles, this Court has no hesitation in holding that the instant writ petition is an attempt by the petitioner to mislead the

14 AIR 1963 SC 1558

15 (1983) 4 SCC 575 : 1983 SCC (Cri) 872

16 (1991) 3 SCC 261 : JT (1991) 3 SC 12

17 (1994) 1 SCC 1 : JT (1993) 6 SC 331

18 (2007) 4 SCC 221 : JT (2007) 4 SC 186

19 (2007) 8 SCC 449 : JT (2007) 10 SC 218

20 (2008) 2 SCC 326 : (2008) 1 SCC (Civ) 558 : JT (2008) 1 SC 308

21 (2008) 12 SCC 481 : JT (2008) 8 SC 57

22 (2009) 3 SCC 141 : JT (2009) 2 SC 71

23 (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324 : JT (2009) 15 SC 201

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a Court on the basis of frivolous allegations and by suppression of material facts as pointed out and discussed above. In view of such incorrect presentation of facts, this Court had issued notice and also subsequently passed the injunction order which is still continuing.

b 62. This Court, therefore, dismisses the writ petition and vacates the interim order and is not called upon to decide the merits, if any, of the petitioner's case. No case of tapping of telephone has been made out against the statutory authorities in view of the criminal case which is going on and especially in view of the petitioner's stand that he is satisfied with the investigation in that case.

c 63. The petitioner has withdrawn his case against Respondent 7. In that view of the matter this Court makes it clear that the petitioner, if so advised, may proceed against the service provider, Respondent 8, before the appropriate forum, in accordance with law. This Court, however, makes it clear that it does not make any observation on the merits of the case in the event the petitioner initiates any proceeding against Respondent 8.

d 64. This Court wants to make one thing clear i.e. perfunctory and slipshod affidavits which are not consistent either with Order 19 Rule 3 CPC or with Order 11 Rules 5 and 13 of the Supreme Court Rules should not be entertained by this Court. In fact three Constitution Bench judgments of this Court in *Purushottam Jog Naik*<sup>4</sup>, *Barium Chemicals Ltd.*<sup>5</sup> and *A.K.K. Nambiar*<sup>6</sup> and in several other judgments pointed out the importance of filing affidavits following the discipline of the provision in the Code and the said Rules.

e 65. These Rules, reiterated by this Court time and again, are aimed at protecting the Court against frivolous litigation must not be diluted or ignored. However, in practice they are frequently flouted by the litigants and often ignored by the Registry of this Court. The instant petition is an illustration of the same. If the Rules for affirming an affidavit according to the Supreme Court Rules were followed, it would have been difficult for the petitioner to file this petition and so much of judicial time would have been saved. This case is not an isolated instance. There are innumerable cases which have been filed with affidavits affirmed in a slipshod manner.

f 66. This Court, therefore, directs that the Registry must henceforth strictly scrutinise all the affidavits, all petitions and applications and will reject or note as defective all those which are not consistent with the mandate of Order 19 Rule 3 CPC and Order 11 Rules 5 and 13 of the Supreme Court Rules.

g 67. The writ petition is, therefore, dismissed subject to the aforesaid liberty. All interim orders are vacated. The parties are left to bear their own costs.

h 4 *State of Bombay v. Purushottam Jog Naik*, AIR 1952 SC 317 : 1952 Cri LJ 1269 : 1952 SCR 674

5 *Barium Chemicals Ltd. v. Company Law Board*, AIR 1967 SC 295

6 *A.K.K. Nambiar v. Union of India*, (1969) 3 SCC 864