THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

<u>Crl.P.No.5520 of 2015</u>

<u>ORDER</u>:

The petitioner/A-4 filed the petition under Section 482 Cr.P.C to quash the **Crime No.11/ACB-CR/2015** of Anti Corruption Bureau Police Station, City Range-I, Hyderabad **registered on 31.05.2015** for the offences punishable under Section 12 of the Prevention of Corruption Act,1988 (for short, 'PC Act') and Sections 120-B read with 34 I.P.C. basing on the letter/**report dated 28.05.2015** of the 2nd respondent.

2) Impugning the registration of above crime, the petitioner/A-4 in the petition sought for quashing of the proceedings with the contentions in the grounds for quashing that it is not a case of the accused abetting the other to commit the offence, that the defacto-complainant inviting the accused to seek his vote at the behest of the ruling party with a guilty intent to implicate the petitioner and others in a criminal case with a concocted and false story and hence apart from the petitioner, the defacto-complainant who abetted the commission of the alleged offence shall be tried and punished as prime accused. It is further contended that the police after receiving the written report from the 2nd respondent on 28.05.2015, thereafter registering the crime on 31.05.2015 and proceeding further with the investigation is contrary to law that there are no ingredients either in the written report or as per the subsequent charge sheet to constitute an offence under Section 12 of the P.C. Act, that admittedly the crime was not registered on that day and on the other hand the investigating officer initiated the enquiry and arranged for video and audio recording for collecting the evidence without registering the F.I.R and reporting to the

Court. It is further contended that the respondent police on 31.05.2015 after trap was laid and after recording the conversation between accused and the 2nd respondent and after seizing the cash and other articles, the crime was registered. It is contended that the person abetting any offence under Sections 7 or 11 of P.C. Act shall be liable to be punished under Section 12 of the P.C. Act and thus it is clear that only when the material collected show that the accused abetted the offence either under Section 7 or Section 11 of the Prevention of Corruption Act, then only the prosecution could proceed under Section 12 of the Prevention of Corruption Act, that on perusal of Section 7 of the Act would clearly indicate that a person being a public servant accepts or agrees to accept as a motive or reward for doing or not doing any official act in the exercise of his official functions, therefore, <u>there shall be an allegation that a public servant must have been induced by the accused to accept or to agree to accept gratification for doing an act or forbearing to do an act in the exercise of his official functions</u>, that therefore casting of vote or not to vote is not an official act or official duty to attract the ingredients of Section 7 of the Prevention of Corruption Act. It is further contended that Section 11 of P.C.Act is also not attracted as the ingredients itself says that if a public servant accepts or agrees to accept any valuable thing without consideration or for an inadequate consideration in any proceeding or business transacted by such public servant or for any action with his official function and this section also referred to the public duty and official function, therefore, when the public duty or public functions are not involved with reference to exercise of the voting right, Section 11 of the Act also would not be attracted.

3) The petitioner further contended that the offence of bribery

and inducement to an elector during the elections pursuant to the notification issued by the Election Commission under Representation of People Act, would come under Sections 123 to 138 of the Representation of People Act, 1951; apart from that the offences relating to elections i.e., bribery, undue influence etc., would come under Sections 171-A to 171-I of the Indian Penal Code and all these offences are non-cognizable and bailable offences, that right to vote is a statutory right, as such there is no discharge of public functions in exercising franchise as the elector, that there must be a discharge of public function or activity, to come under the purview of public servant as defined under Section 2(c) of the P.C. Act, that electoral malpractices does not come within the ambit of the P.C. Act and Sections 171-A to 171-H of I.P.C were retained even after the commencement of the P.C. Act to curb the electoral malpractices and to punish the same.

4) The further contention is that the respondent police have not followed the mandatory procedure contemplated under Section 154 and 157 of Cr.P.C. as the report of the 2nd respondent was said to have been received on 28.05.2015 and the respondent police, for the reasons best known to them, did not choose to register a crime till 31.05.2015 and sent the copy of the F.I.R to the Court concerned on 01.06.2015, that the respondent police cannot investigate into any crime without registering the crime and also cannot apprehend any person without conducting investigation, but in this matter the respondent police even though they received a written report on 28.05.2015, instead of registering the same, investigated into and later it was registered as a crime and more so the respondent police while remanding the accused, does not indicate that a statement was recorded from the 2nd

respondent/defacto-complainant preceding the written report, that the written report alleging the offence was said to have been submitted on 28.05.2015, whereas the F.I.R was forwarded to the Court concerned on 01.06.2015 with an abnormal delay which is contrary to Section 157 Cr.P.C. It is further contended that according to the 2nd respondent, the petitioner approached him and offered money and flight tickets either to abstain from voting or to cast vote in favour of a particular party, that the said allegation is vague, incorrect and suffers from want of particulars as no person could either be prosecuted or convicted basing on such vague allegations, that in any event without admitting, it is submitted that at best such allegations may come under the offence relating to elections as codified under Chapter IX-A of I.P.C and shall not come under the provisions of P.C. Act, that the said offences have been incorporated in I.P.C with a specific intent to curb the electoral malpractices and to punish the offenders, that while amending the I.P.C, the intent of the Legislature is to specifically deal with the electoral malpractices exclusively under this provision, that however, the intention of the legislature is to keep the penal offence as non-cognizable and bailable, that the act of the Anti Corruption Bureau in registering the crime under the provisions of the Prevention of Corruption Act is nothing short of an attempt to defeat the Legislative intent.

5) The further contention is that the 2nd respondent did not complain to the officials of the Election Commission, who were conducting the elections, that in the event of giving such a report, it is for the election authority to conduct enquiry and file a complaint before the Court concerned as the alleged offence is non-cognizable and bailable, that the respondent police with a

malafide intention to implicate the petitioner and other accused sought a report from the 2nd respondent with vague allegations and conducted a stage managed trap merely to register the crime under the P.C. Act, that the registration of a crime for the offence under Section 12 of the P.C. Act and proceeding with the investigation are nothing but an abuse of process of criminal justice system and such act is liable to be set aside and hence prayed to quash the entire proceedings.

6) During the course of hearing before admission of the quash petition, when this Court, after hearing both sides, on 18.06.2015 ordered not to arrest the petitioner/A-4 till 24.06.2015, the 2nd respondent filed a petition in Crl.P.M.P.No.5823 of 2015 praying to recuse from the hearing of Criminal Petition No.5520 of 2015 from this bench on various grounds and the same was heard by this Court at length and dismissed the same on 29.06.2015 the result portion of the order is as follows:

(a) The recusal petition is dismissed;

(b) The recuse petitioner is liable to be punished for criminal contempt of Court, after following due procedure as per Section 14 of the Contempts of Courts Act with the rules framed in relation thereto by the Hon'ble High Court and the Registry is hereby directed to take necessary further steps, subject to permission of the Hon'ble Chief Justice, if any required by the Rules;

(c) It is needless to say once the Court is not chosen to recuse, for no grounds and from the caution by the Apex Court in ***Sahara*** supra of a Judge recusing from the matter of hearing would constitute act of breach of oath apart from the direction as Law of the Land for all Courts to follow and not recuse for mere asking, this Court is going to hear the matter further and in this regard requesting the parties and learned counsel concerned to cooperate for fair hearing and impartial disposal.

(d) It is for transparency in the proceedings in the matter before this Court, the Court is intending to record (subject to the permission of the Hon'ble Chief Justice) the proceedings with audio and video coverage and by confining permission under Section 327(1) proviso to Cr.P.C. to attend in the Court hall only those advocates on record and the senior counsel with required assistants on permission and the learned Advocate General for the State of Telangana besides the Public Prosecutor concerned and the parties concerned without entry to others.

(e) As it is the first time of the procedure chosen to adopt, though not a new concept for such procedure is required to be adopted in recording evidence by Commissioner as per the amended C.P.C. that was laid down by the Apex Court in ***Salem Bar Association Case No.1***[1] and the recording of evidence in criminal cases by video recording as laid down in ***Praful B.Desai*** supra***,*** by following the guidelines therein[2];

(f) The Registry is directed to place before the Hon'ble Chief Justice for necessary permission and consequent to it for necessary arrangements to be cause made by the Registry and therefrom to list the matter and also put up the proceedings for contempt against the recuse petitioner.

(g) This Court feels it just, with reference to the expression in ***Patti Begari Ramaiah*** supra by the Division Bench of this Court that – It is settled law that the administrative control of the High Court vests in the Chief Justice of the High Court alone and it is his prerogative to distribute business of the High Court both judicial and administrative, the Chief Justice is since the master of the roster and he alone has the prerogative to constitute Benches of the Court and allocate cases to the Benches so constituted (see State of Rajasthan Vs. Prakash Chand (1998) 1 S.C.C. 1, R.Rathinam Vs. State (2000) 2 S.C.C. 391 and State of U.P. Vs. Neeraj Chaubey(2010) 10 S.C.C. 320)" – the Hon'ble Chief Justice can take any administrative decision if at all the matter is to be listed before any another bench.

7) The interim order of not to arrest the petitioner-A4 is extended from time to time and is in force. The Hon'ble Chief Justice has since allotted the criminal petition to this Court vide order dt.30.07.2015 so as to continue the hearing and to decide, heard both sides at length by recording with audio and video coverage and by confining permission to the Advocates on record and the senior counsel appearing for them respectively under Section 327(1) proviso to Cr.P.C.

8) Subsequent to filing of the quash petition, the 1st respondent by completion of investigation, **filed charge sheet on 27.07.2015,** before the learned Principal Special Judge for S.P.E

& A.C.B Cases, Hyderabad against four accused including against the petitioner as A4 for said offences and however stating that the investigation is still pending against A-5 and others and the prosecution is intending to file supplementary charge sheet and also any other material which comes to light during further investigation against A-1 to A-4 and others. The learned Principal Special Judge endorsed on the charge sheet on 11.08.2015 that to avoid multiplicity of proceedings, await supplemental charge sheet or final report. Thus so far no cognizance is taken on the final report supra for any offence against any accused and no material under Section 207/208 CrPC is supplied to the accused by the Court for no cognizance taken, from the above.

9) In this background, subsequent to the filing of the charge sheet and in the course of the hearing of the quash petition as referred supra, the 1st the respondent investigating agency filed a memo on 06.11.2015 in U.S.R.No.8616 of 2015 stating that the Criminal Petition to quash the FIR has become infructuous from the subsequent investigation and filing of the charge sheet against A-1 to A-4 on 27.07.2015 before the learned Principal Special Judge. ***It is the submission of the learned Advocate General representing the learned Standing Counsel for 1st respondent-A.C.B, that very charge sheet contents supra reads investigation against A-1 to A-4 is completed, but for against A5 and others to file a supplementary charge sheet and there to include if any other material comes to light during further investigation against A-1 to A-4 also and thereby the quash petition of the crime is infructuous and the remedy is to file quash petition against the charge sheet separately.*** Whereas the submission of the learned senior counsel for the

quash petitioner is that mere filing of charge sheet even no way liable to dismiss the quash petition impugning the crime more particularly in the facts of the case impugning the very registration and maintainability of the crime as stated in their counter-affidavit in opposing said memo. After hearing both sides at length on the memo and objections of quash Petitioner, this Court rejected the memo by a detailed order dt.02.12.2015 referring to Section 173 CrPC and the expressions of the Apex Court in ***State of Haryana Vs. Bhajanlal***[3], ***Lal Kamlendra Pratap Singh Vs. State of U.P.***[4] and ***Devendra Vs. State of U.P.***[5] and in holding mainly from ***Devendra (supra)*** that this Court cannot close the matter or dismiss by holding as infructuous or to say there are any further remedies left open, unless it is after hearing and if submitted by counsel for quash petitioner of the crime to take that remedy to close and give a further relief to impugn the final report with such observation. It is because, the quash petition running in 12 pages with 20 paras is mainly impugning the very maintainability of the crime, not only for registered belatedly on 31.05.2015 from the report dated 28.05.2015 and dispatched to the Court on 01.06.2015 also with delay in forwarding under Section 157 Cr.P.C to the prejudice of defence, but also in saying while arraying A-1 to A-3 pursuant to the alleged trap laid of their involvement and arrest, shown the petitioner also as A-4 under Section 12 of Prevention of Corruption Act and Section 120-B and 34 I.P.C, even not a case of accused abetting the other to commit the offence, that a classic case of false implication with a false story, that as per the Penal provisions if at all the defacto-complainant shall be tried and punished for the abetment, that without person abetting the offence under Section 7 or 11 liable to be punished with allegation of public servant under Section 2(c) of the P.C. Act must have been induced, else Section 12 of P.C. Act won't attract, the casting of vote and exercise of franchise not even in discharge of any public duty or official function, to attract the election offences after election notification under Section 171-A to I of I.P.C and Section 123 to 138 of R.P. Act are even non-cognizable, besides not even complained to the officials of the Election Commission who were conducting the elections, as it is for them to conduct any enquiry and file complaint before Court, that the investigation is contrary to law and mandatory procedure and abuse of the process of criminal justice system, further that no ingredients of Section 12 of P.C. Act attracts and further the registering of the crime after commencement of investigation is contrary to law against all accused, that the allegation against the petitioner in the report is also vague, incorrect and suffers from want of particulars to prosecute on that basis.

10) It is therefore from supply of the chargesheet copy by 1st respondent to the quash petitioner, the quash petition is taken up for hearing to decide on merits. For the 1st respondent ACB, earlier the learned Advocate General for the State of Telangana was appearing and representing the learned standing counsel for ACB, however, later changed and representing by learned Senior Counsel Mr. Harin P.Raval and permission sought for is accorded for the Senior Counsel and another counsel to assist to him by name Sri P.Harsha, besides the standing counsel Sri V.Ravi Kiran Rao, is appearing along with the Investigating Officer in assisting. The 2nd respondent-Defacto complainant is appearing through the counsel on record and the quash petitioner is appearing through another Senior Counsel Sri K.Ravindra Kumar.

11) In the course of hearing, it is the submission of the learned counsel for the quash petitioner while reiterating all the contentions raised in the quash petition that even from the very letter of the defacto complainant setting the law in motion that was registered as FIR, leave about the same liable to be quashed and its continuation is abuse of process and it is a belated one by false implication of the petitioner as A.4, leave about the other accused, that the defacto complainant is the prime accused in abetting and instigating other accused to the offer to accept and not a trap by police concerned; even on its face so far as the quash petitioner Mr. Mathias Jerusalem concerned is only stating that he approached him and offered an amount of Rs.2.00 Crores and a ticket to leave the country or vote in favour of Telugu Desam Party. It is not even mentioned as to on what date and time the Petitioner approached him and offered Rs.2.00 Crores and a ticket either to leave the country or vote in favour of Telugu Desam Party and if so what is his response if at all true to believe and therefrom no offence made out against the petitioner(A4) but for against the defacto complainant in seeking to quash the FIR, from non mention of any facts within knowledge if at all in the FIR is fatal though FIR need not be otherwise an encyclopaedia. It is also the submission during hearing that from the charge sheet filed also there is nothing to sustain any accusation against the petitioner as A.4 to take cognizance of any offence by the special Court against him.

12) Whereas, it is contended by the learned counsel for the 1st respondent that it is a clear case of offering of bribe to the 2nd respondent and who in turn preferred a complaint to the D.G, A.C.B and there is prima facie evidence against the accused and

incriminating material has been collected and further investigation is going on, that on reading of Section 12 read with Section 7 and 11 of the P.C.Act, whoever abets any offence punishable under Section 7 or Section 11, that offence is committed in consequence of that of abetment or not, shall be punishable, that the mens rea of the bribe giver has to be taken into consideration and in the trial for the offence of offering a bribe to a public servant the relevant question is the state of mind of the accused when he offers a bribe, that it has nothing to do with the question whether the public servant is or is not in a position to do or not to do that act, for the doing or not doing where of the amount is offered to him, thus the offerer of an illegal gratification to a public servant who may have no authority to show that particular favour, will be guilty of the offence although the public servant may refuse to be tempted, that Section 12 of the P.C.Act is applicable in the case of the petitioner as he has offered bribe and abetted the commission of offence under Section 7 of the P.C.Act that there is oral and documentary evidence to prove the meeting of the mind and collusion between the petitioner and other accused and therefore the other accused are also liable to be punishable under Section 120-B and 34 of I.P.C. It is further contended and whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment shall be liable for punishment for abetment of offences defined in Sections 7 or 11 of P.C.Act and there is no any reason to invoke Section 482 CrPC or extraordinary jurisdiction under Article 226 of the Constitution of India for quashing the F.I.R because the investigation is still at the preliminary stage and legality, correctness and authenticity of registration of F.I.R. It is further contended that it cannot be said that exercising his right to vote or not to vote is not an official duty on his part, that the action of voting in the elections and the offer made to the complainant seeking a favour must be construed as an inducement by the accused and therefore it falls within the ambit of the provisions of Section 12 of the P.C.Act. It is further contention of the 1st respondent-ACB that the petitioner herein had mediated, colluded and conspired with other accused and all of them had common interest in furtherance of their object. In reply to the contention of the learned counsel for the petitioner, it is contended that there is no specific provision under the Representation of People Act that the offences pertaining to bribery or corruption by or against the public servants shall not be dealt by provisions under any other enactment, that there is no such bar, on the other hand to register a case under the provisions of P.C.Act and Sections 171-A to 171-I of I.P.C are also applicable in respect of the offence committed by the accused and the I.O can include such offences also during the course of investigation or subsequently at the time of filing charge sheet or as and when required and deemed fit at the appropriate stage, that the Chief Electoral Officer of the Telangana State referring to the letters addressed to the D.G, A.C.B on 01.06.2015, 02.06.2015 and 04.06.2015 on the subject and the Election Commission of India desired that the matter be vigorously pursued to take to its logical end. It is contended that after preliminary enquiry was taken up by the investigating officer basing on the complaint of the 2nd respondent, the case was registered and during the course of enquiry only the investigating officer recorded audio and video pertaining to the allegation apart from mediator reports and hence there is no irregularity or illegality in the procedure followed and any delay in FIR is a matter to decide during trial and not a ground to quash and the FIR need not be an encyclopaedia and the allegation against petitioner is making out a cognizable offence in its registration and investigation and filing of final report. It is also the contention that the crime at nasal stage and there are no grounds to quash the crime much less to interfere with the statutory prerogative of the ACB police to investigate the crime and sought for dismissal of the quash petition.

13) The learned counsel for the 2nd respondent-defacto complainant, while adopting the arguments submitted by the counsel for 1st respondent-ACB, further submitted that right to vote by an MLC is a constitutional right and governed by the constitutional provisions referring to Articles 333 read with Articles 170, 171 of the Constitution of India, apart from provisions of the representation of peoples Act and the approach of defacto complainant by accused is nothing but abetment to commit an offence of not to vote by offering bribe and that there are no grounds to quash the FIR of the crime and subsequent investigation culminated into final report.

14) This Court has extended its consideration to the competing pleadings and the arguments advanced by both sides with reference to facts and law in detail and as referred supra and perused the material on record.

15) Basically the crime registered is basing on the letter dated 28.05.2015 of the 2nd respondent, Mr.Elvis Stephenson, M.L.A. representing Anglo Indian Community, Telangana Assembly, addressed to the Director General, Anti Corruption Bureau (ACB), The letter reads as follows:

"*Mr. Elvis Stephenson*
MLA (Nominated

Dt. 28.5.2015

To
The D.G.
Anti Corruption Bureau,
Hyderabad, Telangana.

Sir,

I would like to bring to your notice that I have been approached by Mr. Mathias Jerusalem, who offered me an amount of Rs.2 crores and a ticket to leave the country or vote in favour of the TDP party.

I was also contacted by Bishop Sebastin Harry who offered me a sum of RS.5 crore to abstain from casting my vote for the Biennial election to be held on the 1st day of June, 2015 or to vote in favour of the TDP Party. I was also informed that the entire transaction will be dealt by Mr. Revanth Reddy personally.

Since, this act is considered as an illegal offence including bribery and voting against my free will, I request you to please take necessary action in lieu of the Indian Law.

Yours sincerely
Sd/-Elvis Stephenson, MLA"

16) There is nothing to show from the above that the defacto complainant approached the DSP,ACB, concerned as per Section 154 CrPC as per normal course, but for directly the Director General, Anti Corruption Bureau (ACB). The Director General, Anti Corruption Bureau (ACB), endorsed on the letter/report immediately on 28.05.2015, to the D.S.P, A.C.B, City Range-I, Hyderabad, to verify the contents and take action as per law and there is initial of the DSP as received on 28.05.2015 itself. There is nothing even to make enquiry before registration of FIR, for not registering the crime immediately or to wait till 31.05.2015 by said DSP. The letter/report dt.28.05.2015 with FIR dt.31.05.2015 at 23 hours, received by the special Judge through PC 2015 of A.C.B, City Range-I, at 7.59 AM on 01.06.2015.

17) The remand Case Diary (Part-I) filed by the investigation officer is stating that the D.S.P, A.C.B, City Range-I, Hyderabad got the endorsement from the Director General of A.C.B, Telangana State over said letter for verification and necessary

action as per law and procedure and the D.S.P, ACB City Range-I, Hyderabad took up enquiry with the assistance of task force, Hyderabad City Police. There is nothing to show what is the verification made.

18) It is not even mentioned in the report of the defacto-complainant as to on what date and time and at what place the Petitioner approached him and offered Rs.2.00 Crores and a ticket either to leave the country or vote in favour of Telugu Desam Party and if so what is his response if at all true to believe. Even taken of above allegation in the letter/report, leave about non-mention of the material particulars known to the maker of the report is fatal, though FIR need not be an encyclopaedia, therefrom no offence is made out against the petitioner(A4) from mere offer, for same does not constitute abetment of any offence, much less of the offence punishable under Section 12 of the P.C. Act, for no more person to fasten vicarious liability much less for criminal conspiracy under Sections 120-B I.P.C. or common intention under Section 34 I.P.C. It is not even mentioned not only as to on what date and time and at what place the Petitioner if at all approached him and offered Rs.2.00 Crores and a ticket either to leave the country or vote in favour of Telugu Desam Party, but also if so as to what is his response to believe said version. No one keep mum for such an approach if true, without response, as his response is of vital importance. It is not even the case of the defacto complainant that he refused his offer or warned not to resort to such things and still he approached again by instigated him or lured him. There is practically no link between A1 to A4 that could be made mention in FIR to attract against the Petitioner any of the offences for which the crime is registered with other accused, much less for the final report from investigation even. What all the letter/report of defacto

complainant dt.28.05.2015 speaks against A1&2 is that "*I was also contacted by Bishop Sebastin Harry who offered me a sum of Rs. 5 crores to abstain from casting my vote for the Biennial election to be held on the 1st day of June, 2015 or to vote in favour of the TDP Party. I was also informed that the entire transaction will be dealt by Mr. Revanth Reddy personally.*

Since, this act is considered as an illegal offence including bribery and voting against my free will. I request you to please take necessary action in lieu of the Indian Law."

19) From that even it is not a case of petitioner present with them or his approach earlier was made a reference by other accused. What all it says is he was also contacted by Bishop Sebastin Harry who offered me a sum of Rs. 5 crores to abstain from casting my vote for the Biennial election to be held on the 1st day of June, 2015 or to vote in favour of the TDP Party. I was also informed that the entire transaction will be dealt by Mr. Revanth Reddy personally. It is not even mentioned as to what is the nexus between the Petitioner and other accused. The alleged first offer by the petitioner to the complainant for Rs.2.00 crores is different to the second offer by Sebastian for Rs.5.00 crores itself shows in the absence of further details of no nexus between accused inter se of A.1 to A.3 with the petitioner-A.4 much less others either from the report or from the investigation and charge sheet.

20) In this regard it is apt to mention of contents of the remand Case Diary(Part-I) filed by the investigation officer that the D.S.P, A.C.B, City Range-I, Hyderabad got the endorsement from the Director General of A.C.B, Telangana State over said letter for verification and necessary action as per law and procedure and the D.S.P, ACB City Range-I, Hyderabad took up enquiry with the assistance of task force, Hyderabad City Police and on 31.05.2015 the investigating officer secured the presence of mediators and proceeded to Pushpa Nilayam, South Lalaguda,

Secunderabad at about 4.00 P.M and took vantage positions and kept watch by observing the surroundings, that at about 4.40 P.M A-1, A.Revanth Reddy, M.L.A and A-2 Bishop Harry Sebastian came to Pushpa Nilayam by Mahindra Scorpio vehicle bearing No.AP 09 CV 9939 and went into the flat No.204, few minutes later, A-3 Sri Rudra Uday Simha also came to the flat by Hyundai Verna Car(black colour) bearing Reg. No.TS 10 UA/1031 and went into the Flat No.204 along with cash bag containing Rs.50.00 lakhs. ***A-1 and A-2 negotiated with the complainant*** and offered Rs.5.00 Crores as bribe for casting his vote in favour of T.D.P candidate in M.L.C elections to be held on 01.06.2015. On the directions of A-1, A-3 opened the cash bag and kept currency bundles(Rs.50.00 lakhs) on a table as advance bribe amount, that A-1 once again asked the complainant to cast his vote in favour of T.D.P and promised to pay remaining bribe amount of Rs.4.5 crores after completion of M.L.C elections.

21) Even therefrom there is nothing to say any link between the accused 1-3 and petitioner(A4). Further, from the above it is crystal clear that, but for the defacto complainant`s willingness indicated to receive the amounts so to vote or not to vote, the question of approaching by A1–A3 with money alleged does not arise. Leave it of no offence much less of a cognizable one for the report to police to register crime against the petitioner(A4) made out from the above, even from said reverse trap stated made on alleged approaching the defacto complainant by A1&2 firstly having come in a car and later of A3 on other car with money alleged but for the defacto complainant`s willingness indicated to accept and receive the amounts so to vote or not to vote, this could not happen and had it been, what more is required of the

defacto complainant is a privy and main perpetrator to the crime to array as co-accused from what is stated is after negotiations with defacto-complainant by A1, on money given having kept on the table, it is seized. It is unknown what exact verification or enquiry conducted before registration of the crime. It is unknown why even no entry in general diary made immediately of report received, in waiting till 31.05.2015 at 23 hours. Further from reading of the letter/report dt.28.05.2015 said to have been received at 15 hours on that date, there is nothing indicating any of the three persons are public servants to wait for registration of crime by conducting preliminary enquiry or verification meantime. In column No.8 of FIR dt.31.05.2015, it is mentioned as if no delay. There is no explanation for the delay in registering the FIR and also in forwarding to the Court after registration and not even mentioned of what enquiry conducted with assistance of task force. It shows how the investigation taken up and later crime registered and what sanctity to be attached to the letter/report. Once it is not having FIR value under Section 154 CrPC, but for of Section 162 CrPC, what is the material against petitioner(A4) to sustain the crime, leave about validity of the so called reverse trap against A.1 to A.3 dated 31.05.2015. A distinction is to be made between “legitimate” and “illegitimate” traps, and the reverse trap is to be viewed with disapproval by courts, for duty of the public servant if any offer is made at least to refuse instead of luring and inviting as a privy and co-accused being the prime accused to trap the others from the alleged offer if any on their side to him which in this case admittedly accepted and even from the mediator’s report amount found on the table of the house where the alleged reverse trap is conducted and not even in the hands of any of the accused and that too the alleged accused 1 to 3 left the house by given send off up to the road by the defacto-complainant from that alleged part of investigation without registration of crime to say the entire proceedings as referred supra as hit by Section 162 CrPC.

22) In the charge sheet dt.27.07.2015 also there is no averment with regard to A-4 except some messages. One message is to meet at Krishna Oberoi hotel and another message is requesting the 2nd respondent to make it final and waiting for confirmation and the final message is inviting the 2nd respondent as chief guest to self-employment scheme awareness programme for SC, ST, BC, Minority Christians.

23) <u>It is from the above not a case of the accused abetting the defacto complainant or any others to commit the offence, but for the defacto-complainant inviting other accused 1-3 to seek his vote from their any offer, in luring them to accept by him and definitely it shows with a guilty intention of him to implicate the petitioner and others in a criminal case, which he could not perpetrate being a public servant as defined in Section 2(c) of the P.C. Act and as laid down by the constitution Bench expression of the Apex Court from the majority view of P.V.Narasimha Rao Vs. State(CBI/SPE) at paras 85 and 99</u>[6].

24) At the cost of repetition, the contents of mediators report dt.31.05.2015 which is the basis for the Case Diary(Part-I) speaks that it is on credible information that Sri A.Revanthreddy, MLA,.... and others offered Rs.5 crores to Mr.Elvis Stephenson,MLA,.......with the mediators, ACB Officials left the ACB Office at 3 pm and reached Pushpa Nilayam, south Lalaguda, Secunderabad, at about 4 pm and took vantage positions and kept watch by observing the surroundings, that at

about 4.40 P.M A-1, A.Revanth Reddy, M.L.A and A-2 Bishop Harry Sebastian came to Pushpa Nilayam by Mahindra Scorpio vehicle bearing No.AP 09 CV 9939 and went into the flat No.204, few minutes later, A-3 Sri Rudra Uday Simha also came to the flat by Hyundai Verna Car (black colour) bearing Reg. No.TS 10 UA/1031 and went into the Flat No.204 along with cash bag. <u>After few minutes above three persons(A1-3) along with the Complainant Mr.Elvis Stephenson came to the main door of the flat and were about to disperse</u>. <u>On seeing them the ACB officials, taskforce officials and mediators went into the flat No.204 and requested the persons standing at the main road to move into the hall of the flat. The DSP disclosed his identity and introduced his staff and mediators to that persons. Then the DSP ascertained the identity of the persons</u> as 1). Sri A.Revanth Reddy, M.L.A,.....2). Bishop Harry Sebastian.....3). Rudra Uday Simha..... and informed them the purpose of the visit to the flat along with the mediators. The DSP found another person in the hall of the flat and ascertained his identity as Malcoln Taylor, the resident of flat and also friend of the Complainant-Mr.Elvis Stephenson. The DSP taken the recording equipments arranged there with assistance of task force, Hyderabad, with due precautions. We the mediators noticed huge bundles of cash on the T-POY in the hall of the flat. **On enquiry by the DSP, the Complainant informed that Mr.A.Revanthreddy,....offered Rs.5 crores as bribe to cast his vote in favour of TDP candidate in MLC elections of Telangana State to be held on 01.06.2015. The negotiations made by Bishop Harry Sebastian and Mathaias Jerusalem**. ***According to their mediations, on 31.05.2015, at about 4.40 pm, Sri A.Revanth Reddy, M.L.A, and Bishop Harry Sebastian, came to the flat and asked for casting of his vote in favour of***

their party candidate in M.L.C elections to be held on 01.06.2015. ***After few minutes of their arrival, one person brought a black colour bag and put at the sofa. On the directions of A.Revanth Reddy, M.L.A, the person who brought the bag placed the currency bundles of Rs.500/- denomination on the T-POY (totalling Rs.50 lakhs).*** Later *the MLA once again asked him to cast the vote in favour of their party candidate and* ***promised to pay the remaining*** *bribe amount of Rs.4.5 Crores after completion of MLC Elections*. ....

25) From the above, it is crystal clear that the defacto Complainant Mr.Elvis Stephenson accepted the amount as illegal gratification at said private premises of Secunderabad for alleged purpose of casting his vote in favour of the TDP candidate, as but for that, he could not allow them to leave the amount there at the T-POY of his house and leave the house by his giving send off to them till crossing main door and till reaching the road, for thereafter only the mediators and the ACB officials called them inside and enquired the complainant of what happened of what he narrated even of the promise he received for the remaining balance, to say he accepted the bribe voluntarily being the public servant from his categorical version to the D.S.P, A.C.B, as recorded in the panchanama supra; leave about the panchanama speaks A1-3 denied the above versions of the Complainant Mr.Elvis Stephenson and of Malcoln Taylor.

26) Thus had it been a fair investigation, the Complainant Mr.Elvis Stephenson, leave about Malcoln Taylor, could be arrayed as co-accused, leave further about the mediators report must contain only what was noticed by mediators and for any

confession or disclosure of what is stated for nothing leading to discovery of a fact from disclosure by accused under Section 27 Evidence Act, same is hit by Section 25 Evidence Act and Section 162 CrPC. It also shows nothing of search and seizure of pre FIR stage to say same is the FIR, for report of the Complainant Mr.Elvis Stephenson dt.28.05.2015 is already there, received by the DSP to register crime and to investigate and not even registered, a subsequent registration of the same lost the sanctity of FIR under Section 154 CrPC. In fact the quash petitioner/A-4, admittedly not present at the scene of alleged offence even from the mediators' panchanama. The letter/report dt.28.05.2015 did not even mention about the A-4(petitioner) approached the complainant on 28.05.2015, muchless the mediators report supra, for the I.O. so to mention in the C.D Part-I of A-4(petitioner) approached the complainant on 28.05.2015, in saying the date when he allegedly offered bribe of Rs.2.00 crores to the Complainant for casting his vote in favour of T.D.P candidate in M.L.C elections to be held on 01.06.2015 and arrested A-1 to A-3. There is nothing even from the above of any further acts of petitioner(A4), to array as accused, from alleged mere offer which is as vague as anything and on its plain reading nothing to attract any offence of abetment to the commission of crime to apply any of the provisions of P.C.Act muchless any privy or sharing of intention with other accused of the crime and charge sheet to array him as co-accused under Section 120-B or 34 I.P.C even. There is nothing against the petitioner/A-4 from the above, but for the complainant alleged as negotiations made by Bishop Harry Sebastian and Mathaias Jerusalem (A-4). It is not even stated what negotiations to implicate the petitioner in the crime without further investigation in this regard, for very report of defacto-complainant referred above dated 28.05.2015 only whispers against the petitioner/A-4 of only an offer by him and nothing more and nothing even as to on what date and nothing even as to any connection with other accused muchless those allegedly present at the alleged reverse trap, from what the report reads:

I would like to bring to your notice that I have been approached by Mr. Mathias Jerusalem, who offered me an amount of Rs.2 crores and a ticket to leave the country or vote in favour of the TDP party.

27) Leave it as it is for further consideration, as per remand report Case Diary(Part-I), only A-1 and A-2 negotiated with the complainant and offered Rs.5.00 Crores as bribe for casting his vote in favour of T.D.P candidate in M.L.C elections to be held on 01.06.2015. On the directions of A-1, A-3 opened the cash bag and kept currency bundles (Rs.50.00 lakhs) on a table as advance bribe amount, that A-1 once again asked the complainant to cast his vote in favour of T.D.P and promised to pay remaining bribe amount of Rs.4.5 crores after completion of M.L.C elections. <u>Same prepared by the DSP as I.O. is not correlating to what is contained in the mediators report contents supra, apart from the very reading shows the complainant is the prime accused in accepting the bribe and accepting to receive further amount promised to cast the vote in a future date undertaken.</u>

28) It is unknown why the D.S.P left without array of the complainant as co-accused and implicated the petitioner as co-accused in the factual scenario supra. In this context, it is essential to mention the famous quote of Lord Denning in his erudite expression in ***R. V. Metropolitan Police Commr,***[7] that was quoted with approval by the Honourable Apex Court in one of

the celebrated expressions in ***T.T.Antony V. State of Kerala***[8] as part of para 33 which reads as follows:

"The duty of the police - investigating agency of the State - is to act in accordance with the law of the land. This is best described by the learned law Lord - Lord Denning - in R. v. Metropolitan Police Commissioner [1968 (1) All E.L.R. 763 at p.769] observed as follows:

"I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself."

29) The Apex Court in Manusharma V. N.C.T of Delhi[9] at paras 197-201(82 to 85 of the original) – observed "that in the Indian Criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, <u>the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India."</u>

30) In the latest expression of the Apex Court in **Dharam Pal V. State of Haryana**[10] it was observed at para 25 that it is

the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "'id'ee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic.

31) In other latest expression of the Apex Court in **Pooja Pal Vs. Union of India**[11] it was observed at paras 79, 81, 88 and 89 that:

"79. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though, well demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard and fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

81. The expression "fair and proper investigation" in criminal jurisprudence was held by this Court in ***Vinay Tyagi vs Irshad Ali @ Deepak and others*** (2013)5SCC 762 to encompass two imperatives; firstly the investigation must be unbiased, honest, just and in accordance with law and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.

88. Adverting to the role of the police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties, it was underscored in ***Manohar Lal Sharma vs. Principal Secretary and others*** (2014)2SCC 532 that the aim of investigation is ultimately to search for truth and to bring the offender to book. The observations of Lord Denning in his rendering in "The Due Process of Law" First Indian Reprint 1993 page 102 were alluded to at page 553 as under: ***"In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust; and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.***

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."

89. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsized in the prefatory chapter dealing with the history of criminal investigation in the treatise on Criminal Investigation – Basic Perspectives by Paul B. Weston and Renneth M. Wells: ***"Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.***

Successful investigations are based on fidelity, accuracy, and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. .. . .".

32) The expression in ***Pooja Pal*** supra is no doubt by ordering CBI re-investigation referring to ***Vinay Tyagi*** and other expressions from the earlier State police investigation found not fair in relation to the alleged murder of the husband of the defacto-complainant and in this context by saying it is the part of the duty of the Court for so ordering, observed that respect for law is one of the cardinal principles for an effective operation of the Constitution, Law and the Government and fair trial includes fair investigation.

32(a) Not only that above facts in the case on hand, the remand report Case Diary(Part-I) further speaks that during the course of enquiry the D.S.P, A.C.B, City Range-I, Hyderabad collected audio and video recordings pertaining to the allegations.

It is unknown how evidence to be collected by investigation without registration of FIR/crime, under the guise of pre FIR registration enquiry, but for at best if at all permitted by any law or internal specific guidelines like for CBI cases to verify the authenticity or veracity of averments.

33) In this regard, learned counsel for the 1st respondent to rely on the expression of the Apex Court in ***Lalita Kumari Vs. Govt. Of UP***[12]***.*** The Constitution Bench of the Apex Court in ***Lalita Kumari*** categorically held referring to Sections 154 to 157 CrPC that, there must be information and it must disclose a cognizable offence to register FIR and in such event, registration of FIR is mandatory and no preliminary enquiry is permissible in such a situation, that this is a general rule and must be strictly complied with. However, where information received does not disclose a cognizable offence, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. Promptness in filing FIR by compulsory registration of earliest information as FIR is serving twofold objective that criminal law is set in motion and is well documented from very start preventing embellishments later and ensures transparency in the criminal justice system and also functioning of the police and it is providing for an efficient means to check powers of police as also for judicial oversight of the same including with reference to section 44 of the Police Act, 1861 and Sections 154,155, 157 and 172 of CrPC. There are two kinds of FIRs one by the informant to police officer under Section 154(1) CrPC and the other registered by police itself on any information received other than by way of an informant and registration of both kinds of FIR is obligatory and non-registration leads to negative impact on the rule of law. Police officer cannot

avoid his duty of registering FIR if cognizable offence is disclosed as part of public accountability against erring officers action has to be taken. It is held in para-44 onwards that the legislative intention of Section 154 CrPC is vividly elaborated in paras-30 to 33 (SCC) of **Bhajanlal** supra of the legislative mandate enshrined in Section 154(1) CrPC is that every information relating to commission of a cognizable offence if given orally reduced to writing or in writing and signed by the informant, should be entered in a book to be kept by such officer in such form as the State Government may prescribe which is commonly called as First Information Report which act of entering the information in the said form is known as registration of a crime or a case.......... The Officer in-charge of police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of the offence which he is empowered u/sec.156 CrPC to investigate, subject to proviso to Section 157 CrPC....... It is therefore manifestly clear that if any information disclosing a cognizable offence is laid before an officer in-charge of police station satisfying the requirements of Section 154(1) CrPC, the said police officer has no other option except to enter the substance thereon in the prescribed form, that is to say, to register a case on the basis of such information......... The use of the word 'shall' in Section 154(1) CrPC, clearly shows the legislative intent that it is mandatory to register an FIR if the information disclosing commission of a cognizable offence as laid down in ***Khubchand Vs. State of Rajasthan***[13] ***..........***u/sec. 44 of the Police Act,1861 it shall be the duty of every officer in-charge of a police station to keep a general diary....... and to record therein all complaints and charges referred, the names of all persons arrested, the names of the complainants, ... the old CrPC 1861 also refers to the word 'diary' in Section 139 CrPC and the subsequent old CrPC 1872 deals with registration of written information by entering in a book in the prescribed format as FIR in Section 12 CrPC with a departure of the word 'book' used in the place of 'diary'.......... In ***Madhubala Vs. Suresh Kumar***[14] It was held that FIR must be registered in the FIR Register, it shall be a book consisting of 200 pages. The substance of the information is also to be mentioned in the general diary which is a record of all important transactions or events taking place in a police station etc.......... It is clear from the mandate of Article 254(1) of the Constitution that if there is any inconsistency between the provisions of the Code(CrPC 1973) and the Police Act, 1861, the provisions of the Code will prevail..........In ***CBI Vs. Tapan Kumar Singh***[15] it is held that a G.D. entry may be treated as First Information in an appropriate case where it discloses the commission of a cognizable offence........... In ***Rameshkumari Vs. State(NCT) Delhi***[16] relying upon Bhajanlal held that a police officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 CrPC is no more res integra........... At the stage of registration of a crime or a case, on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) CrPC, the police officer concerned cannot embark upon an enquiry as to whether the information laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible(from the difference in the wording of Section 154 and 41(1) CrPC). Also referred ***Lullan Chowdary Vs. State of Bihar***[17] and **Ramlal Narang** supra and of the Privy Council in **Khwaja Nazir Ahmed** supra in this regard and as to re-opening of investigation and further investigation on the scope of Section 173(8) CrPC.

34) Referring to some more expressions on the preliminary enquiry if any, where police officer not prima facie satisfied as regards commission of a cognizable offence to register a crime, at paras-83 to 86, it is observed as follows:-

In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action.

The insertion of sub-section (3) of Section 154, by way of an amendment, reveals the intention of the legislature to ensure that no information of commission of a cognizable offence must be ignored or not acted upon which would result in unjustified protection of the alleged offender/accused.

The maxim expression unius est exclusion alterius (expression of one thing is the exclusion of another) applies in the interpretation of Section 154 of the Code, where the mandate of recording the information in writing excludes the possibility of not recording an information of commission of a cognizable crime in the special register.

Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the “procedure established by law” and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law.

In paras-89 to 96, it is observed that

Besides, learned senior counsel relied on the special procedures prescribed under the CBI manual to be read into Section 154. ***It is true that the concept of “preliminary inquiry” is contained in Chapter IX of the Crime Manual of the CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that the CBI is constituted under a Special Act, namely, the Delhi Special Police Establishment Act, 1946 and it derive its power to***

investigate from this Act.

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

"Section 4. Trial of offences under the Indian Penal Code and other laws. (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

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

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

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

Significance and Compelling reasons for registration of FIR at the earliest

The object sought to be achieved by registering the earliest information as FIR is inter alia two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc., later.

Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police etc., are provided to be written and documented. For example, in case of arrest under Section 41(1)(b) of the Code, arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence etc., for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the concerned officer to seek documents; under Section 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/panchnama has to be drawn for every article seized etc.

The police is required to maintain several records including Case Diary as provided under Section 172 of the Code, General Diary as provided under Section 44 of the Police Act etc., which helps in documenting every information collected, spot visited and all the actions of the police officers so that their activities can be documented. Moreover, every information received relating to commission of a non-cognizable offence also has to be registered under Section 155 of the Code.

The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure 'judicial oversight'. Section 157(1) deploys the word 'forthwith'. Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary.

34(a) In para-98 relying upon para-12 of ***Thulia kali Vs. State of TN***[18] emphasized the importance of the FIR and its early registration in the standpoint of accused and delay often results in embellishment which is a creature of afterthought and danger creeps in of the introduction of coloured versions exaggerated account of concocted story as a result of deliberation and consultation and delay in lodging FIR should be satisfactorily explained thereby.

34(b) In para-99 referring to **Tapan Kumar Singh** supra (2003) 6 SCC 175 para-20 that FIR though not encyclopaedia, must disclose all facts and details relating to the offence reported. An informant may lodge a report about commission of an offence though he may not know the nature of the victim or his assailant. He may not know even how the occurrence took place...........

34(c) In paras-107 to 109 observed also referring to ***Joginder Kumar Vs. State of UP***[19] that while registering of FIR is mandatory, arrest of accused immediately on registration of FIR is not at all mandatory and arrest cannot be made by police in a routine manner as observed in **Joginder Kumar** supra.

34(d) It was held from paras-115 onwards of the exceptions to what Section 154 postulates the mandatory registration of FIR on receipt of all cognizable offences is there may be instances where preliminary enquiry may be required owing to the change in genesis and novelty of crimes with the passage of time one such instance is in the case of allegations relating to the medical negligence on the part of the doctors as held in Jacob **Mathew Vs. State of Panjab**[20]**,** in the context of offences relating to corruption from **P.Sirajuddin Vs. State of Madras**[21] expressed the need for a preliminary enquiry before proceeding against public servant, in **Tapan Kumar Singh** supra validating preliminary enquiry where allegations does not disclose a cognizable offence. The information once disclose commission of a cognizable offence registration of FIR is mandatory for no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of the registration of FIR, such as, whether the information is falsely given, genuine, credible etc., for what is seen is information disclosing commission of a cognizable offence.

34(e) In para-120 (1 to 8) with conclusions/directions held that the scope of **preliminary enquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence**. **As to what type and in which cases preliminary enquiry is to be conducted will depend on the facts and circumstances of each case.** The category of cases in which preliminary enquiry **may be made** are as under:- a) matrimonial disputes/family disputes, b) commercial offences, c) medical negligence cases, d) corruption cases, e) cases where there is abnormal delay or latches in initiating criminal prosecution for example, over three months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

35) While ensuring and protecting the rights of the accused

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

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

121. With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits.

37) **In State of Rajasthan v. Bhanwar Singh**,(2004)13 SCC 147, also the Apex Court observed that **delay** in **lodging** FIR corrodes the credibility of the prosecution. The unexplained **delay** of more than one day in **lodging** the FIR casts serious doubt on the truthfulness of the prosecution version.

37(a) Even from ***Lalitha kumari*** supra particularly in the guidelines and directions at para-120(8) supra the Apex Court constitution Bench specifically directed to make G.D. entry the information relating to cognizable offence, whether resulting in registration of FIR or leading to an enquiry and it must mandatorily and meticulously reflect in the said diary the decision to conduct a preliminary enquiry also.

38) In this case, from perusal of even case diary there is no such compliance to take shelter of the above expression under

the guise of conducting an enquiry for nothing reflects entry made in the G.D. including of the decision to conduct a preliminary enquiry and in the absence of which as held in the expression referring to ***Tulaikali*** supra in particular the delay in registering FIR and in forwarding report to the Magistrate/Special Judge till 01.06.2015 from alleged report on 28.05.2015 as contended by the counsel for the quash petitioner be viewed as riddled with suspicion of an introduced story and in particular so far as the petitioner-A.4 concerned for no even basis to register the crime including from the investigation to file the final report and same is as apparent nothing but abuse of process of law and abdication of the responsibility and duty reasons better known to the said Investigating Officer, more particularly, for not registering the case against the defacto-complainant as co-accused as rightly contending by the counsel for the accused/petitioner that also taken as one of the grounds in the quash petition referred supra. Even to take shelter for that relying on the expression of the Apex Court in **P.V.Narasimha Rao** supra, no doubt, the majority view of three out of five judges is that bribe takers are entitled to immunity under Article 105 in respect of alleged conspiracy and acceptance of bribe in respect of or having nexus with the vote against no confidence motion, however, the M.P. who despite having received the bribe abstained from voting would not be entitled to such immunity since protection under Article 105(2) must relates to the vote actually given or speech actually made in parliament by an M.P. Even from that coming to the facts the alleged election was on 01.06.2015, the report was dated 28.05.2015, the alleged bribe giving and acceptance was on 31.05.2015 and there is nothing to invoke the protection without knowing to whom he vote or whether he abstain from voting as agreed in accepting the bribe from the very mediator's report also from what is discussed supra of the contents. This also shows a lame excuse for the unfair investigation. Further, the analogy in P.V.Narasimha Rao supra has no application to the facts for not a case to get immunity for voting or speech in the parliament or state legislature in relation to no confidence motion. According to Lord Denning in the matter of applying precedents, for each case depends on its own facts and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases(as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. The Apex Court i**n** ***Chauharya Tripathi V. Life insurance Corporation of India***[22] in Para 15, relying upon the observations of para No.18 of ***Ambika Quarry Works V. State of Gujarat***[23] and of Lord Halsbury in ***Quinn V. Leathem*** held that "it has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it. Even other recent expression of the Apex Court in **Manish Trivedi Vs. State of Rajasthan**[24] at para-21 observed that for ascertaining the binding nature of a judgment, one must see its ratio. Having regard to the above, the expression in ***P.V.Narasimha Rao*** supra is not only not an authority to invoke for the factual matrix of the case on hand, but also even taken on its face value by the time of registration there was no election conducted to say prima facie crime could have been registered against the defacto-complainant also. Even coming to the contention of the defacto-complainant

(R-2) of the exercising of vote is a constitutional right appears not correct from the subsequent Constitution Bench expression of the Apex Court (5 JB) in ***Kuldip Nair V. Union of India***[25].

39) In fact, in ***Kuldip Nair*** supra particularly at paras 300, 301, 302, 372 and 373 it was categorically held that right to vote is neither a fundamental right nor a common law right but is a pure and simple statutory right under the Representation of the People Act, 1951 as amended by the Act 40 of 2003 in upholding the amendment of open ballot system of election to fill the seats of the representatives of the States in the Council of States. Same reads that:

"In N.P. Ponnuswami v. Returning Officer, Namakkal Constituency & Ors. [1952 SCR 218], this Court noticed with approval the decision of Privy Council in Joseph Theberge & Anr. v. Phillippe Laudry [(1876) 2 AC 102], and held that the right to stand as a candidate for election is not a civil right, but is a creation of statute or special law and must be subject to the limitations imposed by it. It was observed in Paragraph 19 of the Judgment as under:-

"The points which emerge from this decision may be stated as follows:

"(1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

(2) Strictly speaking, it is the sole right of the legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a Special Tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it." (emphasis supplied)

In the case of Hari Prasad Mulshanker Trivedi V. V.B.Raju[26] it was reiterated that: -

"The right to stand for election is a statutory right and the statute can therefore regulate the manner in which the right has to be enforced or the remedy for enforcing it."

Similar view was expressed by this Court once again in Jyoti Basu v. Debi Ghosal, [(1982) 1 SCC 691], in following words:-

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. ....Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People

Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. ...." (emphasis supplied)

In ***Kuldip Nair*** it is further observed that, it is the contention of the learned counsel that the same should be the interpretation as to the scope and tenor of the provision contained in Article 194 (2) concerning the privileges of the Members of the Legislative Assemblies of the States who constitute State wise electoral colleges for electing representatives of each State in the Council of States under the provisions of Article 80(4). The counsel argue that the freedom of expression without fear of legal consequences as flowing from Article 194(2) should inure to the Members of the Legislative Assemblies while discharging their function as electoral college under Article 80(4). The Apex Court held categorically that this (above) argument though attractive, does not deserve any credence in the context at hand. ***The proceedings concerning election under Article 80 are not proceedings of the "House of the Legislature of State" within the meaning of Article 194.*** It is the elected members of the Legislative Assembly who constitute, under Article 80 the Electoral College for electing the representative of the State to fill the seat allocated to that State in the Council of States. It is noteworthy that it is not the entire Legislative Assembly that becomes the Electoral College, but only the specified category of members thereof. When such members assemble at a place, they do so not to discharge functions assigned under the Constitution to the Legislative Assembly. Their participation in the election is only on account of their ex-officio capacity of voters for the election. Thus, the act of casting votes by each of them, which also need not occur with all of them present together or at the same time, is merely exercise of franchise and not proceedings of the legislature."

40) Thus, the contention by the respondents for non-registration of the crime against the defacto-complainant from the above is untenable as contended by the learned counsel for the quash petitioner as referred supra that it is not a case of the accused abetting the other to commit the offence, that the defacto-complainant inviting accused to seek his vote at the behest of the ruling party with a guilty intent to implicate the petitioner and others in a criminal case with a concocted and false story and hence apart from the petitioner, the defacto-complainant who abetted the commission of the alleged offence shall be tried and punished as prime accused.

41) Coming to further contention of the police after receiving the written report from the 2nd respondent on 28.05.2015,

thereafter registering the crime on 31.05.2015, without against the defacto-complainant as a co-accused and proceeding further with the investigation is contrary to law that there are no ingredients either in the written report or as per the subsequent charge sheet to constitute an offence under Section 12 of the P.C. Act, that admittedly the crime was not registered on that day and on the other hand the investigating officer initiated the enquiry and arranged for video and audio recording for collecting the evidence without registering the F.I.R and reporting to the Court. It is further contended that the respondent police on 31.05.2015 after trap was laid and after recording the conversation between accused and the 2nd respondent and after seizing the cash and other articles, the crime was registered. It is contended that the person abetting any offence under Sections 7 or 11 of P.C. Act shall be liable to be punished under Section 12 of the P.C. Act and thus it is clear that only when the material collected show that the accused abetted the offence either under Section 7 or Section 11 of the Prevention of Corruption Act, then only the prosecution could proceed under Section 12 of the Prevention of Corruption Act, that on perusal of Section 7 of the Act would clearly indicate that a person being a public servant accepts or agrees to accept as a motive or reward for doing or not doing any official act in the exercise of his official functions, therefore, there shall be an allegation that a public servant must have been induced by the accused to accept or to agree to accept gratification for doing an act or forbearing to do an act in the exercise of his official functions, that therefore casting of vote or not to vote is not an official act or official duty to attract the ingredients of Section 7 of the Prevention of Corruption Act. It is further contended that Section 11 of P.C.Act is also not attracted as the ingredients itself says that if a public servant accepts or agrees to accept any valuable thing without consideration or for an inadequate consideration in any proceeding or business transacted by such public servant or for any action with his official function and this section also referred to the public duty and official function, therefore, when the public duty or public functions are not involved with reference to exercise of the voting right, Section 11 of the Act also would not be attracted.

42) The Apex Court's in ***A.Subair V. State of Kerala***[27] at para 13 held of the essential ingredients required for attracting Section 7 of the P.C. Act are: (i) that the person accepting the gratification should be a public servant; (ii) that he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person. The petitioner impugning the registration of crime further contended that the offence of bribery and inducement to an elector during the elections pursuant to the notification issued by the Election Commission under Representation of People Act, would come under Sections 123 to 138 of the Representation of People Act, 1951; apart from that the offences relating to elections i.e., bribery, undue influence etc., would come under Sections 171-A to 171-I of the Indian Penal Code and all these offences are non-cognizable and bailable offences, that right to vote is a statutory right, as such there is no discharge of public functions in exercising franchise as the elector, that there must be a discharge of public function or activity, to come under the purview of public servant as defined under Section 2(c) of the P.C. Act, that

electoral malpractices does not come within the ambit of the P.C. Act and Sections 171-A to 171-H of I.P.C were retained even after the commencement of the P.C. Act to curb the electoral malpractices and to punish the same.

43) The further contention is that the respondent police have not followed the mandatory procedure contemplated under Section 154 and 157 of Cr.P.C. as the report of the 2nd respondent was said to have been received on 28.05.2015 and the respondent police, for the reasons best known to them, did not choose to register a crime till 31.05.2015 and sent the copy of the F.I.R to the Court concerned on 01.06.2015, that the respondent police cannot investigate into any crime without registering the crime and also cannot apprehend any person without conducting investigation, but in this matter the respondent police even though they received a written report on 28.05.2015, instead of registering the same, investigated into and later it was registered as a crime and more so the respondent police while remanding the accused, does not indicate that a statement was recorded from the 2nd respondent/defacto-complainant preceding the written report, that the written report alleging the offence was said to have been submitted on 28.05.2015, whereas the F.I.R was forwarded to the Court concerned on 01.06.2015 with an abnormal delay which is contrary to Section 157 Cr.P.C. It is further contended that according to the 2nd respondent, the petitioner approached him and offered money and flight tickets either to abstain from voting or to cast vote in favour of a particular party, that the said allegation is vague, incorrect and suffers from want of particulars as no person could either be prosecuted or convicted basing on such vague allegations, that in any event without admitting, it is submitted that

at best such allegations may come under the offence relating to elections as codified under Chapter IX-A of I.P.C and shall not come under the provisions of P.C. Act, that the said offences have been incorporated in I.P.C with a specific intent to curb the electoral malpractices and to punish the offenders, that while amending the I.P.C, the intent of the Legislature is to specifically deal with the electoral malpractices exclusively under this provision, that however, the intention of the legislature is to keep the penal offence as non-cognizable and bailable, that the act of the Anti Corruption Bureau in registering the crime under the provisions of the Prevention of Corruption Act is nothing short of an attempt to defeat the Legislative intent.

44) The further contention is that the 2nd respondent did not complain to the officials of the Election Commission, who were conducting the elections, that in the event of giving such a report, it is for the election authority to conduct enquiry and file a complaint before the Court concerned as the alleged offence is non-cognizable and bailable, that the respondent police with a malafide intention to implicate the petitioner and other accused sought a report from the 2nd respondent with vague allegations and conducted a stage managed trap merely to register the crime under the P.C. Act, that the registration of a crime for the offence under Section 12 of the P.C. Act and proceeding with the investigation are nothing but an abuse of process of criminal justice system and such act is liable to be set aside and hence prayed to quash the entire proceedings.

45) Coming to delay in registering FIR in addition to what is laid down in ***Lalitha Kumari*** supra, directions abdicated by the investigating officer for not making any G.D entry of requirement of

any preliminary enquiry and not showing need of preliminary enquiry and not showing by G.D entry date, time and particulars of the report if received and even given credence from the endorsements of the superior police officers received by the I.O on same date of 28.05.2015, the FIR should have been registered and atleast a G.D entry of requirement of preliminary enquiry should have been made for no cognizable offence constituted if at all against any accused persons and that is not even the case herein from what is stated in the remand report case diary referred supra. In fact, in ***T.T.Antony*** supra, the Apex Court held on the scope of Section 154 to 157, 162, 169, 170 and 173 CrPC observed at paras 17 to 20 that, F.I.R under Section 154 CrPC is as its nick name suggests, the earliest and the first information of a cognizable offence recorded by an officer in-charge of a police station. It sets the criminal law in motion and makes the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not frequently that more than one piece of information is given to a police officer in-charge of a police station in respect of a same incident regarding one or more than one cognizable offences. In such a case, he need not enter everyone of them in the station house diary and this is implied in Section 154 CrPC. Apart from vague information by a phone call or a cryptic telegram, the information first entered in the Station House Diary, kept for this purpose, by a police officer in-charge of a police station is the first information report postulated by Section 154 CrPC. Only information about commission of a cognizable offence which is first entered in Station House Diary by officer in-charge of police station can be regarded as F.I.R under

Section 154 CrPC. All subsequent informations will be covered by Section 162 CrPC, for no such information/statement can properly be treated as F.I.R. The scheme of CrPC is that an officer in-charge of police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. Thus, the alleged FIR after commencement of investigation has no sanctity of Section 154 CrPC as first information report but for hit by section 162 CrPC even against A-1 to A-3 leave about nothing to survive the crime muchless to register even thereafter to file charge sheet against the petitioner as A-4.

46) Coming to the other contention of respondents of the crime is at nasal stage and there are no grounds to quash the crime sought for without allowing police to conduct investigation concerned, said argument is nothing but blow hot and cold. In the very memo filed after the charge sheet mentioning investigation against A-1 to A-4 completed which includes the petitioner and only remained against A-5 to file the supplemental charge sheet, if at all therein any further facts came to light to mention against A-1 to A-4 also and thereby the quash petition is liable to be dismissed holding as infructuous for the crime by subsequent investigation culminated to final report. Same was answered by this Court as referred supra of not liable to hold as infructuous but for to decide on merits from the final report also. When such is the case, how a contrary argument now can be propounded as if the crime is at nasal stage or there is further investigation to be done including by securing presence of petitioner for interrogation. In fact in ***T.T.Antony*** supra, the Apex Court observed in paras 23 to 27 referring to the very expression placed reliance by the learned

counsel for the respondents of the Privy Council in ***Emperor V. Khwaja Nazir Ahmad***[28] and also by relying upon several expressions of the Apex Court referring to ***Khwaja Nazir Ahmad*** viz., ***R.P. Kapoor V. State of Punjab***[29]***, S.N.Sharma V. Bipin Kumar Tiwari***[30]***, Prabhu Dayal Deorah V. District Magistrate***[31]***, Nandini Satpati V. P.L.Dani***[32]***, State of West Bengal V. Swapan Kumar Guha***[33] which almost referred among other expressions in the celebrated expression of the Apex Court in ***State of Haryana V. Bhajan Lal***[34], that is mainly relied ***in T.T.Antony** supra **in categorically holding that the plenary power of the Police to investigate a cognizable offence is not unlimited as subject to certain well recognized limitations. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court.*** There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In ***Ram Lal Narang V. State (Delhi Administration)***[35] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution. ***T.T.Antony*** supra is relied upon by the Apex Court in the later expression in ***Kari Chowdhary V. Mst.Sitadevi***[36]***.***

47) Coming to the other contention though answered generally supra to answer specifically from the expressions placed reliance including on the scope of law and the difference supra definition of public servant in IPC to the definition under Section 2(c) of the prevention of Corruption Act,1988 so also the scope of Section 12 of P.C.Act, 1988 and compared to Section 165-A IPC inserted by Criminal Law Amendment Act, 46 of 1952 after the (old) P.C.Act,1947; there is nothing to show any abetment by the petitioner-A.4 of defacto-complainant to commit any of the offences under the P.C.Act, much less to accept the bribe by instigation or aiding etc., but for a mere offer even from the very say of the report of the defacto-complainant dated 28.05.2015 referred supra and even from the charge sheet one of the phone message, even taken true only asks only willing or not to make it final of the mind of the defacto-complainant only.

47(a) In this regard among the expressions relied on the scope of Section 12 of the Prevention of Corruption Act, in ***State***

V. Mahadeo Dhunnappa Gunaki[37] it was held referring to Section 161 IPC what requires of gratification should be given to a public servant as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show favour of disfavour in the exercise of his official functions or for rendering or attempting to render any service or disservice to any person with any public servant. Case of a person who offers bribe to public servant, if the intention or object with which money is offered is to induce the public servant to perform an official act or show favour in the exercise of his official functions or render any service with any public servant the offence under Section 161 read with 116 IPC would be complete. In fact, it is not the mere offer but further it must be shown in furtherance of the inducement to attract the alleged abetment even from the expression. As held in ***Kuldeep Nair*** supra by the constitutional bench exercise of franchise or not is not a public duty muchless a constitutional right but only a statutory right. The appeal against said judgment of ***State V. Mahadeo Dhunnappa Gunaki*** by the accused, the Apex Court observed that the appellants were charged in furtherance of any intention of themselves offered Rs.15,000/- illegal gratification to the police inspector, ACB, Belgaum to help them in Income Tax enquiry and to cause return the account books of them attached by the ACB and to return and the charge under Section 161 IPC, 116 IPC and 34 IPC similar offer was made also to said Naid through 2nd accused M.B.Durbi and more amount upto Rs.20,000/- to hush up the matter and similar offer was made to another officer. The two officers having returned to Belgaum informed the same to their superior officers and to the Superintendent of Police, the then Head of A.C.B and to the District Magistrate and on their advise arranged a trap to catch them. The Apex Court held in answering the contention of Dr.B.R.Ambedkar for appellants/accused of no offence has been committed therefrom by referring to AIR 1924 Madras 851 in ***Pulipati Venkayya V. State***[38] in Venkatrama Naidu of question of law not fully discussed and observed the High Court of Allahabad etc disapproved the two expressions of Madras High Court supra and ultimately observed it is however not necessary for the purpose of the case to express any final opinion on this question, for we are satisfied on the facts of this case that Goodi and Naik had it in their power in exercise of the official functions to show favour to the appellants.

47(b) This decision no way assists to the sustainability of prosecution case against the petitioner/a-4 from alleged mere offer to attract the penal consequences of Section 12 of P.C.Act.

47(c) Coming to the other decision of Bombay High Court (2 JB) in ***Damodar Krishna Kamli V. State***[39] the charge against appellant of abetted the Thana Deputy by name Deshmukh a public servant in commission of offence punishable under Section 161 IPC for the official favour in discharge of his official functions in forbearing to do an official act by offering Rs.20/- as punishable under Section 165-A IPC. It was contended that it is a mere offer or invitation to make an offer and nothing to establish in abetment to commit offence under Section 161 IPC. On facts, it was observed there was instigation in justifying conviction by dismissal of the appeal. Even there the expression clearly says there must be an instigation and not mere offer that too in discharge of public duty forbearing to do the public duty and by doing some favour therefrom. Coming to the other expression relied in ***Bajahari***

Mondal V. State[40] (2JB) to the charge under Section 165-A IPC for offer to give illegal gratification as an inducement to give a favourable verdict. There in fact, the Apex Court set aside the conviction confirmed by High Court and set aside the judgment of High Court. There is no principle discussed in relation to the ingredients of Section 165-A I.P.C of what constitutes abetment therein.

47(d) In ***Faguna Kanta Nath V. State***[41] appellant was tried for offence under Section 165-A IPC for abetting one K.Rehmaan in commission of the offence under Section 161 IPC and both were tried and convicted for the abetment and commission of the offence of the bribe of Rs.200/- and ultimately the bribe taker was acquitted i.e., K.Rehmaan, public servant, where on facts the appellant though initially no willing from the demand by public servant agreed to pay lesser amount and brought to the public servant and give him who accounted and put in the trousers pocket. It was held there was abetment also even main accused in accepting the illegal gratification demanded was acquitted, abettor need not be acquitted. The principle laid down in the decision has no application to the facts muchless anything said therein of mere offer is enough to constitute the offence of abetment under Section 165-A IPC for offence under Section 161 IPC.

47(e) Coming to the other expression in ***Omprakash V. State***[42] the accused was charged for the offence under Section 165-A IPC for abetment of the offence under Section 161 IPC. The accused made a confession of guilt that was placed reliance as voluntary to bind him, for nothing suggesting of the accused/appellant has been cheated even he has no real intention to pay the bribe. This decision also no way helpful to the respondents to quash petition in the factual scenario as discussed supra, more particularly from the facts, not a case not only petitioner/A-4, instigated but also nothing of instigation from A-1 to A-3 to defacto-complainant from the case diary containing mediatorsnama and also the statement of defacto-complainant discussed supra.

47(f) In ***State of U.P V. Bhagwant K.Joshi***[43] where permission of Magistrate required for registration of crime under P.C. Act, 1947, for the initial enquiry conducted at pre-registration stage such permission is not required. Thereby, it has no application to the case on hand. Coming to ***Dalpat Singh V. State of Rajasthan***[44] where appellants, the armed constables convicted under Section 120-B and 161 IPC and under Section 5 PC Act for they allegedly conspired in extracting money and valuable things by using force and threat and harassment of the villagers and when the matter came to a head they tried to compel P.W-1 Mohammed to give Rs.100/- and took him to the outpost by one of the appellant to the other as alleging he was constantly visiting Pakistan and black marketing and unless give Rs.200/- would be sent to prison, without heeding his plea of innocence from which he agreed to pay Rs.100/- for no money secured, P.W-3 Kalla a surety and the matter while discussing in the shop of P.W-5, later a C.I.D officer had the information carried to P.W-17, DSP, SPE therefrom the crime is registered. This decision is also no way applicable to the case on hand in any manner. In the decision of ***Jamna Singh V. State***[45], the ingredients of Section 107 IPC discussed and observed that, question of abettor's guilt depends upon nature of act abetted and manner in which it was abetted, from any of the three requirements of instigate to do an act or engaging any conspiracy for doing that act or intentionally aiding to do that act. Thus, from this decision also a mere offer is not enough without showing any of the ingredients of Section 107 IPC supra. Coming to the other decision of ***P.Nallammal V. State***[46] what is said under Section 13, 10 and 12 of P.C.Act 1988 of trial of non-public servant for abetment of offences under Section 13(1)(e) with public servant by a Special Judge is not barred. It is observed that Section 12 deals specifically with abetment of offences under Section 7 and 11 of P.C.Act. Section 13 of P.C.Act is enacted as a substitute to Sections 161 to 165-A IPC supra, from the Santanan Committed recommendations' to make it more effective the provisions and it also discussed the scope of Section 107 IPC by reproducing the section where the illustration referring of public servant states his close friend, for he cannot keep his wealth with no known source and requested to keep in his friend's name which he accepts and did, held as abettor. It is referred of the non-public servant actively aids and facilitates the perpetration of the offence to say as abettor. This decision also one way helps in favour of the quash petitioner to say there is no abetment so far as the petitioner/A-4 concerned of the defacto-complainant from the alleged mere offer even taken true. Coming to the other expression ***Government of A.P V. P.Venku Reddy***[47] it deals mainly with definition of public servant and employee of a co-operative society controlled and aided by Government comes within that definition in saying 1947 PC Act repealed and replaced by 1988 P.C. Act contains a very wide definition of public servant. I n ***State through C.B.I V.***

Parameswaran Subrahmani[48] it dealt mainly on the question of so long as sanction required for punishment of principle offender under Section 7 and 11 of P.C.Act would equally be necessary in regard to punishment for abetment of the offence. In answering the same at para No.15, it is observed that Section 12 cannot be treated as being wholly distinct or independent from Section 7 or 11 because it speaks abetment of those offences punishable. Thus, sanction would equally necessary. Thereby, the law is clear that mere offer does not constitute abetment without showing some act in furtherance including of the intention to abet.

47(g) Even in the three Judge bench expression of the Apex Court in ***C.B.I V. V.C.Shukla***[49] (Jain Hawala Dairy's case) it was observed in para No.51 categorically referring to Section 107 of P.C.Act that prosecution intended to prove abetment of ***Jain's*** by aiding to say intentionally aids by act or illegal omission the doing of thing under clause (3) which is clear there from of when a person abets by aiding, the act so aided should have been committed in order to make such aiding an offence. Unlike clause (1) and (2) of instigation to do the thing or engages in conspiracy for the doing of that thing, so far as third clause concerned, it applies where the offence is committed from that aide and as such when no case made out against prime accused Adwani and Shukla of their committing the offence under Section 7 of P.C.Act, the question of Jains committing the offence under Section 12 of P.C.Act does not arise.

47(h) Once such is the case, there is no offence under Section 12 of the P.C. Act, that is made out much less any offence under Section 120-B or 34 IPC or Section 107 IPC with any other offence against the petitioner-A.4, much less from alleged commission of offence by the defacto-complainant under Section 7 and 11 of the P.C.Act. Both the above sections represent or explain about the public servant acceptance or agrees to accept or attempts to accept the bribe from other persons and for such act punishment has been provided and Section 12 of P.C. Act provided punishment for abetment of such acts. As per Section 107 IPC- (Abetment of a thing), A person abets the doing of a thing, who –

First- **Instigates** any person to do that thing; or

Secondly- **Engages with one or more other person or persons in any conspiracy for the doing of that thing**, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly**- Intentionally aids**, by any act or illegal omission, the doing of that thing.

Explanation 1- A person who by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

47(i) Coming to the contentions of investigation latches no way fatal always to the prosecution for the absence shown prejudice to the accused that could be considered only pre-trial by relying upon ***Union of India V. P.Nath Muni***[50]. On facts there was alleged incompetency of the Sub-Inspector to investigate from the Court permission that was overlooked by the High Court. The gist of the order of the Special Judge from which no prejudice or miscarriage shown caused for the High Court to interfere. It is a post cognizance and pending trial case and the other decision relied including those referred in the expression particularly is ***H.N.Rishbud V. Inder Singh***[51] what was observed is illegality committed in the course of investigation does not affect the competence and jurisdiction of Court for trial of the case taken cognizance and preceded with trial. The principle laid down in the decision has no application herein from what is laid down in ***T.T.Antony, Manu Sharma, Pooja Pal*** and ***Dharam Pal*** supra.

48) From the above, when the allegations in the report or in the charge sheet repeatedly says only offering of bribe by petitioner, which does not attract the ingredients of Section 12 of P.C.Act, against the petitioner, leave about A.1 to A.3 or A.5 or others, for even case made out against the defacto-complainant under Section 7 or 11 of the P.C.Act,1988.

48(a) Coming to the contentions by referring to some of the expressions including of the Full Bench of the Allahabad High Court, same was referred and relied in fact by the expression of the Apex Court in ***Lal Kamalendra Pratap Singh*** supra including by referring to ***Joginder Singh*** . The decisions relied are in fact mostly referred in State of Haryana vs. Bhajan Lal & Ors[52] where after exhaustive consideration of several expressions including those relied upon herein of State of West Bengal vs. Swapan Kumar Guha (1982) 1 SCC 561; S.N.Sharma vs. Bipen Kumar Tiwari (1970) 1 SCC 653; R.P.Kapur vs. State of Punjab (1960) 3 SCR 388; Nandini Satpathy vs. P.L.Dani (1978) 2 SCC 424 and Prabhu Dayal Deorah vs. District Magistrate, Kamrup (1974) 1 SCC 103] and approving the judgment of the Privy Council in Khwaja Nazir Ahmad's case (supra), it was concluded in para 102 as follows:

"In the backdrop of the interpretation of the various relevant provisions of the code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) **Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.**

(2) **Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.**

(3) **Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.**

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) **Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."**

The above list, as noted, is illustrative and not exhaustive. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate.

48(b) Even from the expressions placed reliance by the 1st respondent/ACB of ***Rajiv Thapar & Ors. vs. Madan Lal***

Kapoor[53] and ***Prashanth Bharathi V. State (NCT of Delhi)***[54] on the scope of the inherent powers under Section 482 CrPC in a quash petition, what was held is that, to invoke its inherent jurisdiction under Section - 482 of the CrPC, the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. It was held of the three steps regarding the defence material, (iv) Step four is, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? On facts held that, we therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it under Section 482 of the CrPC. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under Sections 328, 354 and 376 of the Indian Penal Code against the appellant-accused, and the consequential charge sheet dated 28.6.2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1.12.2008, deserves to be quashed. The same are accordingly quashed."

48(c) In ***Chandran Ratnaswami V. K.C.Palanisamy*** (2013)6 SCC 740 it was held on abuse of process and duty of the Court to quash the proceedings in such case that

"29. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognized doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court. Lord Morris in the case of Connelly vs. Director of Public Prosecutions, (1964) 2 All ER 401 (HL) observed: "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rule of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its process". "The power (which is inherent in a court's jurisdiction) to prevent abuse of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice." In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

30. In Hui Chi-Ming vs. The Queen [(1992) 1 AC 34 (PC)], the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

31. In the leading case of Bennett vs. Horseferry Road Magistrates' Court, (1993) 3 All ER 138, on the application of abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:
(i) where it would be impossible to give the accused a fair trial; or

(ii) where it would amount to misuse/manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case."

48(d) In ***M/s.Suryalakshmi Cotton Mills Ltd. V. Rajvir Industries Ltd. & others*** AIR 2008 SC 1683 it was observed:

"16. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of well known legal principles involved in the matter.

17. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure should be exercised, but some attempts have been made in that behalf in some of the decisions of this Court as for example State of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335], Janata Dal Vs. H.S. Chowdhary and Others [(1992) 4 SCC 305], Rupan Deol Bajaj (Mrs.) and Another Vs. Kanwar Pal Singh Gill and Another [(1995) 6 SCC 194], Indian Oil Corp. Vs. NEPC India Ltd. and Others [(2006) 6 SCC 736]. In Bhajan Lal (supra), this Court held;

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. We may also place on record that criminal proceedings should not be encouraged when it is found to be mala fide or otherwise abuse of the process of court.

In All Cargo Movers (I) Pvt. Ltd. & Ors. v. Dhanesh Badarmal Jain & Anr. [2007 (12) SCALE 391], it was opined :

We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, This Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of the plaintiff-respondent No. 1 in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simplicitor does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice.

48(e) In **Inder Mohan Goswami V. State of Uttaranchal**[55] the Apex Court observed that the inherent powers of the High Court under Section 482 Cr.P.C are though wide that has to be exercised sparingly with great caution and to exercise ex-debito justitia that is to do real and substantial justice for the administration of which the Courts exist, and for not to allow to use the prosecution is an instrument of harassment or private vendetta or with a motive to pressurize the accused to terms and the powers too could not be exercised to stifle a legitimate prosecution and Court should refrain from giving prima facie decision in a case where entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issue involved are of such a magnitude that they cannot be seen in the true perspective without sufficient material, though no hard and fast rule can be laid down for exercise of the extraordinary jurisdiction. It is observed that Court should balance with personal liberty, the societical interest and a warrant for arrest of accused should not be issued without proper scrutiny of facts from complaint or F.I.R in application of judicial mind and where dispute is a pure civil in nature or from reading of F.I.R the ingredients of offence are absent, the proceedings can be quashed.

48(f) Coming to the contention of respondents referring to ***Ajith Pramodh Kumar Jogh V. Union of India*** which is in relation to writ petition under Article 226 of the constitution of India to quash the F.I.R under P.C.Act where on facts held the matter is still to investigate at preliminary stage and correctness of contents of F.I.R cannot be considered at that stage. Though it is the contention of the crime under P.C.Act cannot be quashed like ordinary IPC offences, by referring to it. There is no such principle of law that could be shown therefrom. On the other hand in ***Seeta Hemchandra Shashittal V. State of Maharashtra***[56] it was held that if the allegations made in the complaint prima facie do not satisfy the ingredients of P.C.Act the Court can quash the proceedings by exercising inherent jurisdiction under Section 482

CrPC.

48(g) In ***State of Karnataka vs. L.Munnniswamy*** [57], considering the scope of inherent power of quashing under Section 482 CrPC, the Apex Court held that in the exercise of this wholesome power, the High court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that **the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature**.

49) Having regard to the above, the petition is allowed and all the proceedings in Crime No.11/ACB-CR/2015 of Anti Corruption Bureau Police Station, City Range-I, Hyderabad relating to the petitioner are hereby quashed. The bail bonds of the accused No.4/petitioner, if any, shall stand cancelled. Miscellaneous petitions, if any pending, shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

03.06.2016
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[1] AIR 2003 SC 189

[2] The evidence can be recorded even with the help of the electronic media, audio or audio-visual, and in fact whenever the evidence is recorded by the Commissioner it will be advisable that there should be simultaneously at least an audio recording of the statement of the witnesses so as to obviate any controversy at a later stage.

[3] (1992) (Suppl.) 1 SCC335

[4] (2009)4 SCC 437

[5] (2009)7 SCC 495

[6] 1998(4)SCC-626

[7] (1968)1 AllER 763

[8] (2001)6 SCC 181

[9] (2010)6 SCC 1

[10] (2016)4 SCC 160

[11] 2016(3)SCC-150

[12] (2014) 2 SCC page 1

[13] AIR 1967 SC 1074

[14] 1997 (8) SCC 476

[15] 2003 (6) SCC 175

[16] (2006) 2 SCC 677

[17] (2006) 12 SCC 229

[18] 1972 (3) SCC 393

[19] 1994 (4) SCC 260

[20] (2005) 6 SCC 1

[21] (1970) 1 SCC 595

[22] (2015) 7 SCC 263

[23] AIR 1987 SC 1073

[24] (2014) 14 SCC 420

[25] (2006)7 SCC 1

[26] *(1974)3 SCC 415*

[27] (2009)6 SCC 587

[28] AIR 1945 PC 18

[29] AIR 1960 SC 866

[30](1970)1 SCC 653

[31] (1974)1 SCC 103

[32] (1978)2 SCC 424

[33] (1982)1 SCC 561

[34] (1992) Supp (1) SCC 335

[35] (1979)2 SCC 322

[36] (2002)1 SCC 714

[37] 1952 ILR Bombay 900

[38] AIR 1929 Madras 756

[39] 1955 Crl.L.J 181

[40] AIR 1959 SC 8

[41] AIR 1959 SC 673

[42] AIR 1960 SC 409

[43] AIR 1964 SC 221

[44] AIR 1969 SC 17

[45] AIR 1967 SC 553

[46] (1999)6 SCC 559

[47] (2002)7 SCC 631

[48] (2009)9 SCC 729

[49] (1998)3 SCC 410

[50] 2015(2) ALT (Crl.) 165 (SC)

[51] AIR 1955 SC 196

[52] 1992 Suppl.(1) SCC 335

[53] (2013)3 SCC 330

[54] (2013)9 SCC 293

[55] (2007) 12 SCC 1

[56] (2001)4 SCC 525

[57] 1977 (3) SCR 113