Reportable

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION [CRIMINAL] NO.135 OF 2011

Sanjiv Rajendra Bhatt … Petitioner

Vs.

Union of India & Ors. … Respondents

[With W.P. (Crl.) No.204/2011]

J U D G M E N T

ARUN MISHRA, J.

1. The petitions have been filed by the petitioner under Article 32 of the Constitution. In W.P. (Crl.) No.135/2011, a prayer has been made to direct transfer of the investigation arising out of I-CR. No.149/2011 registered on the basis of FIR lodged by Mr. K.D. Panth at Ghatlodia Police Station, Ahmedabad, (Rural), under sections 189,

193, 195, 341 and 342 of the Indian Penal Code (for short "IPC") to any independent agency like CBI outside the control of the State Government. An application being Criminal Misc. Petition No.15871/2015 has been filed for issuance of further directions in the changed circumstances to appoint an independent Special Investigation Team (SIT) to conduct *de novo* investigation in the aforesaid FIR. Prayer had also been made to investigate into the additional documents filed on 29.7.2011. Proceedings for contempt under Article 129 of the Constitution read with Contempt of Courts Act, be initiated against incumbents named in the application, and such other persons as this Court may deem fit. A prayer has also been made to direct certain service providers to preserve the e-mails and/or electronic traces thereof. Criminal Misc. Petition No.15874/2015 has been filed for impleadment of certain incumbents as respondents.

2. In W.P. (Crl.) No.204/2011, a prayer has been made to transfer investigation arising out of II-CR No.3148/2011 registered on the basis of the FIR lodged by the then Additional Advocate General of State of Gujarat at Vastrapur P.S., Ahmedabad, Gujarat, under section 66 of the Information Technology Act, (for short ""the IT Act") to any independent agency like the CBI outside the control of the State

Government. Similarly Crl.Misc. Petition No.15875/2015 for aforesaid directions and for impleadment as respondents - Crl.Misc. Petition No.15877/2015 has been filed.

3. In Writ Petition (Crl.) No.135/2011, the petitioner has averred that investigation of I-CR No.149/2011 is required to be transferred to CBI or any other investigating agency/SIT outside the control of the then Chief Minister of Gujarat. Since the aforesaid FIR had been lodged with a view to falsely implicate, pressurize and intimidate the petitioner and other witnesses as the petitioner in statements before the SIT as well as before the Commission of Enquiry has divulged certain facts which have the potential of directly implicating high functionary of State of Gujarat in the riots of 2002 alleging that there is an unholy nexus between the prosecuting agency and higher echelons of the Government of Gujarat in certain judicial proceedings including W.P. (Civil) No.221/2002.

4. The petitioner has submitted that he joined the service as an IPS Officer way-back in the year 1988 and was allocated to the State of Gujarat. From December, 1999 to September, 2002, he was posted as Deputy Commissioner with the State Intelligence Bureau. He used to look after matters pertaining to internal security of the State, Border

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Security, Coastal Security, security of vital installations, counter intelligence and VVIP security including that of the Chief Minister. He has alleged that he was present in the meeting convened by the then Chief Minister on the night of 27.2.2002. The instant FIR was a counter-blast at the aforesaid action taken by the petitioner. The petitioner has submitted that Ms. Jakia Nasim Ahesan Jafri had filed a complaint on 8.6.2006 which was ordered to be looked into by SIT as per orders of this Court. The petitioner is a close friend of the then AAG. They have been regularly vacationing together for the last so many years. In 2009, they had made a family trip to Goa. At that time, it is alleged, at the request of the then AAG, the petitioner had accessed his e-mail account. The petitioner came across very unusual e-mails received from SIT, (sit.godhracases@gmail.com). It is alleged that someone from SIT was leaking sensitive and confidential contents. A copy of e-mail dated 14.9.2009 (P-4) has been filed.

5. In November, 2009, the petitioner was informed telephonically by the SIT appointed by this Court. Prior to the scheduled interaction with the SIT, he was approached by the then Minister of State, Home Department, and was sought to be briefed at the office of the then AAG of Gujarat. While appearing before the SIT, he had informed

Mr. A.K. Malhotra, Member, SIT, about the episode and also leaking of information by the SIT to the then AAG. His statement was recorded on several occasions in 2009 and 2010 by the SIT. The petitioner has further averred that he had vacationed again in May-June, 2010 with the then AAG along with family. He was again required to access the e-mail account on several occasions. During the period from February to June, 2010, he came across e-mail exchanges which clearly indicated an unholy and illegal complicity between the then AAG and the functionaries of State of Gujarat. The petitioner has further averred that on 20.9.2010, he briefed the Additional Chief Secretary (Home) about the leakage of the testimony before the SIT. He was advised to meet the then Chief Minister to clear the air. In the intervening night of 3rd and 4th November, 2010, the house of the petitioner's mother was ransacked. The petitioner had lodged FIR (P-5) at Navrangpura Police Station registered as I-CR. No.449/2010. Again the incident was repeated on the intervening night of 8th and 9th November, 2010 and a steel almirah which could not be broken open on the earlier occasion, was broken and searched. FIR (P-6) was lodged at Navrangpura Police Station as I-CR No.456/2010. The

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petitioner requested for adequate security cover vide letter dated 14.2.2011 (P-7).

6. On 15.3.2011 this Court directed the Chairman, SIT to carry out investigation and submit a report on the observations made by the *amicus curiae* appointed by this Court. Pursuant thereto the petitioner was summoned by the SIT under section 160 of the Code of Criminal Procedure in connection with the investigation of Meghani Nagar Police Station, I-CR. No.67/2002. He was issued summons (P-10) for 21.3.2011 under section 160 Cr.PC. The SIT started recording of statements of the petitioner on 21.3.2011 which was concluded on 25.3.2011. On 25.3.2011 while recording statement of the petitioner, the SIT expressed its inability to encompass the details indicative of larger conspiracy of official orchestration behind Gujarat riots of 2002. The SIT self-restricted the scope of FIR under investigation. The petitioner had taken Mr. K.D. Panth along with him to the office of the SIT to corroborate the fact of his having attended the fateful meeting at the residence of the then Chief Minister on the late night of 27.2.2002. SIT was averse to record the statement of Mr. Panth including Mr. Tara Chand Yadav who could have corroborated the fact of petitioner's presence in the meeting. Later on, the SIT examined

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Mr. K.D. Panth. While recording statement, he was subjected to intimidation and coercion by the SIT. The fact was informed to him on 6.4.2011 by Mr. K.D. Panth. The petitioner wrote a letter to the Chairman, SIT about the intimidation meted out to Mr. Panth, and expressed an apprehension as to the role and intention of certain members of the SIT. On 14.4.2011, the petitioner sent an affidavit to this Court in SLP (Criminal) No.1088/2008 pointing out certain aspects and inadequacies in the manner and approach of the SIT and intimidation of Mr. Panth. In the affidavit he has also mentioned the details of the meeting convened by the then Chief Minister on 27.2.2002. On 27.4.2011, the petitioner was summoned by Justice Nanavati and Mehta Commission of Inquiry (for short 'Justice Nanavati Commission') directing him to appear on 16.5.2011. This Court vide order dated 5.5.2011 (P-18) in SLP (Crl.) No.1088/2008 directed the *amicus curiae* to examine the record of the SIT. He was permitted to interact with the witnesses examined by the SIT. On 27.5.2011, the petitioner was asked by *amicus curiae* to remain at Gandhinagar (Ahmedabad) on 18/19.6.2011.

7. The petitioner then informed Mr. K.D. Panth and Mr. T.C. Yadav about the forthcoming visit of the *amicus curiae*. The petitioner

suggested to Mr. T.C. Yadav and Mr. K.D. Panth that they may prepare affidavits to be given to *amicus curiae* on 18.6.2011. The petitioner submitted that they agreed and requested the petitioner to arrange for trustworthy advocate who could help them in preparing and affirming the proposed affidavits in strict confidence. Both the witnesses got their affidavits prepared and affirmed on 17.6.2011 and gave them to the petitioner. On 18.6.2011 the petitioner met the *amicus curiae*. Mr. T.C. Yadav also met *amicus curiae*. However, Mr. K.D. Panth did not turn up. The petitioner then handed over a copy of the affidavit affirmed by Mr. K.D.Panth to the *amicus curiae*. The petitioner came to know on 22.6.2011 that senior police officials pressurized Mr. K.D. Panth and made him to affirm the affidavit before the Executive Magistrate at Gandhinagar negating the earlier affidavit sworn by him before the Notary Public on 17.6.2011. A written complaint was prepared at the behest of Mr. K.D. Panth on the basis of which at 2330 hrs. on 22.6.2011 an FIR (P-13) was registered at Ghatlodia Police Station as I-CR. No.149/2011. In the course of the statement before the Commission, the counsel for the State of Gujarat intimidated to the effect that the petitioner was crossing the line. Certain applications were filed in the ongoing criminal sessions cases

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to summon the petitioner under section 311 as a witness in May-June, 2011.

The FIR has been registered against the petitioner. He has no hope of fair investigation in CR. No.149/2011 hence the petition has been preferred.

8. The State of Gujarat in its counter affidavit has *inter alia* raised the question of maintainability of the petition and has submitted that the petitioner is guilty of suppressing certain facts and has made incorrect statement on oath. Thus he is guilty of *suppressio veri and suggestio falsi.* The petitioner has filed concocted documents regarding award of Rs.500/- given to Mr. K.D. Panth for working till late night on 27.2.2002. The original award is in vernacular language, not in English and the outward number is incorrect. It was not for working overnight on 27.2.2002 as contended by the petitioner. It was for taking care of entire situation post 27.2.2002 incident. The petitioner has tried to mislead this Court and has made false suggestions. The award was given by the State Government to all employees for taking care of post the situation of 27.2.2002 incident.

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This Court has considered all the allegations made by petitioner against them in SLP (Crl.) No.1088/2008 monitored by a Special Bench of this Court.

9. Investigation into the riot cases of 2002 is completed by the SIT appointed by this Court and trials are going on in accordance with the orders passed by this Court on 1.5.2009 in W.P. (Crl.) No.109/2003. In *Gulberg Society* case also, this Court has passed order in SLP (Crl.) No.1088/2008. The complaint of Ms. Jakia Jafri dated 8.6.2006 has already been examined by the SIT. The petitioner cannot choose investigating agency. The petitioner appears to have been brought at the scene at the fag end of the trial by the political parties, activists and other vested interest groups. An activist has filed an application for being impleaded as respondent. While petitioner was in connivance and constant consultation with the adversary political party and vested interest groups, he has no explanation to keep quiet for nine years as to the meeting dated 27.2.2002. Other facts have also been denied. In e-mail (P-4) filed by the petitioner, attachments indicate that it was with respect to *Sohrabuddin* encounter, the petitioner has made false suggestions and allegations as to the

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contents of e-mails and absolutely false allegations against SIT. The *Sohrabuddin* encounter case was investigated by Gujarat State CID.

10. It is further stated in the reply that the petitioner is guilty of hacking the e-mail account of the then AAG for which offence under section 66 of the IT Act has been registered. Petitioner was leaking information and interacting with media and other vested interest groups. He even attempted to use media card to influence judicial proceedings. The affidavit sent by the petitioner in SLP (Crl.) No.1088/2008 was not taken on record. This fact has been suppressed by the petitioner. He is acting at the behest of rival political party in the State of Gujarat. The State has made serious allegations against the petitioner and real motives to file the petition in this Court. It has placed on record e-mails sent/received by the petitioner which indicate that the petitioner has interacted with the Deputy leader of Assembly belonging to rival political party. He has tried to influence *amicus curiae* and the 3-member Bench of this Court by using media card and using pressure groups. He was receiving packages and materials from the leader of rival political party in Gujarat. He has referred to rival political party as his own party. While being cross-examined by the opposition parties before Justice Nanavati

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Commission, petitioner has send e-mail that the performance of the advocate of the rival political party was pathetic and mentioned that "I am under exploited".

11. Petitioner was also negotiating with several vested interest groups, NGOs. and was trying to influence the *amicus curiae* appointed by this Court. E-mails reveal that someone else was instrumental in sending the unsolicited affidavit of petitioner to this Court on 14.4.2011. He was in constant touch with an activist and her lawyer. E-mail discloses unholy nexus of the petitioner with politicians, NGOs., activists etc. It is submitted that on behalf of the rival political party, a prayer was made to call the petitioner as witness. The petitioner did not object to the cross-examination by Jan Sangharsh Manch, and to the main rival political party, in Gujarat, but objected to the cross-examination by the State of Gujarat.

12. It is further contended by the State that Mr. K.D. Panth appeared before the Executive Magistrate, Gandhinagar on 17.6.2011 and swore an affidavit as to the petitioner illegally obtaining affidavit which was filed before the *amicus curiae* by the petitioner. The allegation regarding destruction of records has also been denied. The record of category 'D' is maintained only for 3 years that is log book

of the vehicle and the same is not available with the State Government as the copies are maintained by the concerned officers contemporaneously who submit the same. The petitioner failed to appear despite several summons in CR. No.149/2011, he was arrested and was immediately visited by the leaders of rival political party.

13. In the counter affidavit filed on behalf of Mr. K.D. Panth, respondent No.4, it is contended that the investigation in I-CR. No.149/2011 is over. He has not received any award for working late in the night on 27.2.2002. The petitioner has made false averments. Petitioner had taken him to the residence of the President of Gujarat State Unit of main rival political party. The incident is established by way of scientific evidence reflected in chargesheet. He was in Maharashtra from 25.2.2002 to 28.2.2002. He had visited notary/advocate at Bombay (Maharashtra) for the purpose of getting the translated documents notarized/certified. Petitioner has falsely asserted that he accompanied him to the meeting at the residence of the then Chief Minister on 27.2.2002.

14. He had received a call from the petitioner at 1557 hours and he was asked to meet the petitioner at 2200 hours at his residence. Petitioner had taken him to President of the Gujarat State rival

political party, wherefrom he was taken to the office of the co-accused, Chairman of the Legal Cell of the said party and was permitted to leave early in the morning hours after preparation of affidavit dated 17.6.2011. All the movements are substantiated by the mobile call records and mobile tower locations. Respondent No.4 has given the statement before the SIT constituted by this Court. The petitioner is making frivolous contentions.

15. A counter affidavit has also been filed on behalf of respondent No.5 – SIT contending that the evidence given by Mr. Bhatt is absolutely unreliable. His antecedents have been mentioned in detail. The petitioner remained posted in various capacities in the State of Gujarat. There were 3 departmental inquiries pending against him. He was given 3 promotions of Junior Administrative Grade, Selection Grade and DIG Grade vide orders dated 6.8.2005, 3.9.2005 and 24.7.2006 respectively. He was not given IGP Grade as other departmental enquiries and criminal cases were pending against him. Chargesheet was served upon him on 29.12.2010 for irregularities in the Police recruitment under his Chairmanship as SP, Banaskantha. In the year 1990, the petitioner allegedly committed atrocities on peaceful and innocent villagers belonging to a place called

Jamjodhpur in which one person was killed. He invoked the provisions of TADA and arrested 140 innocent persons. An inquiry was got conducted by the State Government and the petitioner was found guilty of misuse of TADA and unnecessary imposition of curfew for 70 hours. As sanction was not given by the State Government to prosecute the petitioner the closure report was submitted which was rejected and cognizance taken under sections 302, 323, 506(1) and 114 IPC. The said case was pending for framing charges against the petitioner. The victim was awarded a compensation of Rs.1.5 lakh who died due to Police atrocities.

16. It is further contended that petitioner was involved in infamous case of eviction of tenant after fabricating case under NDPS Act while he was posted at Banaskantha. A complaint was filed by Mr. S.S. Rajpurohit, Advocate practising at Pali, State of Rajasthan, registered as FIR No.403/1996 for commission of offence under sections 120B, 195, 196, 342, 347, 357, 365,388, 458, 482 IPC and sections 58(1) and 58(2) of the NDPS Act. On completion of the investigation, a chargesheet had been filed against petitioner in the Court of Special Judge under the NDPS Act at Jodhpur. The allegations of the complainant advocate are that he had been occupying property as a

tenant in Pali, Rajasthan, which was owned by the sister of Mr. R.R. Jain, the then Additional Judge of the High Court of Gujarat. At the instance of said Judge, Mr. Sanjiv Bhatt and his subordinate officers planted narcotic drugs in a hotel-room at Palanpur, Gujarat, which was clandestinely shown as occupied by said advocate Mr. S.S. Rajpurohit. In order to get the property vacated, Mr. Rajpurohit was abducted by the officers of the Gujarat Police from Pali in Rajasthan. The arrest was shown on 2.5.1996. Due to torture of police, Mr. Rajpurohit vacated the premises and handed over possession to the sister of Mr. R.R. Jain, Additional Judge. Mr. Jain was not confirmed as Judge of the Gujarat High Court and repatriated to his original post as City Civil & Sessions Judge and had ultimately retired under suspension. The National Human Rights Commission has taken a serious note of fabrication of the case by the petitioner under the NDPS Act and imposed a fine of Rs.1 lakh on the Government of Gujarat as the monetary relief to Mr. Rajpurohit, Advocate. Gujarat State Vigilance Commission had recommended on 15.7.2002 and 19.10.2006 suspension of Mr. Sanjiv Bhatt. However, his suspension was not ordered. Mr. Sanjiv Bhatt did not look after political and communal matters during 2002 Gujarat riots.

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17. SIT has further submitted in the counter affidavit that the claim of Mr. Sanjiv Bhatt that he was present in meeting convened by the then Chief Minister on the night of 27.2.2002, could not be substantiated during SIT investigation. In this regard SIT has already submitted its report in the Court of XIth Metropolitan Magistrate, Ahmedabad City on 8.2.2012 in compliance of the orders passed by this Court on 12.9.2011 in addition to the final report already submitted by the SIT in this Court on 25.4.2011. The theory put forth by the petitioner appears to be far-fetched, imaginary and unsubstantiated.

18. The allegations made against the SIT leaking sensitive and confidential contents are absolutely false, baseless and motivated. The e-mails relating to *Sohrabuddin* encounter which was not investigated by SIT, the Convener of SIT did not have anything whatsoever to do with the matters pending investigation/inquiry/trial with the Supreme Court appointed SIT for Godhra cases. Thus, the petitioner has made a deliberate attempt to mislead this Court and intentionally avoided furnishing of the enclosures with the e-mails. The then AAG of Gujarat did not have anything to do with the ongoing investigation with SIT. *Sohrabuddin* encounter was investigated by State Police,

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CID (Crime) which was earlier being supervised by Smt. Geetha Johri as IG, CID (Crime), Gujarat State.

The petitioner was examined by SIT earlier on 25.11.2009 and 26.11.2009 not in the year 2010. Thereafter, he was called for further investigation in *Gulberg Society* case only on 21.3.2011. There is an allegation of hacking of password of e-mail account of the then AAG.

19. It is also contended in reply by the SIT that the statement of petitioner was recorded on 21.3.2011, 22.3.2011 and 25.3.2011 in connection with *Gulberg Society* case. Petitioner on his own without being summoned brought Mr. K.D. Panth, Constable then attached to Meghaninagar Police Station along with him on 25.3.2011. Petitioner stated that Mr. K.D. Panth followed him on 27.2.2002 with the files in his staff car whereas he himself had accompanied D.G.P. in his staff car. Mr. K.D. Panth was waiting outside and he should be examined in his presence. The petitioner was informed by SIT that Mr. Panth would be called on a date convenient to the Investigating Officer and then examined. This fact was reported by the SIT to this Court on 25.4.2011. It is denied that SIT has expressed its inability to encompass the details indicative of a larger conspiracy. The facts are totally false and baseless. Mr. Panth did not corroborate the version of

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the petitioner that of having followed him in his staff car to the Chief Minister's residence on the night of 27.2.2002.

20. The SIT further contends that the office order which has been shown as referring to reward by the petitioner indicates a fax message asking M/s. Mackro, Chennai, to send their detailed quotation along with specifications and relevant particulars in respect of Pistol Glock as the Intelligence Bureau of Gujarat was in need to purchase the said equipments. In fact, the reward was given for performing work related to the movement of VIPs. during communal violence after Godhra incident which took place on 27.2.2002. The fax message has been placed on record. Thus, petitioner has filed false and forged documents in this Court.

21. It is further contended by SIT in its reply that the petitioner had given wide publicity to the affidavit dated 14.4.2011 through electronic and print media. However, after enquiries SIT has come to the conclusion that Mr. Bhatt was not present in the meeting convened by the then Chief Minister on 27.2.2002.

22. It is further contended by SIT that on 17.6.2011, Mr. K.D. Panth sent an application to the Chairman, SIT enclosing a copy of affidavit

affirmed before an Executive Magistrate, Gandhinagar stating that his statement before the SIT on 5.4.2011 was without any pressure or motivation. He has further stated that in the early hours on 17.6.2011 the affidavit was got signed from him by petitioner - Mr. Sanjiv Bhatt fraudulently after threatening him, for which a complaint was lodged with the local police. Prayer has been made that action be taken against the petitioner for committing contempt of court and also misleading the court by placing incorrect facts and e-mail pertaining to *Sohrabuddin* encounter case by State Police CID (Crime).

Petitioner has filed additional affidavit. Petitioner has submitted that his e-mail account has been illegally hacked with a view to destroy certain crucial evidence and the State Government is misusing the State machinery.

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23. In reply to the aforesaid affidavit, State of Gujarat has denied the facts and has given the details of the allegations in CR. No.149/2011 filed by Mr. Panth. Chargesheet has been filed under section 173 Cr.P.C. Statement of eye-witnesses under section 164 had been recorded. Mobile call records of the petitioner and complainant, exchange of calls between the petitioner and complainant as well as petitioner and co-accused, mobile tower location received from

service providers indicate the presence of the petitioner as well as the complainant. The presence of petitioner/complainant at the residence of President of rival political party in Gujarat, as asserted by the complainant and his presence at the office of the Advocate, who was Chairman of the Legal Cell of the rival political party in Gujarat, is also established by the mobile tower locations. FSL reports also corroborate that the affidavit was prepared on the same laptop as stated in the FIR.

24. A rejoinder affidavit has been filed by the petitioner in W.P. (Crl.) No.135/2011. It is contended by the petitioner that there is a deliberate attempt to falsify the stand of the petitioner regarding his presence in 27.2.2002 meeting with the then Chief Minister. The purpose of annexing e-mails was to bring them to the notice of this Court. Petitioner had no intention to suppress any information. There was nexus of the then AAG with the Advocate of the accused. Petitioner has filed exchange of e-mails between him and leader of rival political party in Gujarat Assembly on 28.4.2011 pointing out the shortcomings of SIT under its Chairman. Full text of e-mails exchanged between the petitioner and others has been filed. What is of significance is that in rejoinder affidavit, the petitioner has not

controverted e-mail contents mentioned by State of Gujarat in its counter affidavit. Petitioner has filed additional affidavit including certain documents. He has submitted that 9 reports submitted by SIT were sent by the Under Secretary (Home) to the then AAG and to Mr. G.C. Murmu. Mr. Gurumurthy Swaminathan had written to the then AAG that he has received the reports and the attachments. Mr. Gurumurthy Swaminathan forwarded the note for hearing on 15.3.2010 to the counsel appearing on behalf of Pranab Badekha. Petitioner has submitted that SIT reports were given to the State counsel and *amicus curiae*. They were ultimately forwarded to Mr. Gurumurthy who in turn had advised counsel for the accused Pranab Badekha in this Court. The then AAG had exchanged e-mail with respect to Mr. Bipin Ambalal Patel to his Advocate in this Court. Certain documents were also forwarded to the other counsel. Certain e-mails by Mr. Swaminathan to other functionaries and by AAG to other State functionaries have been filed along with additional affidavit on 29.7.2011. E-mail exchange of Mr. Gurumurthy to correspondent of a newspaper has also been filed. The then AAG had also drafted a political memorandum addressed to the Hon'ble President of India to be submitted by the leaders on behalf of the

ruling party of the State. In *Sohrabuddin*'s case investigation was transferred to the CBI. Thus, the then AAG was helping the accused as well as acting on behalf of the State. State of Gujarat was obtaining the advice of Mr. Gurumurthy. Petitioner has also submitted that in *Ishrat Jahan* encounter case, SIT investigation was ordered. In that connection also the then AAG had exchange 13 e-mails. It is also submitted that Additional Secretary (Home)'s affidavit was drafted by an outsider Mr. Gurumurthy Swaminathan in consultation with the advocates of the accused persons. Petitioner has filed various e-mails as Annexures P-33 to P-54.

25. Petitioner has submitted in Crl.Misc. Petition No.15871/2015 and Crl.Misc. Petition No.15875/2015 that Mr. K.D. Panth was pressurized to swear an affidavit before the Executive Magistrate on 22.6.2011 which was back dated to 17.6.2011 stating that the earlier affidavit given by the petitioner was obtained under duress at the behest of the petitioner. The applicant was sacked from service by the Ministry of Home Affairs on the recommendations of the Government of Gujarat on 13.8.2015. Petitioner has also submitted that he and the then AAG enjoyed family relations; that is how he had an opportunity to access the e-mail account. The e-mails sent by the applicant to the

travel agents regarding visa application, cruise, confirmation of tickets to Sea World, Santiago, air-tickets, car-rental, other travel arrangements, change in travel plans etc. (A-3 to A-14) have been filed.

26. W.P. (Crl.) No.204/2011 relates to an FIR lodged by the then AAG of State of Gujarat at Vastrapur Police Station registered as II-CR No.3148/2011 under section 66 of the IT Act regarding hacking of his e-mail account and tampering of the same by the petitioner. Prayer has been made in the writ application to transfer investigation arising out of the aforesaid crime to any independent agency like CBI outside the control of the State Government and in Crl.M.P. No.15875/2015. In the changed scenario prayer has been made to appoint SIT, contempt proceedings be initiated and additional documents may also be enquired into. Prayer has also been made to direct service providers to preserve the e-mails and/or electronic traces thereof.

State Government has filed an affidavit in reply and has adopted the counter affidavit dated 8.11.2011 filed in W.P. (Crl.) No.135/2011.

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27. Ms. Indira Jaising, learned senior counsel appearing for the petitioner in W.P. (Crl.) No.135/2011 submitted that considering the factual matrix of the case, investigation made in I-CR. No.149/2011 by the State Police cannot be relied upon as serious allegations made by the petitioner against the then Chief Minister with respect to the meeting dated 27.2.2002 require to be looked into. Petitioner was present in the said meeting and when he disclosed certain facts against the then Chief Minister the case has been filed by Mr. K.D. Panth at the instigation of certain officers of the State machinery. In the circumstances, investigation made by the State Police cannot be fair and impartial investigation and due to the changed scenario at the national level, even the CBI cannot be relied upon as pressure may also be exerted upon the CBI. Thus a Special Investigation Team (SIT) be formed to make an investigation under the supervision of this Court. The investigation is going to have wide ramifications as to what transpired in the meeting dated 27.2.2002, notwithstanding the fact that a chargesheet has been filed, this Court has ample power to direct investigation by an independent agency by forming a Special Investigation Team of different independent officers. Learned senior counsel has taken us through various documents on record including

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the e-mails to contend that there had been leakage of SIT reports, SIT itself has leaked the reports. She has also taken us through various exchange of e-mails between the then AAG, Mr. Gurumurthy Swaminathan etc. to contend that serious contempt of this Court has been committed by the machinery of the State of Gujarat which has acted in connivance with the accused persons. The then AAG has espoused the cause of the accused persons. Both the FIRs. have been lodged against the petitioner to pressurize him and recently he has been dismissed from service also. Learned senior counsel has also submitted that the amicus curiae appointed by this Court has observed in his report that certain aspects pointed out by the petitioner deserve to be looked into. It was also submitted that Mr. K.D. Panth, complainant, has been made to turn hostile against the petitioner. It was submitted that though the complainant was on leave on 27.2.2002, he joined duty due to the Godhra incident. He reported for duty in the late afternoon of 27.2.2002. Learned counsel has relied upon the affidavit of Mr. K.D. Panth, complainant, submitted to the amicus curiae. The case of the petitioner is akin to that of *Zahira Sheikh*. She was also made to turn hostile and was forced to depose falsely. Petitioner has been harassed with malicious prosecution as he

disclosed about the meeting on 27.2.2002 and his conversation with the then Chief Minister of Gujarat. It was further submitted that the then AAG has not denied the contents of the e-mails exchanged by him. The then AAG had voluntarily given password to the petitioner and there was no question of hacking his e-mail account as petitioner had close relationship with him. She has relied upon e-mails A-3 to A-14 to show that they were jointly enjoying vacations. Petitioner himself had filed a complaint with the DIG (Police), Economic Offences Wing, Delhi Police, regarding hacking of his e-mail account. It was further submitted by learned senior counsel that the then AAG's conduct as revealed through e-mails shows a criminal conspiracy between him and others in administration of justice which constitutes offence under the IPC and also amounts to contempt of court. Hence, it was submitted that criminal contempt stands substantiated by the fact that participants in the correspondence include law officers of the State of Gujarat, the advocates for the accused in certain cases and the Government of Gujarat and a complete outsider to litigation Mr. Gurumurthy Swaminathan was also consulted by the State of Gujarat. She has further submitted what was exchanged between the parties were confidential documents supposed to be submitted before this

Court as well as the State of Gujarat in criminal cases and the documents to be filed on behalf of the State were being shared with individuals who had no connection with the ongoing legal proceedings. Even the documents to be filed on behalf of the accused were being prepared by the law officers of the State with assistance from senior officials of the State. Thus, a prima facie case of criminal contempt has been made out against the respondent sought to be impleaded by the petitioner. She has relied upon section 2(c)(iii) of the Contempt of Courts Act to contend that act which interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice amounts to criminal contempt for which action be initiated.

28. It was further submitted by learned senior counsel that counter affidavit of respondent No.2 discloses sufficient reason to constitute SIT. It was further submitted that free and fair investigation is an integral part and a fair trial under Article 21 of the Constitution of India and the petitioner lacks faith in the ability of the State Government to conduct free and fair investigation considering the allegations made against the then AAG of the State, other Government officials as well as the petitioner's role in disclosing a larger conspiracy implicating the then Chief Minister in Gujarat riots of

2002. She has also emphasized on the need for an inquiry by an independent agency. She has submitted that in the changed circumstances, inquiry by CBI is no guarantee of a fair and impartial investigation. Considering the present political set up in the country even the then AAG has become more influential. This Court has monitored the investigation in several cases and there is a need for court-monitored investigation. Court can order an investigation even after chargesheet is filed. She has referred to the e-mails of 2009 and 2010 exchanged between the then AAG and other incumbents. She has also submitted that as State of Gujarat in its return has urged that it is a systematic and larger conspiracy through petitioner involving top leaders of rival political party in Gujarat and vested interest groups, as such State machinery cannot make fair investigation, hence from averments in reply filed by State a case is made out to constitute independent SIT. On a query by this Court, she has submitted that the petitioner ought to have disclosed the e-mails on the various occasions when he made the statement before SIT, filed affidavit in this Court and was examined by the Commission. However, disclosure on 29.7.2011 cannot be said to be an afterthought as he was pushed to the wall by lodging criminal case against him by Mr. K.D. Panth.

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29. Mr. Prashant Bhushan, learned senior counsel appearing on behalf of the petitioner in W.P. (Crl.) No.204/2011 has submitted that it is the fittest case in which SIT investigation should be ordered by this Court, considering the ramifications of the allegations made by the petitioner as to the involvement of the then Chief Minister of the State of Gujarat and in riots of 2002. It is the bounden duty of this Court to constitute SIT. Serious criminal conspiracy is apparent from the exchange of e-mails filed by the petitioner in W.P. (Crl.) No.135/2011 to subvert path of justice. The petitioner had shared the password due to his affinity with the then AAG and close family friendship. The investigation in the case of II-CR No.3148/2011 cannot be entrusted to the State Police. In the facts and circumstances, investigation cannot be entrusted to the State Police or to the CBI. He has also taken us through the various documents to take home his submissions.

30. Mr. Ranjit Kumar, learned Solicitor General appearing for the State of Gujarat has submitted that considering the overall conduct of the petitioner, e-mail exchange of the petitioner with the political party in opposition, NGOs., media persons and others indicates that the petitioner has concocted the story as an afterthought and anyhow

or somehow want to keep issue alive. SIT reports in 9 cases were made available to the State of Gujarat on 2.3.2009. They were forwarded by the counsel to the State of Gujarat on 6.3.2009. On 1.5.2009 this Court had passed an order disposing of the main matter. In *National Human Rights Commission v. State of Gujarat & Ors*. (2009) 6 SCC 767, this Court vacated the stay on commencement of the trial. It was submitted that SIT reports which were made available to the State of Gujarat, in none of these reports there was any substance of any investigation. Reports did not contain confidential materials. The reports mentioned the action taken by SIT for filing reports and/or for conducting investigation. Thus, it was not a secret information nor contained any sensitive information as has been tried to be projected by the petitioner. Investigation stage reports were part of court records. It was also submitted that the claim of the petitioner that he was present in the meeting dated 27.2.2002 is not only concocted, an afterthought and a flimsy one. The stand of the petitioner has already been looked into by the SIT. He has taken us through various orders and judgments passed by this Court in the case of *Jakia Nasim Ahesan Jafri & Anr. v. State of Gujarat & Ors*. (2011) 12 SCC 302 to contend that SIT has found the claim of the petitioner

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to be incorrect. It was further submitted by the counsel that the petitioner is trying to re-agitate the issue with the help of rival political party after the court-monitored investigation had come to fag end and even the allegations made by the petitioner had been looked into effectively. He has also contended that the petitioner has not come to Court with clean hands, as such he is not entitled to any indulgence. The e-mail exchange does not indicate any criminal conspiracy to subvert the course of justice or criminal contempt of this Court in any manner. Petitioner is guilty of hacking and tampering with the e-mail account of the then AAG. Petitioner has no right to choose investigating agency. The apprehensions raised by the petitioner are baseless. Mainly, there has to be a scientific investigation with respect to the hacking and tampering of e-mail account which can be effectively and fairly made by State agencies. Chargesheet in CR. No.149/2011 has also been filed. It is not shown by the petitioner how the investigation is tainted. The petitioner wants to widen the scope of the inquiry in the cases in question. The inquiry is limited in both the cases as to whether the petitioner is guilty of the alleged offences or not.

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31. Learned Solicitor General has also taken us through various e-mails and has contended that in view of the e-mails exchanged, the petitioner is himself guilty of committing criminal contempt of this Court. He has endeavoured to influence the Special Bench of this Court by exerting pressure by media and other pressure groups. The affidavit of petitioner was prepared in consultation and deliberation with several persons, groups and NGOs. In case petitioner was present in meeting dated 27.2.2002 he would not have kept quiet for 9 years. He did not state the said fact in 2009 before SIT.

32. Mr. C.S. Vaidyanathan, learned senior counsel appearing on behalf of SIT submitted that SIT had been constituted by this Court and its work has been appreciated. This Court has monitored its investigation. Petitioner had made unwarranted allegations against SIT for no good cause. Petitioner has not stated about the factum of meeting dated 27.2.2002 with the then Chief Minister in his first statement recorded by SIT in the year 2009. SIT did not pressurise Mr. K.D. Panth not to support petitioner when his statement was recorded. On due investigation made by the SIT, the presence of the petitioner was not found in meeting dated 27.2.2002. The allegation made against SIT of disclosing the reports is absolutely incorrect. The

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Member of the SIT had sent report of *Sohrabuddin* encounter case which was not entrusted to SIT but was looked after by Ms. Geetha Johri, Member, SIT, in a different capacity of State officer. He has also pointed out the antecedents of the petitioner, considering the overall conduct and track record which is dubious, no case for interference is made out.

33. Mr. Vikas Singh, learned senior counsel appearing on behalf of Mr. K.D. Panth has submitted that chargesheet has been filed in the case (CR. No.149/2011) four years before and the same has not been questioned. Investigation is over and is based upon scientific investigation and record of the mobile service providers buttresses the case of the complainant – Mr. K.D. Panth. The scope of inquiry is limited in the instant case as to the conduct of the petitioner in obtaining the affidavit dated 17.6.2011 which he had handed over to the *amicus curiae* of this Court. No case for entrusting the case to any other agency is made out.

34. Mr. L.Nageshwara Rao, learned senior counsel appearing on behalf of the then AAG in W.P. (Crl.) No.204/2011 has submitted that wholly unwarranted allegations have been made. Even the family of the then AAG has been attacked in a brazen manner by the petitioner

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whose conduct indicates that he has not come to this Court with clean hands. His conduct and antecedents are tainted. He had not only hacked e-mail account but also tampered with the e-mails for which report has been lodged. The allegation of criminal conspiracy which has been levelled is wholly unwarranted and the conduct of the then AAG cannot be said to be of committing contempt of this Court or subverting the course of justice in any manner whatsoever. It was up to the State to take the advice of any other individual. All the main functionaries were put under scanner. In peculiar facts of the case there was thin line left due to the accusation against the State and its functionaries who were subjected to false accusations. The conduct of the then AAG could not be said to be improper. The e-mails exchanged by the then AAG, Mr. Gurumurthy etc. cannot be said to be offending and subverting the course of justice whereas the petitioner himself has tried to influence independent decision making by this Court as reflected by his e-mails. Thus, no cause for any indulgence is made out and the petitions deserve to be dismissed.

35. The backdrop facts indicate that in the wake of Godhra incident which took place on 27.2.2002, National Human Rights Commission filed W.P. (Crl.) 109/2003 in this Court. On 8.6.2006, Ms. Jakia Jafri

filed a complaint with the Director General of Police, Gujarat against 63 persons for commission of offence under section 302 read with section 120-B IPC in relation to Gujarat riots requesting the complaint to be registered as an FIR which was refused. Said Jakia Jafri filed criminal complaint - Special Crl. Application No.421/2007 - seeking a direction to register the case as an FIR vide order dated 2.11.2007. SLP (Crl.) No.1088/2008 was preferred by said Jakia Jafri. On 3.3.2008 this Court issued notice. On 26.3.2008 in *National Human Rights Commission* case - W.P. (Crl.) No.109/2003, this Court has passed an order constituting a Special Investigation Team to investigate 9 major cases pertaining to Gujarat riots of 2002. On 27.4.2009 this Court directed SIT to look into the allegations made into the complaint of Ms. Jakia Jafri. On 1.5.2009 this Court vacated the stay of trial of 9 cases and directed that SIT would continue to monitor the trial and submit periodic reports every 3 months. On 30.7.2009, SIT submitted interim report in *Jakia Jafri*'s case. Petitioner was examined by SIT appointed by this Court at Gandhinagar in the context of Jakia Jafri's complaint. The allegation of Jakia Jafri was that during the period from 27.2.2002 and 10.5.2002 the incidents which took place were committed, abetted and conspired

by some responsible persons in power in connivance with powerful persons in the State administration including the police. On 2.2.2010 SIT had submitted in this Court that further investigation with respect to Ms. Jakia's complaint was over. On 20.1.2011 *amicus curiae* appointed by this Court submitted a note on SIT preliminary enquiry report in *Jakia Jafri*'s case. On 15.2.2011 this Court directed SIT to submit its report on the observations made in the *amicus curiae* note and carry out further investigation if required. On 15.3.2011 SIT issued summons to the petitioner for recording of his statement in connection with the FIR I CR No.67/2002 registered at Meghaninagar Police Station. SIT had recorded the statement of the petitioner in March, 2011. On 25.3.2011, petitioner had taken Mr. K.D. Panth along with him as witness to corroborate the fact that petitioner had attended the fateful meeting at the residence of the then Chief Minister on the night of 27.2.2002. However, SIT recorded the statement of Mr. K.D. Panth on 5.4.2011. Mr. Panth did not support the presence of the petitioner in the meeting dated 27.2.2002. On 14.4.2011 petitioner *suo moto* had sent an affidavit to this Court in SLP (Crl.) No.1088/2008 pointing out SIT's conduct regarding testimony of Mr. K.D. Panth and its reluctance to record information

as to the larger conspiracy behind 2002 riots. On 5.5.2011 this Court permitted the *amicus* to interact with witnesses. Pursuant thereto, on 17.6.2011 petitioner got prepared the affidavits of Mr. K.D. Panth and Mr. Tarachand Yadav. Petitioner had arranged advocate for the said purpose and on 18.6.2011 petitioner and Mr. Yadav met *amicus curiae*. However, Mr. K.D. Panth did not turn up for meeting *amicus curiae* as such his affidavit dated 17.6.2011 was handed over to him by the petitioner. Mr. Panth lodged a report against the petitioner as to obtaining the aforesaid affidavit in illegal manner which had been registered on 22.6.2011 in I-CR. No.149/2011. The statement of the petitioner was recorded by Justice Nanavati Commission initially on 16.5.2011. He was also cross-examined on 29.6.2011.

36. It is also relevant to mention certain e-mails which have been placed on record and relied upon by the respondents so as to contend that petition has not been filed bona fide. In the rejoinder filed by the petitioner, the e-mails which have been referred to in the return filed by the State of Gujarat have not been controverted or alleged to be incorrect in any manner by the petitioner. The petitioner has annexed full text of some of the e-mails along with rejoinder. However substance of the e-mails remains the same. Though the petitioner has

also mentioned in the rejoinder affidavit that he has filed complaint with the DIG (Police), Economic Offences Wing, Delhi Police regarding unauthorized hacking of his e-mail account. It is not understandable a senior officer of Police like petitioner has filed complaint to Economic Offences Wing which is not at all concerned with offences like hacking of e-mails. To avoid embarrassment at large, we deem it appropriate to quote only some relevant portions of the e-mails of petitioner which have been heavily relied upon.

Certain e-mails were exchanged on 27th and 28th April, 2011 between the petitioner and political leader of rival party. Petitioner required him to send copy of the note and even tried to suggest the points if necessary. Political leader ultimately sent the packages. Petitioner acknowledged to have received the item. On 28.4.2011 said political leader informs the petitioner about date of hearing in SLP (Crl.) No.1088/2008 – *Jakia Jafri*'s case that the case is not on tomorrow's board and will come up next week and he will be sending a small note. On 28.4.2011 petitioner had further exchanged e-mail with the said political leader and has mentioned about a note on "points for arguments in Supreme Court case, allegations to be made against the members of SIT".

37. Yet another set of e-mails exchanged with another political leader of rival party in which there is reference of approaching the high echelons in the party. On 28.5.2011 petitioner had sent another e-mail to the said leader asking him "Any progress on the front of Amicus Curiae ? Time is running out. We need to act quickly."

There is another e-mail dated 28.4.2011 petitioner had sent, reflecting his meeting with other political leaders of rival party.

38. Petitioner had also sent on 17.5.2011 e-mail to said incumbent indicating the performance of the advocate appearing for rival political party was absolutely pathetic and he has also mentioned "**I am under exploited**". Petitioner has also exchanged e-mail with Chairman of Legal Cell of rival political party. In one of the e-mails petitioner has mentioned influencing the amicus curiae of this Court thus :

> **"amicus should be calling me on his own in due course. You can try to mobilize support/pressure-groups in Delhi to influence him in a very subtle manner".**

39. With respect to the affidavit which was sent by the petitioner on 14.4.2011 certain e-mails indicate that he was in constant touch with

an activist of NGO and her senior advocate and meeting was arranged with said lawyer at Ellisbridge Gymkhana, Ahmedabad. Petitioner has also exchanged the affidavit dated 14.4.2011 with a journalist. He has also consulted about the contents of the affidavit with a journalist who has suggested addition of a paragraph which appears to have been incorporated in his corrected affidavit. Be that as it may. At least it is apparent that before sending the affidavit dated 14.4.2011 to this Court it was exchanged to invite suggestions.

Petitioner had also suggested the affidavit of yet another correspondent in order to support his statement that he had attended the meeting dated 27.2.2002. Petitioner has sent e-mail to the said correspondent to the effect that

> **"May be you can mention that I had met him (Sanjiv Bhatt) on 27th when he was about to go to the "disputed meeting".**

The petitioner had send an e-mail to one of the TV channels on 19.5.2011 to the following effect :

> **"Filed an affidavit in Supreme Court on 16th May, saying that he was with me when he had to leave for CM's meeting on 27th. Kindly confirm through your sources in Supreme Court."**

In one of the e-mails the petitioner even asks Correspondent whether he would be comfortable with xxxxxxx ? (Names of media persons).

Ultimately, when the reluctance of said correspondent still persists, the petitioner writes to him as under :

> "**My feeling is what we could let the press sniff it out and contact you. It will not make a good story for them, but, make the print media to take notice of your affidavit and finally force the hand of amicus and Supreme Court to take notice and subsequent affirmative action."**

40. Petitioner had also sent other e-mails to few TV channels. Petitioner has also sent yet another e-mail to the said correspondent suggesting him to play the media card. He has stated :

> **"I think we should play the media card and make it difficult for the other side. If you fear that amicus and Supreme Court will not take it seriously then media trick can be tried. xxx."**

Petitioner was in touch with an activist of the NGO and was deliberating upon what was to be stated before Justice Nanavati Commission. The exchange indicates ghost questions in lead and cross were prepared and sent to the petitioner. Said activist has suggested that her lawyer should spend 2 days with the petitioner to deliberated

ghost questions in lead and cross expecting the worst so that petitioner is prepared to reply.

An activist writes "what I believed was necessary or is necessary is having a Lawyer like …….. (name of advocate) spend a few days with you … then we prepared GHOST questions in LEAD and CROSS expecting the worst and you are prepared to reply.."

41. Petitioner had exchanged yet another e-mail with another activist of *Narmada Bachao Andolan* in which he has mentioned to create a situation so as to make it difficult for a 3-Judge Bench of this Court to disregard the shortcomings of SIT and exerting pressure by the groups and opinion makers in Delhi. Relevant portion is quoted below :-

> **" What we need to do at this stage is to create a situation where it would be difficult for three judge bench hearing Zakia–Jaffri's SLP 1088 of 2008 to disregard the shortcomings of SIT under stewardship of Mr. Raghavan. The Pressure groups and opinion makers in Delhi can be of great help in forwarding the cause. I am hopeful that things will start turning around from next hearing if proper pressure is maintained at National level".**

In one of the e-mails written to another President of NGO petitioner has referred to rival political party. He has written :

> **" I will take it up with someone in the party and getting suitably instructed."**

The petitioner has sent the e-mails of the then AAG with to news channels but they decided not to use them and petitioner had also suggested them they could also access the e-mail of the then AAG.

42. In e-mail exchange with another officer indicated that the petitioner was trying to ascertain location of one Haren Pandya on 27th night from the said officer. Said officer replied :

" there is absolutely no question of him being in Gandhinagar".

It appears that the petitioner has stated that Haren Pandya was also there in CM's residence on 27.2.2002. Petitioner was also trying to ascertain the precise time of the meeting in his e-mail exchange with the said officer. The petitioner had sent another e-mail to the said officer. The same is to the following effect :

> **"The deposition went well. The cross could have been a little better. I felt a little under-exploited! Lets hope they exploit me fully during subsequent hearings."**

Petitioner has also exchanged e-mails with others to recreate his movement on 27.2.2002.

43. The aforesaid exchange of e-mails which are self-explanatory indicate that the petitioner was in active touch with leaders of rival political party, NGOs., their lawyers tried to play media card, was being tutored by NGOs. The manner in which he acted is apparent from the aforesaid e-mails and need not be repeated. Petitioner had probably forgotten that he was senior IPS Officer. In case he was fairly stating a fact after 9 years he ought not to have entered into the aforesaid exercise and kept away from all politics and activism of creating pressure, even upon 3-Judge Bench of this Court, *amicus* and many others. Thus the entire conduct of petitioner indicates that he was not acting *bona fide* and was catering to the interest elsewhere. Even if we ignore his antecedents vividly mentioned in reply of SIT for time being, his aforesaid conduct does not inspire confidence.

44. Petitioner has initially in writ petitions prayed for investigation by CBI or by other independent agency. In an application for directions filed in 2015, the petitioner has stated that he has no faith in the CBI also and the cases should be investigated by SIT which may be constituted by this Court. It was strenuously urged by learned

senior counsel appearing for the petitioner that considering the ramifications of the case and also the fact that the petitioner was present in the meeting dated 27.2.2002 is also to be looked into. As such it is the duty of this Court to direct investigation by SIT.

45. We are not impressed by aforesaid submissions. It cannot be said that the petitioner has come to this Court with clean hands. Firstly the petitioner kept quiet for a period of 9 years as to the factum of meeting dated 27.2.2002. Then he was exchanging e-mails for ascertaining the time and presence of the persons at Ahmedabad. In case he was present in the meeting it was not required of him to ascertain those facts. Petitioner did not state fact of meeting dated 27.2.2002 in statement recorded by SIT in 2009. The explanation offered by the petitioner for said omission that his statement was recorded in the year 2011 before SIT under section 161 Cr.P.C. as such he made all disclosures. The SIT was same, having same powers all the time. Petitioner is a senior IPS officer thus the explanation of the petitioner does not appear to be *prima facie* credible.

46. This Court had earlier appointed SIT and petitioner had made unwarranted and serious allegations on the SIT constituted by this Court whose performance has been appreciated by this Court a

number of times. Petitioner after keeping quiet for 9 years had taken Mr. K.D. Panth with himself to the SIT on 25.3.2011 and insisted that Mr. Panth should be examined in his presence. It was not expected of a senior officer like petitioner to act in the aforesaid manner. Effort of petitioner to examine Mr. K.D. Panth on 25.3.2011 in his presence by SIT was indicative of pressure tactic employed by him. The SIT ultimately examined Mr. Panth on 5.4.2011 and Mr. Panth has not supported the stand of the petitioner that he attended the meeting dated 27.2.2002. Later on petitioner as per his own case, got drafted and obtained the affidavit of Mr. Panth and Mr. Tara Chand Yadav and he had provided legal assistance to them and had handed over the affidavit of Mr. Panth to the *amicus curiae* appointed by this Court; whereas Mr. Panth did not turn up to handover his own affidavit. It is also apparent that the petitioner had acted in deliberation and consultation with the leaders of rival political party, NGOs. and had sent the e-mails to the effect that he was not fully exploited by a counsel of the rival political party while his statement was being recorded before Justice Nanavati Commission. He had exchanged e-mails with rival political party leaders and was being tutored by the lawyer of NGO and its activist. Ghost questions and answers were

also prepared as to what the petitioner was required to speak before Justice Nanavati Commission. Petitioner has used the media card, has even sent the e-mails to influence the judicial proceedings of a 3-Judge Bench of this Court and has tried to influence the *amicus curiae.* The e-mails also indicate that he tried pressure groups and tried to invoke media pressure. He sent e-mail account details of the then AAG to the media channels but they did not oblige the petitioner as it would not have been appropriate in their opinion to do so. Petitioner inspite of being a senior IPS officer was interacting with the top rival political leaders of Gujarat. He also suggested to a correspondent that he was required to state that he was present when he was leaving for the meeting dated 27.2.2002. The e-mails of interactions with journalists, press, media, NGOs., conduct reflected in e-mails exchanged during the course of inquiry before Justice Nanavati Commission, made it clear that he has not come to the Court with clean hands. No relief can be granted if a person approaches this Court with unclean hands as laid down by this Court in *Dalip Singh v. State of U.P. & Ors*. (2010) 2 SCC 114.

47. As per averments made by the petitioner, he accessed the e-mails of the then AAG in the years 2009 and 2010. In case these e-

mails were in his possession, it was the bounden duty of the petitioner to disclose them at the relevant time in appropriate proceedings at an appropriate stage but he did not do so. Even when he has made statement before the SIT on 25.11.2009 and 26.11.2009, it was his bounden duty to disclose the e-mail of 14.9.2009 in case he was in possession of the same. Apart from that when the petitioner's statement was recorded by SIT in March, 2011, it was his bounden duty to hand over e-mails to the SIT and it was also incumbent upon him to mention the same in the unsolicited affidavit dated 14.4.2011 which he had filed in SLP (Crl.) No. 1088/2008 – *Jakia Jafri*'s case but he kept silent as to the e-mails in the said affidavit. When he made such sensational disclosures after 9 years, what prevented him from not disclosing the e-mails and keeping quiet is inexplicable conduct. In the statement before Justice Nanavati Commission also petitioner has failed to state about the e-mails. When he has sent the e-mails to the effect that his potential was not fully exploited by rival political party, what prevented him from stating about the e-mails before Justice Nanavati Commission also is not understandable. Learned senior counsel appearing for the petitioner in response to the query made by the court why the petitioner kept quiet as to e-mails

on aforesaid occasions, fairly and rightly conceded that it was the duty of the petitioner to state on the aforesaid occasions as to the e-mails but their explanation that petitioner was ultimately pushed to the wall by registering a criminal case at the behest of Mr. Panth, then he disclosed the e-mails, is also not acceptable as the petitioner's statement before Justice Nanavati Commission continued even after the date of registration of offence. The aforesaid explanation does not appear to be sound one. The petitioner has filed the e-mails first time in this Court along with affidavit dated 29.7.2011. This was around the time when the report as to hacking of e-mail account and tampering with the e-mails was filed by the then AAG against the petitioner. The questions of delay and explanation are ultimately to be gone into finally in criminal case II-CR. No.3148/2011, without meaning to decide in present proceedings, the overall conduct of the petitioner does not inspire confidence.

48. It was submitted on behalf of the petitioner that since he was present in the meeting dated 27.2.2011 and this aspect is material for the cases in question, as such considering ramifications, this Court should direct investigation by SIT into the aforesaid allegations. We are not ready to accept the submission for various reasons. Firstly the

scope of inquiry in the case I-CR. No.149/2011 on the basis of the complaint lodged by Mr. K.D. Panth is whether his affidavit was obtained by the petitioner under coercion and in the circumstances narrated by him in the First Information Report. This aspect is not required to be gone into and decided in this case whether the petitioner was present in the meeting dated 27.2.2002 and what transpired in that meeting. That is not the issue within the ambit and scope of I-CR. No.149/2011. It is simply a case in which question has to be gone into whether the affidavit dated 17.6.2011 was obtained by the petitioner in the circumstances alleged by Mr. K.D. Panth and after taking him to political luminaries of rival party and whether they were involved in preparation/drafting of the same. Similarly in the case of hacking of e-mail account also the aforesaid question cannot be said to be open for investigation at all considering the scope of the complaint lodged by the then AAG. Thus the submission made by the petitioner to sensationalise the issue by widening the scope of inquiry of the aforesaid two cases and that SIT is required to be appointed for the aforesaid reasons, is too tenuous to be accepted.

49. This Court on 22.4.2009 had directed SIT to look into complaint dated 8.6.2006 of *Ms. Jakia Jafri*. Apart from that

petitioner has himself appeared before the SIT as per the directions issued by this Court for further investigation. On 12.5.2010 SIT had examined number of witnesses and looked into large number of documents and submitted the report and recommended further investigation under section 173(8) Cr.P.C. against certain police officials and a Minister in the State Cabinet who was ultimately tried also. The SIT conducted further investigation and submitted its report dated 17.11.2010 before this Court. On 20.1.2011 learned amicus curiae appointed by this Court submitted a preliminary report. This Court on 15.3.2011 directed Chairman, SIT to look into the observations made by the learned amicus curiae and to carry out further investigation if necessary in the light of the suggestions made by *amicus curiae*. Thereafter on 21.3.2011, 22.3.2011 and 25.3.2011 the petitioner was examined by the SIT and Mr. K.D. Panth on 6.4.2011. The petitioner had sent an unsolicited affidavit on 14.4.2011 to this Court which was not taken on record. Petitioner was also summoned by Justice Nanavati Commission on 27.4.2011. The SIT conducted further investigation under section 173(8) in the *Gulberg Society* case and submitted its report on 24.4.2011. This Court examined the report dated 24.4.2011 submitted by SIT and

directed on 5.5.2011 that a copy of the same be supplied to the learned *amicus curiae* who shall examine the reports of the SIT and make an independent assessment of the witnesses statements recorded by the SIT and submit his comments thereon and also observed that it would be open to the learned amicus curiae to interact with any of the witnesses who have been examined by SIT including the Police officers. Thereafter, petitioner had appeared before the *amicus curiae* on 18.6.2011 and handed over disputed affidavit dated 17.6.2011 of Mr. K.D. Panth who failed to turn up before the *amicus curiae*. On 25.7.2011 amicus curiae submitted his final report before this Court. SIT had prepared a final report in the aforesaid matter and this court on 12.9.2011 disposed of *Jakia Jafri*'s case (supra), and directed the Chairman, SIT to file the final report along with the entire material collected by SIT to the court which had taken cognizance of Crime No.67/2002 in terms of Section 173(2) Cr.P.C. Thereafter, SIT in compliance of the order dated 12.9.2011 has filed the final report before the competent court in Sessions Case No.152/2002.

50. The SIT in its report submitted to the trial court had come to the conclusion that the claim of the petitioner that he was present on

27.2.2002 in meeting held at the residence of the then Chief Minister is not correct. The SIT has made the investigation into the aforesaid aspect and SIT in its counter affidavit has also clearly stated that it was found after investigation that the petitioner was not present in the meeting dated 27.2.2002. Thus with respect to the investigation into aforesaid aspect, the matter stands concluded as to the petitioner's presence in the meeting dated 27.2.2002. That investigation had been made by the SIT appointed by this Court and there is absolutely no basis now to order constitution of a fresh SIT to look into the aforesaid aspect. This Court in *Jakia Jafri*'s case (supra) has observed as follows :

> **"9.** We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report under Section 173(2) of the Code to the court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in *M.C. Mehta (Taj Corridor Scam)* v. *Union of India* (2007) 1 SCC 110, in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law.

10. Accordingly, we direct the Chairman, SIT to forward a final report, along with the entire material collected by SIT, to the court which had taken cognizance of Crime Report No. 67 of 2002, as required under Section 173(2) of the Code. Before submission of its report, it will be open to SIT to obtain from the amicus curiae copies of his reports submitted to this Court. The said court will deal with the matter in accordance with law relating to the trial of the accused, named in the report/charge-sheet, including matters falling within the ambit and scope of Section 173(8) of the Code.

11. However, at this juncture, we deem it necessary to emphasise that if for any stated reason SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or reasonable grounds for proceeding against any person named in the complaint dated 8-6-2006, before taking a final decision on such "closure" report, the court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report strictly in accordance with law as enunciated by this Court in *Bhagwant Singh* v. *Commr. of Police* (1985) 2 SCC 537. For the sake of ready reference, we may note that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(*i*) of the Code, decides not to take cognizance of the offence and to drop the proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

12. Having so directed, the next question is whether this Court should continue to monitor the case any further. The legal position on the point is made clear by this Court in *Union of India* v. *Sushil Kumar Modi* (1998) 8 SCC 661, wherein, relying on the decision in *Vineet*

Narain v. *Union of India* (1996) 2 SCC 199, a Bench of three learned Judges had observed thus: (*Sushil Kumar Modi case* (supra), SCC p. 662, para 6)

> "*6*. … that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive.""

51. The petitioner has also made allegations against the SIT to the effect that on 14.9.2009 he came across from two e-mails received from the official e-mail address of the SIT from the inbox of the then AAG of Gujarat when he was accessing the former e-mails. Thus he has accused the SIT of leaking reports to the then AAG. However, position has been made clear by the State of Gujarat and SIT in the counter affidavits. In our opinion, the allegation that the SIT had been leaking very sensitive and confidential details pertaining to the ongoing investigation is totally false and baseless. Two e-mails referred to by the petitioner were sent by Ms. Geetha Zohri, IPS,

Additional DG of Police, and the then Convener of SIT from the e-mail of SIT for Godhra cases to the then AAG. Both these e-mails were related to the investigation done in the year 2005 in the *Sohrabuddin* encounter case by the State Police (Crime) of which Ms. Geetha Zohri IG (Crime) was incharge. She wrongly used the e-mail ID of Godhra cases at her cost to transmit these information pertaining to CID (Crime) to the then AAG. That information absolutely had nothing to do with the matters pending investigation/inquiry/trial with the Supreme Court-appointed SIT for Godhra cases. Petitioner had made deliberate attempt to mislead this Court and has enclosed only the covering text of the e-mails and intentionally avoided the enclosures because the same would have exposed falsity of his stand. The two e-mails dated 14.2.2009 sent by Ms. Geetha Zohri to the then AAG have been filed along with the enclosures by SIT. A report in this regard had already been submitted by SIT to this Court on 23.2.2011. Thus the petitioner is guilty of *suppressio veri and suggestio falsi*. He has suppressed the enclosures which he ought to have filed and ought not to have made false allegations in the writ petition that SIT was exchanging sensitive and confidential information with the then AAG. It is unfortunate that on the one hand

petitioner has prayed for appointment of SIT and on the other has not spared SIT appointed by this Court and has made false allegations against it. The conduct of the petitioner cannot be said to be desirable.

52. Coming to the question whether the investigation into the allegations made in I-CR. No.149/2011 requires investigation by the SIT. There are various reasons for which SIT investigation is not warranted at all in the aforesaid case. The scope of the case is only whether the petitioner had obtained the affidavit of Mr. K.D.Panth in an illegal manner for which offence case has been registered. In the case chargesheet has already been filed after investigation by the concerned police to the competent court. In the counter affidavit filed by respondent No.4, chargesheet has been placed on record, the statements of various witnesses have been recorded including the scientific evidence of mobile-tower, laptop etc. Statements of eye witnesses under section 164 Cr.PC have also been recorded. Mobile record of the petitioner and the complainant clearly indicate the exchange of calls between petitioner and co-accused during the relevant period. It is also found that the mobile tower location received from the service providers with respect to complainant's mobile and petitioner's mobile established that the complainant was present at the

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residence of the petitioner at the time stated in the FIR and mobile tower location of rival political luminaries and advocate who happens to be the Chairman of Legal Cell of rival political party. Laptop of the said advocate was seized and laboratory had confirmed that affidavit was prepared on the same, we make no comment on the investigation and the chargesheet which has been filed as on ultimate trial, the facts have to be gone into and decided. Once the chargesheet has been filed to the knowledge of the petitioner before 4 years, it has not been questioned and no attempt has been made by the petitioner to indicate how the investigation is unfair and incomplete or in any of the other aspects investigation is required. Credibility of the investigation is not the subject matter at this stage. It has to be gone into during the course of trial. The petitioner has unnecessarily tried to widen the scope of the case and no case is made out so as to direct investigation in CR. No.149/2011 by SIT into the circumstances in which affidavit dated 17.6.2011 of Mr. K.D. Panth has been obtained. Once the chargesheet has been filed the court has to proceed in accordance with law in the matter.

53. It was also submitted on behalf of learned counsel for the petitioner that counter affidavit filed in W.P. (Crl.) No.135/2011

discloses sufficient reason to constitute SIT in which in the reply filed by respondent No.2 it has been mentioned that "there is no room for doubt that it is a systematic and larger conspiracy through the petitioner of rival political party in Gujarat and vested interest groups surviving on anti-Gujarat campaign all of whom had started efforts to keep the Godhra riot issue live based on concocted facts and the petitioner, through all of them, is trying to build up a story at a stage when after almost 10 long years this Court has virtually concluded the judicial proceedings after undertaking tremendous judicial exercise". In our opinion, by the aforesaid averment in the reply no case is made out for investigation by the SIT into I-CR. No.149/2011 relating to preparation of affidavit or for that matter in II-Crime No.3148/2011 relating to hacking of e-mail account and tampering with it. These are not such cases of wide amplitude so as to warrant SIT to be constituted or even the CBI to be entrusted with the investigation. It is not for the petitioner to choose the investigating machinery as held by this Court in *Sakiri Vasu v. State of U.P. & Ors*. (2008) 2 SCC 409 thus :

> "10. It has been held by this Court in *CBI. v. Rajesh Gandhi* [1996) 11 SCC 253, (vide para 8)] that no one can insist that an offence be investigated by a particular

> agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice."

54. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in *Union of India & Anr. v. W.N. Chadha* (1993) Supp 4 SCC 260, *Ms. Mayawati v. Union of India & Ors*. (2012) 8 SCC 106, *Dinubhai Boghabhai Solanki v. State of Gujarat* (2014) 4 SCC 626, *CBI v. Rajesh Gandhi* (1996) 11 SCC 253, *Competition Commission of India v. SAIL & Anr*. (2010) 10 SCC 744 and *Janta Dal v. H.S. Choudhary* (1991) 3 SCC 756.

55. Learned senior counsel appearing for the petitioner has placed reliance on the decision in *Babubhai v. State of Gujarat* (2010) 12 SCC 254, wherein it was held as follows :

> "45. Not only the fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. Investigating agency cannot be permitted to conduct an investigation in tainted and biased manner. Where non-interference of the Court would ultimately result in failure of justice, the Court must interfere."

56. Learned senior counsel has placed reliance on *Zahira Habibulla Sheikh v. State of Gujarat* (2004) 4 SCC 158, *Rubabbuddin Sheikh v. State of Gujarat & Ors.* (2010) 2 SCC 200, *Narmada Bai v. State of Gujarat & Ors.* (2011) 5 SCC 79, *CBI v. Amitbhai Anilchandra Shah* (2012) 10 SCC 545. In cases related to *Best Bakery*, *Sohrabuddin encounter* etc., considering the nature of the case, appropriate directions were issued by this Court for conducting impartial investigation by CBI or other independent agency. However, SIT constituted by this Court has already investigated into the main cases and the scope of cases in hand is not so wide in magnitude so as to direct the SIT or CBI to investigate into the matters.

57. It was submitted by learned senior counsel that there is a need for investigation by an independent agency when the local police officials and State officials are involved. For that, learned senior counsel has relied upon *R.S. Sodhi, Advocate v. State of U.P. & Ors*. (1994) Supp 1 SCC 143 as follows :

> "2.…we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into

> the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice."

R.S. Sodhi was a case of fake encounter killings. The case in hand is not such and this Court has already appointed SIT which has looked into various allegations raised by Ms. Jakia Jafri in the course of which petitioner had been examined and his stand regarding meeting dated 27.2.2002 has not been found to be correct. Whether there is hacking of e-mail account in II-CR. No.3148/2011 and tampering with e-mails, investigation is to be based on the scientific evidence. It cannot be said that merely because report has been lodged by the then AAG of the State, investigation is not going to be fair or impartial. More so, when it is to be based on the scientific evidence and in case investigation is not fair or not made into all the aspects it would be

open to the petitioner to question it at an appropriate time before an appropriate forum in accordance with law.

58. To constitute SIT, learned senior counsel has also relied upon *Vineet Narain & Ors. V. Union of India & Ors.* [(1996) 2 SCC 199], *Union of India & Ors. V. Sushil Kumar Modi* [(1998) 8 SCC 661], *M.C. Mehta v. Union of India* [(2007) 1 SCC 110], *Centre for Public Interest Litigation & Ors. V. Union of India & Ors*. [(2011) 1 SCC 560], *Shahid Balwa v. Union of India & Ors*. [(2014) 2 SCC 687], *Manoharlal Sharma v. Principal Secretary & Ors*. [(2014) 2 SCC 532]. Reliance was also placed on *NHRC v. State of Gujarat* [(2009) 6 SCC 342] and *Ram Jethmalani & Ors. V. Union of India & Ors*. [(2011) 8 SCC 1] to constitute SIT. Relevant extracts of *Vineet Narain* (supra) are quoted below :

> "2. The gist of the allegations in the writ petition is that government agencies, like the CBI and the Revenue authorities, have failed to perform their duties and legal obligations inasmuch as they have failed to properly investigate matters arising out of the seizure of the so called "Jain Diaries" in certain raids conducted by the CBI. It is alleged that the apprehending of certain terrorists led to the discovery of financial support to them by clandestine and illegal means, by use of tainted funds obtained through 'hawala' transactions; that this also disclosed a nexus between several important politicians, bureaucrats and criminals, who are all recipients of money from unlawful sources given for unlawful considerations;

that the CBI and other government agencies have failed to fully investigate into the matter and take it to the logical end point of the trial and to prosecute all persons who have committed any crime; that this is being done with a view to protect the persons involved, who are very influential and powerful in the present set up; that the matter discloses a definite nexus between crime and corruption in public life at high places in the country which poses a serious threat to the integrity, security and economy of the nation; that probity in public life, to prevent erosion of the rule of law and the preservation of democracy in the country, requires that the government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against each and every person involved, irrespective of the height at which he is placed in the power set up.

3. The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law : "Be you ever so high, the law is above you". Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the government agencies.

4. In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law."

59. We have already discussed nature of cases in hand applying aforesaid principles. No case is made out to constitute SIT. No doubt about it "be you ever so high the law is above you" is a well accepted principle but in the instant case the conduct of the petitioner cannot be said to be above board. Neither it can be said that he has come to the court with clean hands. Petitioner was a high ranking officer but he too cannot be said to be above law. He must undergo the investigation as envisaged by law in case he has committed the offences in question.

60. There is no need to monitor the case any further as this Court has already laid down in *Jakia Jafri*'s case (supra) that once chargesheet has been filed it is not necessary for Court to monitor the case and the case of hacking of e-mail account is not such which needs any investigation by SIT or CBI or court's monitoring.

61. It was also submitted that the Court can transfer investigation after chargesheet is filed. That can be done only in extraordinary cases. Considering the scope and ambit of enquiry in both the cases, the submission based upon *Rubabbuddin Sheikh* (supra), *Narmada Bai* (supra), *State of Punjab v. Central Bureau of Investigation & Ors*. [(2011) 9 SCC 182] and *Bharati Tamang v. Union of India & Anr*. [(2013) 15 SCC 578] is untenable.

62. Coming to question whether criminal contempt proceedings to be initiated, as prayed, learned senior counsel appearing for petitioner has heavily relied upon e-mail exchanges filed by petitioner allegedly from e-mail account of the then AAG with respect to which offence CR. No.3148/2011 under section 66 of the IT Act has been registered. The allegation against petitioner is of hacking of account and tampering with e-mails with respect to which an FIR has been filed, without meaning to deciding the correctness of the e-mails they are being looked into only for the purpose whether criminal contempt of the Court has been committed.

63. It was submitted by learned senior counsel for petitioner that there was criminal nexus between the then AAG with lawyers of the accused, Ministers and non-State actors to undermine the administration of justice. It was submitted that certain replies etc. which were to be filed in court were shown to Mr. G.Swaminathan who was completely outsider to the litigation. In our opinion merely taking somebody's opinion who is outsider to litigation before filing the reply in the court would not undermine the administration of justice in any way and is not indicative of criminal conspiracy. There are knowledgeable incumbents who can always be consulted and their

opinion obtained. There is nothing improper in it. If some reply/petition was to be filed in Gujarat court and the same was shown to the said gentleman for his opinion it would not subvert the course of justice in any manner. When certain pleading is to be filed in court there is no legal bar on consultation with the appropriate persons of confidence or having requisite knowledge. It was submitted by the petitioner that certain affidavit was sent to the said person in which he has suggested certain paragraphs to be incorporated but the learned Solicitor General has shown actual affidavit filed in the case in which alterations suggested by the said person were not actually inserted.

64. It was also submitted that 9 SIT reports were sent to Mr. G.Swaminathan in 2010. These reports were submitted by SIT on 11.2.2009 in this Court and copies thereof were ordered to be handed over to the State of Gujarat on 2.3.2009. On 6.3.2009 the reports were made available to the counsel appearing for the State of Gujarat. They were in turn forwarded to the State authorities. This Court has passed an order on 1.5.2009 in *National Human Rights Commission*'s case (supra) vacating the stay on commencement of trial. In the reports which had been placed on record by petitioner only the action taken by SIT was mentioned and the stage of investigation or need for

conducting further investigation. These reports did not contain material/finding for or against any accused person hence no advantage could be derived therefrom by any accused person. They did not contain such material disclosure of which may subvert the course of justice. No case is made out of criminal conspiracy and criminal contempt or otherwise. It cannot be culled out how the course of justice has been subverted by the aforesaid disclosure of SIT reports. Thus charge of criminal contempt cannot be said to be taken home successfully. Petitioner has not been able to substantiate that the aforesaid actions interfered or obstructed in the administration of justice in any manner. Petitioner was not able to establish how the reports could be of any help to anybody so as to subvert the course of justice or action otherwise amounts to interference with administration of justice. The petitioner has himself obtained these SIT reports, as per the then AAG allegedly in illegal manner whereas as per petitioner by sharing the e-mails of the then AAG. If they were meant to be confidential petitioner has also used them and even sent e-mail particulars of the then AAG to media channels. Therefore the submission advanced does not lie in his mouth. Overall exchange has to be considered in the light of sweeping accusations against the State

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and its large number of functionaries. The conduct of the then AAG in the circumstances he was placed, has been unnecessarily adversely commented upon, the accusation of criminal contempt is not at all made out.

65. Merely sending some representation which was to be submitted to the President and Prime Minister of India, and other documents to an advocate who was a politician also would not tantamount to criminal contempt unless and until it is shown that the information was intended to help the accused in any manner whatsoever, it cannot be said that sharing of information tantamount to criminal contempt.

66. Learned counsel for the petitioner has placed reliance upon a decision of this Court in *Rachapudi Subba Rao v. Advocate General, Andhra Pradesh* [(1981) 2 SCC 577] in which as to criminal contempt, it has been laid down thus:

> "14. It is noteworthy, that in the categorization of contempt in the three sub-clauses (i) to (iii), only category (ii) refers to 'judicial proceeding'. Scandalizing of court in its administrative capacity will also be covered by sub-clauses (i) and (iii). The phrase "administration of justice" in sub-clause (iii) is far wider in scope than "course of any judicial proceeding". The last words "in any other manner" of sub-clause (iii) further extend its ambit and give it a residuary character.

> Although sub-clauses (i) to (iii) describe three distinct species of "criminal contempt", they are not always mutually exclusive."

67. This Court has considered what constitutes criminal contempt in *Dr. D.C. Saxena v. Hon'ble the Chief Justice of India* [(1996) 5 SCC 216] and has laid down the aforesaid criteria thus :

> "**38.** The contempt of court evolved in common law jurisprudence was codified in the form of the Act. Section 2(*c*) defines "criminal contempt" which has been extracted earlier. In *A.M. Bhattacharjee case* [1995 (5) SCC 457] relied on by the petitioner himself, a Bench of two Judges considered the said definition and held that scandalising the court would mean any act done or writing published which is calculated to bring the court or judges into contempt or to lower its authority or to interfere with the due course of justice or the legal process of the court. In para 30, it was stated that scandalising the court is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific Judge, is a scurrilous attack on the judiciary as a whole, which is calculated to undermine the authority of the courts and public confidence in the administration of justice. Contempt of court is to keep the blaze of glory around the judiciary and to deter people from attempting to render justice contemptible in the eyes of the public. A libel upon a court is a reflection upon the sovereign people themselves. The contemnor conveys to the people that the administration of justice is weak or in corrupt hands. The fountain of justice is tainted. Secondly, the judgments that stream out of that foul fountain are impure and contaminated. In *Halsbury's Laws of England* (4th Edn.) Vol. 9, para 27 at page 21 on the topic

"Scandalising the Court" it is stated that scurrilous abuse of a judge or court, or attacks on the personal character of a judge, are punishable contempts. The punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual judges of the court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In consequence, the court has regarded with particular seriousness allegations of partiality or bias on the part of a judge or a court. On the other hand, criticism of a judge's conduct or of the conduct of a court, even if strongly worded, is not a contempt provided that the criticism is fair, temperate and made in good faith, and is not directed to the personal character of a judge or to the impartiality of a judge or court."

x x x x x

40. Scandalising the court, therefore, would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalising the judge as a judge, in other words, imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor

challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt. *Section 2(c) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt.* Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the judge or court into contempt or tends to lower the authority of the court would also be contempt of the court."

(emphasis supplied)

68. This Court in *Rizwan-Ul-Hasan & Anr. v. State of U.P.* [AIR 1953 SC 185] has laid down that judicial contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with due course of justice and the Court will not exercise its jurisdiction upon a mere question of propriety. This Court has laid down thus :

> "**10.** … the jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice and that the purpose of the Court's action is a practical purpose and it is reasonably clear on the authorities that the Court will not exercise its jurisdiction upon a mere question of propriety."

69. Considering the aforesaid decisions, it does not appear that the e-mail exchange between the then AAG and other functionaries tantamounts to causing prejudice or amounts to substantial interference in any other manner in due course of justice. It is not the case of scandalizing the court or in any manner affecting fair decision of the court or undermining the majesty of the Court/people's confidence in the administration of justice or bringing or tending to bring the court into disrepute or disrespect which tantamount to criminal contempt under section 2(c)(iii) of the Contempt of Courts Act.

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70. Apart from that prayer to initiate criminal contempt on the basis of documents filed on 29.7.2011 has been made in the applications for directions – Crl.M.P. Nos. 15871/2015 and 15875/2015 filed in 2015. On merits we have not found any case is made out of criminal contempt. Besides it is also clear that the prayer is also barred by

limitation. One year limitation is provided under section 20 of the Contempt of Courts Act. Both applications are hopelessly barred by limitation so as to initiate contempt.

71. Resultantly, the writ petitions and Crl. Misc. Petition Nos.15871/2015, 15874/2015, 15875/2015, 15877/2015 and other petitions are dismissed. Since there was interim stay, as charge-sheet has been filed in I-CR. No.149/2011, let trial court proceed further in accordance with law, and investigation in II-CR. No.3148/2011 be made expeditiously in accordance with law. No costs.

……CJI
(H.L. Dattu)

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New Delhi; ……J.
October 13, 2015. (Arun Mishra)

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