Purushottam Karad And Ors vs Mohini Naraindas Kamwani And Ors on 16 October, 2015

Author: S.C.Dharmadhikari

Bench: S. C. Dharmadhikari, B. P. Colabawalla

WP.427&439.2014.Judgment.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 427 OF 2014
WITH
CRIMINAL APPLICATION NO. 50 OF 2015

1. Mr. Purushottam Karad }
presently working as Deputy }

Commissioner of Police, Zone - I, }
Navi Mumbai Police }
Commissionerate having office }
at Sector - 19, APMC Market, }

Vashi, Navi Mumbai. }
ig }
2. Mr. Ahmed Javed }
presently working as Additional }
Director General of Police, Law }

and Order, Maharashtra State, }
having office at Maharashtra }
Police Headquarters }

(Police Mukhayalay), Colaba, }

Mumbai }
}

3. Mr. Ashok Kumar Sharma }
presently working as }
Commissioner of Police, }
Navi Mumbai Commissionerate, }

having office at CBD Belapur, }
Navi Mumbai } Petitioners

versus

1.Smt. Mohini Naraindas Kamwani }
Age - 79 years, R/o. 101, }
Mavali Society, 'A' Wing, Plot }
No. 29C, Sector - 4, Vashi, }
Navi Mumbai - 400 703 }
}
2. Mr. Dilip Naraindas Kamwani }
Age - 58 years, R/o. 101, }
Mavali Society, 'A' Wing, Plot }

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No. 29C, Sector - 4, Vashi, }
Navi Mumbai - 400 703 }
3. State of Maharashtra }

At the instance of Vashi Police }
Station, Navi Mumbai Police }

Commissionerate, Navi Mumbai } Respondents

WITH
WRIT PETITION NO. 439 OF 2014

WITH
CRIMINAL APPLICATION NO. 51 OF 2015

1. Mr. Laxman Bhausaheb Kale }
presently working as Senior Police
ig }
Inspector, Vashi Police Station, }
Navi Mumbai Police }
Commissionerate, having office }

at Sector - 2, Vashi, Navi Mumbai }
}
2. Mr. R. B. Sardesai }
presently working as Senior }

Police Inspector, Special Branch, }
Thane Police Commissionerate, }

Thane } Petitioners

versus

1.Smt. Mohini Naraindas Kamwani }
Age - 79 years, R/o. 101, }
Mavali Society, 'A' Wing, Plot }
No. 29C, Sector - 4, Vashi, }
Navi Mumbai - 400 703 }

}
2. Mr. Dilip Naraindas Kamwani }
Age - 58 years, R/o. 101, }
Mavali Society, 'A' Wing, Plot }
No. 29C, Sector - 4, Vashi, }
Navi Mumbai - 400 703 }
}
3. State of Maharashtra }
At the instance of Vashi Police }

Station, Navi Mumbai Police }
Commissionerate, Navi Mumbai } Respondents

Mr. Amit Desai-Senior Advocate with Mr. M. V.

Thorat for the Petitioners in WP/427/2014.

Mr. V. M. Thorat with Mr. Pratap Patil for the
Petitioners in WP/439/2014.

Ms. Mohini Naraindas Kamwani Respondent

No. 1 in person.

Mr. Dilip Naraindas Kamwani Respondent No.

2 in person.

Mr. J. P. Yagnik-APP for Respondent No. 3.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.
Reserved on :- SEPTEMBER 7, 2015
Pronounced on :- OCTOBER 16, 2015

Judgment :- (Per S.C.Dharmadhikari, J.)

These matters were placed before us pursuant to th

directions of the Hon'ble the Chief Justice. Two applications b

Criminal Application Nos. 50 and 51 of 2015 in the aforementioned

Writ Petitions were moved by the Respondents to the Writ

Petitions/original complainants. The request in these applications was

to vacate the interim orders in the Writ Petitions.

2) When these two applications were placed before us,

indicated to the parties and Counsel that it would be a repetition and

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duplicity as common arguments would be canvassed in these applications and thereafter in the Petitions. It would be therefore fair, just and in the interest of justice that we take up the Writ Pet themselves for hearing and final disposal.

3) Accordingly, all parties and Counsel have agreed and we have, by this judgment, disposed of the Petitions themselves. Once the Petitions themselves are disposed of and in the view that we have taken, the criminal applications would not survive.

4) The facts and circumstances in which the Writ Peti have been filed in this Court need to be briefly stated. Writ Petition No.427 of 2014 is by three Petitioners, namely, Purushottam Karad Ahmed Javed and Ashok Kumar Sharma. These Petitioners have impleaded the original complainants as Respondent Nos. 1 and 2

together with the State as Respondent No. 3. This Petition invokes this

Court's power under Articles 226 and 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 and seeks to challenge the legality and validity of an order dated

February, 2014 passed by the Judicial Magistrate First Class, Vashi at Belapur, Navi Mumbai in Miscellaneous Application No. 91 of 2014.

5) By this order, the learned Judicial Magistrate had directed the concerned police station to investigate the crime as against Laxman

Kale - Senior Police Inspector, Vashi Police Station, Vashi, Navi Mumbai,

Raosaheb Sardesai, Senior Police Inspector, Vashi Police Station, Vashi, Navi Mumbai and the aforementioned Petitioners Purushottam Karad

and Ahmed Javed. The parties would be referred to as accused and complainants.

6) We do not see why Mr. Ashok Kumar Sharma, Commissioner of Police, Navi Mumbai, CBD Belapur has filed the Petition for, the direction to investigate the crime by the con police station is not qua him. The two complainants appearing person agreed before us that the learned Judicial Magistrate First Class has not directed investigation by the police and under section 156(3) of the Code of Criminal Procedure, 1973 qua Mr. Ashok Kumar Sharma.

Therefore, he was not required to file any Petition. Pertinentl complainants have themselves stated before us that they have no grievance as against Mr. Sharma.

7) In the two Writ Petitions, we are concerned with original accused Nos. 1 to 4. Writ Petition 427 of 2014 is by original accused Nos. 3 and 4 and the other Writ Petition, namely Writ Petition No. 439 of 2014 is by original accused Nos. 1 and 2.

8) The facts leading to the filing of the Petitions are that a private complaint is filed in the Court of the learned Judicial Magistrate First Class, Vashi, CBD Belapur, being Regular Criminal Case and Other Miscellaneous Application No. 91 of 2014. The complainants' case is that complainant No. 1 resides with her unmarried son, namely, Dilip Kamwani, aged 58, complainant No. 2 therein and a mentally challenged daughter, namely, Kanta. Second daughter of complainant No. 1, namely, Smt. Sumita Karani resides in Vashi along with husband. Sumita Karani has three sons, one residing at Andheri, one at Dubai and one at USA. (Sumita Karani has sold her Vashi flat in March and her son has also sold his Andheri flat. The complainants do not know where they stay in Mumbai presently).

9) Around August, 2010, Manoj Karani, grandson of

complainant No. 1 and son of Sumita Karani, residing in Dubai,

approached complainant No. 1 with the intention of forcefully obtaining her signatures on some documents and obtaining her bank details. It is relevant to state here that complainant No. 1 had allegedly severed her

relations with her daughter Sumita Karani and her grandson in 2007 itself. That due to the protests of the complainants, the said Manoj Karani left the premises, but continued to intimidate and threaten the complainants through various means. It is pertinent to state here that

complainant No. 1 had approached accused No. 2, on 24 th December, 2010 to register a case of criminal intimidation against her grandson

but only a non-congnizable case was registered and no further action

was taken. Even thereafter Manoj Karani visited the complainant's house on several occasions threatening her and her son with dir

consequences stating that he had links with the underworld and certain Hiten Sampat with criminal antecedents.

10) That only after complainant No. 1 constantly followed up with accused No. 2 that complainant No. 1 was informed that the case was held to be of a civil nature and therefore not within the jurisdiction of the police department and hence closed. This, despite the fact that the complainants repeatedly informed the police officers that their life was in danger due to the continuous threats from the grandson complainant No. 1 (Manoj Karani)

11) That on 11th November, 2011, complainant No. 1 addressed a letter to the Chief Minister explaining her grievance and the harassment faced by her.

12) As a consequence of the said letter, complainant No. 1 was approached by the officers of accused No. 1 on 27 th December, 2011, wherein they promised complainant No. 1 that appropriate action

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would be taken and asked her to give a written undertaking stating that she would not sit on any protest fast. That a copy of the letter dated 27th December, 2011 sent by complainant No. 1 to accused No. 1 is at Annexure 'B'.

13) That in view of the fact that no action was taken by the officers working under accused No. 1, on the complaint of complainant No. 1 and the officers of accused No. 1 making false statements before the Maharashtra State Human Rights Commission resulting in the closure of the complainants' complaint, the complainants addressed a letter to the Senior Police Inspector of Azad Maidan Police Station and thereby sought permission to sit on "Peaceful Protest Hunger Strike" on 16th January, 2012 against the inaction of the police.

14) The complainant No. 1 started her fast (Hunger Str from 16th January, 2012 at Azad Maidan and was stationed there for three days. The complainant No. 1 addressed a letter to vario authorities informing them that she intends to continue her hunger fast for an indefinite time, till justice is done. A copy of the letter dated 21 st January, 2012 sent by Bombay High Court Public Grievances Cell to accused No. 4 is at Annexure 'D'.

15) As a consequence of the above said representation, a high ranking officer of the Azad Maidan Police Station visited complainant No. 1 and convinced her that action will be taken on her grievances and she should not take any steps that could be considered contrary to the law of the land. Therefore, complainant No. 1 decided to call off her

fast and gave the same in writing to the police officer. Copy of the undertaking dated 24th January, 2012 of complainant No. 1, wherein

she had very clearly stated that in her life of 77 years she did not breach any law and she did not intend to do so at this stage of her life, is annexed at Annexure 'E'.

16) That the complainants were extremely surprised to see two police officers, one of them addressed as Kadam, accompanied by one

lady police officer, addressed as Ms. Chikne, at their doorstep at 8.30 a.m. on the morning of 25th January, 2012. Complainant No. 1 and her

son were informed that the police officials had come to their residence to register an FIR on her complaint and that she along with her son would have to accompany them to the police station. Since it was early

morning, the complainants asked them to proceed ahead and that they would be at the police station in half an hour. Complainant No. 1 and her son were told that they will be required only for about an hour, therefore, the complainant No. 1 and her son left her mentally

challenged daughter behind and arrived at the Vashi Police Station at around 9.00 a.m. on 25th January, 2012.

17) That on 25th January, 2012, till 1.30 p.m., the complainants were made to sit inside the police station without any information or explanation and without any food or water. At about 2.30 p.m., the complainants were escorted to the Court premises by few police officers along with lady police officers and were made to sit on a bench outside the Court room of learned Judicial Magistrate, First Class. At around 4.45 p.m., the complainants were produced before the Magistrate and it was only at this stage that the complainants realised that they were being touted as accused persons and not as complainants. After completing the formalities, the complainants were sent to judicial

custody for three days. This in spite of the fact that complainant No. 1 had given a clear undertaking that she had called off her protest fast.

18) Complainant No. 2 requested the officers of accused No. 1 that he be produced before the learned Magistrate once again so that the Magistrate could be apprised of the facts. Instead, complainant No. 2 was handcuffed by Mr. Kadam, and pushed into the police van along with complainant No. 1. Complainant No. 1 requested the police officers to at least allow her to take an extra set of clean clothes, articles of necessity and ensure that her mentally challenged daughter, who was

alone at home, is looked after by the neighbours, but this request was also turned down by the police officers.

19) That on 27th January, 2012, the complainants were produced before learned Magistrate, where police officers sought

extension of the detention period, which was opposed by the complainants. On hearing the submissions made by the complainants, the learned Judicial Magistrate, First Class ordered release of t complainants.

20) Following the order of learned Judicial Magistrate, Class, the complainants were taken back to Kalyan Prison for conducting release procedure. On the way to Kalyan Prison, complainant No. 2 was again handcuffed despite his protest and objection.

21) That after their release, complainant No. 2 made a complaint to the Commissioner of Police narrating the above illeg incident of being handcuffed by the accused.

22) Aggrieved by the illegal action of the accused, complainant No. 1 approached the Bombay High Court filing Criminal Writ Petition No. 1857 of 2012 seeking justice from the High Court against the illegal action and gross violation of fundamental rights of the complainants.

23) The accused filed an affidavit of Senior Police Inspector on 3rd August, 2012 denying the allegation of illegal arrest or detention of the complainants. Further it also denied the ill-treatment and handcuffing of the complainants.

24) The High Court heard the Petition on 20 th November, 2012 and found that prima facie case is made out by the complainants that the directions of the Hon'ble Supreme Court in case of D. K. Basu vs. State of West Bengal reported in (1997) 1 SCC 416 have not bee complied with. The Court directed the concerned officers to remain present on 23rd November, 2012.

25) Further, on 23rd November, 2012, the High Court perused

the documents filed by the Assistant Public Prosecutor and came to the

conclusion that Station Diary Entry No. 26 does not make any reference to the complainants and that the complainants had declined to sign the

arrest form. Further, the affidavit of the then Senior Police Inspector Raosaheb Sardesai dated 3rd August, 2012 does not make any reference

to the arrest form being drawn. The Court, in its order, further found that there is no record to show that the constable was depute inform the mentally challenged daughter of complainant No. 1.

26) On 22nd February, 2013, the accused filed an additi affidavit in Criminal Writ Petition No. 1857 of 2012 denying th

handcuffing of the complainants or any illegal acts committed against

the complainants.

27) The complainant No. 1 filed a rejoinder to the additional reply affidavit by the accused on 22 nd February, 2013 bringing on record the illegal arrest and violation of fundamental rights of the complainants which were contrary to the law laid down in the D. K. Basu's case (supra).

28) On 28th March, 2013 and 30th March, 2013, complainants sought amendment in the Writ Petition with regard to the prayer seeking mandamus against the co-accused No. 1 Senior Police Inspector Laxman Kale, Senior Police Inspector Raosaheb Sardesai. (These are two co-accused of No. 1 Senior Police Inspector, Vashi, in Writ Petition No. 1857, because first rejoinder was filed by Senior Police Inspector Raosaheb Sardesai on 3rd August, 2012 and second rejoinder was filed by Senior Police Inspector Laxman Kale on 22 nd February, 2013). mandamus was also sought against accused No. 2 DCP of Vashi Zone -

I, Navi Mumbai Purushottam Karad and Accused No. 3 earlier Police Commissioner, Navi Mumbai, Javed Ahmad. The mandamus sought was that the accused be immediately suspended and prosecuted for

illegally detaining and arresting the complainants and for perjury by seeking detention order and judicial custody from Judicial Magistrate First Class, Vashi Court. They also sought that accused No. 1 should be suspended and prosecuted for planned conspiracy and deliberate dereliction of duty (as Bombay High Court Public Grievances Cell had sent a letter on 21st January, 2012 to accused No. 3 earlier Navi Mumbai Police Commissioner Javed Ahmad and accused No. 2 DCP Vashi Zone - I Purushotam Karad had submitted a false reply to that through additional affidavit of accused Senior Police Inspector Laxman Kale dated 22nd February, 2013 by way of exhibit 'A' therein).

29) After hearing the parties, the Hon'ble High Court, vide its final judgment and order dated 13 th June, 2013 partly allowed Criminal Writ Petition No.1857 of 2012 granting compensation of Rs.3 lacs each to the complainants for their illegal arrest and detention.

30) It is the case of the complainants that this Court in its final judgment dated 13th June, 2013, delivered in Criminal Writ Petitio No.1857 of 2012, was pleased to direct that the police officers of Vashi Police Station should examine the complaint by the original Petitioner No. 2 (Respondent No. 2 in present Petitions) and the necessary documents in support of the grievous injury and if the complaint and the documents disclose a cognizable offence, action in accordance with

law be initiated. However, this Court dismissed the Writ Petition to the extent it relates to a Writ of Mandamus directing the police to register an offence on the basis of the complaint of the first Petitioner. The

Petitioners were relegated to avail of alternate remedies in accordance with law.

31) It is in these circumstances that the complainants filed the complaint in the Court of Judicial Magistrate, First Class and

prayers thereof are as under:-

> "a)
>
> My this Hon'ble Court be pleased to direct the concerned Vashi Police Station to register FIR U/s (IPC) Sections 466, 469, 471, 474, 167, 196, 220, 191, 192, 193, 195, 201, 120(B), 199,
>
> 200 and 145 (2) Bombay Police Act.
> b) Concerned police station be directed to give the report to this Hon'ble court within a period of 1 month from the date of the order of this Hon'ble Court.
> ....."

32) We are not concerned with other prayers in the application.

33) It is on this complaint that the learned Judicial Magistrate,

First Class passed the impugned order. It would be convenient reproduce the same in its entirety. It reads as under:-

> "Order below Ex. No. 1 in Other Misc. Appln. No. - 91/2014

1] Perused the complaint. Heard the petitioner no. 2 Dilip Kamwani. Perused the documents. As per the Petitioner no. 2 his mother i.e. petitioner no. 1 Mohini Kamwani was arrested as well as he was arrested on 25-01-2012 and he has alleged that accused no. 1 to 4 are responsible for their arrest, and that their arrest and detention in the jail after arrest for 3 days was not justified and the accused no. 1 and 4 are prima facie responsible for their arrest and detention. They relied on the Judgment and

Order passed by the Hon'ble High Court of Judicature in Writ Petition (Criminal) No. - 1857/2012 filed by the petitioner no. 1 and 2. The petitioners alleged that they were directed

proceed to file the private complaint or an application under Section 156(3) of Code of Criminal Procedure by the Hon'ble High Court in writ petition no. - 1857/2012. I agree with the

arguments advanced by the petitioner no. 2 as to satisfying to proceed as per Section 156(3) of the Code of Criminal Procedure to investigate the crime as against accused no. 1 to 4 for the offence alleged under Section 211, 466, 469, 471, 474,

167, 196, 220, 191, 192, 193, 195, 201, 120(B), 199, 200 of the Indian Penal Code and 145(2) of the Bombay Police Act.

2] Prima facie accused no. 1 to 3 are the police officers and accused no. 4 is the then Commissioner of Police Navi Mumbai

and presently Additional DGP Law and Order Maharashtra. As per my view, whether these police officers will be immune from

prosecution is a matter of trial and passing order under section 156(3) under Code of Criminal Procedure is a part of investigation and not any cognizance of an offence taken by this Court. The concern Investigating Officer to whom the matter

will be prefer for investigation is at liberty to get sanction as provided under the Law. Hence, the order -

ORDER

1] The concern police are directed to investigate the crime as against accused no. 1 to 4 under Section 211, 466, 469, 471, 474, 167, 196, 220, 191, 192, 193, 195, 201, 120(B), 199, 200 of the Indian Penal Code and 145(2) of the Bombay Police Act, as per Section 156(3) of the Code of Criminal Procedure.

Vashi, Dt. 01-02-2014 (Yamini Boravke) Jt. C.J.J.D. & J.M.F.C. Vashi.

At-Belapur, Navi Mumbai"

34) Mr. Amit Desai-Senior Advocate appearing for the Petitioners in Writ Petition No. 427 of 2014 submitted that the impugned order is contrary to law. It is clearly contrary to the principles to be applied while directing the police to carry out investigations. Mr. Desai would submit that there are no allegations J.V.Salunke,PA WP.427&439.2014.Judgment.doc made against the present Petitioners in respect of the arrest of Respondent Nos. 1 and 2 nor allegations are made connecting the present Petitioners in respect of the arrest panchanama. There is complete non application of mind on the part of the learned Judicial Magistrate, First Class, inasmuch as offences punishable under sections 167, 191, 192, 193 and 195 of the Indian Penal Code cannot be alleged at the instance of a private party. It is the magistrate or under his direction, his subordinate officer, who can file a complaint in respect of these offences and a private complaint therefore was not entertainable.

35) Mr. Desai submits that the learned Judge ought to have been aware that even a direction under section 156(3) of the Code of Criminal Procedure, 1973 can be issued only after the Judge is of the prima facie opinion that the material produced discloses commission of an offence. A direction of the nature issued casts a stigma on parties like the Petitioners. Therefore, the learned Judge should apply his mind and record a

reasoned satisfaction. He cannot pass an order mechanically or for the asking. Mr. Desai submits that the reasons may be brief but they must disclose application of mind to the necessary and relevant factors. In the present case, the learned Judge was passing an order on a private complaint of the complainants. The learned Judge should have read the complaint as a whole and to find out whether J.V.Salunke,PA WP.427&439.2014.Judgment.doc there is any material to issue the direction qua these accused, namely, accused Nos. 3 and 4. Mr. Desai was at pains to point out that the only averment at para 16 of the complaint is not enough to proceed and issue the direction to investigate under section 156(3) of the Code of Criminal Procedure, 1973. Thus, no prima facie finding against accused Nos. 3 and 4 has been rendered and violation allegedly of the guidelines in the decision of the Hon'ble Supreme Court of India in the case of D.K. Basu (supra) would not enable the learned Judge to issue the direction as complained. The learned Judge should have appreciated that the alleged act and committed by other accused was completed before the complainants made a written complaint to the Commissioner of Police. There is nothing to show even prima facie that the Petitioners had a role in the episode of arrest or any overt act has been attributed to them. There is no allegation of any conspiracy either. In these circumstances, the learned Judge should not have proceeded to issue the subject direction as against the Petitioners/original accused Nos. 3 and 4. This would dissuade high ranking officers from performing their duties in law.

36) Mr. Desai then submits that the learned Judge should have been aware of the requirement of prior sanction so as to proceed J.V.Salunke,PA WP.427&439.2014.Judgment.doc against the public servants/public officials. It is a pre-condition and no reasons have been assigned as to why the sanction is not required or if required that aspect need not be gone into at this stage. Mr. Desai has submitted that the finding in para 2 that whether these police officers are immune from prosecution is a matter of trial is illegal, erroneous and untenable. The further view that at this prima facie stage the learned Judge is only exercising powers under section 156(3) of the Code of Criminal Procedure, 1973 as a part of the investigation and the Court is not taking any cognizance of the offence is ex-facie unsustainable in law. The learned Judge has completely lost sight of the absence of any allegations or averments against the Petitioners.

Mr.Desai would submit that if the complaint projects that the complainants were arrested illegally, then, the learned Judge should have been aware of the fact that the Petitioners are not concerned with nor have effected the arrest. Petitioner No. 1 is the Deputy Commissioner of Police and Petitioner No.2 is the Commissioner of Police, Navi Mumbai. As far as the Petitioner No. 3 is concerned, it is conceded that there is no material and therefore no direction is issued qua him. Mr.Desai has invited our attention to page 27 of the paper book to urge that the complainants are bold enough to seek suspension and immediate detention so also arrest of these Petitioners for planned conspiracy and deliberate dereliction of duty. Mr. Desai submits that, as J.V.Salunke,PA WP.427&439.2014.Judgment.doc far as conspiracy is concerned, there is no prima facie material nor are the averments in the complaint enough to infer even prima facie any conspiracy, in which

these high ranking police officials are involved. If the allegations are of dereliction of duty and which are based on a complaint made to this Court's Public Grievances Cell, then, for that, at best a departmental action or proceedings can be initiated against the Petitioners, but surely no offence and punishable in law has been committed. Mr. Desai then highlights the prayers in the complaint and at pages 29 and 30 of the paper book. Mr. Desai would submit that there are no prima facie materials which would indicate that offences punishable under sections 466, 469, 471, 474 of the Indian Penal Code are committed much less offences punishable under sections 201, 120B of the said Code. For all these reasons, Mr. Desai would submit that the Writ Petition be allowed.

37) Heavy reliance is placed by Mr. Desai on the Hon'ble Supreme Court Judgment in the case of Anil Kumar and Ors. vs. M. K. Aiyappa and Anr. (Criminal Appeal Nos. 1590-1591 of 2013, dated 1st October, 2013) and on the following decisions:-

(i) Mr. Pandharinath Narayan Patil and Ors. vs. The State of Maharashtra (Criminal Appeal No. 4775 of 2014 dated 30th March, 2015)

(ii) Mrs. Priyanka Srivastava and Anr. vs. State of U. P. and Ors. (Criminal Appeal No. 781 of 2012 dated 19th March, 2015) J.V.Salunke,PA WP.427&439.2014.Judgment.doc

38) Mr. Desai's arguments have been adopted by Mr. Thorat, the learned Advocate appearing for the Petitioners in Writ Petition No.439 of 2014. In addition, he relies upon the judgment of the Hon'ble Supreme Court of India in the case of Maksud Saiyed vs. State of Gujarat and Ors. reported in (2008) 5 SCC 668. He also relies upon an order of a Division Bench of this Court dated 5th December, 2014 passed in Writ Petition No. 4188 of 2014.

39) On the other hand, complainant No. 2 Mr. Kamwani appearing for himself and his mother, the other complainant, argued extensively and also filed written submissions.

40) Before his oral arguments and remaining if any after extensively quoting from the written submissions are considered, we deem it appropriate to firstly make reference to the notes of arguments.

The written notes of arguments read as under:-

40.1) Respondents in-person No. 1 and 2 Mohini Kamwani and Dilip Kamwani humbly request the Hon'ble Court to please take the following on record as our Written Notes of Argument in the above mentioned Petitions as well as in our Applications No. APPW 50 and 51 of 2015 in the above Petitions as they are connected matters:

> J.V.Salunke,PA WP.427&439.2014.Judgment.doc 40.2) Petitioners' false Criminal Writ Petition Nos. 427 and 439 of 2014 to obtain ex-parte stay orders are not maintainable, as, as per the law they have to file a Revision in Sessions Court and Criminal Writ Petition for quashing under section 482 is not maintainable.

We have already submitted to the Hon'ble Court the case law on this with final judgment of Bombay High Court (Nagpur Bench) being Criminal Writ Petition No. 460 of 2008 in the case of Narayandas s/o Hiralalji Sarda vs. State of Maharashtra and Anr.

reported in 2009(2) Mh. L. J. 426 and another Bench of Bombay High Court has also held the same view in the case of B. S. Khatri vs. State of Maharashtra reported in 2004(1) Mh. L. J. 474.

40.3) I am raising the basic point of jurisdiction, jurisprudence, natural justice and legal validity of any equivalent Bench of this Hon'ble Court (Coram: JJ - Hon'ble Naresh Patil and V. L. Achaliya) entertaining the above two Criminal Writ Petitions for quashing of the FIR and granting the said ex-parte stay orders to Petitioner Police Officers against the directions issued to me by the earlier equivalent Bench (Coram: JJ - Hon'ble P. V. Hardas and M. Bhatkar) to avail alternate remedy of filing a private complaint under section 156(3) against four guilty police officers after fining them Rs.6 lac after admitting their illegalities, false case, forgery, perjury, etc. J.V.Salunke,PA WP.427&439.2014.Judgment.doc 40.4) That too after the four guilty police officers filed their Special Leave Petition in the Hon'ble Supreme Court which was dismissed by the Hon'ble Supreme Court - which means the SC has upheld the filing of private complaint against them under section 156(3) by us.

40.5) This shockingly means that, one Bench of this Court, which did not grant me the direct remedy but directed me to register FIR against the police under section 156(3) through alternate remedy, but the other Bench of the same High Court gives them an ex-parte stay order to them when I have obtained the FIR order under section 156(3) - thereby snatching my alternate remedy also and making me remedyless - that too after SC has upheld the filing of private complaint against them under section 156(3) by us.

40.6) Gross contempt of Hon'ble Supreme Court:

> (I) Granting of the said ex-parte stay orders dated 6 th February, 2014 in Criminal Writ Petition Nos. 427 and 439 of 2014 to the Petitioner police officers and non-registration of FIR resulting from non-vacating of the same itself amounts to gross contempt of the Hon'ble Supreme Court.
>
> (II) It is clear that this Court, after finding the four Petitioner police officers guilty and fining them to pay us the J.V.Salunke,PA WP.427&439.2014.Judgment.doc monetary compensation of Rs.3 lac each, gave us clear directions in the final judgment dated 13th June, 2013 in our Criminal Writ Petition No. 1857 of 2012 to prosecute the Petitioner police officers through a private complaint under section 156(3) of the Code of Criminal Procedure, 1973 and after that the Petitioners filed

their SLP No. 6534 of 2013 on 23rd September, 2013 in the Hon'ble Supreme Court to challenge the said final judgment of this Court and the Hon'ble Supreme Court has dismissed their said SLP - not giving them any reliefs including on their prosecution through private complaint by us under section 156(3) of the Code of Criminal Procedure, 1973, thereby upholding the filing of private complaint by us against police under section 156(3) of the Code of Criminal Procedure, 1973.

(III) If the Hon'ble Supreme Court did not want the four Petitioner police officers to be prosecuted, when police filed their SLP in the Hon'ble Supreme Court, then, the Hon'ble Supreme Court would have granted the relief to police, including no prosecution of police even through private complaint by us under section 156(3) of the Code of Criminal Procedure, 1973, as directed by the Hon'ble Bombay High Court in the said order dated 13th June, 2013 in our Criminal Writ Petition No. 1857 of 2012 J.V.Salunke,PA WP.427&439.2014.Judgment.doc which police challenged in their SLP in the Hon'ble Supreme Court and the Hon'ble Supreme Court has dismissed their SLP.

(IV) If the Hon'ble Supreme Court did not want the four Petitioner police officers to be prosecuted, as per our SLP No. 25082 of 2013, then, the Hon'ble Supreme Court would not have granted us the liberty to approach the Bombay High Court.

(V) Moreover, the Bombay High Court in its final judgment has not maintained requirement of prior sanction for prosecution of guilty police officers under section 156(3) of the Code of Criminal Procedure by us because the High Court has admitted the false case of police (that we were going to commit suicide) and also forgery done by police in station diary and a criminal conspiracy under section 120B, which require no sanction to prosecute such police officers filing false cases and doing forgery and a criminal conspiracy under section 120B, as these are not part of their official duties and the Hon'ble Supreme Court has also upheld the same by dismissing the SLP of police and not asking for sanction to prosecute them.

J.V.Salunke,PA WP.427&439.2014.Judgment.doc 40.7) Material hiding of the facts by Petitioner police officers that Hon'ble Supreme Court has dismissed their SLP challenging Bombay High Court final judgment:

Moreover, we have also submitted to this Court a copy of the order passed by the Hon'ble Supreme Court in our SLP No.25082 of 2013 on 13th December, 2013 where the Hon'ble Supreme Court has directed us to approach this Hon'ble Court, whereas the Hon'ble Supreme Court has dismissed the SLP No.6534 of 2013 on 23rd September, 2013.

That the Petitioner police officers have deliberately hidden and suppressed these crucial Hon'ble Supreme Court orders from this Hon'ble Court to get a favourable order by playing a fraud on this Court. Hence, their Petitions are liable to be

dismissed in limine with heavy costs and appropriate action against the Petitioners for contempt of Hon'ble Supreme Court and High Court and the said ex-parte orders are liable to be vacated.

40.8) 2014 Hon'ble Supreme Court Judgment - No sanction required to prosecute police officers who file false cases/charge-

sheet:

In the matter of Perumal V. Janaki (2014) 5 SCC 377, the Hon'ble Supreme Court (CJI P. Sathasivam and Chelameswar) has J.V.Salunke,PA WP.427&439.2014.Judgment.doc laid down a clear law to prosecute police officers who file false charge-sheet/case.

40.9) Hon'ble Supreme Court judgment - No sanction required in cases of misuse and abuse of power by police:

In the case of Choudhury Parveen Sultana vs. State of West Bengal and Anr. reported in 2009 (1) SCR 99, Hon'ble Supreme Court Justice Altamas Kabir and Justice Markandey Katju holds that no sanction is required to prosecute public servants (Deputy Superintendent of Police in this case), as all their acts in the purported discharge of the official duties cannot be brought under the protective umbrella of section 197 of the Code of Criminal Procedure, 1973. On the other hand, there can be cases of misuse and abuse of power vested in a public servant which can never be a part of their official duties.

Annexed and marked as Exhibit 'C' is the copy of the above Supreme Court judgment.

40.10) No sanction required as per clear law laid down by the Hon'ble Supreme Court in para 36 of the judgment in the case of D.K. Basu vs. State of West Bengal reported in (1997) 1 SCC 416.

J.V.Salunke,PA WP.427&439.2014.Judgment.doc 40.11) In the case of Arnesh Kumar vs. State of Bihar reported in (2014) 8 SCC 273, again the Apex Court has laid down clear directions on actions to be taken against police officers and Magistrates arresting and jailing the accused illegally and unnecessarily:

Criminal Law Criminal Procedure Code, 1973 Ss. 41, 41-A and 57 - Power of police to arrest without warrant - Proper exercise of - balance between individual liberty and societal order while exercising power of arrest - directions issued - directions issued herein, held, shall apply to all such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine - police officers shall not arrest the accused unnecessarily and Magistrate shall not authorise detention casually and mechanically

> - failure to comply with these directions, shall, apart from rendering police officers concerned liable for departmental action, also make them liable to be punished for contempt of court - authorising detention without recording reasons by Judicial Magistrate concerned shall be liable for departmental action by appropriate High Court - Copy of judgment to be forwarded to Chief Secretaries as also Director Generals of J.V.Salunke,PA WP.427&439.2014.Judgment.doc Police of all States and UT and Registrar General of High Courts for ensuring compliance therewith, (2014) 8 SCC 273-A. Criminal Law-Police Colonial attitude of police persistence of, even after 60 years of independence deprecated, (2014) 8 SCC 273-C. 40.12) Catena of the Hon'ble Supreme Court and Hon'ble High Court judgments - no sanction is required if police officers file false cases, do forgery, perjury, criminal conspiracy to commit criminal offences to jail any person.

41) We have quoted verbatim from their notes of arguments tendered on different occasions only because they should not have any grievance. The vehemence with which the complainants argued demonstrated that they were deeply hurt, disturbed and therefore agitated by the wrongful and illegal arrest. Besides the above, it is orally urged that the case law cited by the Petitioners is distinguishable on facts. It is evident, according to the complainants, that for prosecution of offences under the Indian Penal Code, a sanction under section 19 of the Prevention of Corruption Act, 1988 is not necessary.

Similarly, the requirement of section 197 of the Code of Criminal Procedure, 1973, in this case, would not apply, as the acts committed are not in the course of performance and discharge of official duty. It is urged that none of the police officers can forge or tamper the official J.V.Salunke,PA WP.427&439.2014.Judgment.doc records. Such tampering or forging is a offence and punishable act and merely because they are high ranking police officers does not mean that they are empowered to commit offences. They are only protected if they act honestly and bonafide. It is found that they have not acted as such and that is why their conduct is strongly commented upon by this Court. In the circumstances, the contentions of the Petitioners are entirely untenable and should not be accepted. The proceedings in the present case are pursuant to liberty granted by this Court. Secondly, it is apparent that the learned Judge was not required to give a detailed judgment nor comment upon the merits of the case at this prima facie stage. The learned Judge was obliged to record only a prima facie view and on why she deems it necessary to cause a investigation to be made into the allegations in the complaint of the present complainants. That she has sufficiently indicated and whether there were adequate materials or otherwise cannot be determined by this Court at this prima facie stage. In other words, in writ jurisdiction, the adequacy of the reasons assigned in the impugned order cannot be gone into. This Court is not a Court of Appeal. It is only scrutinising the impugned order for its legality and validity. In the circumstances, and when the order is not erroneous and illegal nor is it perverse, then, the same deserves to be upheld. It must be upheld in its entirety. The Petitions be dismissed.

J.V.Salunke,PA WP.427&439.2014.Judgment.doc

42) Reliance is placed upon the following decisions of the Hon'ble Supreme Court and several High Courts:-

(i) District Development Officer vs. Maniben Virabhai AIR 2000 Guj. 255.

(ii) Narayandas s/o. Hiralalji Sarda vs. State of Maharashtra and Anr. 2009(2) Mh. L. J. 426.

(iii) B. S. Khatri vs. Stateof Maharashtra 2004(1) Mh. L. J. 474.

(iv) Hari Singh Etc. vs. State of Haryana 1993 SCC (3)

114.

(v) Sundarjas Kanaylal Bhathija and Ors. vs. The Collector, Thane, Maharashtra AIR 1990 SC 261.

(vi) Mahadeolal Kanodia vs. The Administrator General of West Bengal AIR 1960 SC 936.

(vii) Perumal vs. Janaki (2014) 5 SCC 377.

(viii) Choudhury Parveen Sultana vs. State of West Bengal and Anr. 2009 (1) SCR 99.

(ix) D. K. Basu vs. State of West Bengal (1997) 1 SCC 416.

(x) Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273.

(xi) Niraj Ramesh Jariwala vs. Mahadev Pandurang Nikam Criminal Writ Petition No. 856 of 2012.

(xii) Afzal vs. State of haryana AIR 1996 SC 2326.

(xiii) Secretary Hailakandi Bar Association vs. State of Assam 1996 SCC 9 74.

(xiv) G.L. Gupta, Advocate vs. R. K. Sharma 2000 AIR SC 0- 3632.

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(xv) Mohd. Zahid vs. Govt. of NCT of Delhi 1998 Cri. L. J. 2908.

(xvi) Salma Babu Shaikh vs. State of Maharashtra Mh. L. J. 3 182.

(xvii) Nandkumar S. Kale vs. Bhaurao Chandrabhanji Tidke 2007 All MR (Cri.) 2737.

(xviii) Kodali Puranchandra Rao vs. Public Prosecutor Andhra Pradesh 1975-SCC-2-570.

(xix) Raman Lal vs. State of Rajasthan and Ors. 2001 Cri. L.J. 800.

(xx) Prabatabai Sakharam Taram vs. State of Maharashtra 2006 Cri. L. J. 0-2202.

(xxi) Kapol Co-op. Bank Ltd. vs. State of Maharashtra 2005 Cri. L. J. 765.

(xxii) Rajkumar Pandurang Narute vs. State of Maharashtra Criminal Application No. 488 of 2011.

(xxiii) Prabhakar V. Sinari vs. Shanker Anant Verlekar AIR 1969 SC 686.

(xxiv) Rabindranath Satpathy vs. Hina Sethy Criminal MC No. 470 of 2004.

(xxv) State of Maharashtra vs. Shashikant s/o. Eknath Shinde 2013 All MR (Cri.) 3060.

(xxvi) Indian Bank vs. Satyam Fibers (India) Pvt. Ltd. 1996 (5) SCC 550.

(xxvii) Lazarus Estates Ltd. vs. Beasley (1956) 2 QB 702.

(xxviii) State of U. P. vs. O. P. Sharma 1996 (7) SCC 705.

(xxix) L. V. Jadhav vs. Shankarrao Abasaheb Pawar and Ors. AIR 1983 SC 1219.

(xxx) Trisuns Chemical Industry vs. Rajesh Agarwal and Ors. (1999) 8 SCC 686.

J.V.Salunke,PA WP.427&439.2014.Judgment.doc (xxxi) Rajesh Bajaj vs. State N. C. T. of Delhi and Ors. AIR 1999 SC 1216.

(xxxii) Ram Biraji Devi vs. Umesh Kumar Singh and Ors. 2006 AIR SCW 2543.

(xxxiii) State of West Bengal vs. Narayan K. Patodia AIR 2000 SC 1405.

43) For properly appreciating the rival contentions, we would have to make a brief reference to the allegations in the complaint. The complaint proceeds to allege that the complainants are the unmarried son and the mother residing at the address mentioned in the cause title with a mentally challenged daughter of the complainant No. 1 mother.

Her second daughter Smt. Sumita Karani is residing elsewhere with her husband. Sumita Karani has three sons, one resides at Andheri, one at Dubai and one in USA. It is claimed that Sumita Karani has sold her Vashi flat as also her Andheri flat, that is something with which we are not concerned. It is alleged that in or around August, 2010, Manoj Karani, the grandson of complainant No. 1 and son of Sumita Karani residing at Dubai approached complainant No. 1 with an intention of obtaining her signatures forcibly on some documents and obtaining her bank details. Complainant No. 1 claims to have severed her relations with her daughter Sumita Karani and her grandsons in 2007. When this incident happened in August, 2010, the complainants protested and the grandson

of complainant No. 1 Manoj Karani left the premises of the J.V.Salunke,PA WP.427&439.2014.Judgment.doc complainants. But his threats and intimidation continued and that is why they approached the nearest police station to lodge a complaint against him. However, it is alleged that cognizance of the same was not taken. The police only registered a non-cognizable case. However, it is alleged that the threats from the grandson continued and the complainants were threatened with dire consequences by the grandson and by stating that he has links with the underworld. The matter was followed up constantly by the complainants, but they were informed that the police cannot assist them, as the dispute is of civil nature.

Then, there were protests from complainant No. 1 and she addressed complaints, including to the Chief Minister of the State. She also sat on a protest fast. However, the allegations are that instead of the police assisting the complainants, they visited their house and the names of the police officers are set out in para 10 and thereafter, the complainants were taken away from their residence and the mentally challenged daughter of complainant No. 1 remained at the residence alone. The complainants were taken to the police station and made to sit and later on they were shown as arrested and produced before the Magistrate. Thus, the allegations are that instead of assisting the complainants and registering their case, they themselves were shown as accused and illegally arrested by the police officers of the concerned police station. On their production before the learned Magistrate, these J.V.Salunke,PA WP.427&439.2014.Judgment.doc complainants were let off. However, it is thereafter that they protested against their illegal detention and moved this Court by filing a Writ Petition being Writ Petition (Cri.) No. 1857 of 2012. This Court having accepted the allegations, directed payment of compensation for this illegal and unlawful arrest. However, this Court did not issue a writ of mandamus directing prosecution of guilty police officials. This Court gave liberty to the Petitioners therein (complainant Nos. 1 and 2) to launch criminal prosecution if so advised. The complainants have, pursuant to this liberty filed the instant complaint. They, however, make allegations in this complaint that an affidavit of the Senior Police Inspector was filed in the High Court proceedings denying the allegations of ill-treatment and handcuffing. However, this Court found that the affidavit does not disclose the true state of affairs and that the version of the complainants inspires confidence. This Court came to the conclusion that the directions of the Hon'ble Supreme Court in the case of D. K. Basu (supra) have not been complied with. The specific allegation, thereafter, in the complaint, is that when this Court perused the documents filed by the Assistant Public Prosecutor it recorded in its judgment that the station diary entry No. 26 does not make any reference to the complainant and that the complainants declined to sign the arrest form. Further, the affidavit of Senior Police Inspector Raosaheb Sardesai dated 3rd August, 2012 does not make any reference J.V.Salunke,PA WP.427&439.2014.Judgment.doc to the arrest form being drawn. Thus, the record of the Writ Petition has been relied upon to allege commission of serious offences. The allegations are based on the stand taken in the affidavit in reply filed in the Petition in this Court and the documents referred in these affidavits.

It is the case of the complainants that there is tampering and forgery of the official records and that is to support the arrest of the complainants, which was subsequently found to be illegal and unconstitutional.

44) The complainants rely on the station diary entry and it is alleged that there is not even a reference to the arrest form. There is no entry in the station diary that arrest form was drawn and the complainant and her son declined to sign the same.

45) It is pertinent to note that in the judgment of this Court in Writ Petition (Cri.) No. 1857 of 2012 it is held that at the time when the police officers visited the residence of complainant No. 1, she was neither sitting on hunger fast nor had she taken any steps at initiating the fulfillment of the threat of suicide. If complainants had been arrested, as is contended by the police officials, the signatures of the complainants ought to have appeared on the arrest panchanama. This Court held that the version of the Respondent police officials that the complainants declined to sign the panchanama is after thought. There is no corresponding station diary entry which would fortify the J.V.Salunke,PA WP.427&439.2014.Judgment.doc submission of the police officials that the complainants had declined to sign the arrest form. This Court held that the complainants were called to the police station under the pretext that an offence would be registered on the basis of the complaint of complainant No. 1, however, they were detained in the police station and thereafter suddenly produced in the Court of the Magistrate and to their dismay learnt that they had been arrested. Thus, this Court found that it can award damages/compensation to the complainants for the illegal arrest, but as far as directing the police to register an offence, that is not possible in the Writ Jurisdiction and the complainants are at liberty to initiate such proceedings as are permissible in law.

46) It is not necessary for us to express any conclusive opinion with regard to the allegations in the complaint. We are of the view that a perusal of the complaint as a whole reveals that there are specific allegations at least against two police officials, both of whom are Petitioners before us in Writ Petition (Cri.) No. 439 of 2014. We have found that there are specific allegations against these officials and of a prima facie nature showing the complainants as accused in a criminal case, forgery in station diary and violations of the directions of the Hon'ble Supreme Court in D. K. Basu's case (supra), while effecting arrest. The complainants have stated in the complaint that the original J.V.Salunke,PA WP.427&439.2014.Judgment.doc arrest form, which was produced, contains endorsement, which was subsequently made that the arrestee declined to sign the arrest form.

The handwriting appears to be different than the handwriting in which full details have been filled in. These allegations have been made in the complaint and by arraying two police officials Laxman Kale and Raosaheb Sardesai as accused Nos. 1 and 2. The allegations against these two police officials are of the aforesaid nature. They are to be found in several paragraphs in the complaint and which pertain to the illegal arrest and thereafter filing of an affidavit justifying it. That affidavit dated 3rd August, 2012, filed in Writ Petition (Cri.) No. 1857 of 2012 is specifically referred to in the complaint and a copy thereof has been annexed. There are allegations with regard to the tampering and forging of the police station records. It is in these circumstances that we find that there is prima facie material as far as these two accused are concerned.

47) The arguments of these accused, in their Petition, are not independent but they adopt the stand of the Petitioners in Writ Petition (Cri.) No.427 of 2014. Mr. Thorat, then places reliance upon the principles laid down in the judgment of the Hon'ble Supreme Court in the case of Maksud Saiyed vs.

State of Gujarat and Ors. reported in (2008) 5 SCC 668. The Hon'ble Supreme Court, in this judgment has J.V.Salunke,PA WP.427&439.2014.Judgment.doc set out and reiterated the well settled principles. While exercising jurisdiction under section 156(3) or section 200 of the Code of Criminal Procedure Code, 1973, the Magistrate is required to apply his mind.

Summoning of an accused in a criminal case is a serious matter and the criminal law cannot be set into motion as a matter of course. We are aware of these principles, but what we find is that the learned Judge in the present case perused the complaint, heard complainant No. 2 and perused the documents. After referring to the allegations in the complaint and the judgment and order of this Court in the Criminal Writ Petition, the learned Judge expressed her agreement with the arguments of complainant No. 2. She arrived at a prima facie opinion that the complaint makes out a case for directing the concerned police station to investigate the crime insofar as the offence under Chapter XI of the Indian Penal Code. It contains sections carving out offences of giving false evidence, fabricating false evidence, punishment for false evidence, giving or fabricating false evidence with intent to procure conviction of offence with imprisonment for life or imprisonment for a term, causing disappearance of evidence of offence or giving false information to screen offender in a capital offence, making false statement in a declaration, which is by law receivable as evidence, using such declaration knowingly to be false, conspiring with each other and to commit these offences so also offences punishable under sections J.V.Salunke,PA WP.427&439.2014.Judgment.doc 466, 469, 471, 474, 167, 197 of the Indian Penal Code. Thus, prima facie allegations pertain to public servant framing an incorrect document with an intent to cause injury, using that document and to support a version of the accused and detention of the complainants, which was subsequently declared as illegal and unconstitutional and forgery and tampering with public records. At this prima facie stage, we are not concerned with the merits of these allegations. Suffice it to state that we have, as far as accused Nos. 1 and 2 are concerned, found that the complaint, if read as a whole, makes out a case of commission of a criminal offence. All further steps pursuant to the directions of the learned Magistrate under section 156(3) of the Code of Criminal Procedure, 1973 would necessarily follow. At this stage, we are not concerned with the guilt of the Petitioners in Writ Petition (Cri.) No.439 of 2014. These Petitioners are the original accused Nos. 1 and 2.

48) The argument of Mr. Thorat, thereafter, is that these complainants themselves have indulged in several objectionable acts, including casting serious aspirations on the integrity of some of the Hon'ble Judges of this Court. In that regard, our attention is invited to the order passed in Criminal Writ Petition No. 4188 of 2014 filed by these complainants by naming some of the Hon'ble Judges as party Respondents. We do not see how this act of the complainants has any J.V.Salunke,PA WP.427&439.2014.Judgment.doc relevance to the present controversy. We need not express any opinion on the conduct of the complainants.

49) Mr. Thorat then argued that the learned Judge has failed to record the requisite satisfaction in law. He would submit that the order is cryptic and contains no reasons. However, we do not think that the learned Judge was required to render any elaborate or detailed findings. The order reveals the prima facie satisfaction arrived at after perusal of the complaint, documents, including the judgment and order of this Court and the brief submissions of the complainants. This Court itself, in

its judgment, has referred to the stand of the Respondents/original accused Nos. 1 and 2 in the affidavit in reply and the learned Judge, bearing in mind the allegations of conspiracy has found a prima facie case for directing investigation under section 156(3) of the Code of Criminal Procedure, 1973. As far as these two accused are concerned, namely accused Nos. 1 and 2, we do not find that the impugned order is vitiated by a non application of mind or excess of jurisdiction. The prima facie allegations are that these two accused conspired and sought to take revenge on the complainants, therefore, they were arrested illegally and jailed in a false case. It is in these circumstances, we do not find the order of the learned Judicial Magistrate, First Class, Vashi to be patently illegal or erroneous so as to J.V.Salunke,PA WP.427&439.2014.Judgment.doc call for interference in writ jurisdiction under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, at the instance of the Petitioners in Writ Petition (Cri.) No. 439 of 2014.

50) As far as the contentions with regard to prior sanction so as to initiate criminal action against these police officials, what we find is that the learned Judge in para 2 of the order held that whether these police officers will be immune from prosecution is a matter of trial and passing order under section 156(3) of the Code of Criminal Procedure, 1973 is part of investigation and not a cognizance of an offence taken by the Court. The concerned investigating officer to whom the matter will be assigned is at liberty to get sanction as provided under the law.

Great emphasis has been laid in the grounds of Writ Petition (Cri.) No. 439 of 2014 on the correctness of these prima facie observations. The specific ground in that regard and which appears to have been completely copied from the memo of the Writ Petition (Cri.) No. 427 of 2014 is that the impugned order and the private complaint deserve to be quashed and set aside for simple reason that before filing such complaint, no sanction, envisaged under section 197 of the Code of Criminal Procedure, 1973 is obtained by the complainants. If the allegations in the complaint are perused, the same will reveal that the J.V.Salunke,PA WP.427&439.2014.Judgment.doc complaint is at the most in respect of illegal arrest and wrongful detention of Respondent Nos. 1 and 2 and also in respect of preparation of arrest panchanama. It is therefore submitted that the said act alleged is in discharge of official duty. Hence, sanction envisaged by section 197 of the Code of Criminal Procedure, 1973 is required even for filing a private complaint. Since that is not obtained, the private complaint as well as the impugned order deserve to be quashed and set aside.

51) It is not necessary to go into rival contentions on this point simply because Mr. Thorat's arguments overlook the basic difference and noted in the sanction that is required by section 197 of the Code of Criminal Procedure, 1973 and by section 19 of the Prevention of Corruption Act, 1988. In a decision in the case of General Officer Commanding vs. CBI and Anr. reported in AIR 2012 SC 1890, the Hon'ble Supreme Court has re-emphasised the legal principles. It has reiterated its earlier view in the case of Shambhoo Nath Misra vs. State of U. P. reported in AIR 1997 SC 2102. In Sambhoo Nath's case (supra), the Hon'ble Supreme Court held as under:-

> "....
>
> 4. Section 197(1) postulates that "when any person who is a public servant not removable from his office, save by or with the sanction of the Government, is accused

of any offence alleged to have been committed by him, while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the appropriate Government/authority". The essential requirement postulated for sanction to prosecute the public J.V.Salunke,PA WP.427&439.2014.Judgment.doc servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant's act is in furtherance of his performance or his official duties. If the act/omission is integral to performance of public duty, the public servant is entitled to the protection under Section 197(1) of Cr. P. C. without previous sanction, the complaint/charge against him for the alleged offence cannot be proceeded with the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer. The requirement of sanction by competent authority of appropriate Government is an assurance and protection to the honest officer who does official duty to further public interest. However, performance of public duty under colour of public duty cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records a finding that the crime and the official duty are not integrally connected.

5. The question is: when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot be sustained.

....."

52) In the later decision (AIR 2012 SC 1890), while following this view, the Hon'ble Supreme Court has held as under:-

J.V.Salunke,PA WP.427&439.2014.Judgment.doc "....

22. The protection given under Section 197, Cr. P. C. is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for

offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. Use of the expression "official duty" implies that the act of omission must have been done by the public servant in the course of his service and that it should have been done in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty, then it must be held to be official to which applicability of Section 197, Cr. P. C. cannot be disputed. (See R. Balkrishna Pillai v. State of Kerala & Anr., AIR 1996 SC 901: (1996 AIR SCW 293); Center for Public Interest Litigation & Anr. v. Union of India & Anr., AIR 2005 SC 4413 : (2005 AIR SCW 5252); Rakesh Kumar Mishra v. State of Bihar & Ors., AIR 2006 SC 820 : (2006 AIR SCW 189); Anjani Kumar v. State of Bihar & Ors., AIR 2008 SC 1992 : (2008 AIR SCW 2870); and State of Madhya Pradesh v. Sheetla Sahai & Ors., (2009) 8 SCC 617 :

(AIR 2009 SC (Supp) 1744 : 2009 AIR SCW 5514)).

23. The question to examine as to whether the sanction is required or not under a statute has to be considered at the time of taking cognizance of the offence and not during enquiry or investigation. There is a marked distinction in the stage of investigation and prosecution. The prosecution starts when the cognizance of offence is taken. It is also to be kept in mind that the cognizance is taken of the offence and not of the offender.

The sanction of the appropriate authority is necessary to protect a public servant from unnecessary harassment or prosecution. Such a protection is necessary as an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the J.V.Salunke,PA WP.427&439.2014.Judgment.doc honest officer. However, performance of public duty under colour of duty cannot be camouflaged to commit a crime. The public duty may provide such a public servant an opportunity to commit crime and such issue is required to be examined by the sanctioning authority or by the court. It is quite possible that the official capacity may enable the public servant to fabricate the record or mis-appropriate public funds etc. Such activities definitely cannot be integrally connected or inseparably inter- linked with the crime committed in the course of the same transaction. Thus, all acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of requirement of sanction. (Vide: The State of Gujarat, AIR 1968 SC 1323;

Hareram Satpathy v. Tikaram Agarwala & Ors., AIR 1978 SC 1568; State of Maharashtra v. Dr. Budhikota Subbarao, (1993) 3 SCC 339; Anil Saran v. State of Bihar & Anr., AIR 1996 SC 204 :

(1995 AIR SCW 3937); Shambhoo Nath Misra v. State of U. P. & Ors., AIR 1997 SC 2102 : (1997 AIR SCW 1938); and Choudhury Parveen Sultana v. State of West Bengal & Anr., AIR 2009 SC 1404 : (2009 AIR SCW 861)).

24. In fact, the issue of sanction becomes a question of paramount importance when a public servant is alleged to have acted beyond his authority or his acts complained of are in dereliction of the duty. In such an eventuality, if the offence is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, grant of prior sanction becomes imperative. It is so, for the reason that the power of the State is performed by an executive authority authorised in this behalf in terms of the Rules of Executive Business framed under Article 166 of the Constitution of India insofar as such a power has to be exercised in terms of Article 162 thereof. (See : State of Punjab & Anr. v. Mohammed Iqbal Bhatti, (2009) 17 SCC 92 : (2010 AIR SCW 1186)). .....

27. This Court in Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan & Ors., AIR 1998 SC 1524 : (1998 AIR SCW 544), held as under:

"..... The legislature mandate engrafted in sub-section (1) of Section 197 debarring a Court from taking cognizance of an offence except with a previous sanction of the concerned Government in a case where the acts complained of are alleged to have been committed by public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the Court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the Court on process being issued, by J.V.Salunke,PA WP.427&439.2014.Judgment.doc an application indicating that Section 197(1) is attracted merely assist the Court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings."

28. In Matajog Dobey v. H. C. Bhari, AIR 1956 SC 44, the Constitution Bench of this Court held that requirement of sanction may arise at any stage of the proceedings as the complaint may not disclose all the facts to decide the question of immunity, but facts subsequently coming either to notice of the police or in judicial inquiry or even in the course of prosecution evidence may establish the necessity for sanction. The necessity for sanction may surface during the course of trial and it would be open to the accused to place the material on record for showing what his duty was and also the acts

complained of were so inter-related or inseparably connected with his official duty so as to attract the protection accorded by law. The court further observed that difference between "acting or purporting to act"

> in the discharge of his official duty is merely of a language and not of substance.
>
> On the issue as to whether the court or the competent authority under the statute has to decide the requirement of sanction, the court held:
>
> "Whether sanction is to be accorded or not is a matter for the Government to consider. The absolute power to accord or withhold sanction conferred on the government is irrelevant and foreign to the duty cast on the Court, which is the ascertainment of the true nature of the act..... There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation."

.....

39. In broad and literal sense 'cognizance' means taking notice of an offence as required under Section 190, Cr. P. C. 'Cognizance' indicates the point when the court first takes judicial notice of an offence. The court not only applies its mind to the contents of the complaint/police report, but also proceeds in the manner as indicated in the subsequent provisions of Chapter XIV of the Cr. P. C. (Vide: R. R. Chari v. The State of Uttar Pradesh, AIR 1951 SC 207; and State of W. B. & Anr. v. Mohd. Khalid & Ors., (1995) 1 SCC 684 : (AIR 1995 SC 785 : 1995 AIR SCW 559)."

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53) In such circumstances, for the present, we do not feel that the impugned order requires interference on the point of fulfillment of the requirement of prior sanction under section 197 of the Code of Criminal Procedure, 1973.

54) As far as the other Criminal Writ Petition No. 427 of 2014 is concerned, there, the two Petitioners were, at the relevant time, serving as Deputy Commissioner of Police Zone - I, Vashi, Navi Mumbai and the Petitioner No. 2 was, at the relevant time, working as Commissioner of Police, Navi Mumbai. As far as these two Petitioners are concerned, a perusal of the complaint and as a whole does not reveal that any specific act is attributed to them. The allegation against them in para 23 is that they submitted a false reply, but reference in this very paragraph is made to the affidavit of accused No. 1 Laxman Kale dated 22nd February, 2013. During the course of arguments, however, the complainant submitted that even these two officers and particularly Petitioner No. 2 have been named by them for their overt acts. The reference in that regard is made to a complaint made

against Petitioner No. 2 and highlighting his role. That complaint is contained in a letter to the Registry of this Court dated 20th January, 2012. The request is to peruse this letter and then draw the requisite inferences. It is stated that the falsity of the stand of this Petitioner was revealed when the J.V.Salunke,PA WP.427&439.2014.Judgment.doc complaint that was made by the complainants to all higher authorities and dignitaries including the Hon'ble Prime Minister of India was forwarded to this Court and this Court sent a letter to Petitioner No. 1 forwarding therewith copies of the complaints of the complainants.

Thus, the allegations are that without the consent and approval of the then Deputy Commissioner of Police and the Commissioner of Police, Navi Mumbai, the other two accused, who are subordinate officials, would not have dared effecting arrest of the complainants and thereafter tried to support it though it was patently illegal and unconstitutional.

55) We do not see how, at this prima facie stage, even from these allegations, could a conclusion be drawn that there is a conspiracy and of which these two Petitioners are also a part. Mr. Desai, learned Senior Counsel is right in his contentions that as far as these Petitioners are concerned, there are no prima facie findings in the impugned order.

The learned Judge has merely held that the accused are police officers posted at Navi Mumbai. However, there is no reference to any specific act and attributable to the Petitioners in Writ Petition (Cri.) No. 427 of 2014, original accused Nos. 3 and 4. If there is an averment or complaint for violation of the principles laid down by the Hon'ble Supreme Court in the case of D. K. Basu (Supra) and the judgment and J.V.Salunke,PA WP.427&439.2014.Judgment.doc order of this Court in the Criminal Writ Petition of the complainants, then, that by itself was not enough at this prima facie stage to direct investigation by the concerned police station qua these accused. Prima facie, these accused were approached in relation to certain acts attributed to original accused Nos. 1 and 2. From that alone, at this prima facie stage, no inference could have been drawn by the learned Magistrate so as to direct investigation under section 156(3) of the Code of Criminal Procedure, 1973. We do not find the requisite prima facie satisfaction from the order of the learned Magistrate impugned in this case. That these two police officers, who are high ranking, have been arrayed as accused in relation to the illegal and unconstitutional arrest of the complainants is true but whether they conspired and brought about this arrest and prima facie in what manner having not been indicated nor the record before this Court revealing this position that we are of the opinion that the impugned order as against them cannot be sustained. As far as these high ranking police officers are concerned, the learned Judge should have applied her mind and on careful perusal of all the materials, proceeded in accordance with law.

56) The learned Judge should have adverted to the caution administered by the Hon'ble Supreme Court in several decisions. The Hon'ble Supreme Court has cautioned the Magistrates that while J.V.Salunke,PA WP.427&439.2014.Judgment.doc exercising their powers under section 156(3) of the Code of Criminal Procedure, 1973, they should not act in a mechanical or casual manner and go on with the complaint after getting the report. The Magistrate is required to apply his mind and that application of mind should be reflected in the order. Though detailed expression of his/her views is not required or warranted, but the prima facie reasons must indicate application of mind to the

relevant facts.

57) It is not necessary for us to examine the rival contentions and particularly about the requirement of obtaining prior sanction against these accused. The reliance of Mr. Desai on the judgment of the Hon'ble Supreme Court in the case of Anil Kumar and Ors.(supra) need not be considered any further, for, that was a case where the Special Judge/Magistrate referred a private complaint made under section 200 of the Code of Criminal Procedure, 1973, for investigation in exercise of powers conferred under section 156(3) of the Code of Criminal Procedure without the provision of valid sanction order under section 19 of the Prevention of Corruption Act, 1988. Having found that the requirement of sanction for offences punishable under the Prevention of Corruption Act, 1988 and the Indian Penal Code is distinct and separate, we do not wish to pursue the reliance on this judgment any further. Similarly, the judgment which has been relied and of this Court in Criminal Writ Petition No. 4775 of 2014 in the case of Mr. J.V.Salunke,PA WP.427&439.2014.Judgment.doc Pandharinath Narayan Patil and Ors. vs. The State of Maharashtra decided on 30th March, 2015, we find that the grievance raised by the original complainant in the application and the offences registered against the Petitioner in that case related to the act performed by them in discharge of their official duty and found to be reasonably connected therewith. Therefore, they attracted the bar under section 197 of the Code of Criminal Procedure, 1973. In that context, the duty of the Magistrate has been emphasised.

58) We are mindful of the dictum in the Hon'ble Supreme Court judgment in the case of Mrs. Priyanka Srivastava and Anr. (supra).

Moreover, we have applied the very principles to the facts of the present case.

59) As a result of the above discussion, we find that for the time being and presently on the materials produced, the learned Magistrate was not justified in directing the investigation under section 156(3) of the Code of Criminal Procedure insofar as the original accused Nos. 3 and 4, the Petitioners in Writ Petition (Cri.) No. 427 of 2014. The Rule in that Petition requires to be made absolute. The order passed by the learned Magistrate is therefore quashed and set aside only insofar as the original accused Nos. 3 and 4 are concerned.

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60) The complainants, throughout argued that this Court cannot consider the submissions of Mr. Desai and accept them, for, that would result in putting a premium on the illegal and unconstitutional acts of the high ranking police officials. Their contentions throughout are that even the high ranking police officials are not above law.

Further, they argued that the charges are not under the Prevention of Corruption Act, 1988. Then, they argued that the charge against them is not for any offence punishable under the Prevention of Corruption Act, 1988 but for offences punishable under the Indian Penal Code.

Therefore, requirement of previous sanction as far as they are concerned is not required to be adhered to.

61) We have clarified that we have not considered the issue of sanction nor have we quashed the impugned order qua these accused on the ground of non consideration of the issue of prior sanction under section 197 of the Code of Criminal Procedure, 1973. We have quashed and set aside the impugned order against them only because the learned Judge failed to adhere to the binding principles as laid down in the Hon'ble Supreme Court judgment while ordering investigation under section 156(3) of the Code of Criminal Procedure, 1973. The caution administered by the Hon'ble Supreme Court should have been present to the mind of the learned Judge. She was required to apply her mind and her application of mind should have been reflected in the J.V.Salunke,PA WP.427&439.2014.Judgment.doc reasons assigned by her to direct criminal investigation against all accused. It was necessary for her to have referred to the specific allegations and the role of accused Nos. 3 and 4 and merely because they were, at the relevant time, posted as the Deputy Commissioner of Police and the Commissioner of Police, Navi Mumbai, should not have resulted in directing investigation qua them. The allegations in the complaint required at least a prima facie scrutiny and ordering investigation under section 156(3) is not a mechanical or casual act. It is on that ground that we have faulted the impugned order.

61A) In the view that we have taken, it is not necessary to refer to all the judgments cited by the complainants appearing in person.

Some of them are not necessary to be referred to simply because they are on the point of maintainability of the Criminal Writ Petitions and grant of any interim stay/relief therein and its duration. Since the Criminal Writ Petitions were admitted and were ripe for hearing, we decided to dispose of them finally. Therefore, the point of maintainability need not be gone into. Once it need not be gone into, then, the question, whether a Criminal Writ Petition would lie or the Petitioners are obliged to file a Criminal Application need not be decided. Even the judgments on that point require no further reference.

Similarly, we have not gone into the other aspect as to whether a interim stay was required to be granted in both the Petitions and if so, J.V.Salunke,PA WP.427&439.2014.Judgment.doc what should have been its duration. Once the matters are decided finally by this judgment, then, the legal principles and the judgments highlighting them are not required to be referred any further. Lastly, the judgments cited on the point of sanction under section 197 of the Code of Criminal Procedure, 1973 by the complainants need not be referred because we have already reproduced, in paras 51 and 52, the paragraphs from a recent Supreme Court judgment so as to remind all concerned about the ambit and scope of section 197 of the Code of Criminal Procedure, 1973 and its application to the facts and circumstances of the given case. Therefore, each and every judgment cited by the complainants on this point need not be referred any further.

The learned Magistrate having referred to the judgment of this Court in Criminal Writ Petition No. 1857 of 2012 and thereafter directed the investigation under section 156(3) of the Code of Criminal Procedure, 1973 against the Petitioners in Criminal Writ Petition No. 439 of 2014, which order we

have upheld, then, all the more the issue of sanction and prior to the directions issued, need not be considered in further details. We clarify that the issue of sanction and the application of the legal principles summarised above is open for being raised and considered. We have not foreclosed the arguments of both sides on the same.

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62) With this clarification, it is strictly not necessary to observe anything more. However, the complainants are appearing in person and have throughout argued their case in person. We are not giving any clean chit nor acquitting any police officials, including high ranking police officials. It is obvious that the complainants are not aware of the niceties or intricacies of criminal law. They are also not aware of the ambit and scope of the powers conferred on a criminal Court. It is not as if the criminal Court is powerless. It is not as if all materials have to be produced and to support the allegations in the private complaint and for not producing them at the threshold, the complainants must suffer.

The law guarantees justice and provides adequate safeguards against miscarriage of justice. In this regard, it is not necessary to observe and clarify that if after investigation and during the course of trial further material emerge and which would show the involvement or complicity of even these high ranking police officials, then, the criminal Court is not precluded or prevented in law from proceeding against them and by naming them as accused. In that regard, the following principles emerging from applicability of section 319 of the Code of Criminal Procedure are relevant. In a Constitution Bench judgment in the case of Hardeep Singh vs. State of Punjab and Ors. reported in AIR 2014 SC 1400 the Hon'ble Supreme Court has guided the criminal Courts as under:-

> J.V.Salunke,PA WP.427&439.2014.Judgment.doc ".....
>
> 35. In view of the above, the law can be summarised to the effect that as 'trial' means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the 'trial' commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken.
>
> 36. Section 2(g), Cr. P. C. and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under Cr.P.C. by the Magistrate or the court. The word 'inquiry' is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-

sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial.

37. Even the word "course" occurring in Section 319, Cr.P. C., clearly indicates that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial and the trial stage. The word "course" therefore, allows the court to invoke this power to proceed against any person from the initial stage of inquiry upto the stage of the conclusion of the trial. The court does not become functus officio even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused. The word "course" ordinarily conveys a meaning of a continuous progress from one point to the next in time and conveys the idea of a period of time; duration and not a fixed point of time. (See: Commissioner of Income-tax, New Delhi (Now Rajasthan) v. M/s. East West Import & Export (P) Ltd. (Now known as Asian Distributors Ltd.) Jaipur, AIR 1989 SC 836.

38. In a somewhat similar manner, it has been attributed to word "course" the meaning of being a gradual and continuous flow advanced by journey or passage from one place to another with reference to period of time when the movement is in progress. (See: State of Travancore-Cochin & Ors. vs. Shanmugha Vilas Cashewnut Factory, Quilon, AIR 1953 SC

333).

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39. To say that powers under Section 319, Cr. P. C., can be exercised only during trial would be reducing the impact of the word 'inquiry' by the court. It is a settled principle of law that an interpretation which leads to the conclusion that a word used by the legislature is redundant, should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim "A Verbis Legis Non Est Recedendum"

> which means, "from the words of law, there must be no departure" has to be kept in mind.
>
> 40) The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The Court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot re-write, recast or reframe the legislation for the reason that it has no power to legislate.

41. No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the

context and other provisions of the Statute. By construction, a provision should not be reduced to a "dead letter" or "useless lumber". An interpretation which renders a provision an otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in "an exercise in futility" and the product came as a "purposeless piece" of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was "most unwarranted besides being uncharitable." (Vide: Patel Chunibhai Dajibha etc. v. Narayanrao Khanderao Jambekar & Anr., AIR 1965 SC 1457; The Martin Burn Ltd. v. The Corporation of Calcutta, AIR 1966 SC 529; M. V. Elisabeth & Ors. v. Harwan Investment & Trading Pvt. Ltd. Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, AIR 1993 SC 1014; Sultana Begum v. Prem Chand Jain, AIR 1997 SC 1006; State of Bihar & Ors. etc. etc. v. Bihar Distillery Ltd. etc. etc., AIR 1997 SC 1511; Institute of Chartered Accountants of India v. M/s. Price Waterhouse & Anr. AIR 1998 SC 74; and The South J.V.Salunke,PA WP.427&439.2014.Judgment.doc Central Railway Employees Co-operative Credit Society Employees Union, Secundrabad v. The Registrar of Co-operative Societies & Ors., AIR 1998 SC 703).

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43. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1), Cr. P. C., can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Section 207/208, Cr. P. C., committal etc., which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind.

44. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance of Sections 207 and 208, Cr. P. C., and committing the matter if it is exclusively triable by Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209, Cr. P. C. is forbidden, by express provision of Section 319, Cr. P. C., to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

.....

49. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319, Cr. P. C., cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in Dharam Pal (CB). The dispute therein was resolved visualizing a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319, Cr. P. C. is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193, Cr. P. C. confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

50. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor the legislature could have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a J.V.Salunke,PA WP.427&439.2014.Judgment.doc person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in section 319, Cr. P. C. Accordingly, we hold that the court can exercise the power under Section 319, Cr. P. C. only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove. .....

52. What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319, Cr. P. C. acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319, Cr. P. C. is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319, Cr. P. C. at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses is being recorded.

53. Thus, the application of the provisions of Section 319, Cr. P. C., at the stage of inquiry is to be understood in its correct perspective. The power under Section 319, Cr. P. C. can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice.

63) It is therefore apparent that at this stage we are neither holding that these accused Nos. 3 and 4 have no role absolutely nor our J.V.Salunke,PA WP.427&439.2014.Judgment.doc order means otherwise. It is therefore open for the Trial Court to proceed in accordance with law and if there emerges material to apply the principles laid down in the Constitution Bench Judgment, then, the same can always be invoked and applied.

64) With this clarification, we conclude this judgment. Hence, in the light of the above discussion, the following order:-

> (i) Rule in Criminal Writ Petition No. 427 of 2014 is made absolute in terms of prayer clause (a).

(ii) Rule in Criminal Writ Petition No. 439 of 2014 is discharged and the Writ Petition is dismissed.

(iii) Criminal Application Nos. 50 and 51 of 2015 do not survive in the light of our above conclusion.

(iv) We clarify that our observations and conclusions are prima facie and tentative and shall not influence the criminal Court while proceeding and trying the criminal case.

(v) All contentions on the requirement of sanction and on merits of the charges, of both sides, are kept open.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.) J.V.Salunke,PA