

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-CLT-OJ-No.1 of 2019 (O&M)

Date of Decision: November 8th, 2019

Justice (Retd.) Ranjit Singh

...Complainant

Versus

Sukhbir Singh Badal & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. APS Deol, Senior Advocate with
Mr. H.S.Deol, Advocate,

Mr. G.S.Punia, Senior Advocate with
Mr. P.S.Punia, Advocate,
for the complainant.

Mr. Ashok Aggarwal, Senior Advocate with
Mr. K.S.Nalwa, Advocate &
Mr. A.S.Thind, Advocate,
for respondent No.1.

Mr. Puneet Bali, Senior Advocate with
Mr. Satyam Aneja, Advocate &
Mr. D.S.Sobti, Advocate,
for respondent No.2.

AMIT RAWAL, J.

The complainant, a member of the Commission of Inquiry constituted under the Commissions of Inquiry Act, 1952 (for short, 1952 Act), through various notifications, Annexures C-8(i), 8(ii) & 8(iii), has invoked the jurisdiction of this Court under Section 10-A of the 1952 Act by making the respondents as accused enclosing three applications, i.e., CRM No.5006 of 2019 for seeking exemption from filing typed/certified copies of news reports Annexures C-1 to C-5 and CDs Annexures C-6 and C-7, CRM No.5007 of 2019 under proviso to sub-section (5) of Section 10-A of 1952 Act for exemption from personal appearance as Chairman of the

Commission of Inquiry and CRM No.5008 of 2019 under proviso to Section 200 read with Section 204 of the Criminal Procedure Code, 1973 for dispensing with the examination of the complainant and witnesses.

The facts and circumstances resulting into filing of the complaint, in brief, are recapitulated as under:-

Complainant, a former Judge of this Court, vide notification dated 14.04.2017, Annexure C-8 (i), was appointed as a Chairman of the Commission of Inquiry regarding the incidents of alleged desecration of Sri Guru Granth Sahib Ji in 2015, particularly in District Faridkot and other places in the State, to conduct an inquiry into the incidents of sacrilege by confining its scope as under:-

- a) Conduct an enquiry into the cases of sacrilege of Sri Guru Granth Sahib Ji, Srimad Bhagwad Gita, Holy Quran Sharif;
- b) Enquire into the detailed facts and circumstances and chronology of events of what actually happened and to identify as a matter of fact the role played by various persons into what happened;
- c) Enquire into the truth of what occurred in such incidents and factual role of the persons who may have been involved;
- d) Enquire into the firing at Kotkapura on 14.10.2015 and village Behbalkalan, District Faridkot in which two persons died; and
- e) Identify and enquire into the role of the police officers/officials in incomplete/inclusive investigations into the earlier incidents of sacrileges so far.”

The tenure of the Commission was fixed as six months. However, vide second notification dated 22.09.2017, Annexure C-8(ii), the tenure was extended for another six months, i.e., upto 12.04.2018. Through another notification dated 02.04.2018, Annexure C-8 (iii), period was extended upto

31.08.2018.

Respondent No.1, at the time of the incident, was Deputy Chief Minister as well as the Home Minister of the State of Punjab and similarly, respondent No.2 was elected member of the State Legislative Assembly. Earlier a Commission of Inquiry was constituted headed by a former Judge of this Court to enquire into the acts and incidents, but after extension of the terms of the previous Chairman, report was submitted on 30.06.2016, which was not accepted by the Government resulting into appointment of the complainant as the Chairman. The complainant, being Chairman of the Commission, executed his duties and functions in a completely non-partisan manner and with utmost honesty, integrity and a great sense of responsibility and on publication of the enquiry report, respondent No.1 and his associates embarked upon a tirade to publicly undermine and ridicule the Commission as well as the complainant, which as per the provisions of Section 10-A of 1952 Act, constitute an offence and the offences have been committed by means of medium of Social Media, Press Conferences, Print Media, Public Gatherings, Interviews etc. Certain instances have been referred to in Para 9 of the petition and its English translation. The allegations levelled by respondent No.1 are stated to be false, baseless and have been made with the solitary motive to malign the reputation of the complainant on his degree of law, complainant not only served in the JAG Branch of the Indian Army, but also practiced as an Advocate for approximately two decades and adorn the Bench of this court for a period of more than seven years. The second incident of willful disrepute was allegedly done on 27.08.2018 outside the Punjab Legislative Assembly at Chandigarh by respondent Nos.1 and 2 along with several other members of

the Shiromani Akali Dal (SAD) protested against the enquiry report, thus, respondent Nos.1 and 2 have committed the offences of grave nature. The offences have been committed on public platforms, in full view, hearing of the entire citizens of the State of Punjab and even beyond. Press conferences were also widely broadcasted in various news channels and other digital platforms, like, YouTube etc. On having viewed the press conferences on Television, the witnesses were shocked that they have casted the remarks on the reputation of a Judge resulting into jostling of stature and dignity of the complainant.

In order to bring the offence within the period of six months as per the provisions of Section 10-A of 1952 Act, reference has been made to the press conferences held on 23.08.2018 and 27.08.2018, i.e., before the period of the commission could cease and, therefore, complaint is well within the period of limitation, enclosing list of witnesses.

On institution of the complaint, matter came up for hearing before this Court on 11.02.2019. This Court raised the query with regard to maintainability of the complaint, but before it could be heard, thought to examine the CDs, Annexures C-6 and C-7 and matter was adjourned to 13.02.2019. On the aforementioned date, this Court called upon the complainant to place on record notification dated 14.04.2017, whereby the complainant for the first time was appointed as a Chairman of the Commission. Vide CRM No.5845 of 2019, three notifications, *ibid*, were enclosed and taken on record and in the main complaint, following order was passed:-

“Notice of the case to the respondent for 25.03.2019 subject to the maintainability of the complaint provided the respondent renders assistance in the light of the provisions under Section

10-A(3) of the Commissions of Inquiry Act, 1952.

As regards the argument of Mr.Deol, regarding preservation of the evidence, the same shall be considered after hearing other party.”

Respondents before they could appear, moved an application seeking exemption to appear through counsel vide criminal misc.application. On 11.07.2019, respondent Nos.1 and 2 appeared. Officer on Special Duty was directed to accept the personal bonds in the like amount of Rs.one lac each and on furnishing the same, admitted to bail. On the said date, Mr.APS Deol, learned Senior Counsel assisted by Mr.H.S.Deol, Advocate and Mr.G.S.Punia, learned Senior Counsel assisted by Mr.P.S.Punia, Advocate sought the indulgence of this Court for filing of the list of witnesses in terms of the provisions of Section 244 of the Code of Criminal Procedure. The respondents being represented by Mr.Ashok Aggarwal, learned Senior Counsel assisted by Mr.K.S.Nalwa, Advocate and Mr. R.S.Cheema, learned Senior Counsel assisted by Mr.A.S.Cheema, Advocate raised the objection qua maintainability of the complaint by bringing into notice of this Court the order dated 20.02.2019. Noticing the aforementioned contention, this Court in the penultimate paragraph, while adjourning the matter to 21.08.2019, observed as under:-

“Keeping in view the order dated 20.02.2019, whereby this Court while issuing notice to the respondents, has also kept the question open regarding maintainability of the complaint in terms of the provisions of Section 10(3)(A) of the Commission of Inquiry Act, 1952, I deem it appropriate to adjourn the hearing of the complaint and direct the counsels representing the parties to address arguments in terms of order dated 20.02.2019.”

On 19.08.2019, on submissions of the applications, personal

exemption of respondent Nos.1 and 2 was granted for the next date of hearing, i.e., 21.08.2019, on which date also, their personal appearance was also exempted.

Learned Senior Counsel representing the respondents submitted their arguments qua the maintainability of the complaint by commencing at 2 PM, which concluded at 3.52 PM by raising the following submissions and as well as the provisions of 1952 Act:-

- 1) By referring provisions of Sections 3, 7(2) and ofcourse 10 and 10-A of 1952 Act that the tenure of the Commission on the dates specified in the notification ceased to exist and so would be the Commission and its Chairman;
- 2) Section 10 deals with the description of the members etc. of the Commission to be public servant as per the provisions of Section 21 of the Indian Penal Code, 1860 (45 of 1860);
- 3) No doubt, provisions of Section 10-A prescribe a complete procedure as a penalty for acts calculated to bring the Commission or any member thereof into disrepute by assigning the power to the High Court to take the cognizance of the offence on receipt of the complaint and tried the same as a warrant case and prescribed the limitation within six months from the date on which the offence is alleged to have been committed;
- 4) Complaint has been filed on 29.01.2019 and registered on 04.02.2019 by branding the complainant as the Chairman of the Commission of Inquiry, attention of this Court was drawn to the memo of parties of criminal complaint and affidavits in support of the applications, *ibid*, and as well as the averments in Paragraph 18 of the complaint;
- 5) Designation of the Chairman was bestowed vide notification, but on the date of filing of the complaint, status of the complainant was not of a public servant or Chairman and, therefore, his presence or the exemption being a public servant cannot be deemed to have been granted. Life of the

Commission was upto 31.08.2018. As per the provisions of Section 5(4) of 1952 Act, the Commission is deemed to be a civil court. The word “Member” used in Section 10 would not extend the life of the notification beyond 31.08.2018 till the filing of the complaint in February, 2019. The intent of the Legislation by applying the principal interpretation, as per settled law that once the language of the Act is plain and unambiguous, there cannot be any change or taking assistance of any other provision of the Act making a complaint maintainable;

6) The period of six months is from the date on which the offence is alleged to have been committed. The said period would be construed during the life of the Commission and notification and not beyond that;

7) Section 10-A of 1952 Act is required to be read in conjunction with Section 7 thereof. Protection given to the member is during the subsistence of the Commission. There cannot be any re-writing of the Legislature. Provisions of Section 4 have to be read with it and not in isolation. On expiry of the notification, member or the Commission is powerless and denuded of power to derive any benefit, like initiation of the complaint as under the provisions of Section 10-A, special procedure is provided, which is in exclusion to the general law;

8) By filing the complaint in January, 2019, complainant cannot brand and treat him to be a public servant to bring the case within the parameters of Section 10-A, but there is no bar for him to avail the remedy of filing a separate private complaint for commission of alleged offences, if any, under Section 499 of the IPC;

9) All privileges would be alive during the period of Commission but on demission would not institute complaint as on the date of filing of the complaint, the complainant was not a member of the Commission;

10) Since the complainant is not a public servant, he should have been examined as per the provisions of Section 200 of the

Code of Criminal Procedure, but in some other forum as jurisdiction of the Court could not have been invoked nor granted the deemed personal presence as the proviso to sub-section (5) of Section 10-A of 1952 Act protects the personal appearance only of a member of the Commission as a complainant. Otherwise, the expression “otherwise” cannot be construed to apply to the Ex-Chairman or Member;

11) As per the provisions of Section 204 of the Code of Criminal Procedure, procedure prescribed for warrant case is enshrined in sub-section (b) thereof. It is not a case of cognizance. There cannot be any argument in favour of the complainant that while issuing notice, this Court had already taken the cognizance as it was subject to the caveat to the maintainability of the complaint to be satisfied by the other side. In support of the aforementioned submissions, following judgments have been cited:-

a) **Balasinor Nagrik Cooperative Bank Ltd. Versus Babubhai Shankerlal Pandya and others, (1987) 1 Supreme Court Cases 606** on the point that a statute must be read as a whole;

b) Five Judges judgment in **Padma Sundara Rao (Dead) & others Versus State of T.N. And others, (2002) 3 Supreme Court Cases 533;**

c) **Lalit Narain Mishra Versus The State of Himachal Pradesh & others, 2016 SCC OnLine HP 2866** to contend that the expression “*functus officio*” is read in terms and it means without further authority or legal competence as the duties and the functions of the original commission were fully accomplished;

d) **Sri Kanti Ganguly Versus State of West Bengal & Ors., 2016(3) Cal.L.T. 594,** wherein while interpreting Section 7(1) of 1952 Act, it has been held that the words “appoint a Commission of Inquiry for the purpose of making an inquiry, on expiry of terms, would have no authority to making inquiry/perform the function entrusted to it;

and, thus, prayed for dismissal of the complaint on the ground of maintainability.

On the other hand, Mr. A.P.S.Deol, learned Senior Counsel assisted by Mr. H.S.Deol, Advocate and Mr. G.S.Punia, learned Senior Counsel assisted by Mr. P.S.Punia, Advocate, representing the complainant submitted the following submissions:-

- a) The complaint by referring to Section 199 of the Code is maintainable as the provisions of Section 10-A of 1952 Act are *pari materia*, therefore, public servants detailed are entitled to espouse grievance through complaint filed by Public Prosecutor;
- b) The time of six months to be construed from the date of commission of the offence, thus, would enable the member of the Commission to act as a public servant and raise the grievance in view of the incidents referred to above. The word “aggrieved person” would also include the Chairman/member of the Commission;
- c) The scope of the Court is to see whether the act of the accused has brought the disrepute to the Commission during the term and whether the complaint was within six months;
- d) Annexures C-1 to C-5 are the reports which make a *prima-facie* case for proceeding against the respondents under Section 10-A of 1952 Act. Report was submitted in two parts, one on 30.06.2018 and second on 16.08.2018. The incidents are of 23.08.2018 and 27.08.2018. He would be presumed to be a public servant for filing the complaint. Cognizance is to be taken from the filing of the complaint and not from the date, whereby Court takes cognizance;
- e) Section 10-A (1) & (2) of 1952 Act have to be read conjunctively. As per proviso to sub-section (5) of Section 10-A, the word “otherwise” would not take away the right of the complainant to institute the complaint under Section 10-A as the complainant is purportedly discharging the duty of a public

servant. Sub-section (2) of Section 199 of the Code opens with a non-obstante clause that anything contained in the Code for offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) if alleged to have been committed against a person, who, at the time of commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union Territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, the Court of Sessions shall take the cognizance of such offence without the case being committed to it, upon a complaint in writing made by the Public Prosecutor and the limitation prescribed is six months from the date on which the offence is committed;

f) The process was issued on 25.03.2019 and there is complete procedure for follow up. Order of 20.02.2019, thus, in such circumstances, deemed to have been superseded. If at all the respondents were aggrieved, they had a remedy to file an appeal;

g) As per provisions of Section 244 of the Code, warrant case instituted otherwise than on a police report, on appearance of the accused, the Magistrate would proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution and it is only after taking of the evidence, the Magistrate considers, for the reasons to be recorded, that no case is made out and if remained unrebutted, would discharge the accused;

h) Respondents cannot invoke the jurisdiction under Section 245 of the Code without following the procedure under Section 244 of the Code;

i) Exemplifying his arguments, relied upon the judgment rendered by the Hon'ble Supreme Court in **Adalat Prasad Versus Rooplal Jindal, 2004(4) R.C.R. (Criminal)**. The object and the reason of introducing the provisions of Section

10-A of 1952 Act was in the larger public interest by taking departure from the general public while dealing with the cases of offence under Section 198 with the sole object to protect the Commission and its member from disrepute of any kind which may be a subterfuge for the other side to raise objection qua the maintainability as the act and conduct of respondent Nos. 1 and 2 have brought gravest disrepute to the Commission and its member;

j) The departure by introducing Section 10-A and sub-sections has been borrowed from the amended provisions of Section 199(2) of the Code dealing with the prosecution for defamation. A bare reading of Section 10-A leaves no manner of doubt that the date to be reckoned for calculating the period of limitation for initiation of the complaint would be the date of commission of offence and limitation under sub-section (4) of Section 10-A is six months, therefore, it cannot be read in isolation, but in conjunction, both being co-terminus. A right to initiate the proceedings by way of a complaint would not get extinct after expiry of the term of Commission, otherwise Legislature in its wisdom would not have granted any time of six months, i.e., upper limit for its protection, lest it would render the proceedings under sub-section (5) of Section 199 of the Code redundant. Complaint has been filed by taking reliance of proviso to Section 200 of the Code as status of the complainant would be deemed to be a public servant for the purpose of filing the complaint. Affidavits, *ibid*, for dispensing with the examination of the complainant by virtue of sub-section (a) of Section 200 of the Code and proviso to sub-section (5) of Section 10-A of 1952 Act, from personal attendance is to a member of a Commission being complainant.

In support of the aforementioned contentions, reliance has been

laid to the following judgments:-

i) **S.K.Sinha, Chief Enforcement Officer Versus Videocon International Ltd. & Ors., 2008(2) SCC 492**, by

referring Para 27 of the judgment that date of taking cognizance would be reckoned from the date of filing of the complaint. The expression “cognizance” has not been defined in the Code, but is of indefinite import. It would not involve any formal action of any kind. It occurs as soon as a Magistrate, by virtue of sub-section (2) of Section 10-A of 1952 Act, applies his mind to the suspected commission of an offence . The underlying object of the inquiry under Section 202 of the Code is to see whether there is *prima-facie* case against the accused. It does not allow the Magistrate to form an opinion whether the process should or should not be issued, thus, the scope of the inquiry is unlimited;

ii) **Bhushan Kumar and another Versus State (NCT of Delhi) and another, 2012(5) SCC 424.** The order passed by the Magistrate can not be faulted with on the ground that the summoning order was not a reasoned order. Respondents cannot raise the ground of maintainability once they have been summoned and only remedy is by resorting to the provisions of Section 244 of the Code;

iii) **Dr. Subramanian Swamy Versus Arun Shourie, 2014 (12) SCC 344** where a sitting Judge of the Hon'ble Supreme Court was appointed as a Chairman under Commission of Inquiry Act, 1952;

iv) **P.C.Joshi and Anr. Versus The State of U.P., AIR 1961 Supreme Court 387** to contend that the complaint under sub-section (2) of Section 199 of the Code can be filed by the Public prosecutor in the absence of the signatures of the complainant.

In rebuttal, Mr. Ashok Aggarwal and Mr. Puneet Bali, learned

Senior Counsel submitted:

a) That the manner and mode in which the provisions of Sections 10, 10-A (1) & (2) are being projected, it would tantamount to re-writing of the statute which is impermissible in law;

- b) Notification appointing the complainant as the Chairman ceased to exist on 31.08.2018. Period of limitation of six months cannot be stretched beyond expiry of term of tenure. There was no bar for him to file a complaint before the expiry of his term.
- c) Applications for exemption both under sub-section (5) of Section 10-A of 1952 Act and under Section 200 of the Code have not been disposed of and they are still pending consideration. The complainant cannot seek exemption branding the Chairman of the Commission beyond expiry of tenure and claim himself to be a public servant in terms of provisions of Section 21 of the IPC.
- d) There cannot be any substitution or additions to the provisions of the Act. The Legislature in its wisdom has specifically introduced the words “is and was” in Section 197 Cr.P.C. for prosecution of the Judges and the public servants. The Court has not taken any proceedings as no separate order has been passed for recording preliminary evidence.
- e) The orders dated 11.07.2019 and 20.02.2019 noticing the maintainability of the complaint are specific and have not been modified so far. Section 10-A is complete Code and cannot travel beyond by adding or subtracting. Act do not envisage any remedy for ex-member or past member.
- f) Mr. Bali has also submitted that Section 482 Cr.P.C. enables this Court to exercise the power of dismissing the complaint which has been rebutted by Mr. Deol that there is no concept of invoking the power under Section 482 of the Code. There is no need to file any affidavit along with the application for exemption. The applications for exemption deemed to have been disposed of once the court had taken the cognizance and, thus, urged this Court for rejecting the arguments of the learned counsel for the respondents and to proceed under Section 244 of the Code.

I have heard the learned Senior Counsel for the parties,

appraised the paper book and gone through the judgments cited at bar and in view of the rival contentions of the learned counsel qua maintainability of the complaint, I am of the view that the following questions arise for determination by this Court:-

- 1) Whether the complaint under Section 10-A of 1952 Act by an Ex-member of the Commission filed in January, 2019 and registered on 04.02.2019 is maintainable or not?
- 2) Whether the period period of six months provided under the provisions of 1952 Act can be extended enabling the Ex-member to espouse the grievance or not?
- 3) Whether an Ex-Chairman of the Commission can be treated as a public servant as per the provisions of Section 21 of the IPC and claim exemption from examination and evidence in terms of Section 199 of the Cr.P.C.;
- 4) Whether this Court while issuing notice by putting a caveat qua maintainability has taken the cognizance and proceed further in accordance with the provisions of Section 244 of the Cr.P.C.;
- 5) Whether the intent of the Legislature in protecting the rights of the member and a Chairman can be enlarged de hor of the fact that he ceased to be a member of a Commission.

It would be apt to reproduce the provisions of Sections 3, 7 (1) & (2), 10 and 10-A of 1952 Act and Sections 199, 200, 204, 244 and 245 of the Code, referred to at the time of the arguments. The same read thus:-

“Section 3

Appointment of Commission.—(1) [Save as otherwise provided in the Lokpal and Lokayuktas Act, 2013, the appropriate Government may], if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by 2 [each House of Parliament or, as the case may be, the Legislature of the State], by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry

into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly.

Provided that where any such Commission has been appointed to inquire into any matter—

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.

[(3) The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

(4) The appropriate Government shall cause to be laid before 2 [each House of Parliament or, as the case may be, the Legislature of the State], the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.]

Section 7(1) & (2)

Commission to cease to exist when so notified.—(1) The appropriate Government may, by notification in the Official

Gazette, declare that—

(a) a Commission (other than a Commission appointed in pursuance of a resolution passed by 4 [each House of Parliament or, as the case may be, the Legislature of the State] shall cease to exist, if it is of opinion that the continued existence of the Commission is unnecessary;

(b) a Commission appointed in pursuance of a resolution passed by [each House of Parliament or, as the case may be, the Legislature of the State] shall cease to exist if a resolution for the discontinuance of the Commission is passed by 4 [each House of Parliament or, as the case may be, the Legislature of the State].

(2) Every notification issued under sub-section (1) shall specify the date from which the Commission shall cease to exist and on the issue of such notification, the Commission shall cease to exist with effect from the date specified therein.]

Section 10

Members, etc., to be public servants.—Every member of the Commission and every officer appointed or authorised by the Commission in exercise of functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Section 10A

10A. Penalty for acts calculated to bring the Commission or any member thereof into disrepute.—(1) If any person, by words either spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Commission or any member thereof into disrepute, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when an offence under sub-section (1) is alleged to have been committed, the High Court may take cognizance of such offence, without the case being committed to it, upon a complaint in writing, made by a

member of a Commission or an officer of the Commission authorised by it in this behalf.

(3) Every complaint referred to it in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No High Court shall take cognizance of an offence under sub-section (1) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(5) A High Court taking cognizance of an offence under sub-section (1) shall try the case in accordance with the procedure for the trial of warrant cases instituted otherwise than on a police report before a court of a Magistrate:

Provided that the personal attendance of a member of a Commission as a complainant or otherwise is not required in such trial.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) an appeal shall lie as a matter of right from any judgment of the High Court to the Supreme Court, both on facts and on law.

(7) Every appeal to the Supreme Court under sub-section (6) shall be preferred within a period of thirty days from the date of judgment appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.”

“Section 199

Prosecution for defamation.—(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence: Provided that where

such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have

been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

Section 200

200. Examination of complainant.—A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

Section 204

Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some

other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

Section 244

Evidence for prosecution.—(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

Section 245

When accused shall be discharged.—(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

On plain and simple reading of the aforementioned provisions,

it is deciphered that it will be only Chairman or members of the

Commission to be public servants, who have been authorised to protect the interest of the Commission against the person, attempted to bring disrepute by providing punishment for accused to undergo simple imprisonment for a term which may extend to six months, or with fine, or with both and the power to entertain the complaint has been entrusted to the High Court to take the cognizance on receipt of the complaint in writing made by a member of a Commission or an officer of the Commission authorised by it, whereas as per provisions of sub-section (3), the Court on receipt of the complaint shall give notice to the accused of the offence alleged to have been committed. The limitation during which complaint can be filed is six months from the date on which the offence is alleged to have been committed. The High Court shall take the cognizance and try the case as a warrant case instituted otherwise than on a police report before a court of a Magistrate.

The promulgation of the notifications, duration of the term of the Chairman, extensions and orders of this Court dated 20.02.2019 and 11.07.2019 are not in dispute.

The vehemence and the eloquence of the respective learned Senior Counsel representing the parties rendering the assistance to this Court to answer the questions raised above by referring to the provisions and the judgments, is duly appreciated by this Court.

The pith and substance of the judgments rendered in **Balasinor Nagrik Cooperative Bank Ltd., Padma Sundara Rao (Dead) and Lalit Narain Mishra's cases (supra)**, is when the language of the Act is simple and ambiguous, the Court cannot interpret in a different manner by taking the assistance of the other provisions of the Act on its own. Relevant

paragraphs of the judgments in this regard are required to be extracted. The same read thus:-

“Para 4 of Balasinor Nagrik Cooperative Bank Ltd.

“The decision of the appeal must turn on a construction of sub section (1) of Section 36 of the Act read with the two provisos, thereto, which is in these terms :

36. Expulsion of members - (1) A society may, by resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held for the purpose, expel a member for acts which are detrimental to the proper working of the society :

Provided that, no resolution shall be valid, unless the member concerned is given an opportunity of representing his case to the general body, and no resolution shall be effective unless, it is submitted to the Registrar for his approval and approved by him :

Provided further, that the approval or disapproval of the Registrar shall be communicated to the society within a period of three months from the date of such submission, and in the absence of such communication the resolution shall be effective.

It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section. Keeping that in view, we have no doubt in our mind as to the purport and effect of sub-section (1) of Section 36 of the Act which deals with the power of expulsion of a member for acts which are detrimental to the proper working of the society. It also provides for the manner of the exercise of such power. The exercise of the power of expulsion of a member for his acts which are detrimental to the interests of the society conferred by sub-section (1) of Section 36 is made subject to the fulfilment of the conditions prerequisite, namely, it has to be by

resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held for that purpose. There is no doubt or difficulty as to the precise function of the two proviso appended to sub-section (1) of Section 36 of the Act. The power of expulsion of a member by a society under sub-section (1) of Section 36 is made subject to a defeasance clause engrafted in the first proviso. It interdicts that (1) no such resolution for expulsion of a member passed under sub section (1) of Section 36 of the Act shall be valid unless the member concerned is given an opportunity of representing his case to the general body and (2) unless it is submitted to the Registrar for his approval and approved by him. Condition No. 2 keeps the resolution for expulsion of a member in abeyance.”

Paras 12 and 14 of Padma Sundara Rao

*12. The rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage* 218 FR 547). The view was re-iterated in *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama* (AIR 1990 SC 981).*

14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the

legislature to amend, modify or repeal it, if deemed necessary. [See *Rishabh Agro Industries Ltd. vs. P.N.B. Capital Services Ltd.* (2000 (5) SCC 515)]. ‘The legislative casus omissus cannot be supplied by judicial interpretative process. Language of *Section 6(1)* is plain and unambiguous. There is no scope for reading something into it, as was done in *Narasimhaiah's case (supra)*. In *Nanjudaiah's case (supra)*, the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of *Section 6(1)*. If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to *Section 6(1)*, but also by a non-prescribed period. Same can never be the legislative intent.”

Paras 10, 11, 12 & 13 of Sri Kanti Ganguly

10. Reliance was placed by Mr. Bhattacharya on the decisions reported in (2008) 4 SCC 755 [*Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*], (2007) 5 SCC 85 [*Kunwar Pal Singh v. State of Uttar Pradesh & ors.*], (2007) 2 SCC 588 [*Ram Chandra Murarilal Bhattad v. State of Maharashtra & ors.*], (2004) 2 SCC 759 [*Ram Phal Kundu v. Kamal Sharma*] and (2004) 2 SCC 56 [*Prabha Shankar Dubey v. State of M.P.*], for the proposition that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner only or not at all.

11. Mr. Bhattacharya placed further reliance on the decisions reported in (2001) 4 SCC 139 [*Union of India v. Elphinston*] and 2004 (3) CHN 483 [*Indrani Wahi v. Registrar, West Bengal Co-operative Societies & ors.*] for the proposition that while construing a statute the meaning whereof is clear and unambiguous, the court cannot add or read words in a statute.

12. For the proposition that the court cannot re-legislate in the guise of interpretation, for, that would be contrary to the will expressed in the enactment itself, reliance was placed on

the decision reported in (2003) 1 SCC 730 [Jinia Keotin & ors. v. Kumar Sitaram Manjhi & ors.].

13. It was further submitted that a lacuna or defect in an enactment can be corrected by the legislature by way of an amendment and that the court has no power to do so. In this connection, the attention of the Bench was invited to the decision reported in (2008) 5 SCC 511 [*Common Cause v. Union of India & ors.*].”

Paras 19 to 22 and 27 of Lalit Narain Mishra

19. “*Functus officio*” is a Latin term meaning having performed his or her office. With regard to an officer or official body, it means without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.

20. “*Functus*” means having performed and “*officio*” means office. Thus, the phrase *functus officio* means having performed his or her office, which in turn means that the public officer is without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.

21. Trayner’s *Latin Maxims*, 4th Edn. Gives the expression *functus officio* the following meaning:

“Having discharged his official duty. This is said of any one holding a certain appointment, when the duties of his office have been discharged. Thus a Judge, who has decided a question brought before him, is *functus officio* and cannot review his own decision.

22. In Wharton’s *Law Lexicon*, 14th Edn., the expression *functus officio* is given the meaning, “a person who has discharged his duties, or whose office or authority is at an end.” 27. Accordingly, we found no merit in this application and the same is dismissed with the clear warning to the petitioner, as aforesaid.”

Now coming to the judgment relied upon by Mr. Deol in

Ramdhani Sao and others Versus State of Bihar and another, 1987

CriLJ 1428 qua maintainability, an attempt has been made to bring the case within the parameters of Section 10-A of 1952 Act by referring to the findings in Paras 12 and 13 thereof that the phrase, “acting or purporting to act in the discharge of official duties,” has been defined, thus, both the statutory duties to make the complainant equally to the nature of the incidents and offence against the public servant as averred or alleged in the complaint. Paras 12 and 13 read thus:-

“12. Undoubtedly, the phrase, "acting or purporting to act in the discharge of his official duties." has two aspects, and, if one may use a metaphor, two faces of the same coin. Firstly arise the class of cases where the law enjoins that cognizance of an offence can only be taken on the complaint of a public servant, and, consequently, where such an offence is committed, a duty is laid on the public servant to do so both under the general and the special statutes. Herein the duty usually is with regard to the making or the preferring of the complaint itself. The public servant making such a complaint may have no personal or direct connection with the commission of the offence. He may be doing so only in his capacity as the public servant authorised to make such a complaint, which is often made a pre-condition for the cognizance of the offence. Classic examples thereof may well be [Section 11](#) of the Essential Commodities Act and [Section 20](#) of the Prevention of Food Adulteration Act. Indeed there seems to be no controversy herein and it is plain that these are clear cases where the complaint has been made by a public servant acting strictly in discharge of his official duty and, therefore, would come within the exemption spelt out in Clause (a) of the first proviso to [Section 200](#).

13. As regards the second classes, an example thereof is to be found in the offences enumerated in Chapters X and XI of the

Penal Code. These pertain to contempts of the lawful authority of the public servants and of false evidence and offences against public servants. Sections 172 to 229 therein and equally some other provisions thereof, refer to offences committed against public servants, whilst they are acting or purporting to act in the discharge of their duties. It is, perhaps, for this reason that the phraseology in Clause (a) of the first proviso to Section 200 has been widely couched to include within its scope offences committed against a public servant whilst he was merely purporting to act in the discharge of his official duties.”

Much emphasis has been laid enabling this Court in forming opinion that the role of the complainant if he no longer remains the member of the Commission would be acting and purporting to act in discharge of his official duties as the incidents in the instant case were committed during the life time of the Commission, i.e., on 23.08.2018, 27.08.2018 and 28.08.2018, when the complainant was the Chairman.

In **P.C.Joshi's case (supra)**, while dealing with the provisions of Section 198B(3) of Act No.5 of 1898 of the Criminal Procedure Code. In Paragraphs 5, 6 and 7 it was observed as under:-

“5. Section 198B which deals with a certain category of the offences of defamation of high dignitaries of the State, and of Ministers and public servants in respect of their conduct in the discharge of public functions was incorporated in the Code by Act XVI of 1955. Prior to the incorporation of s. 198B, the only condition precedent to the entertainment of a complaint of defamation by a court competent in that behalf was prescribed by s. 198, viz., that there had to be a complaint by the person aggrieved before the court took cognisance of that offence. By s. 198B, several conditions precedent to the trial of offences falling within that section are prescribed. The material clauses of s. 198B are sub-ss. (1), (3) and (4). (1):-

" notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (Act XLV of 1860) (other than the offence of defamation by spoken words) is alleged to have been committed against the President or the Vice-President, or the Governor or Rajpramukh of a State, or a Minister or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognisance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

(3):- No complaint under sub-s. (1) shall be made by the Public Prosecutor except with the previous sanction,-

(a) in the case of the President or the Vice-President or the Governor of a State, of any Secretary to the Government authorised by him in this behalf;

(b) in the case of a Minister of the Central Government or of a State Government, of the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf by the Government concerned;

(c) in the case of any other public servant employed in connection with the affairs of the Union or of a State, of the Government concerned.

(4):- No Court of Session shall take cognisance of an offence under sub-s. (1) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

6. This section provides for a special procedure for the trial of the offence of defamation of certain specified classes of persons. The conditions necessary for the applicability of sub-s. (1) of s. 198B are:

(1) that the defamation is not by spoken words;

(2) that the offence is alleged to have been committed against the President, or the Vice-President, or the Governor or

Rajpramukh of a State, or a Minister or any other public servant employed in connection with the affairs of the Union or of a State;

(3) that the defamation is in respect of the person defamed in the discharge of his public functions;

(4) that a complaint is made in writing by the Public Prosecutor;

(5) that the complaint is made by the Public Prosecutor with the previous sanction of the authorities specified in sub-s. (3); and

(6) that the complaint is made within six months from the date on which the offence is committed.

7. The Court of Session may entertain a complaint of defamation of the high dignitaries and of Ministers and public servants in respect of their conduct in the discharge of their public functions only if these conditions exist. Section 198 requires,% that a complaint for defamation may be initiated by the person aggrieved and no period of limitation is prescribed in that behalf. Such a complaint can only be entertained by a Magistrate of the First Class. But s. 198- B in the larger public interest, has made a departure from that rule; the accusation is to be entertained not by a Magistrate, but by the Court of Session without a committal within six months of the date of the offence on a complaint in writing by the Public Prosecutor with the previous sanction of the specified authorities. It is manifest that by the non-obstante clause, "notwithstanding anything contained in this Code " in sub.s. (1), the operation of diverse provisions of the Code relating to the initiation and trial of the offence of defamation is excluded and prima facie s. 198 is one of those provisions. It is however urged on behalf of the appellants that sub-s. (13) of s. 198-B makes the provisions of s. 198 applicable to a complaint for defamation of persons specified in s. 198-B(1) and provides that cognisance of the offence of defamation cannot be taken by a court except upon a complaint by the person aggrieved, and that the Chief

Minister of Uttar Pradesh alleged to be the party aggrieved not having signed the complaint the Court of Session, Kanpur, had no jurisdiction to take cognizance of the complaint. Sub-section (13) provides that " the provisions of this section shall be in addition to, and not in derogation of, those of s. 198 ". In our judgment, this clause is enacted with a view to state ex abundanti cautela that the right of a party aggrieved by publication of a defamatory statement to proceed under s. 198 is not derogated by the enactment of s. 198-B. The expressions, " in addition to " and " not in derogation of " mean the same thing-that s. 198-B is an additional provision and is not intended to take away the right of a person aggrieved even if he belongs to the specified classes and the offence is in respect of his conduct in the discharge of his public functions, to file a complaint in the manner provided by s. 198. " Derogation " means, taking away, lessening or impairing the authority, position or dignity, and the context in in which sub-s. (13) occurs clearly shows that the provisions of s. 198-B do not impair the remedy provided by s. 198. It means that by s. 198-B the right which an aggrieved person has to file a complaint before a Magistrate under s. 198 for the offence of defamation, even if the aggrieved person belongs to the specified classes and the defamation is in respect of his conduct in the discharge of his public functions, is not taken away or impaired. If sub-s. (13) be construed as meaning that the provisions of s. 198B are to be read as supplementary to those of s. 198, the nonobstante clause with which sub-s. (1) of s. 198B commences is rendered wholly sterile, and unless the context compels such an interpretation, the court will not be justified in adopting it. There is again inherent indication in ss. 198 and 198B, which supports the view that s. 198B was not intended to be supplementary to s. 198, but was intended to provide an alternative remedy in the case of defamation of persons set out in that section. The expression " complaint " as defined in s. 4, cl. (h) of the Code means " the allegation made orally or in

writing to a Magistrate with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence..... Every complaint of an offence has to be made to a Magistrate competent to take cognizance thereof and not to a Court of Session. A Court of Session under the Code of Criminal Procedure unless otherwise expressly provided, is 'not competent to entertain a complaint; it can only try a criminal case committed to it. The expression complaint in s. 198 is manifestly used in the meaning as defined by s. 4(h). Even a superficial examination of the contention raised by the appellants reveals that if effect be given to it, the utmost confusion would result in working out the provisions of the Code. If beside the complaint filed by the Public Prosecutor under s. 198B, there must also be a complaint by the person aggrieved, two courts would simultaneously be seized of two distinct complaints for the same offence. The complaint by the Public Prosecutor under s. 198B would undoubtedly lie, in the Court of Session and the complaint under s. 198 would lie in the court of a Magistrate, because it is a Magistrate who alone can take cognizance of the offence of defamation under s. 198. Thereafter, the complaint under s. 198 may have to be committed to the Court of Session by the Magistrate and it is only after the case is committed to the Court of Sessions that on complaint filed by the Public Prosecutor, the case may proceed. The Legislature could not have intended that in respect of the same offence, there should be two complaints, one in the Court of Session and another in the court of a Magistrate-and either both should be tried, or the proceedings should be consolidated after committal."

Adalat Prasad (supra), is a case where the earlier view of the Hon'ble Supreme Court in **K.M.Mathew Versus State of Kerala & another, 1992 (1) SCC 217** empowering the Court issuing summons to

recall the same on being satisfied that issuance of summons was not in

accordance with law, has been reversed by holding that the Magistrate, while taking the cognizance of an offence upon receipt of complaint, has to examine the complainant upon oath and the witnesses. Magistrate can dismiss the complaint under Section 203 of the Code if the conclusion arrived is that the statement of the complainant and the witnesses do not make any sufficient ground for proceeding and if otherwise, i.e., the satisfaction, he is enjoined upon an obligation to issue process under Section 204 of the Code, but there is no such provision in the Code for hearing the summoned accused.

Dr. Subramanian Swamy (supra), was a case where a sitting Judge of the Hon'ble Supreme Court when appointed as a Chairman of Inquiry Commission had faced scandalous remarks against the Commission, but it was held that provisions of Contempt of Courts Act, 1971 would not apply.

In **S.K.Sinha's case (supra)**, the question came to be pondered upon was as to whether the limitation to file the complaint would be counted from the date of taking cognizance or filing of the complaint. By applying the reasonable construction, in paras 26, 27 and 30, it was held that the High Court was not correct in quashing the proceedings on the ground of limitation. The aforementioned paras read thus:-

“26. Undoubtedly, the process was issued on February 3, 2003. In our judgment, however, it was in pursuance of the cognizance taken by the Court on May 24, 2002 that a subsequent action was taken under [Section 204](#) under Chapter XVI. Taking cognizance of offence was entirely different from initiating proceedings; rather it was the condition precedent to the initiation of the proceedings. Order of issuance of process on February 3, 2003 by the Court was in pursuance of and

consequent to taking cognizance of an offence on May 24, 2002. The High Court, in our view, therefore, was not right in equating taking cognizance with issuance of process and in holding that the complaint was barred by law and criminal proceedings were liable to be quashed. The order passed by the High Court, thus, deserves to be quashed and set aside.

27. *It was also contended by the learned counsel for the appellant that the relevant date for considering the question of limitation is the date of filing of complaint and not taking cognizance or issuance of process by a Court of law. In this connection, our attention was invited by the counsel to [Bharat Damodar Kale & Anr. v. State of A.P.](#), (2003) 8 SCC 559 and a recent decision of this Court in [Japani Sahoo v. Chandra Sekhar Mohanty](#), (2007) 7 SCC 394. In Japani Sahoo, one of us (C.K. Thakker, J.), after considering decisions of various High Courts as also Bharat Damodar Kale, stated:*

“52. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law. If that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the Court or Magistrate, the provision of law may have to be tested on the touchstone of [Article 14](#) of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a Court of Law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable

*construction rather than making it vulnerable and unconstitutional by adopting rule of *littera legis*. Connecting the provision of limitation in [Section 468](#) of the Code with issuing of process or taking of cognizance by the Court may make it unsustainable and ultra vires [Article 14](#) of the Constitution.*

30. *As regards quashing of proceedings on merits, the learned counsel for the appellant is right in submitting that the High Court has not at all touched the merits of the case and proceedings were not quashed on the ground that the provisions of FERA do not apply to the case before the Court. The High Court dealt with only one point as to whether the proceedings were liable to be quashed on the ground that they were time-barred and upholding the contention of the accused, passed the impugned order. As we are of the view that the High Court was not right in quashing the proceedings on the ground of limitation, the order deserves to be set aside by remitting the matter to the Chief Metropolitan Magistrate, Mumbai to be decided in accordance with law. We may, however, clarify that it is open to the respondents to take all contentions including the contention as to applicability or otherwise of FERA to the facts of the case. As and when such question will be raised, the Court will pass an appropriate order in accordance with law.”*

No doubt, sub-section (2) of Section 245 of the Code does not prevent the Magistrate from discharging the accused at any previous stage of the case, i.e., before initiating procedure as envisaged under Section 244 of the Code, if for the reasons to be recorded by such Magistrate, he considers the charge to be baseless, for recording the evidence of the prosecution or complainant. In view of the aforementioned provisions and as well as the caveat reflected in the order dated 10.02.2019, this court is not prevented to examine the maintainability of the complaint at threshold as the power to take cognizance as per sub-section (2) of Section 10-A is of

the High Court.

No doubt, the submission of Mr. Deol had been very stupendous by applying the doctrine interpretation that the complainant even after expiry of his term would be in a position to espouse the grievance regarding the alleged scandalous remarks occurred during his tenure as Chairman, because the limitation provided in sub-section (4) of Section 10-A of 1952 Act is six months from the date on which the offence is alleged to have been committed. In this regard, he cited provisions of Section 199 of the Code, where certain class of persons being public servants employed in connection with the affairs of the Union or of a State, the Court of Sessions are permitted to take the cognizance of the offence without committal of the complaint, upon receipt of a complaint in writing made by the Public prosecutor. Even the signatures of the complainant as per the law cited supra would not be required.

I am afraid that the aforementioned argument would not come to the rescue at this stage of filing of the complaint, but there would have been a force had the complaint been filed before 31.08.2018, i.e., before the date the incidents had taken place as complainant was aware that his tenure as Chairman after two extensions was to expire on 31.08.2018.

The expression “Commission or any member thereof having disrepute would be extended and relate to an Ex-member. Had, the Legislature intended to grant such protection, i.e., liberty to avail the remedy as provided under Section 10-A, there would have been a specific provision. The plain and simple reading of the aforementioned provisions, leaves no manner of doubt that the provisions of Section 10-A can only be invoked by the Chairman or any other member during tenure and not

thereafter as the remedy lies elsewhere. The doctrine akin to rule of interpretation is no longer *res integra* and equally so, time and again it has been held that when the language of the provisions and the intent of the Legislature do not require any interpretation than the one prescribed, the court cannot re-write the law as it would defeat the purpose of incorporating the provision while enacting an act. In the case of **Dr. Subramanian Swamy (supra)**, Hon'ble Supreme Court has gone to the extent of laying down the law that even if the sitting Judge of the Supreme Court having been appointed as a Chairman of the Commission shall be powerless to invoke the provisions of the Contempt of Courts Act, 1971 when faced with the scandalous remarks against the Commission.

The functions of a Commission appointed under the 1952 Act are not like a body discharging judicial functions or judicial power. The Commission appointed under the 1952 Act is not a Court for the purpose of taking evidence except the civil court for the purposes of Section 5(4), but to make the inquiry or determination of facts which are not of judicial character. The Court is an institute which has the power to regulate legal rights by the delivery of definitive judgments, and to enforce its orders by legal sanctions, if its procedure is judicial in character, but not the member of the Commission, nor would be a deemed public servant.

Issuance of a notice and admitting the respondents on bail would not mean that the Court has taken the cognizance and is required to proceed under Section 244 Cr.P.C., as not only in one order but in subsequent order of 11.07.2019, extracted *ibid*, during the presence of the parties, the objection qua maintainability was left open. High Court in this case as per provision of Section 10-A is empowered to discharge the

accused at any previous stage. Period of six months cannot be enlarged after the complainant ceased to be a member or a Chairman of the Commission. If such interpretation is stretched by accepting the argument of Mr.Deol, then every member of the Commission at his own sweet will can bring the action from the date of alleged commission of the offence *de hor* of the fact that he no longer remains the Chairman of the Commission. That would tantamount to laying an incorrect law.

In Para 18 of the complaint, unflinching, admitted the alleged commission of the incidents on 23.08.2018, 27.08.2018 and tenure of the Commission till 31.08.2018. Relevant portion of Para 18 of the complaint reads thus:-

“More importantly, since the Press Conference in question was held on 23.08.2018 and then on 27.08.2018, the Commission was in operation till 31.08.2019-the offence(s) in question were originally committed well-during the official tenure of the Commission. Therefore, the present complaint has been filed well within the period of limitation prescribed under the Act.”

Having aware of its power and denudation, jurisdiction of this Court for taking cognizance and trying the accused for commission of the offence under Section 10-A of 1952 Act cannot be invoked.

As an upshot of my aforementioned observations, questions framed above are answered against the complainant. The present complaint is held to be not maintainable and hereby dismissed.

November 8th, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No