

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2003 OF 2017

ORDER:

A request is made to exercise the power under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') to quash the First Information Report in Crime No.57 of 2017 of Nandigama Police Station, Krishna District, State of Andhra Pradesh.

2. The petitioner herein is arraigned as accused No.1 in the aforesaid Crime. He alleged to have committed the offences punishable under Sections 353 and 506 of I.P.C.

3. The 2nd respondent is the *de facto* complainant herein, who has been working as a Doctor in Government Hospital, Nandigama, on whose Complaint, dated 28.02.2017, the present First Information Report was registered against altogether ten accused persons for the aforesaid offences.

4. Heard Sri C.V. Mohan Reddy, learned Senior Counsel, assisted by Sri N. Naveen Kumar, learned counsel for the petitioner, and the learned Public Prosecutor for the State of Andhra Pradesh.

5. A few facts are necessary to refer to before adverting to the submissions made by the learned Counsel for the petitioner and the learned Public Prosecutor for the State of Andhra Pradesh.

(a). Substantially, the complaint averments authored by the 2nd respondent are that on 28.2.2017 at about 5.30 a.m., a passengers bus 'VOLVO' belonging to 'Diwakar Travels' having crossed Penuganchiprolu cross-roads on National Highway No.65, met with an accident and out of 48 passengers, nine (9) of them died and postmortem was conducted. The dead bodies were shifted to Area Government Hospital, Nandigama. When the *de facto* complainant along with duty Doctors was conducting postmortem in the Ground Floor Ward at about 3.30 p.m., the petitioner herein along with nine others named therein suddenly pushed the doors of the room where postmortem was being conducted, entered inside shouting loudly and snatched away the postmortem requisition papers from the Doctor's hands during which time the Collector, Krishna District – Mr. Ahmad Babu has taken those papers from their hands. The petitioner herein told the Collector that he would become the Chief Minister and threatened him that he would send the Collector to Central Jail and also threatened the doctors by raising his finger that he would see their end and for about one hour they all with their other followers raised slogans and prevented the doctors from conducting postmortem examination and thus, obstructed them. The local leaders threatened them that even if the petitioner is not present, since they being local residents, they would see their end.

(b) This has been the substance of the complaint filed by the *de facto* complainant.

6. The petitioner sets out his case stating that he visited the Government Hospital to console the families of the victims and on reaching the hospital, the District Authorities, including the Collector, had taken him to the room, where dead body of one of the deceased was placed, where several family members of the deceased, including media personnel were present; while escorting the petitioner, the District Collector had informed the petitioner that postmortem of all dead bodies was completed and the bodies were being handed over to the family members; when the petitioner entered into the room, he was informed that the dead bodies were being handed over without conducting any autopsy; he had also confronted the doctors, who were present there with the said fact; the petitioner thereupon noticed that body of the deceased (informed to be the driver) was wrapped in cloth as ready to be handed over to the bereaved family members without postmortem being held, which was a grave departure from the statutory duties of the doctors in the hospital; the petitioner on noticing the same informed the Press already present raising issues of conduct of the hospital doctors and also the District Administration in wrapping up the formalities with a view to protecting the management of the travel company.

7. The petitioner has raised the following points:

- (i) Postmortem was not conducted to the body of the driver.

- (ii) In a span of two hours, the possibility of conducting postmortem on eleven (11) bodies does not arise.
- (iii) If the postmortem of the deceased driver was conducted legally by following all the rules of postmortem truth would be surfaced.
- (iv) The body of deceased driver was not subjected to postmortem to verify if he was in an intoxicated state during the time of accident.
- (v) How the District Collector could send away the co-driver, who is equally responsible for the accident?

8. The petitioner further sets out that upon enquiry about the postmortem, Doctor replied that no examination was done to verify whether the driver was in an inebriated condition and he appealed to the entire District Administration to stand with the bereaved family members and conduct the investigation and enquiry in a fair and transparent manner.

9. According to the petitioner, he, being a Public Representative, had enquired the authorities present thereat that if the body of the deceased driver was being properly subjected to postmortem with respect to intoxication and the petitioner has also verified whether the bus was a 'stage carrier' or a 'contract carrier', if

that bus had permission to pick up passengers at different stages en-route; also that the bus was moving at an approximate speed of 120 kilometers per hour, which was far beyond the permissible limit under the statutory rules, and the accident site would indicate that there were no skid marks on the road, which would appear had the Driver applied brakes before the accident.

10. The petitioner states that when he found that the Co-driver was missing from the scene at the Government Hospital, he enquired about the same with the authorities and he was informed that Co-driver was sent away without questioning him about the accident. The petitioner has made statement that he would make sure that a perfect investigation will be got done and District Collector and other responsible persons would be prosecuted in accordance with law and would be sent to Central Jail if they are involved in any sort of conspiracy or dereliction of duty in regard to the accident and the callous attitude of the authorities at the hospital.

11. The petitioner further stated that he has raised issues concerning general public wherein the public was shocked to recall the accident with regard to 'Kesineni Travels', which took place in the previous year, and the present 'Diwakar Travels' bus accident; both the entities are owned by local MLAs/MPs of the Ruling Party and that they are obstructing the investigation with the help of District Authorities/Collector protecting themselves against any proceedings under law and the present incident was widely covered in all over the

media wherein the petitioner questions the doctors and the District Collector with regard to their illegal motives behind the illegitimate procedure followed by them while performing the postmortem of the deceased bodies.

12. In the grounds, he agitates that the present complaint filed by the 2nd respondent/*de facto* complainant is a gross abuse of process of law and initiated a tool of harassment against the petitioner, who is the political opponent of the Party-in-Power in the State of Andhra Pradesh; the present complaint is filed making frivolous and vexatious allegations; the complaint is absolutely vague, ambiguous and does not bring out the commission of any offence under Sections 353 and 506 read with Section 34 of IPC; even if the allegations contained in the First Information Report if taken on face value in their entirety, the same would not disclose the commission of any offence under the above Sections and the petitioner had not committed any offence under the aforesaid Sections, as alleged in the complaint.

13. The petitioner, having extracted the penal provisions of Section 353 of IPC, referred to the ruling in **Durgacharan Naik v. State of Orissa**¹ in the context of the ingredients of ‘assault’ or use of ‘criminal force’ while the public servant is doing his duty is *sine qua non* for a crime alleged under Section 353 IPC.

¹ (1966) 3 SCR 636

14. The petitioner agitates that to attract the offence under Section 353 IPC the person accused of the offence should have assaulted the public servant to prevent him from discharging his duty as a public servant or used criminal force to commit the said offence, but the complaint does not show anything in that direction and thus, taking the uncontroverted allegations to be correct, the ingredients of the offence under Section 353 IPC are not made out.

15. Touching the ingredients of 'Criminal Intimidation' under Section 506 of IPC, having referred to them, the petitioner agitates that he had only enquired duty doctors to perform their duties in accordance with law requesting them to abide by the process of law and procedure in regard to conduct of postmortem and the question of causing injury to the person, reputation or property of the person threatened are not even remotely connected or alleged in the First Information Report, and, therefore, the said offence is also not made out.

16. The petitioner, while controverting the allegation in the complaint that he has shown his finger and threatened the doctors with dire consequences, states that the said allegation is articulated only for the purpose of creating false criminal case against him and the same does not constitute offences under Section 353 and 506 of IPC, and the fact that the doctors continued their callousness towards the victims, and the District Administration continued to protect the management of the travel company with their acts of omission and

commission indicates that there was neither criminal intimidation nor prevention from duty by the public officials.

17. The petitioner also states that one more case was registered with another First Information Report, on the same day, which relates to similar allegations against YSRCP Cadre in Crime No.58 of 2017, dated 28.2.2017, on the complaint of one Jameel Ahmed Mohammed, a police officer, for the offences punishable under Sections 353, 341, 143 read with Section 149 of IPC alleging that after the autopsy on the deceased persons when the dead bodies of the deceased were being handed over to their family members and were taken out in ambulance, YSRCP cadre forming an unlawful assembly had obstructed the ambulance and police in discharging their lawful duties approximately for half an hour and in the said First Information Report the time of the offence is stated to be at 2.30 p.m.. Copy of FIR is also filed along with the present petition.

18. The petitioner agitates that the second First Information Report contradicts the contents of First Information Report herein as regards postmortem, visit of the hospital and other alleged incident where the YSRCP cadre alleged to have stopped the ambulance and the alleged incident and instances are manipulated so as to prosecute the petitioner solely on account of political considerations, for having represented the cause of the victims of accident and for justice to them.

19. The petitioner agitates that he had questioned the authorities about the postmortem sought to be conducted cannot be reduced to a sham as the doctors have already wrapped the deceased driver's body in cloth keeping it ready to be handed over to his family without conducting postmortem as per the procedure, and further the petitioner was contending that true investigation has to be made out and eventually if any mischief surfaces even the District Collector, has to go to jail. The petitioner states that the allegations have been imputed against him to ensure that there is no accountability in the public officials, more specifically, in view of the fact that the accident relates to the business activity of one of the Members of Parliament belonging to the ruling party and the imputations are made, out of political *malice* towards him, being the leader of principal opposition party.

20. The petitioner agitates that the First Information Report does not reflect the actual happenings of the incident and the contents are drafted only to implicate him for the offences punishable under Sections 353 and 506 of IPC. According to the petitioner, the orchestration of support for the doctors by the political establishment of the State organizing support for immediate coercive police action against the petitioner indicates the *malice* underlying the initiation of the proceedings solely on political considerations at the instance of the ruling party and with an oblique motive and malicious intention making concocted, misconceived, frivolous and vexatious allegations

only with political *malice* to harass and defame him and his reputation.

21. The petitioner states that the allegations are vague and inherently improbable and basing on the said allegations no prudent person can reach a just conclusion that there are sufficient grounds for proceeding against the petitioner under the First Information Report.

22. According to the petitioner, the present case falls under the category of rarest of rare cases wherein, a clear case of quashing is made out by him and failure to interfere by the Court would lead to miscarriage of natural justice and the present case is fully covered within the parameters as set out in the landmark judgment in **State of Haryana v. Bhajan Lal**².

23. The petitioner would state that the allegations made against him on merits are incorrect and untrue, and, therefore, in the absence of required ingredients, registration of the offences against him is untenable and subjecting him to a process of criminal trial would constitute an abuse of process of law, stating that lodging of a false complaint by respondent No.3 and perfunctory action of the respondent - police in registering the First Information Report against him is arbitrary, illegal and unconstitutional for the purposes not contemplated by the provisions of the Code and, therefore, requests to

² 1992 SCC Supp (1) 335 = AIR 1992 SC 604

quash the First Information Report invoking the inherent jurisdiction under Section 482 of the Code.

24. The petitioner requests for interim relief of stay of all further proceedings including his arrest pending disposal of the criminal petition and states that the present proceedings are orchestrated so as to prevent him from participating in Legislative Assembly proceedings notified to commence from 06.03.2017 so as to disable him from addressing the people on the floor of the house and to ensure that the Government's actions are not debated in the house, praying quashment of First Information Report as the main relief.

Submissions:

25. The learned Senior Counsel would submit that the copy of the video-clipping dated 28.02.2017, video-graphed from the time the petitioner got down from the car at the hospital till he left the place would give true version as to what transpired at the alleged place of occurrence belying the allegations in the complaint herein. He would submit that in **Harshendra Kumar D. v. Rebatilata Koley**³, the Hon'ble Supreme Court held that in an appropriate case, if on the face of the documents, which are beyond suspicion or doubt placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial Court and in such matter, for

³ (2011) 3 SCC 351

promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at the *prima facie* stage. It is, therefore, his submission that the video-clipping, now placed, as additional material recorded in vernacular version transcribed cannot be overlooked in the circumstances occurring in the present case as none of the ingredients of penal provisions have been finding place in the complaint allegations.

26. The learned Senior Counsel has also placed reliance in **Bhajan Lal**² and referring to the guidelines laid down by the Hon'ble Supreme Court, would submit that the present case falls within the purview of the guidelines 1, 5 and 7. The learned Senior Counsel has also placed reliance in **Akbaruddin Owaisi v. Government of Andhra Pradesh**⁴ concerning the tests to be applied to determine whether the two (2) FIRs relate to the same or different incidents, more particularly, in the direction that it is not possible to enunciate any formula of universal application to determine whether two or more acts constitute the same transaction and they are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. This ruling is relied on in the context of the FIRs registered in Crime No.58 of 2017 and the present crime.

⁴ 2014 CrL.L.J. 2199

27. The learned Senior Counsel also refers to the ruling in **Manik Taneja v. State of Karnataka**⁵, where the offences punishable under Sections 353 and 506 IPC were dealt with in an application under Section 482 of the Code.

28. The learned Public Prosecutor, *inter alia*, would contend that the allegations mentioned in the complaint would *prima facie* constitute commission of cognizable offences and the ingredients of penal offences under Sections 353 and 506 of IPC are attracted, and, therefore, it is not a case where the request for quashment by exercise of inherent powers can be acceded to. He places reliance in **Rameshchandra Nandlal Parikh v. State of Gujarat**⁶ in order to controvert the submission of the learned counsel for the petitioner, submitting that the subsequent complaint was not in relation to same offence or occurrence and did not pertain to same parties. He made the submission in the context of the two (2) incidents relating to the present crime and the crime in FIR No.58 of 2017 and according to him, these two crimes are distinct and have no connection with each other. He would also place reliance in **Anvar P.V. v. P.K. Basheer**⁷ refuting the video-clipping version on the ground of admissibility of secondary evidence of electronic record contending that the conditions prescribed under Section 65-B of the Evidence Act, 1872 are not complied with.

⁵ (2015) 7 SCC 423

⁶ (2006) 1 SCC 732

⁷ (2014) 10 SCC 473

29. The learned Public Prosecutor would also submit that the video-recording version placed before the Court is not a true and complete version and those parts/portions which are adverse to the case of the petitioner have been deliberately deleted. It is, therefore, his submission to exclude the video-clipping version from the record.

30. It is his submission that even taking into consideration the video-clipping now submitted by the petitioner, some portions would, even at this stage condemn the stand taken by the petitioner. He has drawn attention to certain portions of the video-clipping and made much emphasis on them to reject the request.

31. Before analysing the submissions made by the learned Senior Counsel for the petitioner and the learned Public Prosecutor, it would be apt to refer to the version placed before the Court, based on the alleged video-clipping. The vernacular version is placed before this Court along with its English translated version, but the video-clipping/tape is not filed into Court.

32 (a). The Telugu version of the video-clipping reads thus:

నందిగామ ఆస్పత్రి 28 ఫిబ్రవరి 2017

కిక్కిరిసి ఉన్న ఆస్పత్రి ఆవరణలోకి వచ్చిన వైఎస్ జగన్ కారు దిగగానే.. భారీగా జనం దూసుకొచ్చారు. బాధితుల బంధువులతో పాటు వైఎస్సార్ కాంగ్రెస్ పార్టీ నాయకులు కూడా అందులో ఉన్నారు.

"అన్యాయం జరుగుతూ ఉంది, చాలా అన్యాయంగా చేస్తున్నారు ప్యాక్ చేసి పంపించేస్తున్నారు వేరే రాష్ట్రం వాళ్లయితే రెండు లక్షలేనట, చంద్రన్న బీమాతో సరిపెడతారట. "

కేకలు, అరుపుల మధ్య ఆస్పత్రిలోపలికి వచ్చారు వైఎస్ జగన్. బాధితులతో మాట్లాడుతూ ముందుకు వచ్చారు. అక్కడ ఓ శవాన్ని గుడ్డతో కట్టి ప్యాక్ చేసి పెట్టారు ఓ బంధువు తమకు సంబంధించిన వ్యక్తి గుర్తింపు కార్డును జగన్ కు చూపించారు. జగన్ తో మాట్లాడుతూబోరు మన్నారు బంధువులు. వారిని ఓదార్చారు వైఎస్ జగన్.

ఇంతలో పక్కనే ఉన్న మరో బంధువు ఆగ్రహంతో "ఎవరికీ చెప్పలేదు, యాక్సిడెంట్ అయినకాడీ నుంచి ఉన్నాం, ఏం చేస్తున్నారుచెప్పలేదు. ముఖం చూపించకుండా కట్టిశారు".

కొంచెం ముందుకు వెళ్లగానే డాక్టర్ విడుదలచేసారు. పక్కన ఉన్నవాళ్లు వైఎస్ జగన్ కు పరిచయం చేశారు. పోస్ట్ మార్గం వెళ్లి బాడీలకు చేశారు, ఎప్పుడు ప్యాక్ చేశారు అని డాక్టర్ ను జగన్ ప్రశ్నించారు. పది డెడ్ బాడీల్లో ఒక్క దానికి చేశామని, మిగతా వాటిని ప్యాక్ చేశామని డాక్టర్ చెప్పారు. "పది మందిలో ఒక్కదానికి పోస్ట్ మార్గం చేశారా" అని మరోసారి డాక్టర్ ను అడిగి నిర్ధారించుకున్నారు వైఎస్ జగన్. డాక్టర్ ఏదో సమాధానం చెబుతుండగానే పక్కనున్న బాధితులు జోక్యం చేసుకున్నారు. "పదింటిలో ఒక్కదానికి మాత్రమే పోస్ట్ మార్గం చేశారు, అది కూడా మమంతా ఒత్తిడి చేస్తే.. ఒక్కదాన్నయినా అటెండ్ చేయాలన్నదానిపై పోస్ట్ మార్గం చేశారు, ముందయితే చేయనని అన్నాడు".

దీనిపై మరిన్ని వివరాలు డాక్టర్ ను అడిగారు వైఎస్ జగన్. నిబంధనలు ఏం చెబుతున్నాయి? పోస్ట్ మార్గం లేకుండా ప్యాక్ చేస్తే వాస్తవాల్లా తెలుస్తాయా? అని అడిగారు. అప్పటికే అక్కడ మీడియా ప్రతినీధులు వైఎస్ జగన్ వైపు వచ్చారు.

వారితో వైఎస్ జగన్ మాట్లాడుతూ"ఇక్కడ ఇది పూర్తిగా ప్యాక్ చేసి.. ఈ శవం చూస్తే మీకేమనిపిస్తా.. ఉంది..? ఈ శవాన్ని డిస్పాచ్ చేయడానికి.. రెడీగా పెట్టినట్లుగా ఈ శవాన్ని డిస్పాచ్ చేయబోతున్నారు అని కనిపించడం లేదా? ఈ శవాన్ని డిస్పాచ్ చేయబోతున్నట్లుగా.. కనిపిస్తున్న ఈ శవం ఆదినారాయణ అనే డ్రైవర్ ది. ఆశ్చర్యం ఏమిటంటే ఈ శవానికి పోస్టు మార్గం చేయలేదు

నాయక్ అన్న డాక్టర్ అసిస్టెంట్ ప్రొఫెసర్ అదే పనిగా ఇక్కడికి వచ్చారు. ఆ శవానికి పోస్టు మార్టం జరక్కేకుండానే కట్టేసినారు స్వాక్ చేసి పంపించేస్తా ఉన్నారు. పోస్టు మార్టం జరిగినట్లు గా చూపిస్తా ఉన్నారు. 10,11 శవాలకు పోస్టు మార్టం చేయకపోయినా చేసేసామని చెబుతా ఉన్నారు."

మరీ ముఖ్యంగా "డైవర్ తాగాడా? లేదా? అన్న అంశం మీదా పోస్టు మార్టం చేశారా? డైవర్ తాగాడా? లేదా? తాగి తోలాడా?" అని అడుగుతా ఉంటే అప్పుడు డాక్టర్ గారు చెబుతా ఉన్నారు. "సార్ పోస్టు మార్టం చేయలేదు సార్" అని చెప్పి.

డాక్టర్ గారిని.. "డైవర్ తాగి తోలాడా" అని అడిగితే అప్పుడు.. వచ్చిన సమాధానం .. "తెలీదు సార్ అని. నేనింకా పోస్టు మార్టం చేయలేదని". అంటే లిట్రల్గా.. డైవర్ అనే వ్యక్తిని పోస్టు మార్టం కూడా చేయకుండా చేస్తే తాగాడు, తాగలేదు అని తెలుస్తుందని ఏకంగా శవానికి కవర్ చేసి పంపిస్తున్నారు

రెండో డైవర్ ఏమయ్యాడు? బస్సు టువన్ క్వార్ నుంచి స్టార్ అయింది స్టార్ రైన్ బాదరాబాద్ కు వస్తా ఉంది. స్టార్ రైన్ బాదరాబాద్ కు వస్తా ఉంటే బస్సు కాంట్రాక్ట్ క్యారియర్ స్టేజ్ క్యారియర్ అని అడిగితే కలెక్టర్ దగ్గరనుంచి సమాధానాలు లేవు. బస్సు ఇష్టం వచ్చినట్లు గా శ్రీకాకుళంలోనూ విశాఖపట్నంలోనూ.. విజయవాడలోనూ.. ఆపి ఆవకాశం బస్సుకు లేదు. స్టేజ్ క్యారియర్ కాంట్రాక్ట్ క్యారియర్ అంటే సమాధానాలు రావు. బస్సు తోలుతా ఉన్నప్పుడు రెండో డైవర్ ఏమయ్యాడు? ఏమయ్యాడు అంటే రెండో డైవర్ ను తీసుకోవ్వినా.. అని చెబుతారు కలెక్టర్. "మళ్ళీ ఎక్కడున్నాడండీ రెండో డైవర్" అని అడిగితే.. లేదు వెళ్ళిపోయినాడు అంటున్నారు. అంటే రెండో డైవర్ వెళ్ళిపోయాడా? ఉన్నాడా అంటే రెండో డైవర్ తాగకపోయి ఉండుంటే, రెండో డైవర్ దగ్గర లైసెన్స్ ఉంటే ఆ డైవర్ ను ఇక్కడే పట్టుండేవాళ్ళు ఆ డైవర్ కు లైసెన్స్ అన్నా లేకుండాలా? లేదా? ఆ డైవర్ తాగి ఉండాలి. ఆ రెండింట్లో ఏదో ఒకటి అయిందాలి కాబట్టి ఆ డైవర్ ను తప్పించారు. ఆ డైవర్ ఎందుకు కనపడటం లేదిక్కడ? ఆ డైవర్ ఎందుకులేదు? ఆ డైవర్ ను పోలీసులు ఎందుకు అదుపులోకి తీసుకోలేదు? ఎందుకు ఆ డైవర్ ను పంపించేశారు?

అంటే దానర్థం కొత్త డైవర్ ను ఎవరో తీసుకోస్తారు తీసుకోచ్చి ఈ డైవర్ ప్రయాణం చేస్తా ఉన్నాడు. ఈ డైవర్ రెండో డైవర్ గా ప్రయాణం చేస్తున్నాడని చెప్పి ఒక పద్ధతి ప్రకారం ఎంపీ బస్సు యాజమాన్యాన్ని కాపాడే యత్నం జరుగుతా ఉంది. ఇంతకన్నా దారుణమైనా ఉంటుందా? అని నేను అడుగుతా ఉన్నా.. ఒక సంవత్సరం కిందట కేళినేని ట్రావెల్స్ లో యాక్సిడెంట్లు అవుతాయి దినాకర్ ట్రావెల్స్ లో యాక్సిడెంట్లు జరుగుతాయి దినాకర్ ట్రావెల్స్ అయినా.. కేళినేని ట్రావెల్స్ అయినా యాజమాన్యాలు ఏవరివి? తెలుగుదేశం పార్టీకి చెందిన ఎంపీలు, తెలుగుదేశం పార్టీకి

చెందిన ఎంపీలకు చంద్రబాబు దగ్గరుండి సపోర్ట్ చేస్తున్నాడు కాబట్టి ఏ రూల్స్ ఉండవు.

ఒకే బస్సు పర్మిట్లతో 3,4 రూట్లు తిప్పుతారు క్యారియర్ ఒకే దాంట్లో 2,3 చోట్ల 2,3 బస్సులు తిప్పుతారు. స్టేజ్ క్యారియర్లకు పర్మిషన్ లేకపోయినా కూడా, కాంట్రాక్ట్ క్యారియర్లను కూడా స్టేజ్ క్యారియర్ కేంద్ర తిప్పి అవసరం లేని చోట కూడా ఆపుకుంటూ ప్యాసింజర్లను ఎక్కించుకుంటూ వస్తారు డ్రైవర్ తాగి నిర్లక్ష్యంగా తాగి డ్రైవింగ్ చేసినా పట్టించుకోరు డ్రైవింగ్ లైసెన్స్ ఉందా? లేదా? అని కూడా పట్టించుకోరు అసలు స్పాట్ కు పోయి చూస్తే ఆ బస్సు ఎదురుగా ఇంకొక బస్సు వచ్చే అవకాశంలేదు. ఎందుకంటే ఈ పక్క 2,3 లైన్లు ఉన్నాయి ఆ పక్క 2,3 లైన్లు ఉన్నాయి అది ఫోర్ లైన్, సెక్స్ లైన్ రోడ్డు. అటువంటి చోట బస్సు 150 కి.మీ పై చిలుకు వేగంతో వస్తూ ఉంది అనుకుంటా నేనైతే.. ఎందుకంటే బస్సు అక్కడ గుడ్డితే కల్వర్ట్ కు దాదాపుగా కనీసం అంటే 150 అడుగుల బస్సు గాలిలో ప్రయాణం చేసింది. చేసి కల్వర్ట్ కు అటు చివరన ఉన్న గోడను గుడ్డి కింద పడింది అని అంటే కనీసం 120-150 కిలో మీటర్ల వేగంతో బస్సు ప్రయాణం చేస్తూ ఉన్నట్టు కనిపిస్తుంది

డ్రైవర్ తాగి ఉన్నాడా? లేదా? అని డాక్టర్ ను అడిగితే "ఇంకా పోస్ట్ మోర్టమ్ చేయలేదని" డాక్టర్లు చెబుతాఉన్నారు. చేయకుండానే శవాన్ని మూట కట్టికారు శవాన్ని ప్యాక్ చేస్తూ ఉండారు రెండో డ్రైవర్ ను పంపించేశారు. అరెస్ట్ చేసి ఎంక్వైరీ చేయాలన్న రెండో డ్రైవర్ లేడు. రెండో డ్రైవర్ కనిపించడంలేదు. పంపించేశారు. ఇంత దారుణంగా దగ్గరుండి రూల్స్ ను ఫ్లాంట్ చేస్తూ యాక్షన్ తీసుకోవాల్సిన పరిస్థితిలో ఉంటే ఎలా కాపాడాలి అని చెప్పి యాక్షన్ తీసుకోకుండా ఎలా ఉండాలి అని చెప్పి.. నిజంగా పోలీసులు సైలం కుట్ర పన్ని.. ప్రభుత్వం సైలం కుట్ర పన్ని ఇంత రాజకీయం చేస్తూ ఉంటే ఏళ్లు మనుమలైనా అని అడుగుతా ఉన్నా

ఇప్పటికైనా నేను ఒకటి మాట క్లియర్ గా చెప్పడంకంటే. కాంపన్నేపన్ ఎంత ఇద్దారు? అని అడిగితే కాంపన్నేపన్ ఎంత అని అడిగితే రూ. 2 లక్షల రూపాయలట. చంద్రన్న బీమా పథకం ఉన్నవారికి రూ.5 లక్షలు అట. లేని వారికి రూ. 2 లక్షలు అట. నేను ఒకటి అడుగుతున్నా..బస్సు వాళ్లతో...

(ఇంతలో డాక్టర్ నాయక్ పోస్ట్ మార్డం చేయమన్న రిక్వెస్ట్ ఫాంలు మూడు కాపీలు తీసుకుని వచ్చారు, ఒక కాపీని వైఎస్ జగన్ కు ఇచ్చారు)

ఐ వాంట్ టు సీ దిస్.. యూ డోన్ట్ గో టూ సీయింగ్ దిస్.. నేను ఒక్కటి చెబుతా ఉన్నా.. రూ. 2 లక్షలు, రూ. 5 లక్షలు కాంపన్నేపన్ అంటూ ఉన్న. బస్సు యాజమాన్యం నుంచి నిర్లక్ష్యంగా డ్రైవింగ్ చేసినందుకు వింతిస్తూ రూ. కాంపన్నేపన్ అని అడుగుతా ఉన్నా..? కనీసం అంటే

కాంపౌన్డియేషన్ రూ. 20లక్షలు రూపాయలు బస్సు యాజమాన్యం నుంచి ఇప్పిస్తేనే ఇటువంటివి ఆగుతాయి. ఇలా ఈ మాదిరిగా కంపన్యేషన్ ఇవ్వకుంటే బస్సు యాజమాన్యాలు ఇదే మాదిరిగా నిర్లక్ష్యంగా చేస్తూ పోతాయ్ బస్సు యాజమాన్యాలను ఇదే మాదిరిగా ప్రోటిక్ట్ చేస్తూ ఉంటే ఈ పొద్దు వాళ్లు.. రేపొద్దు న అదే బస్సుల్లో మీ భార్యలుమీ పిల్లలు.. మన భార్యలు.. మన పిల్లలు ఇదే బస్సుల్లో ప్రయాణం చేసి పరిస్థితిలోకి పోతాడయదేసి మానవత్వం ప్రదర్శించండి. ఇక్కడున్న ప్రతి పోలీసు సోదరుడికి చెప్తూ ఉన్నా.. ప్రతి డాక్టర్ సోదరుడికి రిక్వెస్ట్ చేస్తూ ఉన్నా. "దయచేసి అటువైపు ఉన్నవాళ్లు తెలుగుదేశం పార్టీ ఎంపీలన్న సంగతి మర్చి పోండి పక్కన పెట్టండి. దయచేసి మానవత్వం ప్రదర్శించండి".

ఇది మన మంతటా మనం ఎంక్వైరీ చేయడంలో తాత్పర్యం చేసినా... నిజాలు కప్పిపెట్టి ప్రయత్నం చేసినా.. "ఇవాళ వాళ్లకు జరిగింది. రేపొద్దు న మన కుటుంబాలకు కూడా జరిగే అవకాశం పరిస్థితులు కచ్చితంగా ఉంటాయి. ఇన్విడెంట్ జరిగిన ప్రతిసారి లోతులోకి మీరు కూడా పోండి. నిజంగా లోతులోకి పోయి తప్పి చేసిన వాళ్లను నిజంగా క్షమిస్తే చేయండి. చనిపోయిన కుటుంబాలకు బస్సు యాజమాన్యాల నుంచి కనీసం రూ.20లక్షల రూపాయల కాంపన్యేషన్ ఇప్పించే పరిస్థితులు క్రియేట్ చేయండి అప్పుడే కనీసం ఆ చనిపోయిన కుటుంబాలకు మేలు చేయకపోయినా.. కనీసం వారి భార్య బిడ్డలకు తోడుగా ఉన్నట్టూ రూడ్ అవుతాం

కాబట్టి నేను ప్రతి పోలీసు సోదరుడికి చెబుతున్నా. ప్రతి డాక్టర్ సోదరుడికి చెబుతున్నా.. ప్రతి విలేకర్ సోదరుడికి చెబుతున్నా.. "దయచేసి అందరూ కూడా కుటుంబాలకు తోడుగా ఉండే కార్యక్రమం చేయండి. మానవత్వంలో చేయండి" అని చెబుతా ఉన్నా..

(ఇంతలో వైఎస్ జగన్ చేతిలోంచి పక్కనున్న డాక్టర్ పేపర్స్ తీసుకునే ప్రయత్నం చేశారు. దీంతో డాక్టర్ నాయక్ ను వైఎస్ జగన్ అభ్యర్థిస్తూ.. "నాకొక కాపీ ఇవ్వండి, నేను పెట్టుకుంటా" అన్నారు. అయినా వినకుండా వైఎస్ జగన్ చేతిలోంచి పేపర్లను డాక్టర్ లాక్కునే ప్రయత్నం చేశారు. దీంతో అభ్యంతరపెట్టిన వైఎస్ జగన్.. "కాపీ నాకీచ్చేదానికి ఏంటి? నేను ప్రతిపక్ష నాయకుడిని కదా!.. మూడు కాపీలు మీ దగ్గర ఉన్నాయి, అందులోంచి ఒక్కటి ఇస్తే ఏమవుతుంది" అన్నారు. దానికి డాక్టర్ సమాధానమిస్తూ.. "ఇది రిక్వెజ్షన్, ఇది డాక్టర్ కాపీ అంటూ లాక్కునే ప్రయత్నం చేశారు. దాంతో మీడియా వైపు తిరిగిన వైఎస్ జగన్.. అసలు పోస్టు మార్గం జరక్కుండానే.. అన్నీ పూర్తయినట్టుగా ప్రేమర్ చేసిన కాపీని మీడియాకు చూపించే ప్రయత్నం చూపించారు. "ఇదిగో, దీన్ని షూట్ చేయండియ్యా. మీడియా కాపీ అయినా ఉంటుంది." అన్నారు. మూడు కాపీలు ఉన్నా.. అందులోంచి ఒక కాపీ ఇవ్వడానికి లేదంటున్నారు. డాక్టర్ వైపు తిరిగి "మీ దగ్గర జీరాక్స్ కాపీలు కూడా ఉన్నాయిగా, జీరాక్స్ కాపీ ఏదీ" అని అడిగారు. అయినా డాక్టర్ వినకుండా

లాక్కునే ప్రయత్నం చేయగా.. వైఎస్ జగన్ చేయి తీయమని అడిగారు.

(ఇంతలో వెనక నుంచి కలెక్టర్ చేయితో తట్టడంతో.. వైఎస్ జగన్.. వెనక్కి తిరిగారు)

వెనక్కి తిరిగిన వైఎస్ జగన్ కు పక్కనున్న వాళ్లు కలెక్టర్ వద్దారని చెప్పారు. కలెక్టర్ వైపు తిరిగిన వైఎస్ జగన్, "కలెక్టర్ గారు, with all due respect, ప్రోటోకాల్ ప్రకారం, కలెక్టర్ గారు....., the entire department from police to collector stands corrupt, stands judgemental, stands.." అంటుండగానే కలెక్టర్ అడ్డు కున్నారు

కలెక్టర్, "no protocol, we have done all the post mortums" అన్నారు.

(అప్పటికే పోస్ట్ మార్డం కాలేదు. ఆ విషయాన్ని డాక్టర్ కూడా చెప్పారు. అయినా కలెక్టర్ మాత్రం పోస్ట్ మార్డం పూర్తయిందంటూ వైఎస్ జగన్ తో అన్నారు)

కలెక్టర్ అవాస్తవం చెబుతున్నారని బయటపడడంతో పక్కనున్న బాధితుల తరపు బంధువులు కేకలు వేశారు. "పోస్ట్ మార్డం కాలేదంటూ" గట్టిగా అన్నారు.

దీంతో కలెక్టర్ తో వైఎస్ జగన్ అన్నారు, "మీరు చేసిన వాటన్నింటిపై పరీఫెక్ట్గా ఎంక్వైరీ చేయిస్తారే, బంగారంగా సెంట్రల్ జైల్ కు తీసుకెళ్లే ప్రయత్నం చేస్తామని ముగించారు.

(5)

(b) Its English translation is thus:

GOVERNMENT HOSPITAL, NANDIGAMA, 28th FEBRUARY, 2017:

As he alighted from his car at the Nandigama Government Hospital, YS Jagan Mohan Reddy was mobbed by a huge crowd that included kin of the victims and waiting leaders of the YSRCP.

The people began pouring out tales of woes and reeling out a litany of complaints. Some shouted: "Injustice is being done."

Some others cried: "The bodies are being packed off," while some more complained that people belonging to states other than Andhra Pradesh will get only Rs 2 lakh towards compensation and the victims would get little else than Chandranna Bima (Insurance).

Amid shrieks and cries of the victims' relatives, YS Jagan waded his way into the hospital.

He kept talking to the relatives of the victims even as he paced towards the place where the bodies were lying - neatly packed in white sheets. A person broke down while showing the ID card of his dead relative. YS Jagan consoled him.

Another relative was livid: "They did not inform us anything. We have been waiting here for hours together since the tragedy struck. They didn't tell us what they were doing. The bodies were packed without even bothering to show us the faces of our dead relatives," he complained.

As YS Jagan moved forward, a doctor came and someone introduced him to YS Jagan.

The Leader of the Opposition sought to know whether autopsy was done on all the bodies and when the bodies were packed. The doctor informed him that post-mortem was performed on only one body and the rest were packed without a post-

mortem. YS Jagan asked him pointedly if only one of the ten bodies was subjected to autopsy. Before the doctor could reply, the people began saying that even this post-mortem was performed only after they insisted. Initially they declined to do the post-mortem but later did the procedure on just one body.

YS Jagan then turned to the doctor and sought to know about the proper procedures to be followed in such cases as mandated by the rules. "How can facts come out if no post-mortem is done?" he queried.

Then the media turned towards Mr YS Jagan and he spoke to them.

He said: "Here's a fully packed body of the victim. One can clearly see that it is kept ready for dispatch. This dispatch-ready body is that of driver Adinarayana. Quite shockingly, no post-mortem was done on this body. Dr Nayak, an assistant professor, has come expressly for the purpose of performing autopsy. But, the bodies are already packed without being subjected to autopsy. They are being dispatched. They are trying to hoodwink us by claiming that post-mortems were done. They are claiming that post-mortem was performed on 10-11 bodies.

Most importantly, I asked the doctor if the driver was drunk at the time of the mishap. The doctor feigned ignorance and said he didn't perform the procedure. It means, no post-mortem was performed on the body of the driver. If a post-mortem is done, then one can ascertain if it was a case of drunken driving. As part of the cover up, the body is packed fully and is being dispatched without even bothering to perform autopsy."

YS Jagan continued: "What happened to the second driver? The bus began its journey from Bhubaneswar and was on its way to Hyderabad. I asked the Collector if it was a contract carrier or a stage carrier. No reply was forthcoming. This bus cannot be stopped at will in places like Srikakulam, Vizag and

Vijayawada. I sought to know whether the ill-fated bus was a stage carrier or contract carrier. There was no reply. I asked where is the second driver and whatever happened to him. They say the second driver has left. Either he must have been drunk or might not have the driving licence. It must of one of the two reasons. Hence, he is allowed to slip away. Why is the second driver not to be seen here? Where is he? Why was he not taken into custody? Why was he sent away?"

"It is clear that sooner than later another person would show up posing as the driver. Obviously, a systematic attempt is being made to bail out the management of the Travels Company. A year ago, Kesineni Travels' buses met with accident. Now, Diwakar Travels bus has suffered a mishap. Who are the owners of Kesineni and Diwakar Travels? Both are MPs of the ruling TDP. Chandrababu Naidu is fully backing his MPs. So, no rules apply to them."

"Using just one permit, they ply their buses in 3-4 different routes. One carrier is plied on several routes. Though they do not have permission for stage carriers, they operate contract carriers as though they were stage carriers. They stop even at unmarked places to allow passengers to get in. They do not bother even if the driver is drunk. No one asks if the driver has a valid driving licence. An examination of the accident spot shows that there is no possibility of an oncoming bus hitting the bus. There are two to three lanes on each side. It is either a four or six lane road. I strongly suspect that the bus was travelling at over 150 kmph. It hit the culvert and flew into air for a good 150 feet and then rammed into the corner of the culvert wall before plunging down. It is clear that the bus was travelling at 120 - 150 kmph."

"I asked the doctor if the driver was drunk. He told me forensic procedures weren't performed on him. Without even bothering to do those procedures, the body was packed for dispatch. The second driver was allowed to scoot. Someone who should

have been arrested and questioned, was allowed to go scot free. Instead of applying rules and taking action, the police and the government are conspiring to let them off. They aren't taking any action. I would like to ask them if there's any iota of humanity left in them."

"I want to say one thing very clearly. I asked about the quantum of compensation. They told me that it is Rs 2 lakh. Those who come under the purview of Chandranna Bima will get Rs 5 lakh. The others will get only Rs 2 lakh. I want to ask the bus owners....."

At that instant, Dr Nayak entered the room holding three copies of the request forms for post-mortem. The doctor gave one copy to Mr YS Jagan.

He said:

"I want to see this. You don't go. I only have this to say. The government is talking of Rs 2 lakh and Rs 5 lakh towards compensation to the victims. Won't the bus owners be made to pay for their reckless driving? I demand at least Rs 20 lakh from them to the victims' kin. Such tragedies will stop happening only when the managements are made to cough up. Otherwise, they would continue to ignore the safety of the passengers. If we continue to protect the managements, tomorrow it could your wife, children... who would be victims. We will have to travel in these buses only. Please show some humaneness. I request every police brother and every doctor brother present here to forget that they are TDP MPs. Keep this aside and please show humanitarian consideration."

"If the probe gets delayed or the facts get pushed under the carpet, what happened to them today, could very well happen to our families too. The possibility and conditions fully exist. Whenever such incidents occur, please do delve deeply and do question those responsible. Please create such conditions that will force the bus

managements to pay at least Rs 20 lakh towards compensation to the kin of the deceased. That way, we will be standing with the family members in their hour of grief."

Hence, I request every brother in the police department, every doctor and every media-person to stand up for the victim's families and show your humaneness.

(Meanwhile, doctor who is standing near YS Jagan tried to snatch away the papers from YS Jagan's hands. YS Jagan requests Dr Nayak: "Please give me a copy. I shall have it with me." Doctor does not relent and try to take the papers away. YS Jagan objects to this and says: "What is the problem? Why are you not giving me a copy? I am leader of the Opposition after all! You have three copies with you and you can very well give me one copy."

The doctor then said: "This is a requisition. This is doctor's copy." Even as he said this, he again made an attempt to snatch away the papers.

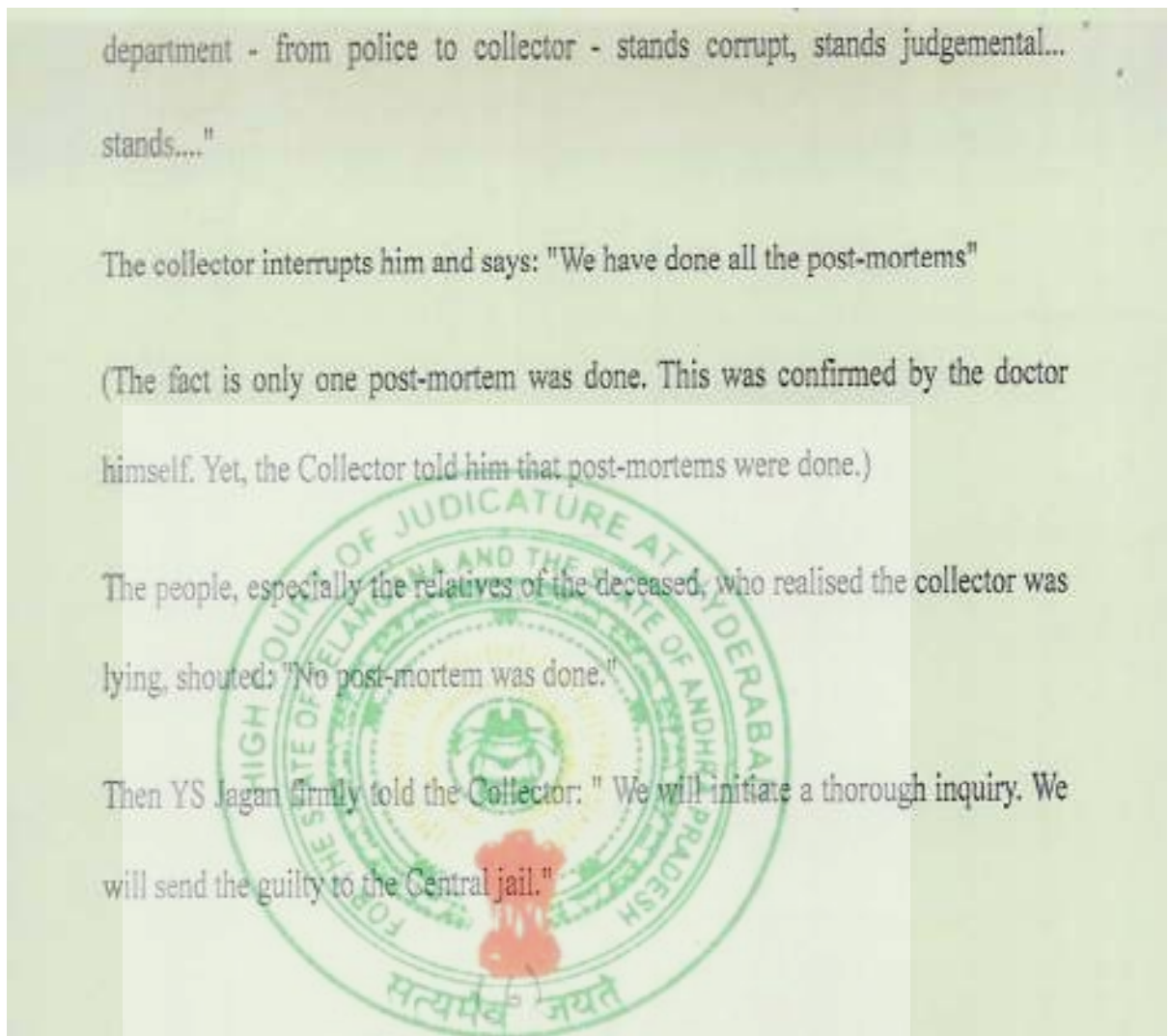
YS Jagan then turns to the media and tried to show the papers to them. "They are trying to furnish papers that say that post-mortem was done while nothing has been done in reality. See this. Shoot this copy. We will at least have videographic evidence. Though he has three copies, he is refusing to give me a copy," he said and turned to the doctor asking him: "You have three copies with you. Why aren't you giving me a copy?"

The doctor again made an attempt to take away the papers. Then Jagan asked him not to touch him. "Take your hands off," he said.

(Meanwhile, the collector touches YS Jagan with hand. Jagan turns towards him.)

The crowds tell him that he is the collector. He turns towards him and tries to say:

"Collector Sir! With due to respect.... as per protocol... Collector sir.... the entire



33. The arguments advanced by the learned Senior Counsel can be summarised thus:

- a) The travel agency is owned by the Member of Parliament of the ruling party in the State and every attempt is made to protect the travel agency.

- b) Post-mortem examination of the deceased driver was not done and post-mortem examination ought to have been done and viscera ought to have been sent to chemical analyst to ascertain whether the driver was in drunken state or not at the time of accident.
- c) Co-driver was sent away deliberately.
- d) The *de facto* complainant - doctor lodged the complaint with inordinate delay giving rise to inference that it is orchestrated in such a manner so as to implicate the petitioner and others.
- e) The FIR itself is outcome of political malice.
- f) The FIR does not disclose ingredients of the offences alleged even on a plain reading.

34. Touching the incident referred to in the complaint, the learned Senior Counsel would submit that snatching the papers by the petitioner is concocted, threatening the Collector and the Doctor are also concocted with political malice to harass and defame the petitioner and his reputation. The learned Senior Counsel in an attempt to substantiate the aforesaid submissions mainly rests on the video-clipping version submitted by way of additional material. It is his submission that when the entire version is read, it would belie the overt-acts attributed to the petitioner by the *de facto* complainant in the complaint. According to the learned Senior Counsel, the petitioner only appealed to the relatives of the victims, having heard

them, that post-mortem on the deceased driver was not conducted and had it conducted legally by following all the rules, truth would have surfaced and the doctors' version that no examination was done to verify whether the driver was in an inebriated condition would substantiate the petitioner's stand and he was appealing to the entire District Administration to stand with the bereaved families and conduct investigation and enquiry in a fair and transparent manner.

35. The learned Senior Counsel would submit that when the petitioner, on enquiry, learnt that co-driver was sent away without questioning him about the accident, made a statement that he would make sure that a perfect investigation will be got done and the District Collector and others responsible will be prosecuted, in accordance with law, and sent to Central Jail, if they are involved in any sort of conspiracy or dereliction of duty in regard to the accident and the callous attitude of the authorities at the hospital as the travel agency belongs to a Member of Parliament of the ruling party and the petitioner never threatened either the doctor or the District Collector and there was no occasion at all to threaten either of them; but, mentioning, what did not really transpire, projecting a new version in the complaint, attributing to the petitioner that he along with others, pushed the doors of the room where post-mortem was being done and raising shouts, snatched away post-mortem requisition papers from the doctor's hands and tried to tear them, during which time, the District Collector, Krishna District, viz., Sri Ahmed Babu taken the

said requisition forms from the petitioner, on which, the petitioner said to have uttered that he would become Chief Minister and then he would send the Collector to Jail and by raising his finger towards doctors uttering that he would see their end and thus for about one hour, by shouting, obstructed the doctors from conducting post-mortem examination and that even the persons, accompanying the petitioner, threatened the doctors that even if the petitioner would not be there, since they are local residents, they would see the end of the doctors, created a false story. According to the learned Senior Counsel the said version is inherently improbable mainly for two reasons: firstly, it totally contradicts the version contained in the video-clipping; second, there was no reason why the doctor waited till 8.00 p.m., and lodged the complaint and the delay thus, strongly probablises orchestration of support for the doctors by the political establishment of the State, organising support for immediate coercive police action against the petitioner with malice and aimed solely on political considerations at the instance of the ruling party with an oblique motive and malicious intention in incorporating concocted, misconceived and vexatious allegations to defame the petitioner.

36. Besides the same, the learned Senior Counsel would also submit that the facts projected in the second FIR would contradict the FIR herein and unless the incident in the other FIR takes place in the first instance, taking place of present incident does not arise at all. Even the main submissions made by the learned Senior Counsel are in

the direction to picturise the present case falling within the ambit of rarest of rare cases for quashment of the FIR. The learned Senior Counsel has also relied on the decisions, which are referred to in the above, more particularly, the guidelines in **Bhajan Lal**².

37. The learned Public Prosecutor would submit that the case of the petitioner does not fall within the parameters of Section 482 of the Code. The FIR was registered on 28.02.2017 and just immediately after its registration, the petitioner rushed to this Court projecting defence without comprehending at what stage, defence can be put-forth.

38. Concerning the video-clipping version, the learned Public Prosecutor would submit that unless, unimpeachable material is placed, the same cannot be looked into even for quashing the FIR. He would submit that even if the compact disk transcription is looked at, it would disfavour the petitioner. He would also submit that witnesses statements were also recorded.

39. When analysed the above mentioned submissions, it is to be stated that the averments mentioned in the petition are mainly based on the alleged compact disk version extracted in the above. The other suspicious circumstances pointed out by the learned Senior Counsel with regard to delay in lodging the FIR by the doctor and the alleged motive in mentioning the allegations in the complaint are, of course, not connected with the compact disk version.

40. There are three important aspects, which cannot be ignored even at this stage, touching the compact disk version filed as additional material papers. The first important aspect is that the petition does not disclose as to which of the television channels did record the said version. There is no indication at all evidencing that a particular television channel did record such a version. Second, if it is really a true version, what was asked by the petitioner and what was answered by the informants would have been mentioned in direct form, but not the other matter. Third, as already mentioned in the above, neither the compact disk nor the drive is made available, to cross-check, whether the version now placed before the Court is complete and constitutes true recording. So, it is difficult, at this stage, to give weight to the television clipping version to find merit in the submissions made by the learned Senior Counsel.

41. Thus, if the Compact Disk version, both, in vernacular and its English translation are excluded, nothing remains on record for the petitioner to substantiate the averments mentioned in the petition. It is no doubt true, the said version falls within the ambit of Section 65-B of the Evidence Act and attributes thereof have to be satisfied. Even giving allowance to non-filing of a certificate as mandated by the said provision, still, for want of information referred to in the above, the authenticity of the version placed before the Court, becomes doubtful and, therefore, at this stage, cannot be relied upon. Even otherwise, as rightly pointed out by the learned Public

Prosecutor, at page No.5 thereof, the petitioner alleged to have uttered the words “Collector Sir! With due to respect.... as per protocol... Collector sir.... the entire department - from police to collector – stands corrupt, stand judgemental... stands....” , as shown in the English translation and based on which, the learned Public Prosecutor would submit that, that itself would substantiate the acts of the petitioner alleged in the complaint.

42. The learned Senior Counsel places reliance in **Harshendra Kumar D.** (3 Supra) for the expression that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code, in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations, but in an appropriate case, if on the face of the documents which are beyond suspicion or doubt placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial Court and in such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at *prima facie* stage. So, it is his submission that video clipping version now placed before the Court, since has significant bearing on the matter at *prima facie* stage, requests to consider the same and quash the FIR.

43. As regards the admissibility of video clipping version, the learned senior counsel places reliance in **Manik Taneja** (5 Supra). The said decision was rendered by the Hon'ble Supreme Court in the context of Section 66-A of Information Technology Act, 2000 prior to its being held unconstitutional. The learned senior counsel places emphasis on the observations of the Hon'ble Supreme Court in paragraph Nos.3, 8 and 10 to 13, thus:

“3. Being aggrieved with the manner with which they were treated, the appellants posted comments on the Bangalore Traffic Police Facebook page, accusing Mr. Kasim of his misbehaviour and also forwarded an email complaining about the harassment meted out to them at the hands of the Respondent Police Inspector. The Respondent No.2-Police Inspector filed a complaint regarding the posting of the comment on the Facebook by the appellants and subsequently FIR was registered against the appellants for offences punishable under [Sections 353](#) and [506](#) IPC on 14.06.2013.

8. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made, prima facie, establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the Court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal

prosecution to continue, the Court may quash the proceeding even though it may be at a preliminary stage.

10. So far as the issue regarding the registration of FIR under [Section 353](#) IPC is concerned, it has to be seen whether by posting a comment on the Facebook of the traffic police, the conviction under that Section could be maintainable. Before considering the materials on record, we may usefully refer to [Section 353](#) IPC which reads as follows:-

"353. Assault or criminal force to deter public servant from discharge of his duty.- Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

A reading of the above provision shows that the essential ingredients of the offence under [Section 353](#) IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second

respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, that the ingredients of the offence under [Section 353](#) IPC are not made out.

11. [Section 506](#) IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in [Section 503](#) IPC is as under:-

"503. Criminal Intimidation.- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging

his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "Criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in [Section 503](#) IPC.

13. Of course, in exercise of its jurisdiction under [Section 482](#) Cr.P.C., the court should be extremely cautious to interfere with the investigation or trial of a criminal case and should not stall the investigation, save except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of offence and that continuance of the criminal prosecution would amount to abuse of process of the court. As noted earlier, the page created by the traffic police on the Facebook was a forum for the public to put forth their grievances. In our considered view, the

appellants might have posted the comment online under the bona fide belief that it was within the permissible limits. As discussed earlier, even going by the uncontroverted allegations in the FIR, in our view, none of the ingredients of the alleged offences are satisfied. We are of the view that in the facts and circumstances of the case, it would be unjust to allow the process of the court to be continued against the appellants and consequently the order of the High Court is liable to be set aside.”

44. The facts therein as could be gathered from the contents of paragraph No.3 of the judgment are not akin to the fact-situation occurring in the present case so far as offences punishable under Sections 353 and 506 IPC are concerned.

45. Now, turning to the principle laid down in **Harshendra Kumar**³ relied on by the learned senior counsel, in the discussion made hereinbefore, it is made clear that it is difficult at this stage to give weight to the television clipping version for the three reasons aforementioned. Therefore, even the decision in **Harshendra Kumar**³ is of no assistance to substantiate the case of the petitioner so as to quash the FIR.

46. On the other hand, the learned Public Prosecutor places reliance in **Anvar P.V.**⁷ contending that the video-clipping version now placed by the petitioner has to be accompanied by a certificate as specified in Section 65 B of Evidence Act and in the absence of the

same, the version cannot be considered. Nothing more is required to discuss again in view of the three (3) reasons mentioned in the above. One of the main factors being that the name of the Television Channel or author of the video-clipping stood undisclosed.

47. Now, turning to the complaint lodged by the *de facto* complainant, she mentions names of the petitioner and other nine (9) persons pushing the doors of the room in which they were conducting post-mortem on nine (9) dead bodies, raising slogans, shouting and snatching away post-mortem requisition papers and even attempting to tear them, during which time, the District Collector, Sri Ahmed Babu has taken away the said requisition forms from the hands of the petitioner; on which, the petitioner threatened the Collector that he would become the Chief Minister and he would send him to Central Jail and then pointing at the doctors, threatened them that he would see their end, and, for about one hour, the petitioner and his followers raised slogans, obstructed them from conducting post-mortem and even others proclaiming that they are local leaders and even without the presence of the petitioner, they would see the end of the doctors, are all sufficient to arrive at even at this stage, that there are *prima facie* allegations as to commission of cognizable offence to proceed with the investigation.

48. Turning to the submission touching the delay in lodging the complaint, no doubt, the offence alleged to have taken place at 3.30 p.m. and in fact, it would have commenced at 3.30 p.m. and

continued for an hour as could be seen from the contents of the complaint, it was about after three and half (3½) hours, the complaint was lodged. The suspicious features, which the learned senior counsel sought to derive based on the said delay in lodging the complaint, certainly, cannot be considered at this stage. It is true, petitioner is the leader of the opposition party. But, it is difficult, at this stage, to view that the complaint is motivated with concocted version with political malice to harass the petitioner, defame him and his reputation, without testing the version occurring in the complaint by examining the witnesses and recording their statements and subjecting them to cross-examination, if they step into witness box, in case, the petitioner is charged on completion of investigation.

49. Yet another submission made by the learned Senior Counsel is, that the F.I.Rs. in the present crime and Crime No.58 of 2017 are continuing offence, and, therefore, registration of second FIR in same police station for same occurrence is impermissible. Emphasis is placed in **Akbaruddin Owaisi**⁴, more particularly, the observations contained in paragraph Nos.40, 41 and 42, thus:

“VII. TESTS TO BE APPLIED TO DETERMINE WHETHER TWO FIRS RELATE TO THE SAME OR DIFFERENT INCIDENTS:

40. Let us now briefly refer to the tests which should, ordinarily, be applied to determine whether or not the two FIRs under consideration relate to the same incident/transaction. The law recognizes a common trial or a common FIR being registered for one series of acts so

connected together as to form the same transaction as contemplated under [Section 220](#) Cr.P.C. The expression 'same transaction', from its very nature, is incapable of exact definition. (Anju Chaudhary⁴; [Mohan Baitha v. State of Bihar](#)⁵⁷). The distinction between two FIRs relating to the same incident, and two FIRs relating to different incidents or occurrences of the same incident, should be carefully examined. (Babubhai²). The merits of each case must be considered to determine whether a subsequently registered FIR is a second FIR relating to the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the Court to lay down one straight jacket formula uniformly applicable to all cases. This will always be a mixed question of law and fact depending on the merits of a given case. (Anju Chaudhary⁴). The test, to determine whether two FIRs can be permitted to exist, is whether the two incidents are identical or not. (Ram Lal Narang²⁹).

41. The concept of "sameness" has been given a restricted meaning. In order to examine the impact of one or more FIRs, the Court has to rationalise the facts and circumstances of each case and then apply the test of 'sameness' to find out whether both FIRs relate to the same incident and to the same occurrence; and whether they are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. It is only if the second FIR relates to the same cause of action, the same incident, there is sameness of occurrence and an attempt has been made to improvise the case, would the second FIR be liable to be quashed. In cases where every FIR has a different spectrum, and the allegations made are distinct and separate, it may be regarded as a counter complaint, but it cannot be stated that an effort has been made to improve the allegations that find place in the first FIR or that the principle of

"sameness" is attracted. (Babubhai2; [Surendra Kaushik v. State of Uttar Pradesh](#)⁵⁸).

42. It is not possible to enunciate any formula of universal application to determine whether two or more acts constitute the same transaction. They are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. For several offences to be part of the same transaction, the test to be applied is whether they are so related to one another in point of purpose or of cause and effect or as principal and subsidiary, so as to result in one continuous action. Where there is commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction". Where two incidents are of different times with involvement of different persons, there is no commonality, the purpose thereof is different, they emerge from different circumstances, and would not form part of the same transaction. (Anju Chaudhary⁴)."

The said decision is relied on in the context of tests to be applied to determine whether two FIRs relate to the same incidents. If the tests referred to in paragraph No.42 by a learned Single Judge of this Court, are applied to two FIRs referred to above, certainly, they do not satisfy any of the parameters observed.

50. The learned Public Prosecutor in the same context placed reliance in **Rameshchandra Nandlal Parikh**⁶, laying emphasis on paragraph Nos.13 and 14, thus:

“13. In the facts of the present case, we are satisfied that the complaints, which were filed in respect of malfeasance and misfeasance within the jurisdiction of the Ahmedabad Police, were not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences, nor were they alleged to have been committed in the course of the same transaction or the same occurrence as the ones alleged in First C.R. No. 67/2001.

14. There is a further distinction in that while First C.R. No. 67/2001 pertained to cases concerning one Ketan Parikh and entities associated with him in the crime, the subsequent complaints pertained to other parties. Further, the FIR being investigated pertained only to criminal acts relating to the Mandvi Branch (Mumbai), while the subsequent complaints being investigated by the State Police pertained to criminal acts at the Shahibaug (Ahmedabad) Branch of the Bank. In our view, the distinctions drawn by the High Court are fully justified. The High Court was right in observing that the FIRs, which were under challenge before it, were regarding independent and distinct offences. Hence, the FIRs could not be prohibited on the ground that some other FIR had been filed against the Petitioner in respect of other allegations made against the Petitioner.”

51. It is true, as contended by the learned Public Prosecutor, certainly, it is difficult, at this stage to accede to the submission of the learned Senior Counsel for the petitioner that both the FIRs relate to a continuing offence. Therefore, even the decision in **Akbaruddin Owaisi**⁴ is of no assistance to quash the FIR in the present case.

52. Thus, these submissions touching the alleged delay in lodging the complaint relates to appreciation of evidence to be judged,

in accordance with evidentiary rule at an appropriate stage. It would be premature to view the complaint with suspicion acceding to the submissions made by the learned Senior Counsel, more particularly, when the source of compact disk version placed before the Court by way of additional material stood undisclosed.

53. Touching the submission of the learned Senior Counsel that none of the ingredients of Section 353 of IPC are attracted as neither ‘assault’ nor use of ‘criminal force’ can be gathered from the allegations in the complaint, it is useful to refer to Sections 349 and 351 of IPC. Section 349 of IPC deals with ‘criminal force’, whereas Section 351 of IPC deals with ‘assault.’ To answer the submission made by the learned Senior Counsel, it would be appropriate to extract Section 351 of IPC, which reads thus:

“351. Assault – Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.”

54. Thus, Section 351 IPC makes it clear that any gesture or preparation intending or knowing it to be likely that such gesture or preparation would cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that

person is said to commit an assault. Thus, though, in popular parlance, there can be no assault unless there is criminal force, but in its legal conception, act must fall short of the use of force to constitute assault.

55. Turning to the allegations in the complaint, it is not in dispute that the *de facto* complainant is a public servant and even other doctors, who were conducting autopsy at the relevant time. Thus, the primary ingredient of Section 353 of IPC is satisfied.

56. The very allegation that when the *de facto* complainant along with duty doctors was conducting autopsy in the ground floor at about 3.30 p.m., the petitioner herein along with nine (9) others, suddenly pushing the doors of the room, entering inside, shouting loudly and snatching away post-mortem requisition papers from the doctors' hands, is sufficient to hold that it constitutes *prima facie* allegation to attract the ingredients of Section 353 of IPC.

57. The other offence alleged against the petitioner is punishable under Section 506 of IPC. The said offence deals with 'criminal intimidation'.

58. Section 503 of IPC deals with 'criminal intimidation, insult and annoyance', which reads thus:

“503. Criminal intimidation - Whoever threatens another with any injury to his person, reputation or property, or to the person or

reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

59. Section 506 of IPC provides punishment for criminal intimidation with imprisonment of either description for a term which may extend to two years, or with fine, or with both. If threat be to cause death or grievous hurt, etc., the offence is made punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years or with fine or with both.

60. The allegations in the complaint are that the petitioner proclaimed that he would become the Chief Minister and threatened the Collector that he would send him (Collector) to Central Jail and even threatened the doctors by raising finger, would all attract the provisions of the present Section. Therefore, the contention of the learned Senior Counsel that even taking the un-controverted allegations to be correct, the ingredients of the offences punishable under Sections 353 and 506 of IPC are not made out cannot be agreed.

61. One of the important grounds put-forth by the petitioner in the direction of attributing political malice in lodging the complaint cannot be lost sight off. In paragraph No.20 of the petition, while seeking stay of all further proceedings including arrest of the

petitioner pending disposal of the criminal petition, the petitioner avers that the proceedings are orchestrated so as to prevent him from participating in the Legislative Assembly proceedings notified to commence from 06.03.2017 so as to disable him from addressing the grievances of the people on the floor of the House and to ensure that the government's actions are not debated in the house. The petitioner has filed the petition on 06.03.2017 and was heard on 13.03.2017. The petitioner's apprehension that the complaint was orchestrated so as to prevent him from participating in the Legislative Assembly proceedings that commenced from 06.03.2017 so as to disable him from addressing the grievances of the people on the floor of the House appears to be misconceived, since the learned Senior Counsel appearing for the petitioner has not advanced as to whether the petitioner was prevented from addressing the grievance of the public on the floor of the House.

62. The other so-called inherent improbability touching the time of occurrence in this case and the incident in other crime, basing on which, the submission was made to the effect that unless the incident in other crime had taken place, taking place of the incident in the present crime does not arise can only be appreciated if evidences are collected during investigation or during trial when the witnesses are examined as the submission touches the probability and the probabilities can be derived in aid of the case only from the proved facts.

63. Thus, viewed from any angle, certainly, continuation of investigation in the present case cannot be viewed as amounting to abuse of process of law. There are no merits in the present petition.

64. Therefore, the Criminal Petition is dismissed, at the admission stage itself. However, the investigating agency is hereby directed to follow the procedure under Section 41-A of the Code and strictly adhere to the guidelines laid down by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**⁸.

Further, the petitioner is at liberty to exercise his right, in case charge is laid, to avail the remedies available either under Section 482 of the Code or by filing a discharge petition.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

June 13, 2017.

GBS/PV

⁸ (2014) 8 SCC 273