Yashwant Sinha vs Central Bureau Of Investigation ... on 14 November, 2019

Equivalent citations: AIRONLINE 2019 SC 1452, 2020 (2) SCC 338, (2019) 16 SCALE 1, (2019) 4 MAD LJ(CRI) 539

Author: Sanjay Kishan Kaul

Bench: Chief Justice, Sanjay Kishan Kaul, K.M. Joseph

Report

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL ORIGINAL JURISDICTION

Review Petition (Crl.) No.46 of 2019

IN

Writ Petition (Crl.) No.298 of 2018

YASHWANT SINHA & ORS. ….Petitio

Versus

CENTRAL BUREAU OF INVESTIGATION
Through its DIRECTOR & ANR. ….Responde

(I.A. No. 69008/2019 – CLARIFICATION/DIRECTION, I.A. No. 69006/2019 – INTERVENTION APPLICATION, I.A. No. 71047/2019 – PRODUCTION OF RECORDS and I.A. No. 69009/2019 – STAY APPLICATION)

WITH

MA 58/2019 in W.P.(Crl.) No. 225/2018 (PIL-W) (I.A. No. 182576/2018 – CORRECTION OF MISTAKES IN THE JUDGMENT)

R.P.(Crl.) No. 122/2019 in W.P.(Crl.) No. 297/2018 (PIL-W)
12:35:57 IST
Reason:

MA 403/2019 in W.P.(Crl.) No. 298/2018 (PIL-W)

(I.A. No. 29248/2019 – INITIATING CRIMINAL PROCEEDINGS U/S 340 OF CRPC)

R.P.(C) No. 719/2019 in W.P.(C) No. 1205/2018 (PIL-W)

CONMT.PET.(Crl.) No. 3/2019 in R.P.(Crl.) No. 46/2019 in W.P.(Crl.) No. 298/2018 (PIL-W)

(I.A. No. 63168/2019 – EXEMPTION FROM FILING O.T., I.A. No.71678/2019 – EXEMPTION FROM FILING O.T. and I.A. No. 66253/2019 – EXEMPTION FROM FILING O.T.)

JUDGMENT

SANJAY KISHAN KAUL, J.

(I.A. No. 63168/2019 – EXEMPTION FROM FILING O.T., I.A. No.71678/2019 – EXEMPTION FROM FILING O.T. and I.A. No. 66253/2019 – EXEMPTION FROM FILING O.T.)

1. Allowed subject to just exception.

MA 58/2019 in W.P.(Crl.) No. 225/2018 (PIL-W) (I.A. No. 182576/2018 – CORRECTION OF MISTAKES IN THE JUDGMENT)

2. The Union of India has filed the present application seeking correction of what they claim to be an error, in two sentences in para 25 of the judgment delivered by this Court on 14.12.2018. This error is stated to be on account of a misinterpretation of some sentences in a note handed over to this Court in a sealed cover.

3. The Court had asked vide order dated 31.10.2018 to be apprised of the details/cost as also any advantage, which may have accrued on that account, in the procurement of the 36 Rafale fighter jets. The confidential note in the relevant portions stated as under:

> "The Government has already shared the pricing details with the CAG. The report of the CAG is examined by the PAC. Only a redacted version of the report is placed before the Parliament and in public domain."

4. It is the submission of the learned Attorney General that the first sentence referred to the sharing of the price details with the CAG. But the second sentence qua the PAC referred to the process and not what had already transpired. However, in the judgment this portion had been understood as if it was already so done.

5. On hearing learned counsel for the parties, we are of the view that the confusion arose on account of two portions of the paragraph referring to both what had been and what was proposed to be done. Regardless, what we noted was to complete the sequence of facts and was not the rationale for our conclusion.

6. We are, thus, inclined to accept the prayer and the sentence in para 25 to the following effect - "The pricing details have, however, been shared with the Comptroller and Auditor General (hereinafter referred to as "CAG"), and the report of the CAG has been examined by the Public Accounts Committee (hereafter referred to as "PAC"). Only a redacted portion of the report was placed before the Parliament and is in public domain" should be replaced by what we have set out hereinafter:

> "The Government has already shared the pricing details with the CAG. The report of the CAG is examined by the PAC in the usual course of business. Only a redacted version of the report is placed before the Parliament and in public domain."

7. The prayer is accordingly allowed.

8. The application stands disposed of.

R.P. (Crl.) No.46/2019 in WP (Crl.) No.298/2018 R.P.(Crl.) No. 122/2019 in W.P.(Crl.) No. 297/2018 (PIL-W) MA 403/2019 in W.P.(Crl.) No. 298/2018 (PIL-W) (I.A. No. 29248/2019 – INITIATING CRIMINAL PROCEEDINGS U/S 340 OF CRPC) R.P.(C) No. 719/2019 in W.P.(C) No. 1205/2018 (PIL-W)

9. The review petitions were listed for hearing in Court and elaborate submissions were made by learned counsel for the parties.

10. We may note that insofar as the preliminary objection raised by the Attorney General is concerned qua certain documents sought to be produced by the petitioners, that aspect was dealt with by our order dated 10.4.2019 and the said preliminary objection was overruled.

11. We cannot lose sight of the fact that unless there is an error apparent on the face of the record, these review applications are not required to be entertained. We may also note that the application under Section 340 of the Code of Criminal Procedure, 1973 partly emanates from an aspect which has been dealt with in our order passed today on the application for correction of the order filed by the Union of India.

12. We have elaborately dealt with the pleas of the learned counsel for the parties in our order dated 14.12.2018 under the heads of 'Decision Making Process', 'Pricing' and 'Offsets'. However, before proceeding to deal with these aspects we had set out the contours of the scrutiny in matters of such a nature. It is in that context we had opined that the extent of permissible judicial review in matters of contract, procurement, etc. would vary with the subject matter of the contract and that there cannot be a uniform standard of depth of judicial review which could be understood as an across the board principle to apply to all cases of award of work or procurement of goods/material. In fact, when two of these writ petitions were listed before the Court on 10.10.2018, we had embarked on a limited enquiry despite the fact that we were not satisfied with the adequacy of the averments and the material in the writ petitions. It was the object of the Court to satisfy itself with the correctness of the decision making process.

13. We cannot lose sight of the fact that we are dealing with a contract for aircrafts, which was pending before different Governments for quite some time and the necessity for those aircrafts has never been in dispute. We had, thus, concluded in para 34 noticing that other than the aforesaid three aspects, that too to a limited extent, this Court did not consider it appropriate to embark on a roving and fishing enquiry. We were, however, cautious to note that this was in the context of the writ petition filed under Article 32 of the Constitution of India, the jurisdiction invoked.

14. In the course of the review petitions, it was canvased before us that reliance had been placed by the Government on patently false documents. One of the aspects is the same as has been dealt with by our order passed today on the application for correction and, thus, does not call for any further discussion.

15. The other aspect sought to be raised specifically in Review Petition No.46/2019 is that the prayer made by the petitioner was for registration of an F.I.R. and investigation by the C.B.I., which has not been dealt with and the contract has been reviewed prematurely by the Judiciary without the benefit of investigation and inquiry into the disputed questions of facts.

16. We do not consider this to be a fair submission for the reason that all counsels, including counsel representing the petitioners in this matter addressed elaborate submissions on all the aforesaid three aspects. No doubt that there was a prayer made for registration of F.I.R. and further investigation but then once we had examined the three aspects on merits we did not consider it appropriate to issue any directions, as prayed for by the petitioners which automatically covered the direction for registration of FIR, prayed for.

17. Insofar as the aspect of pricing is concerned, the Court satisfied itself with the material made available. It is not the function of this Court to determine the prices nor for that matter can such aspects be dealt with on mere suspicion of persons who decide to approach the Court. The internal mechanism of such pricing would take care of the situation. On the perusal of documents we had found that one cannot compare apples and oranges. Thus, the pricing of the basic aircraft had to be compared which was competitively marginally lower. As to what should be loaded on the aircraft or not and what further pricing should be added has to be left to the best judgment of the competent authorities.

18. We have noted aforesaid that a plea was also raised about the "non-existent CAG report" but then at the cost of repetition we state that this formed part of the order for correction we have passed aforesaid.

19. It was the petitioners' decision to have invoked the jurisdiction of this Court under Article 32 of the Constitution of India fully conscious of the limitation of the contours of the scrutiny and not to take recourse to other remedies as may be available. The petitioners cannot be permitted to state that having so taken recourse to this remedy, they want an adjudication process which is really different from what is envisaged under the provisions invoked by them.

20. Insofar as the decision making process is concerned, on the basis of certain documents obtained, the petitioners sought to contend that there was contradictory material. We, however, found that there were undoubtedly opinions expressed in the course of the decision making process, which may be different from the decision taken, but then any decision making process envisages debates and expert opinion and the final call is with the competent authority, which so exercised it. In this context reference was made to (a) Acceptance of Necessity ('AON') granted by the Defence Acquisition Council ('DAC') not being available prior to the contract which would have determined the necessity and quantity of aircrafts; (b) absence of Sovereign Guarantee granted by France despite requirement of the Defence Procurement Procedure ('DPP'); (c) the oversight of objections of three expert members of the Indian Negotiating Team ('INT') regarding certain increase in the benchmark price; and (d) the induction of Reliance Aerostructure Limited ('RAL') as an offset partner.

21. It does appear that the endeavour of the petitioners is to construe themselves as an appellate authority to determine each aspect of the contract and call upon the Court to do the same. We do not believe this to be the jurisdiction to be exercised. All aspects were considered by the competent authority and the different views expressed considered and dealt with. It would well nigh become impossible for different opinions to be set out in the record if each opinion was to be construed as to be complied with before the contract was entered into. It would defeat the very purpose of debate in the decision making process.

22. Insofar as the aforesaid pleas are concerned, it has also been contended that some aspects were not available to the petitioner at the time of the decision and had come to light subsequently by their "sourcing" information. We decline to, once again, embark on an elaborate exercise of analyzing each clause, perusing what may be the different opinions, then taking a call whether a final decision should or should not have been taken in such technical matters.

23. An aspect also sought to be emphasized was that this Court had misconstrued that all the Reliance Industries were of one group since the two brothers held two different groups and the earlier arrangement was with the Company of the other brother. That may be so, but in our observation this aspect was referred to in a generic sense more so as the decision of whom to engage as the offset partner was a matter left to the suppliers and we do not think that much can be made out of it.

24. It is for the aforesaid reasons also that we find that there was no ground made out for initiating prosecution under Section 340 Cr.P.C.

25. We are, thus, of the view that the review petitions are without any merit and are accordingly dismissed, once again, re-emphasising that our original decision was based within the contours of Article 32 of the Constitution of India.

CONMT.PET.(Crl.) No. 3/2019 in R.P.(Crl.) No. 46/2019 in W.P.(Crl.) No. 298/2018 (PIL-W)

26. The contempt petition emanates from an allegation against Mr. Rahul Gandhi, the then President of the Indian National Congress, on account of utterances made in the presence of several media persons on 10.4.2019 by him alleging that the Supreme Court had held that "Chowkidar (Mr. Narendra Modi, Prime Minister) is a thief." The Supreme Court was also attributed to having held in consonance with what his discourse was, i.e., that the Prime Minister of India stole money from the Air Force and gave it to Mr. Anil Ambani and that the Supreme Court had admitted that Mr. Modi had indulged in corruption. It was stated that the Supreme Court had said that the Chowkidar is a thief.

27. On notice being issued, reply affidavit dated 22.4.2019 was filed averring that the comments were made on the basis of a bona fide belief and general understanding of the order even though the contemnor had not himself had the opportunity to see, read or analyse the order at that stage. It was further averred that there had not been the slightest intention to insinuate anything regarding the Supreme Court proceedings in any manner as the statements had been made by the contemnor in a "rhetorical flourish in the heat of the moment" and that his statement has been used and misused by his political opponents to project that he had deliberately attributed the utterances to the Supreme Court. In that context, it was averred that "nothing could be farther from my mind. It is also clear that no Court would ever do that and hence the unfortunate references (for which I express regret) to the Court order and to the political slogan in juxtaposition the same breath in the heat of political campaigning ought not to be construed as suggesting that the Court had given any finding or conclusion on that issue."

28. The acceptance of such an affidavit was opposed by the petitioner, a BJP Member of Parliament, in the contempt petition. It was stated that instead of expression of any remorse or apology, attempt was made to justify the contemptuous statement as having been made in the heat of the moment.

29. On arguments having taken place in this context, and realizing the seriousness of the matter and the inadequacy of the affidavit, learned counsel for the contemnor took liberty to file an additional affidavit. Vide order dated 30.4.2019, this Court left the admissibility and acceptance of such an affidavit to be considered on the subsequent date. An additional affidavit was filed on 8.5.2019 stating that the contemnor held this Court in the highest esteem and respect and never intended to interfere with the process of administration of justice. An unconditional apology was tendered by him by stating that the attributions were entirely unintentional, non-willful and inadvertent.

30. The matter was, once again, addressed by the learned counsel. We have given our thoughtful consideration to this issue.

31. We must note that it is unfortunate that without verification or even perusing as to what is the order passed, the contemnor deemed it appropriate to make statements as if this Court had given an imprimatur to his allegations against the Prime Minister, which was far from the truth. This was not one sentence or a one off observation but a repeated statement in different manners conveying the same. No doubt the contemnor should have been far more careful.

32. The matter was compounded by filing a 20 page affidavit with a large number of documents annexed rather than simply accepting the mistake and giving an unconditional apology. Better wisdom dawned on the counsel only during the course of arguments thereafter when a subsequent affidavit dated 8.5.2019 was filed. We do believe that persons holding such important positions in the political spectrum must be more careful. As to what should be his campaign line is for a political person to consider. However, this Court or for that matter no court should be dragged into this political discourse valid or invalid, while attributing aspects to the Court which had never been held by the Court. Certainly Mr. Gandhi needs to be more careful in future.

33. However, in view of the subsequent affidavit, better sense having prevailed, we would not like to continue these proceedings further and, thus, close the contempt proceedings with a word of caution for the contemnor to be more careful in future.

(I.A. No. 69008/2019 – CLARIFICATION/DIRECTION, I.A. No. 69006/2019 – INTERVENTION APPLICATION, I.A. No. 71047/2019 – PRODUCTION OF RECORDS and I.A. No. 69009/2019 – STAY APPLICATION)

34. In view of the orders passed above, these applications do not survive for consideration and the same are disposed of. Any other pending applications also stands disposed.

.....C.J.I. [Ranjan Gogoi] .....J. [Sanjay Kishan Kaul] New Delhi.

November 14, 2019.

REPORTABLE IN THE SUPREME COURT OF INDIA INHERENT JURISDICTION REVIEW PETITION (CRIMINAL) NO. 46 OF 2019 IN WRIT PETITION (CRIMINAL) NO. 298 OF 2018 YASHWANT SINHA AND OTHERS ... PETITIONER(S) VERSUS CENTRAL BUREAU OF INVESTIGATION THROUGH ITS DIRECTOR AND ANOTHER ... RESPONDENT(S) AND CONNECTED MATTERS J U D G M E N T K.M. JOSEPH, J.

1. I have perused the Order proposed by my learned Brother, Justice Sanjay Kishan Kaul. While I agree with the final decision subject to certain aspects considered by me, I would, by my separate opinion, give my reasons, which are as hereunder.

2. The common judgment in four Writ Petitions has generated three Review Petitions, a Contempt Petition and a Petition under Section 340 of The Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.PC' for short) and an application seeking correction.

3. Review Petition (Criminal) No. 46 of 2019 is filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018. In the said Writ Petition, relief sought, inter alia, was to register an FIR and to investigate the complaint which was made by the petitioners and to submit periodic status reports. The reliefs, as are made in the clauses 'a' to 'e' of the prayer, read as follows:

> "a. Issue writ of mandamus or any other appropriate writ directing Respondent No.1 to register an F.I.R. on the complaint that was made by the th Petitioners on the 04 of October, 2018.
>
> b. Issue writ of mandamus or any other appropriate writ directing the Respondent No.1 to investigate the offences disclosed in the said complaint in a time bound manner and to submit periodic status reports to the Court.
>
> c. Issue writ of mandamus or any other appropriate writ directing the
>
> Respondent No.2 to cease and desist from influencing or intimidating in any way the officials that would investigate the offences disclosed in the complaint.
>
> d. Issue writ of mandamus or any other appropriate writ directing the
>
> Respondent No.1 and Respondent No.2 to not transfer the C.B.I. officials tasked with investigation of the offences mentioned in the complaint.
>
> e. Issue writ of mandamus or any other appropriate writ to ensure that the relevant records are not destroyed or tampered with and are transferred to the CBI."

4. Review Petition (Criminal) No. 122 of 2019 is filed by the petitioner in Writ Petition (Criminal) No. 297 of 2018. The reliefs sought in the said Writ Petition is as follows:

"(a) to constitute a Special Investigating Team (SIT) under the supervision of the Hon'ble Supreme Court with following mandate:

i. to investigate the reasons for cancellation of earlier deal for the purchase of 126 Rafale Fighter Jets.

ii. As to how the figure of 36 Fighter Jets was arrived at without the formalities associated with such a highly sensitive defence procurement.

iii. to look into the alterations made by the Respondent No.2 about the pricing of the Rafale Fighter Jets in view of the earlier price of Rs.526 crores per Fighter Jets alongwith requisite equipments, services and weapons and Rs.670 crores without associated equipments, weapons, India specific enhancements, maintenance support and services; which resulted into the escalation of price of each Fighter Jets from Rs.526 crores to more than 1500 crores;

iv. to investigate as to how a novice company viz. Reliance Defence came in picture of this highly sensitive defence deal involving Rs.59,000 crores without having any kind of experience and expertise in making of Fighter Jets.

v. As to why name of 'Hindustan Aeronautics Limited' was removed from the deal?

vi. As to whether the decision of purchase of only 36 Rafale Fighter Jets instead of 126 was a compromise with the security of the Country or not?

vii. Whether the Reliance Defence or it's sister concern or any other individual or intermediary company has/have influenced the decision making of the purchase of Rafale Fighter Jets at substantially higher prices in the backdrop of the statement given by the then President of French Republic and the investment made by the Reliance Entertainment into the Julie Gayet's Firm Rouge International was made with a purpose to influence the decision of removal of the HAL and induction of Reliance Defence as partner of the Dassault;

(b) to terminate/cancel the inter-governmental agreement with the Govt. of French Republic signed on 23-09-2016 for the purchase of 36 Rafale Fighter Jets and to give direction to the Respondent No.3 to lodge an FIR and to report the progress of investigation to this Hon'ble Court;

(c) to restore the earlier deal for the purchase of 126 Rafale Fighter Jets which was cancelled on 24.06.2015 by the Govt. of India.

(d) to bar the Dassault Reliance Aerospace Limited (DRAL) from handling/manufacturing the Rafale Fighter Jets;

(e) to direct the Respondent 1&2 to propose the Public Sector Company Hindustan Aeronautics Limited as the Indian Offset Partner of Dassault;"

5. Review Petition (Criminal) No. 719 of 2019 has been filed again by a sole petitioner in Writ Petition (Criminal) No. 1205 of 2018. The reliefs sought in the said Writ Petition is as follows:

> "a) Issue an appropriate writ or order or direction directing the respondents to file the details of the agreement entered into between the Union of India and Government of France with regard to the purchase of 36 Rafale Fighter Jets in a sealed envelope.

b) Issue an appropriate writ or order or direction directing the respondents to furnish in a sealed envelope the information with regard to the present cost of Rafale Fighter Jets and also the earlier cost of the Rafale Fighter Jets during the regime of UPA Government;

c) Issue an appropriate writ or order or direction directing the respondents to furnish any other information in sealed envelope before the Hon'ble Supreme Court with regard to the controversy erupted in the purchase of Rafale Fighter Jets;" THE IMPUGNED JUDGMENT

6. The three Writ Petitions, as also Writ Petition in which no Review is filed, came to be dismissed. This Court has referred to the reliefs which have been sought in the four Writ Petitions. This Court referred to the parameters of judicial review. The extent of permissible judicial review of contracts, procurement, etc., was found to vary with the subject matter of the contract. It was further observed that the scrutiny of the challenges before the Court, will have to be made keeping in mind the confines of national security, the subject of procurement being crucial to the nation's sovereignty.

7. The findings of this Court in paragraph 15 throws light on the controversy as was understood by the Court. Paragraph 15 reads as follows:

"15. It is in the backdrop of the above facts and the somewhat constricted power of judicial review that, we have held, would be available in the present matter that we now proceed to scrutinise the controversy raised in the writ petitions which raise three broad areas of concern, namely, (i) the decision-making process; (ii) difference in pricing; and (iii) the choice of IOP." (Emphasis supplied)

8. Thereafter, this Court had proceeded to consider the decision-making process, pricing and offsets and did not find in favour of the petitioners. It is after the discussion, as aforesaid, it is to be noted that this Court finally concluded as follows:

"33. Once again, it is neither appropriate nor within the experience of this Court to step into this arena of what is technically feasible or not. The point remains that DPP 2013 envisages that the vendor/OEM will choose its own IOPs. In this process, the role of the Government is not envisaged and, thus, mere press interviews or suggestions cannot form the basis for judicial review by this Court, especially when there is categorical denial of the statements made in the Press, by both the sides. We do not find any substantial material on record to show that this is a case of commercial favouritism to any party by the Indian Government, as the option to choose IOP does not rest with the Indian Government.

Conclusion

34. In view of our findings on all the three aspects, and having heard the matter in detail, we find no reason for any intervention by this Court on the sensitive issue of

> purchase of 36 defence aircrafts by the Indian Government. Perception of individuals cannot be the basis of a fishing and roving enquiry by this Court, especially in such matters. We, thus, dismiss all the writ petitions, leaving it to the parties to bear their own costs. We, however, make it clear that our views as above are primarily from the standpoint of the exercise of the jurisdiction under Article 32 of the Constitution of India which has been invoked in the present group of cases." (Emphasis supplied)
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> 9. Upon consideration of the Review Petitions and Applications, by Order dated 26.02.2019, prayer for hearing in the open court was allowed. We have heard learned counsel. We heard parties in Review Petition (Criminal) No. 46 of 2019, the learned Attorney General and learned Solicitor General.
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> 10. As far as petitioners in Review Petition (Criminal) No. 46 of 2019 is concerned, the complaint appears to be that this Court has totally overlooked the relief sought in Writ Petition (Criminal) No. 298 of 2018.
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> 11. The first respondent is the Central Bureau of Investigation (CBI) and the second respondent is the Union of India in Writ Petition (Criminal) No. 298 of 2018. The substance of the Writ Petition is that after following the due process under the Defence Procurement Procedure (DPP), to procure Advanced Fighter Aircrafts, and as per the authority under the DPP, the IAF Service Headquarters, after a widely consultative process with multiple Institutions, prepared Services Qualitative Requirements (SQR), specifying the number of aircrafts required as 126.

There was the recommendation of the Committee that Make in India by Hindustan Aeronautics Limited (HAL), a Public Sector Enterprise, under a Transfer Technology Agreement, should be the mode of procurement. The Defence Acquisition Council granted the mandatory Acceptance of Necessity (AON). A Request for Proposal (RFP) was, accordingly, issued. There were six vendors. In 2011, it was announced that Dassault's Rafale and Eurofighter GmbH Typhoon met the IAF requirements. In March of 2014, a Work Share Agreement was entered into between Dassault Aviation and HAL. Accordingly, HAL would do 70 per cent of the work on 108 planes. On 25.03.2015, it is alleged that Dassault was in the final stages of negotiations with India for 126 aircrafts and HAL was to be the partner of Dassault.

12. It was the further case of the petitioners that a new deal was, however, inexplicably negotiated and announced by the Prime Minister without following the due procedure. Number of aircrafts were reduced to 36. This involved complete violation of all laid down Defence Procurement Procedure. There are various allegations made against the deal to purchase 36 planes in place of 126. In particular, there is reference to Mr. Anil Ambani not owning any company engaged in manufacture of products and services mentioned in the list of products and services eligible for discharge of offset obligations. A company was incorporated as Reliance Defence Limited on 28.03.2015, just twelve days before the new deal was suddenly announced on 10.04.2015. There is also the case that DPP was bypassed for collateral considerations. In the complaint lodged with CBI, there is reference to the Prevention of Corruption Act, 1988, as it stood prior to amendment. Their

request is to register an FIR under the provisions which are mentioned therein which fall under the Prevention of Corruption Act, 1988 and to investigate the matter. Other reliefs are already referred to.

13. The petitioners in the said case, premise their case on the judgment of this Court in Lalita Kumari v. Government of Uttar Pradesh and others1. It is their case that though reference was made to the relief at the beginning of the judgment, thereafter, this Court focused only on the merits of the matter in terms of the powers available to it under judicial review. Reliefs sought in other Writ Petitions were focused upon. The only prayers of the petitioners in Writ Petition (Criminal) No. 298 of 2018, as noticed, was 1 (2014) 2 SCC 1 a direction to follow the command of Lalita Kumari (supra) and to register an FIR as they have filed a complaint which is produced along with Writ Petition and as no action was taken as mandated by the Constitution Bench of this Court, they have approached this Court. The error is apparent in not even considering the impact of the Constitution Bench and requires to be redressed through the Review Petition. The petitioners also, undoubtedly, point out that there was suppression of facts by the respondents. This Court was sought to be misled. There is also a case that the petitioners have obtained documents which suggest that there were parallel negotiations being undertaken by the Prime Minister's Office (PMO) which was strenuously objected to by the Indian Negotiating Team (INT). The statement in the judgment that the pricing details have been shared with the Comptroller and Auditor General of India (CAG) and the Report of the CAG has been examined by the Public Accounts Committee (PAC) and that only a redacted portion of the Report was placed before the Parliament, are pointed out to be patently false. It is primarily in regard to the same that an Application is filed purporting to be under Section 340 of the Cr.PC. There is an Application for Correction and there is complaint of wholesale suppression of facts. Errors are also referred to.

14. The stand of the Government of India is that the Review Petitions are meritless. This Court has elaborately considered the matter and found that there was nothing wrong. It is the case of the Government that the impugned judgement addresses contentions of the petitioners on compelling principles with regard to the scope of the judicial inquiry in cases involving the security and defence of the nation and it lays down the correct law. It is pointed out that there is no grave error apparent on the face of record. Reliance is placed on judgment of this Court in Mukesh v. State (NCT of Delhi)2. A fishing inquiry is impermissible. There was additional benefit to the country as a result of the deal which is sought to be questioned. Reliance is placed on the findings of the CAG. It is 2 (2018) 8 SCC 149 contended that the CAG has conclusively held that the basis of the benchmark by the INT was unrealistic.

15. The CAG has held that 36 Rafale aircrafts deal was 2.86 per cent lower than the audit aligned price. Regarding the offset guidelines being amended initially to benefit an industrial group, it is stoutly denied. The waiver of sovereignty/bank guarantee in Government to Government agreements is pointed out to be not unusual. Support is sought to be drawn from the Report of the CAG, inter alia, finding that the French Government was made equally responsible to fulfil its obligations. The production and delivery schedule are monitored by high-level Committee with representatives of both Governments of France and India.

16. As far as mandate of Lalita Kumari (supra), not being followed, it is stated that disclosing prima facie that a cognizable offence is committed is mandatory, which is lacking in the present case especially once this Court has concluded that on decision-making process, pricing and Indian Offset Partners, there was no reason to intervene. Once this Court has held that perception of individuals cannot be the basis for a fishing and roving inquiry, no cognizable offence is made out prima facie so as to order registration of an FIR. There is no concealment of facts or false presentation of facts.

CONTOURS OF REVIEW JURISDICTOIN

17. Article 137 of the Constitution confers jurisdiction on the Supreme Court of India to exercise power of review. It reads as follows:

> "137. Review of judgments or orders by the Supreme Court Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it."

18. Rules have been made known as The Supreme Court Rules, 2013. Order XLVII of the said Rules, deals with review (In The Supreme Court Rules, 1966, it was contained in Order XL) and it reads as follows:

> "ORDER XLVII REVIEW
>
> 1. The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, rule I of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.

The application for review shall be accompanied by a certificate of the Advocate on Record certifying that it is the first application for review and is based on the grounds admissible under the Rules.

2. An application for review shall be by a petition, and shall be filed within thirty days from the date of the judgment or order sought to be reviewed. It shall set out clearly the grounds for review.

3. Unless otherwise ordered by the Court an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party. An application for review shall as far as practicable be circulated to the same Judge or Bench of Judges that delivered the judgment or order sought to be reviewed.

4. Where on an application for review the Court reverses or modifies its former decision in the case on the ground of mistake of law or fact, the Court, may, if it thinks fit in the interests of justice to do so, direct the refund to the petitioner of the court-fee paid on the application in whole or in part, as it may think fit.

5. Where an application for review of any judgment and order has been made and disposed of, no further application for review shall be entertained in the same matter."

19. Thus, a perusal of the same would show that the jurisdiction of this Court, to entertain a review petition in a civil matter, is patterned on the power of the Court under Order XLVII Rule 1 of The Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC', for short).

20. Order XLVII Rule 1 of the CPC, reads as follows:

> "ORDER XLVII : REVIEW
>
> 1. Application for review of judgement (1) Any person considering himself aggrieved-
>
> (a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,
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> (b) by a decree or order from which no appeal is allowed, or
>
> (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgement notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.
>
> Explanation.- The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgement."

21. It will be noticed that in criminal matters, review lies on an error apparent on the face of record being established. However, it is necessary to notice what a Constitution Bench of this Court laid down in P.N. Eswara Iyer And Others v. Registrar, Supreme Court of India3:

> "34. The rule [Ed.:Order 40, Rule 1 of the Supreme Court Rules] , on its face, affords a wider set of grounds for review for orders in civil proceedings, but limits the ground vis-a-vis criminal proceedings to "errors apparent on the face of the record". If at all, the concern of the law to avoid judicial error should be heightened when life or liberty is in peril since civil penalties are often less traumatic. So, it is reasonable to assume that the framers of the rules could not have intended a restrictive review over criminal orders or judgments. It is likely to be the other way about. Supposing an

accused is sentenced to death by the Supreme Court and the "deceased" shows up in court and the court discovers the tragic treachery of the recorded testimony. Is the court helpless to review and set aside the sentence of hanging? We think not. The power to review is in Article 137 and it is equally wide in all proceedings. The rule merely canalises the flow from the reservoir of power. The stream cannot stifle the source. Moreover, the dynamics of interpretation depend on the demand of the context and the lexical limits of the test. Here "record" means any material which is already on record 3 (1980) 4 SCC 680 or may, with the permission of the court, be brought on record. If justice summons the Judges to allow a vital material in, it becomes part of the record; and if apparent error is there, correction becomes necessitous.

35. The purpose is plain, the language is elastic and interpretation of a necessary power must naturally be expansive. The substantive power is derived from Article 137 and is as wide for criminal as for civil proceedings. Even the difference in phraseology in the rule (Order 40 Rule 2) must, therefore, be read to encompass the same area and not to engraft an artificial divergence productive of anomaly. If the expression "record" is read to mean, in its semantic sweep, any material even later brought on record, with the leave of the court, it will embrace subsequent events, new light and other grounds which we find in Order 47 Rule 1, CPC. We see no insuperable difficulty in equating the area in civil and criminal proceedings when review power is invoked from the same source." (Emphasis supplied)

22. In Suthendraraja Alias Suthenthira Raja Alias Santhan and others v. State Through DSP/CBI, SIT, Chennai , 4 (1999) 9 SCC 323 referring to the judgement in P.N. Eswara Iyer (supra), it was, inter alia, held that the scope of review was widened considerably by the pronouncement.

23. In Haridas Das v. Usha Rani Banik (Smt.) and others5, the question arose out of an appeal in the High Court, wherein the High Court accepted the prayer for review. This Court held as follows:

"13. ... The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent 5 (2006) 4 SCC 78 decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise

> the power to review its order with the greatest circumspection. ...” (Emphasis supplied)

24. Jain Studios Ltd. Through Its President v. Shin Satellite Public Co. Ltd.6 involved an order passed by Judge in Chambers. It was sought to review the order passed which is reported in Shin Satellite Public Co. Ltd. v. Jain Studios Ltd.7. In the Arbitration Petition which was the main matter, there was a prayer to appoint an Arbitrator by the review petitioner. The same was heard and rejected. The learned Judge, in the said circumstances, held as follows:

> “11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had 6(2006) 5 SCC 501 7(2006) 2 SCC 628 been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.” (Emphasis supplied)

25. In State of West Bengal and others v. Kamal Sengupta and another8, this Court, inter alia, held as follows:

> “21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not 8 (2008) 8 SCC 612 within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.” (Emphasis supplied)

26. In Moran Mar Basselios Catholicos and another v. Most Rev. Mar Poulose Athanasius and others9, the question, which fell for consideration was, whether misconception of the court about a concession by counsel, furnished a ground for review. A court may pronounce a judgement on the basis that a concession had been made by the counsel when none had been made. The court may also misapprehend the terms of the concession or the scope of a concession. When such misconception underscores a judgment, whether review would lie? Answering the said question, this Court proceeded to hold as follows:

> “36. ... Patanjali Sastri, J. (as he then was) sitting singly in the Madras High Court definitely took the view in Rekhanti Chinna Govinda Chettiyar v. S. Varadappa Chettiar [AIR 1940 Mad. 17] that a misconception by the court of a concession 9 AIR

> 1954 SC 526 made by the advocate or of the attitude taken up by the party appears to be a ground analogous to the grounds set forth in the first part of the review section and affords a good and cogent ground for review. The learned Attorney-General contends that this affidavit and the letters accompanying it cannot be said to be part of "the record" within the meaning of Order 47 Rule 1. We see no reason to construe the word "record" in the very restricted sense as was done by Denning, L.J., in Rex v. Northumberland Compensation Appeal Tribunal Ex parte Shaw [(1952) 2 KB 338 at pp. 351-52] which, was a case of certiorari and include within that term only the document which initiates the proceedings, the pleadings and the adjudication and exclude the evidence and other parts of the record. Further, when the error complained of is that the court assumed that a concession had been made when none had in fact been made or that the court misconceived the terms of the concession or the scope and extent of it, it will not generally appear on the record but will have to be brought before the court by way of an affidavit as suggested by the Privy Council as well as by this Court and this can only be done by way of review. The cases to which reference has been made indicate that the misconception of the court must be regarded as sufficient reason analogous to an error on the face of the record. In our opinion it is permissible to rely on the affidavit as an additional ground for review of the judgment." (Emphasis supplied)

27. It is pertinent to notice that this Court did not confine the word "record" in the narrow sense in which it was interpreted as in the case of an application of Writ of Certiorari. This Court also sanctioned support being drawn from an affidavit by the counsel in this regard, as additional ground for review. Misconception by a court, was found embraced within the scope of the expression "sufficient reasons".

28. Non-advertence to the particular provision of the Statute, which was pertinent and relevant to the lis, was held to be a ground to seek review. In Girdhari Lal Gupta v. D.N. Mehta and another10, this Court held as follows:

> "16. The learned counsel for the respondent State urges that this is not a case fit for review because it is only a case of mistaken judgment. But we are unable to agree with this submission because at the time of the arguments our attention was not drawn specifically to sub-section 23-C(2) and the 10 AIR 1971 SC 2162 light it throws on the interpretation of sub-section (1)." (Emphasis supplied)

29. Also, see in this regard, judgment in Deo Narain Singh v. Daddan Singh and others11 where finding that this Court had decided the case on the basis of a Statute, which was inapplicable in the facts, review was granted.

30. In Sow Chandra Kante and another v. Sheikh Habib12, the judgment involved a request to review the decision of this Court refusing special leave to appeal in a matter, this Court held as follows:

> "... A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. ..." (Emphasis supplied) 11 1986 (Supp) SCC 530 12(1975) 1 SCC 674

31. Two documents, which were part of the record, were considered by the Judicial Commissioner to allow review by the High Court. This Court, in appeal, in the judgement in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma and others13, found as follows:

> "4. In the present case both the grounds on which the review was allowed were hardly grounds for review. That the two documents which were part of the record were not considered by the Court at the time of issue of a writ under Article 226 cannot be a ground for review especially when the two documents were not even relied upon by the parties in the affidavits filed before the Court in the proceedings under Article 226. Again that several instead of one writ petition should have been filed is a mere question of procedure which certainly would not justify a review. We are, therefore, of the view that the Judicial Commissioner acted without jurisdiction in allowing the review. The order of the Judicial Commissioner dated December 7, 1967 is accordingly set aside and the order dated May 25, 1965, is restored. The appeal is allowed but without costs." (Emphasis supplied) 13 (1979) 4 SCC 389

32. M/s. Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi14 was a case which fell to be considered under Article 137 of the Constitution of India. The relevant discussion is found in paragraphs 8 and 9. They read as follows:

> "8. It is well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: Sajjan Singh v. State of Rajasthan [AIR 1965 SC 845 : (1965) 1 SCR 933, 948 : (1965) 1 SCJ 377] . For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: G.L. Gupta v. D.N. Mehta [(1971) 3 SCC 189 : 1971 SCC (Cri) 279 : (1971) 3 SCR 748, 750]. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: O.N. Mohindroo v. Distt. Judge, Delhi [(1971) 3 SCC 5 : (1971) 2 SCR 11, 27] . Power to review 14(1980) 2 SCC 167 its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent

> on the face of the record (Order 40 Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility": Sow Chandra Kante v. Sheikh Habib [(1975) 1 SCC 674 : 1975 SCC (Tax) 200 : (1975) 3 SCR 933].
>
> 9. Now, besides the fact that most of the legal material so assiduously collected and placed before us by the learned Additional Solicitor General, who has now been entrusted to appear for the respondent, was never brought to our attention when the appeals were heard, we may also examine whether the judgment suffers from an error apparent on the face of the record. Such an error exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record."

33. Question in the said case arose under the Bengal Finance (Sales Tax) Act, 1941. The case was based on new material sought to be adduced by the Revenue to establish that the transaction amounted to a sale.

34. The foundations, which underlie the review jurisdiction, has been examined by this Court at some length in the judgment in S. Nagaraj and others v. State of Karnataka and another15:

> "18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and 15 1993 Supp (4) SCC 595 fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such

inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

19. Review literally and even judicially means re-examination or re-consideration.

Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai [AIR 1941 FC 1, 2 : 1940 FCR 78 : (1941) 1 MLJ Supp 45] the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh [(1836) 1 Moo PC 117 : 2 MIA 181 : 1 Sar 175] that an order made by the Court was final and could not be altered:

> "... nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in .... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies." Basis for exercise of the power was stated in the same decision as under:
>
> "It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard." Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the

clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice." (Emphasis supplied)

35. The decision in S. Nagaraj(supra), has been followed in various judgements of this Court (See Lily Thomas and others v. Union of India and others 16 ; Haryana State Industrial Development Corporation Limited. v. Mawasi and 16 (2000) 6 SCC 224 others17; Kamlesh Verma v. Mayawati and others18; Usha Bharti v. State of Uttar Pradesh and others 19 and Vikram Singh Alias Vicky Walia and another v. State of Punjab and another20).

36. In Kamlesh Verma (supra), this Court in paragraph 20, laid down its conclusions, which reads as follows:

"Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

17 (2012) 7 SCC 200 18 (2013) 8 SCC 320 19 (2014) 7 SCC 663 20 (2017) 8 SCC 518.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337:

JT (2013) 8 SC 275] 20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

37. In a very recent judgment, in fact, relied upon by the Union of India, viz., Mukesh (supra), in a review petition in a criminal appeal, this Court reiterated that a review is not rehearing of an original matter. Even establishing another possible view would not suffice [See Vikram Singh (supra), which was relied upon].

38. The anxiety of this Court that the consideration of rendering justice remain uppermost in the mind of the Court, has led to the Constitution Bench judgement in Rupa Ashok Hurra v. Ashok Hurra and another21. It is in the said case that the concept of a curative petition was devised to empower a litigant to seek a reconsideration of a matter wherein the review petition also is unsuccessful. Certain steps have been laid down in this regard which stand incorporated in The Supreme Court Rules, 2013 [in Part IV Order XLVIII thereof].

39. Undoubtedly, any error to be an error on the face of the record, cannot be one which has to be established by a long drawn out process of reasoning on points where there may conceivably be two opinions or if the error requires lengthy and complicated arguments to establish it, a Writ of Certiorari would not lie (See Satyanarayan Laxminarayan Hegde and others v. Mallikarjun Bhavanappa Tirumale 22).

This principle is equally applicable to a review petition also.

21 (2002) 4 SCC 388 22 AIR 1960 SC 137

40. On a conspectus of the above decisions, the following conclusions appeared to be inevitable and they also provide the premise for review:

> Justice above all. While a review petition has not been understood as an appeal in disguise and a mere erroneous decision may not justify a review, a decision which betrays an error which is apparent, does entitle the court to exercise its jurisdiction under Article 137 of the Constitution. The founding fathers were conscious that this Court was the final Court. There are two values, which in any system of law, may collide.

On the one hand, recognizing that men are not infallible and the courts are manned by men, who are prone to err, there must be a safety valve to check the possibility of grave injustice being reached to a litigant, consequent upon an error, which is palpable or as a result of relevant material despite due diligence by a litigant not being made available or other sufficient reason. The other value which is ever-present in the mind of the law giver, is, there must be finality to litigation. Be it judgments of a final court, if it becomes vulnerable to indiscriminate reopening, unless a strong ground exists, which itself is based on manifest error disclosed by the judgment or the other two grounds mentioned in Order XLVII of the CPC in a civil matter, it would spawn considerable inequity.

41. It must be noticed that the principle well-settled in regard to jurisdiction in review, is that a review is not an appeal in disguise. The applicant, in a review, is, on most occasions, told off the gates, by pointing out that his remedy lay in pursuing an appeal. In the case of a decision rendered by this Court, it is to be noticed that the underpinning based on availability of an appeal, is not available as this Court is the final Court and no appeal lies.

42. It is no doubt true that the Supreme Court Rules, 2013, certain powers are conferred on the Registrar as also on the Judge holding Court in Chambers and appeals, indeed, are provided in respect of certain orders passed by the Registrar.

43. The fact that no appeal lies from the judgment of this Court may not, however, result in the jurisdiction of this Court under Article 137 of the Constitution being enlarged. However, when the Court is invited to exercise its power of review, this aspect may also be borne in mind, viz., that unlike the other courts from which an appeal may be provided either under the Constitution or other laws, or by special leave under Article 136 of the Constitution, no appeal lies from the judgment of this Court, and it is in that sense, the final Court. The underlying assumption for the principle that a review is not an appeal in disguise, being that the decision is appealable, is really not available in regard to a decision rendered by this Court, is all that is being pointed out.

44. A review petition is maintainable if the impugned judgment discloses an error apparent on the face of the record. Unlike a proceeding in Certiorari jurisdiction, wherein the error must not only be

apparent on the face of the record, it must be an error of law, which must be apparent on the face of the record, for granting review under Article 137 of the Constitution read with Order XLVII Rule 1 of the CPC, the error can be an error of fact or of law. No doubt, it must be apparent on the face of record. Such an error has been described as a palpable error or glaring omission. As to what constitutes an error apparent on the face of record, is a matter to be found in context of the facts of each case. It is worthwhile to refer to the following discussion in this regard by this Court in Hari Vishnu Kamath v. Ahmad Ishaque and Others23, wherein, this Court held as follows:

> "23. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is 23 AIR 1955 SC 233 essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in Batuk K. Vyas v. Surat Municipality [AIR 1953 Bom 133] that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case." (Emphasis supplied)

45. The view of this Court, in the decision in Girdhari Lal Gupta (supra) as also in Deo Narain Singh (supra), has been noticed to be that if the relevant law is ignored or an inapplicable law forms the foundation for the judgement, it would provide a ground for review. If a court is oblivious to the relevant statutory provisions, the judgment would, in fact, be per incuriam. No doubt, the concept of per incuriam is apposite in the context of its value as the precedent but as between the parties, certainly it would be open to urge that a judgment rendered, in ignorance of the applicable law, must be reviewed. The judgment, in such a case, becomes open to review as it would betray a clear error in the decision.

46. As regards fresh material forming basis for review, it must be of such nature that it is relevant and it undermines the verdict. This is apart from the requirement that it could not be produced despite due diligence.

47. The dismissal of a special leave petition takes place at two levels. In the first place, the Court may dismiss or reject a special leave petition at the admission stage. Ordinarily, no reasons accompany

such a decision. In matters where a special leave petition is dismissed after notice is issued, also reasons may not be given ordinarily. Several elements enter into the consideration of this Court where a special leave petition is dismissed. The task for a review applicant becomes formidable as reasons are not given. An error apparent on the face of the record becomes difficult to establish. In a writ petition where pleadings are exchanged and reasons are given in support of the verdict, a self-evident error is detected without much argument. No doubt, a Court, in review, does not reappreciate and correct a mere erroneous decision. That reappreciation is tabooed, is not the same as holding that a Court will not appreciate the case as reflected in the pleadings and the law by which the Court is governed.

48. In this case, the short point, which this Court is called upon to consider, is the effect of the impugned judgment not dealing with a binding decision rendered by a Constitution Bench which was relied upon by the petitioners in Writ Petition (Criminal) No. 298 of 2018 and rendered in Lalita Kumari (supra). It is apposite that I set out what this Court, speaking through the aforesaid Constitution Bench judgment, has laid down in paragraph 120:

> "Conclusion/Directions
>
> 120. In view of the aforesaid discussion, we hold:
>
> 120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> 120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
>
> 120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
>
> 120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
>
> 120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
>
> 120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which

preliminary inquiry may be made are as under:

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  (a)      Matrimonial     disputes/family
disputes
  (b) Commercial offences
  (c) Medical negligence cases
  (d) Corruption cases
  (e) Cases where there is abnormal
delay/laches    in   initiating    criminal
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prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above." (Emphasis supplied)

49. It is their contention, therefore, that the writ petition came to be clubbed along with other writ petitions. This Court proceeded to undertake judicial review of the processes which led to the decision to purchase 36 planes going back on the earlier decision which was to purchase 136 planes.

50. According to the petitioners, therefore, this Court committed a clear error in not focusing on the relief sought in their writ petition which was based on the Constitution Bench of this Court which was binding on a Bench of lesser strength (three). All this Court is being asked to do, according to the petitioners, having regard to the law binding on it, is to direct the registration of the FIR. There is also relief sought to submit reports in the same.

51. The procedure, which is to be adopted by the authorities, has been elaborated upon. There can be no escape from the mandatory procedure laid down by this Court.

52. Where a party institutes a proceeding, if the proceeding is of a civil nature, there would be a cause of action. There would be reliefs sought on the basis of the cause of action. Materials are produced both in support and against the claim. The Court thereafter renders a judgement either accepting the case or rejecting the case. When the Court rejects the case, it necessarily involves refusing to grant the relief sought for by the plaintiff/petitioner. It may transpire that the petitioner may not press for certain reliefs. The Court may, after applying its mind to the case, find that the

petitioner is not entitled to the relief and decline the prayers sought. It may also happen that the court does refer to the reliefs sought but thereafter does not undertake any discussion regarding the case for the relief sought and proceeds to non-suit the party. It is clear that in this case, it is the last aspect which is revealed by the judgment sought to be reviewed.

53. A judgment may be silent in regard to a relief which is sought by a party. It is apposite, in this regard, to notice Section 11 of the CPC. If a decree is silent, as regards any relief which is claimed by the plaintiff, Explanation V to Section 11 declares that the relief must be treated as declined. The Explanation reads as follows:

> "Section 11, Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused."

54. No doubt, if the relief is expressly refused, then also, the matter would become res judicata. It is, therefore, of vital importance that when a case is decided, the Court considers the claim and the relief sought, applies the Statute which is applicable and the law which is laid down particularly when it is by a Constitution Bench in deciding the case. Just as, in the case of a judgement, where the applicable Statute, not being applied, would result in a judgment which becomes amenable to be corrected in review, there can be no reason why when a binding judgment of this Court, which is enlisted by the party, is ignored, it should have a different consequence. In fact, since a review under Article 137 of the Constitution, in a civil matter, is to be exercised, based on what is contained in Order XLVII Rule 1 of the CPC, the Explanation therein, may shed some light. The Explanation which was inserted by the Act of 1976, following the recommendations of the Law Commission of India, in its 54th Report, declares that the law is laid down by a superior court reversing an earlier decision, on a question of law, will not be a ground for the review of a judgment.

55. The Law Commission, in fact, in the said Report reasoned that adopting the view taken by the Kerala High Court in the decision in Thadikulangara Pylee's son Pathrose v. Ayyazhiveettil Lakshmi Amma's son Kuttan and others24 that a later judgment would amount to discovery of new and important matter, and in any case an error on the face of the record, would keep alive the possibility of review indefinitely. This impliedly would mean that when a court decides a case, it must follow judgments which are binding on it. This is not to say that a smaller Bench of this Court, if it entertains serious doubts about the correctness of an earlier judgment, may not consider referring the matter to a larger Bench. However, as long as it does not undertake any such exercise, it cannot refuse to follow the judgment and that too of a Constitution Bench. Any such refusal to follow the decision binding on it, would undoubtedly disclose an error which would be palpable being self-evident.

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56. In this case, when this Court rendered the judgment, sought to be reviewed, the judgment of the Constitution Bench in Lalita Kumari (supra), undoubtedly, held the field having been rendered on 12.11.2013. The said judgement was, indeed, pressed before the Court.

57. To put it in other words, having regard to the relief sought by the petitioners, the dismissal of the writ petition would be, according to petitioners, in the teeth of a binding judgment of this Court. Just as in the case of a binding Statute being ignored and giving rise to the right to file a review, neither on logic nor in law would the refusal to follow a binding judgement, qualify for a different treatment if a review is filed. Be it a civil or a criminal matter, an error apparent on the face of the record, furnishes a ground for review.

58. This is not a case where an old argument is being repeated in the sense that after it has been considered and rejected, it is re-echoed in review. It is an argument which was undoubtedly pressed in the original innings. It is not the fault of the party if the court chose not even to touch upon it. No doubt, it may be different in a case where a ground or relief sought is ignored and it is found justified otherwise. But where a ground, which is based on principles laid down by a Constitution Bench of this Court, is not dealt with at all and it is complained of in review, it will rob the review jurisdiction of the very purpose it is intended to serve, if the complaint otherwise meritorious, is not heeded to.

59. A learned Single Judge, in an arbitration request, turned down a plea to appoint a person as Arbitrator. In review, the request was sought to be resurrected. It was in this context that a learned Single Judge of this Court, sitting in Chambers, in the decision reported in Jain Studios Ltd. (supra), laid down that once such a relief was refused in the main matter, no review petition would lie. However, following the said judgment, this Court, in the decision reported in Kamlesh Verma (supra), summarising the principle, came to declare in paragraph 20.2(ix), that review is not maintainable when the same relief sought at the time of arguing the main matter, has been negatived.

60. With regard to the said principle, the context in which it was laid down in the decision by a learned Single Judge in Jain Studios Ltd. (supra), has already been noted. The said principle, as stated, cannot be treated as one that is cast in stone to apply irrespective of facts. Illustrations come to the fore where it is better related to the factual context and not as an immutable axiom not admitting of exceptions. Take a case where a Writ of Mandamus is sought for after a demand is made. The demand is placed on record and is not even controverted. In the main proceeding, Mandamus is refused on the ground that there is no demand. It amounts to denial of relief. But the verdict is clearly afflicted with palpable error, and if the complaint is made in a review about the denial of relief on a ground which is patently untenable, certainly, a review would lie. There can be many other examples where the denial of relief is palpably wrong and self-evident. It is different, if on an appreciation of evidence or applying the law, and where two views are possible, relief is refused. In fact, broadly, denial of relief can occur in two situations. There are situations where the grant of relief itself is discretionary. There are other situations where if a certain set of facts are established, the plaintiff/appellant cannot be told off the gates. A defendant, who appeals against a time-barred suit being decreed, establishes that a suit is time-barred, and the facts, as stated in the judgment itself, unerringly point to such premise. If still, the Appellate Court decrees the suit and denies relief to the defendant/appellant, can it be said that a review will not lie? The answer can only be that a review will lie.

61. To test the hypothesis that on the facts this Court was wrong and manifestly so in declining in not following the dicta of the Constitution Bench in Lalita Kumari (supra), a reverse process of reasoning can be employed to appreciate the matter further. Can it be said that refusing to follow a Constitution Bench, laying down the response of the Officers to a complaint alleging the commission of a cognizable offence, has not been observed in its breach? If the review petition, in other words, is rejected, in substance this Court would be upholding its judgment which when placed side-by-side with the pronouncement of the Constitution Bench in Lalita Kumari (supra), the two judgments cannot be squared. It must co-exist despite the patent departure, the impugned judgment manifests from the law laid down by the Constitution Bench. But that being impossible, the Constitution Bench must prevail and the impugned judgment stand overwhelmed to the extent it is inconsistent. It may be true that in view of the fact that four writ petitions were heard together, this Court has proceeded to focus on the merits of the matters itself undoubtedly from the standpoint of the limited judicial review which it could undertake in a matter of the nature in question. On the basis of the said exercise, the Court has concluded that there were no materials for the Court to interfere. But this is a far cry from holding that it will not follow the mandate of the Constitution Bench of this Court in regard to the steps to be undertaken by the Officer on receipt of a complaint purporting to make out the commission of a cognizable offence. This Court may declare that it was non-suiting the petitioners seeking judicial review, having regard to the absence of materials which would have justified holding the award of the contract in question vulnerable. It would not mean that it is either precluded or that it was not duty-bound to still direct that the law laid down by the Constitution Bench in Lalita Kumari (supra) be conformed to.

62. If the complaint of the petitioner does make out the commission of the cognizable offence and FIR is to be registered and matter investigated, it will be no answer to suggest that this Court, has approved of the matter in judicial review proceedings under Article 32 of the Constitution and making it clear that entire exercise must be viewed from the prism of the limited judicial review the Court undertakes in such proceedings and this Court would end up paying less than lip service to the law laid down by the Constitution Bench in Lalita Kumari (supra).

63. As far as the judicial review of the award of the contract is concerned, apart from the fact that a review does not permit reappreciation of the materials, there is the aspect of the petitioner seeking judicial review approaching the court late in the day. There is also the aspect relating to the court's jurisdiction not extending to permit it to sit in judgment over the wisdom of the Government of the day, particularly in matters relating to purchase of the goods involved in this case. Therefore, in regard to review, sought in relation to the findings relating to the judicial review, they cannot be found to be suffering from palpable errors.

64. Though, the stand of the Government of India has been noticed, which is the second respondent in Writ Petition (Criminal) No. 298 of 2018, the party, which has a say in the matter or rather a duty in the matter in terms of the law laid down by this Court in Lalita Kumari (supra), is the first respondent, viz., Central Bureau of Investigation (CBI) before which petitioners have moved the Exhibit P1-complaint. It is quite clear that the first respondent, the premiere investigating agency in the country, is expected to act completely independent of the Government of the day. The Government of India cannot speak on behalf of the first respondent. Whatever that be, the fact

remains that a decision in terms of what is laid down in Lalita Kumari (supra), is to be taken.

65. One objection, which has apparently weighed with my learned and noble Brother, is that, this Court, having dealt with the merits of the case, there could be no occasion for directing the compliance in terms of Lalita Kumari (supra) by the first respondent. Reasoning of the Court has been noticed. This Court has approached the matter proclaiming that it was doing so in the context of somewhat constricted power of judicial review. It is further made clear that the Court found that it is neither appropriate nor is it within the experience of this Court to step into the arena of what is technically feasible. This Court also did not find any substantial material on record to show it to be a case of commercial favouritism to any party by the Indian Government as the option to choose the IOP did not rest with the Indian Government. In the concluding paragraph, it was clearly mentioned that the Court's views were primarily from the standpoint of exercise of jurisdiction under Article 32 of the Constitution, which was invoked in this case.

66. The question would, therefore arise, whether in such circumstances, the relief sought in Writ Petition (Criminal) No. 298 of 2018, seeking compliance with Lalita Kumari (supra), was wrongly declined. Differently put, the question would arise whether the petitioners, having participated in the proceedings and inviting the Court to pronounce on the merits as well and cannot persuade the Court to take a different view on the merits, could still ask the Court to find an error and that too a grave error in not heeding to the prayer in Writ Petition (Criminal) No. 298 of 2018.

67. As noticed earlier, it is one thing to say that with the limited judicial review, available to the Court, it did not find merit in the case of the petitioners regarding failure to follow the DPP, presence of over-pricing, violation of Offset Guidelines to favour a party, and another thing to direct action on a complaint in terms of the law laid down by this Court. It is obvious that this Court was not satisfied with the material which was placed to justify a decision in favour of the petitioners. It is also apparent that the Court has reminded itself of the fact that it was neither appropriate nor within the experience of the Court to step into the arena. It is equally indisputable that the entire findings are to be viewed from the standpoint of the nature of the jurisdiction it exercised. There are no such restrictions and limitations on an Officer investigating a case under the law. Present a case, making out the commission of cognizable offence, starting with the lodging of the FIR after, no doubt, making a preliminary inquiry where it is necessary, the fullest of amplitude of powers under the law, no doubt, are available to the Officer. The discovery of facts by Officer carrying out an investigation, is completely different from findings of facts given in judicial review by a Court. The entire proceedings are completely different.

68. In the impugned judgment, under the heading "Offsets", there is, at paragraph 28, reference to the complaint that favouring the Indian Business Group, has resulted in an offence being committed under the Prevention of Corruption Act. This Court extracted Clause (4.3) of the Offset Clause which provides that OEM/Vendor, Tier-1 Sub-Vendor will be free to select the Indian Offset Partner for implementing the offset obligation provided it has not been barred from doing business with the Ministry of Defence. This Court dealt with the same contentions in paragraph 32 of the impugned judgment, which reads as follows:

> "32. It is no doubt true that the company, Reliance Aerostructure Ltd., has come into being in the recent past, but the press release suggests that there was possibly an arrangement between the parent Reliance Company and Dassault starting from the year 2012. As to what transpired between the two corporates would be a matter best left to them, being matters of their commercial interests, as perceived by them. There has been a categorical denial, from every side, of the interview given by the former French President seeking to suggest that it is the Indian Government which had given no option to the French Government in the matter. On the basis of materials available before us, this appears contrary to the clause in DPP 2013 dealing with IOPs which has been extracted above. Thus, the commercial arrangement, in our view, itself does not assign any role to the Indian Government, at this stage, with respect to the engagement of IOP. Such matter is seemingly left to the commercial decision of Dassault. That is the reason why it has been stated that the role of the Indian Government would start only when the vendor/OEM submits a formal proposal, in the prescribed manner, indicating details of IOPs and products for offset discharge. As far as the role of HAL, insofar as the procurement of 36 aircrafts is concerned, there is no specific role envisaged. In fact, the suggestion of the Government seems to be that there were some contractual problems and Dassault was circumspect about HAL carrying out the contractual obligation, which is also stated to be responsible for the non-conclusion of the earlier contract."

69. The very first statement in paragraph 32 would appear to point to the Court taking into account Press Release suggesting that there was possibly an arrangement between the parent Reliance Company and Dassault starting from the year 2012. It is stated as to what transpired between the two Corporates would be best left to them. In this regard, in the Review Petition, it is pointed out that this Court has grossly erred in confusing Reliance Industries of which Mr. Mukesh Ambani is the Chairman with that of Reliance Infrastructure of which Mr. Anil Ambani is the Chairman. It is further contended that Mr. Anil Ambani's Reliance Infrastructure is the parent company of Reliance Aerostructure Limited (RAL), which is the beneficiary of the Offset Contract, and there is no possibility of any arrangement between Reliance Infrastructure Limited with Dassault Aviation in 2012. There appears to be considerable merit in the case of the petitioners that in this regard, this Court had fallen into clear error that there was possibly an arrangement between the parent Reliance Company and Dassault dated back to the year 2012. The parent Reliance Company which was referred in the judgment is Reliance Industries which is a completely different corporate body from Reliance Infrastructure which appears, according to the petitioners, to be the parent company of RAL. Thereafter, there is reference to the denial of the interview by the Former French President. It is further noted that on the basis of the materials, the commercial arrangement does not assign any role to the Indian Government at this stage with reference to the arrangement of the IOP. After making certain observations about HAL and role of the Indian Government starting only when the Vendor/OEM submitted a formal proposal, this Court went on to make the observation contained in paragraph 33 which has already been extracted.

70. From the standpoint of the jurisdiction in judicial review proceedings and under Article 32 of the Constitution, as also absence of any substantial material to show to be a case of commercial

favouritism, it may be true that the findings other than which has been referred to may not disclose a palpable error. This Court's lack of experience of what is technically feasible, as noted by the Court, has weighed with it.

POWERS OF POLICE OFFICER WIDER AND DIFFERENT FROM THAT OF WRIT COURT

71. The 'statutory right of the police to investigate about a cognizable offence' is well settled. In King-Emperor v. Nazir Ahmad Khwaja25, the Privy Council has, inter alia, held as follows:

> "In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an 25 AIR 1945 PC 18 appropriate case when moved under S. 491 of the C.P.C. to give directions in the nature of habeas corpus. In such a case as the present, however, the Courts functions begin when a charge is preferred before it and not until then. ..."

72. Following the same, this Court in M.C. Abraham and another v. State of Maharashtra and others 26 , held as follows:

> "13. This Court held in the case of J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] that there is a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. ..."

73. The Police Officer is endowed with wide powers. Nothing that constricted or limited this Court in the impugned 26 (2003) 2 SCC 649 judgment, applies to an Officer who has undertaken an investigation into the commission of a cognizable offence. In fact, in this case, the first respondent-CBI is the premiere investigation agency of the country. It is equipped to undertake all forms of investigations, be it technical or otherwise. The factors which concerned this Court can be recapitulated to bring out the true role of an Investigator. This Court held, it is neither appropriate nor within the Court's experience to step into what is technical feasible or not. No such limitation applies to an Investigator of a cognizable offence. What is important is that it is the duty of the Investigating Officer to collect all material, be it technical or otherwise, and thereafter, submit an appropriate report to the court concerned, be it a final report or challan depending upon the

materials unearthed. This Court relied on absence of substantial material. This is not a restriction on the Investigating Officer. Far from it, the very purpose of conducting an investigation on a complaint of a cognizable offence being committed, is to find material. There can be no dispute that the first respondent is the premiere investigating agency in the country which assumedly employs state of the art techniques of investigation. Professionalism of the highest quality, which embraces within it, uncompromising independence and neutrality, is expected of it. Again, the restriction which underlies the impugned judgment is the limited scope of judicial review and also the writ jurisdiction under Article 32 of the Constitution. It is clear as a mountain stream that both these considerations are totally irrelevant for an Officer who has before him a complaint making out the commission of a cognizable offence.

74. However, the directions contained in paragraph 120 of the Constitution Bench decision in Lalita Kumari (supra) must be further appreciated. In this case, the petitioners in Writ Petition (Criminal) No. 298 of 2018, have indeed moved an elaborate written complaint before the first respondent-CBI. The complaint that is made, attempts to make out the commission of a cognizable offences under the Prevention of Corruption Act. Paragraph 120.1 of Lalita Kumari (supra), declares registration of FIR is mandatory if information discloses commission of a cognizable offence. The Constitution Bench debarred any preliminary inquiry in such a situation. It is apposite that paragraph 120.5 is noticed at this stage. This Court held that the scope of the preliminary inquiry is not to verify the veracity or otherwise of the information received but it is only to ascertain whether the information reveals any cognizable offence. Coming back to paragraph 120.2, it is laid down by this Court that if the information does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. It is beyond dispute that the offences which are mentioned in the complaint filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018 are cognizable offences. Again, coming back to paragraph 120.3 in Lalita Kumari (supra) read with paragraphs 120.2 and 120.5, if the inquiry discloses commission of a cognizable offence, the FIR must be registered. Where, however, the preliminary inquiry ends in closing the complaint, the first informant must be informed in writing forthwith and not later than a week. That apart, reasons, in brief, must also be disclosed.

75. Paragraph 120.6 deals with the type of cases in which preliminary inquiry may be made. Corruption cases are one of the categories of cases where a preliminary inquiry may be conducted. Also, cases where there is abnormal delay or laches in initiating criminal prosecution, for example over three months delay in reporting the matter without satisfactorily explaining the reasons for the delay. As can be noticed from paragraph 120.6, medical negligence cases, matrimonial disputes, commercial offences are also cases in which a preliminary inquiry may be made. In order to appreciate the scope of paragraph 120.6, it is necessary to advert to paragraphs 115 to 119, which read as follows:

> “Exceptions
>
> 115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there

> may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.
>
> 116. In the context of medical negligence cases, in Jacob Mathew [Jacob Mathew v. State of Punjab, (2005) 6 SCC 1:
>
> 2005 SCC (Cri) 1369], it was held by this Court as under: (SCC p. 35, paras 51-52) "51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.
>
> 52. Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient.

A private complaint may not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Bolam [Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582 : (1957) 2 All ER 118] test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."

117. In the context of offences relating to corruption, this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] expressed the need for a preliminary inquiry before proceeding against public servants.

118. Similarly, in Tapan Kumar Singh [CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305] , this Court has validated a preliminary inquiry prior to registering an FIR only on the ground that at the time the first information is received, the same does not disclose a cognizable offence.

119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR." (Emphasis supplied)

76. As can be noticed that medical negligence cases constitute an exception to the general rule which provides for mandatory registration of FIR in respect of all cognizable offences. The Court, in clear terms, held that it will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint. It relied on a decision of this Court in Jacob Mathew v. State of Punjab and another27.

77. In paragraph 117 of Lalita Kumar (Supra), this Court referred to the decision in P. Sirajuddin, Etc. v. State of Madras, Etc.28 and took the view that in the context of offences related to corruption in the said decision, the Court has expressed a need for a preliminary inquiry before proceeding against public servants.

78. In P. Sirajuddin (supra), relied upon by the Constitution Bench in Lalita Kumari (supra), what this Court has held, and which has apparently been relied upon by the Constitution Bench though not expressly referred to is the following statement contained in paragraph 17:

> 27 (2005) 6 SCC 1 28 (1970) 1 SCC 595 "17. ... Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. ..." (Emphasis supplied)

79. In Lalita Kumari (supra), one of the contentions which was pressed before the Court was that in certain situations, preliminary inquiry is necessary. In this regard, attention of the Court was drawn to CBI Crime Manual. The following paragraphs of the Lalita Kumari (supra) may be noticed, which read as follows:

"89. Besides, the learned Senior Counsel relied on the special procedures prescribed under the CBI Manual to be read into Section 154. It is true that the concept of "preliminary inquiry" is contained in Chapter IX of the Crime Manual of CBI.

However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that CBI is constituted under a special Act, namely, the Delhi Special Police Establishment Act, 1946 and it derives its power to investigate from this Act.

90. It may be submitted that Sections 4(2) and 5 of the Code permit special procedures to be followed for special Acts. Section 4 of the Code lays down as under:

> "4.Trial of offences under the Indian Penal Code and other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
>
> (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." It is thus clear that for the offences under the laws other than IPC, different provisions can be laid down under a special Act to regulate the investigation, inquiry, trial, etc. of those offences. Section 4(2) of the Code protects such special provisions.

91. Moreover, Section 5 of the Code lays down as under:

> "5.Saving.—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force." Thus, special provisions contained in the DSPE Act relating to the powers of CBI are protected also by Section 5 of the Code.

92. In view of the above specific provisions in the Code, the powers of CBI under the DSPE Act, cannot be equated with the powers of the regular State Police under the Code."

80. It is thereafter that under the caption "Exceptions", the Constitution Bench has proceeded to deal with offences relating to corruption as already noted and contained in paragraph 117 of Lalita Kumari (supra), which has already been extracted. Chapter 8 of the CBI Crime Manual deals with complaints and source of information. Chapter 9 deals with preliminary enquiries. Clause (8.6) of Chapter 8 provides for the categories of complaints which are to be considered fit for verification. It provides, inter alia, complaints pertaining to subject matters which fall within the purview of the CBI, either received from official channels or from well-established and recognized organizations or from individuals who are known and who can be traced and examined. Undoubtedly, petitioners are known and can be traced and examined. A complaint against a Minister or a Former Minister of the Union Government is to be put up before the Director of the CBI. The complaints which are registered for verification, with the approval of the competent authority, would only be subjected to secret verification. Clause (9.1) of Chapter 9 contemplates that when a complaint is received, inter alia, after verification and which may after verification indicates serious misconduct on the part of the public servant but is not adequate to justify registration of a regular case, under the provisions of Section 154 of the Cr.PC, a preliminary inquiry may be registered after obtaining approval of the competent authority. Clause (9.1) also, no doubt, deals with cases entrusted by this Court and the High Courts. The Manual further contemplates that the preliminary inquiry will result either in registration of regular cases or departmental action inter alia.

81. The Constitution Bench in Lalita Kumari(supra), had before it, the CBI Crime Manual. It also considered the decision of this Court in P. Sirajuddin (supra) which declared the necessity for preliminary inquiry in offences relating to corruption. Therefore, the petitioners may not be justified in approaching this Court seeking the relief of registration of an FIR and investigation on the same as such. This is for the reason that one of the exceptions where immediate registration of FIR may not be resorted to, would be a case pointing fingers at a public figure and raising the allegation of corruption. This Court also has permitted preliminary inquiry when there is delay, laches in initiating criminal prosecution, for example, over three months. A preliminary inquiry, it is to be noticed in paragraph 120.7, is to be completed within seven days.

82. The petitioners have not sought the relief of a preliminary inquiry being conducted. Even assuming that a smaller relief than one sought could be granted, there is yet another seemingly insuperable obstacle.

83. In the year 2018, the Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as '2018 Act' for short) was brought into force on 26.07.2018. Thereunder, Section 17A, a new Section was inserted, which reads as follows:

> "17A. (1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval— (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government; (b) in the case of a person who is or was employed,

> at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government; (c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed: Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person: Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month. .
>
> (Emphasis supplied)

84. In terms of Section 17A, no Police Officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his Office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first respondent-CBI, is done after Section 17A was inserted. The complaint is dated 04.10.2018. Paragraph 5 sets out the relief which is sought in the complaint which is to register an FIR under various provisions. Paragraphs 6 and 7 of the complaint are relevant in the context of Section 17A, which reads as follows:

> "6. We are also aware that recently, Section 17(A) of the act has been brought in by way of an amendment to introduce the requirement of prior permission of the government for investigation or inquiry under the Prevention of Corruption Act.
>
> 7. We are also aware that this will place you in the peculiar situation, of having to ask the accused himself, for permission to investigate a case against him.

We realise that your hands are tied in this matter, but we request you to at least take the first step, of seeking permission of the government under Section 17(A) of the Prevention of Corruption Act for investigating this offence and under which, "the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month"."

85. Therefore, petitioners have filed the complaint fully knowing that Section 17A constituted a bar to any inquiry or enquiry or investigation unless there was previous approval. In fact, a request is made to at least take the first step of seeking permission under Section 17A of the 2018 Act. Writ Petition (Criminal) No. 298 of 2018 was filed on 24.10.2018 and the complaint is based on non-registration of the FIR. There is no challenge to Section 17A. Under the law, as it stood, both on the date of filing the petition and even as of today, Section 17A continues to be on the Statute Book

and it constitutes a bar to any inquiry or enquiry or investigation. The petitioners themselves, in the complaint, request to seek approval in terms of Section 17A but when it comes to the relief sought in the Writ Petition, there was no relief claimed in this behalf.

86. Even proceeding on the basis that on petitioners complaint, an FIR must be registered as it purports to disclose cognizable offences and the Court must so direct, will it not be a futile exercise having regard to Section 17A. I am, therefore, of the view that though otherwise the petitioners in Writ Petition (Criminal) No. 298 of 2018 may have made out a case, having regard to the law actually laid down in Lalita Kumari (supra), and more importantly, Section 17A of the Prevention of Corruption Act, in a Review Petition, the petitioners cannot succeed. However, it is my view that the judgment sought to be reviewed, would not stand in the way of the first respondent in Writ Petition (Criminal) No. 298 of 2018 from taking action on Exhibit P1-complaint in accordance with law and subject to first respondent obtaining previous approval under Section 17A of the Prevention of Corruption Act.

87. Subject as hereinbefore stated, in regard to the other Petitions and Applications, I agree with the proposed Order of Brother Justice Sanjay Kishan Kaul.

.....J. (K.M. JOSEPH) New Delhi, November 14, 2019.