

N THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21341 of 2018

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Dinesh @ Dinesh Kumar S/o Akhileshwar Prasad Singh, Resident of Kurthaul Rajputana, P.S.- Parsa Bazar, District- Patna Presently residing at Old Lal Kothi, Alkapuri More, P.S.- Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

1. The High Court of Judicature at Patna through Registrar General, Patna High Court, Patna.
2. The Registrar General, Patna High Court, Patna.
3. The Registrar (Vigilance), Patna High Court, Patna.
4. The District Judge, Patna at Patna.
5. The Central Bureau of Investigation, S.K. Singh Road, Near Raj Bhawan, Patna.
6. The Union of India through the Cabinet Secretary, Govt. of India, North Block, Central Secretariat, New Delhi.
7. Republic T.V. Bombay Dyeing Compound, Worli, Mumbai- 400018. (Private respondent).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dinesh Kumar (In person)
For the Respondent/s	:	Mr. Satyabir Bharti, Adv.
For the CBI	:	Mr. Bipin Kr. Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 14-01-2020

Heard Mr. Dinesh Kumar, in person and Mr. Satyabir Bharti, learned counsel appearing on behalf of the Patna High Court as also counsel for the C.B.I.

Mr. Dinesh Kumar, in the present writ petition, has sought following relief:-

“1(i) For the issuance of a writ of mandamus and/or any other appropriate writ/direction/



order commanding the Respondents No.2, 3 and 4 to lodge an F.I.R. against all the judicial and non-judicial staff of Patna District Court whose indulgence in bribery and corrupt behavior has been exposed by the Republic TV sting operation conducted and broadcast in November 2017.

(ii) For the issuance of a writ of mandamus, and/or any other appropriate writ/direction/order commanding the respondent No.5 to investigate, within a given time-frame and under the supervision of this Hon'ble Court, the entirety of criminal conduct shown in the Republic TV sting wherein rampant, shameless and naked bribery in the District Court at Patna has been fully exposed.

(iii) For the issuance of a writ of mandamus, and/or any other appropriate writ/direction/order commanding the respondents No. 2, 3 and 4 to explain the reasons for the inordinate delay in lodging a criminal case (an F.I.R.) against the officers/staff exposed in the sting and also delay in taking adequate disciplinary action against these officers and employees.”

Mr. Dinesh Kumar is a practicing advocate of this Court and has filed this public interest litigation bringing to the notice of this Court that on evening of the 15th November, 2017, Republic T.V. a private news channel, broadcast a news item titled Cash for Justice. The news programme running into over an hour and a half



presented videographic evidence (secretly recorded by the news channel) of rampant corruption by way of bribery in the District Court, Patna. The record room, the Certified Copy Delivery Section and the court staff of the District Judge, Patna were caught on videotape not just demanding bribes but actually robbing the litigants, lawyers' clerk and lawyers. The sting videography also shows that certain lawyers compromising their professional integrity by encouraging others to pay. The most shocking, shameless and brutally anti-public face of the judiciary was exposed by the contents of the sting recorded in the court of Sri R.N. Tripathi, ADJ-cum-Special Judge (Excise and Prohibition). It has been stated that his court staffs apparently in collusion with the judge were caught on videotape demanding and accepting bribe money from the Munshis and prisoners. The court staff can be seen asking for money at different rates for being sent to different jails, Beur for a higher price and Phulwari Sharif Jail for a lower price which clearly amounts to sale of judicial orders as the order is dictated and signed by the judge. Whether a prisoner will go to jail A or B is decided by the judge and hence any demand of money on this score is clearly for and on behalf of the judge. It has been alleged that the respondents have done nothing except suspension of 16 employees of the court despite the extremely



serious nature of the offence. The contents of the videotapes of the Republic TV sting are available on the Internet (You Tube) and made a prayer that this Court should direct the Republic T.V. to produce before this Court the entire video tape for assistance of this Court. It has further been reminded that the High Court should be tough and no-nonsense in dealing with scam cases. In the Fodder scam, the Patna high Court had displayed toughness towards the accused first in ordering a C.B.I. probe and then in sending them to jail. It has also been mentioned about the food grain scam, police uniform scam, SSC question paper leak cases where the Patna High Court displayed remarkable firmness in jailing the accused and keeping them in jail for long periods. The bribery scandal affecting the district judiciary, the respondents have done nothing to bring the culprits to book. The citizenry of this country expects of dealing with corruption in higher judiciary with iron fists and has given details of scam cases handled by this Court. He has also attached the copy of the letter dated 5.10.2018 addressed to the Hon'ble Chief Justice of this Court bringing all the facts to his notice and requested to take an exemplary action on the administrative side against all the persons, judicial and other staffs of the Court and also requested for investigation by the C.B.I. Agency.



A supplementary affidavit has been filed stating therein that Mr. Dinesh Kumar has come to know about another sting operation carried out in Patna District Court by the news channel, Aaj Tak and further said that the sting operation was aired on 15.11.2017 and the same is available in You Tube wherein the video clip depicts that the reporter of the news channel is making conversation with the court master of the Special Judge (Excise and Prohibition), Patna, Sri R.N. Tripathi. It has also been stated that the videotapes contains unimpeachable evidence of bribery in the court of Mr. Tripathi as the court master admits on camera that he charges a bribe amount of Rs. 1,000/- from every under trial prisoner for sending him/her to Beur Jail but, during argument, when this Court has asked the material to substantiate the sting operation done by the Aaj Tak whereupon Mr. Dinesh Kumar could not bring on record to show that the sting operation has been done by the Hindi T.V. Channel Aaj Tak.

Further supplementary affidavit has been filed stating that the sting operation exposes rampant bribery and culture of 'paid justice' in the District Court, Patna and failure to take exemplary action against those involved in such corruption cases will give a bleak message in the citizenry of the State and further



stated that it is a clear case of constituting offence under different sections of the Prevention of Corruption Act.

During course of argument, Sri Dinesh Kumar has submitted that the sting operation which has been made viral and aired in the Republic T.V. itself constitutes a prima facie case of the court machinery, not discharging the duty free from corruption and this Court should give direction for lodging of the First Information Report in the present case and has placed reliance on the judgment passed in the case of State of Madhya Pradesh & Ors. Vs. Shri Ram Singh reported in 2000 Cr.L.J. 1401 SC $\simeq$ (2000) 5 SCC 88 and has further stated that as per provision of Article 235 of the Constitution of India, the entire civil court falling within the territorial jurisdiction of this State comes under the administrative control of this Court. He has further said that he has not only made a complaint to this Court but at different places and received the letter from the Hon'ble Apex Court that the High Court is empowered to take decision with respect to the administrative matter and it is obligatory on the part of this High Court to lodge First Information Report in the present case.

In the counter affidavit filed on behalf of the Patna High Court, it has been stated that after the broadcast of the news item titled 'Cash for Justice' dated 15.11.2017, a letter bearing Memo



No. 77876 dated 15.11.2017 under the signature of the Registrar General, Patna High Court was sent to the District and Sessions Judge, Patna to furnish a detailed report about the sting operation and also directed to suspend the employees shown to be involved in the matter. In compliance of the aforesaid letter, the District and Sessions Judge, Patna vide letter no. 16585 dated 15.11.2017 informed this Court vide order no. 146 dated 15.11.2017 that the persons concerned have been put under suspension with immediate effect and attached the order of suspension. The High Court through the Registrar General directed the District Judge, Patna to send a detailed report in the matter at the earliest. In compliance of that letter, the District and Sessions Judge, Patna vide letter no. 17046 dated 25.11.2017 furnished the list of 17 employees caught on camera while taking bribe were put under suspension and the departmental proceeding has been initiated against all of them vide Departmental Proceeding No. 03/2017 dated 17.11.2017. It has been informed that Sri Vipul Sinha, Additional District & Sessions Judge-X cum Authorized Officer Special Court No.11, Vigilance, Patna has been appointed as Enquiry Officer and In-charge Registrar, Civil Court, Patna has been appointed as Presenting Officer. It has further been said that all judicial officers posted in Sadar, Patna were called on 13.12.2017 at 4.35 PM, were given



clear-cut message upon keeping strict vigil on their respective staffs so that they may not engage in corrupt practices. The minutes of the meeting was circulated among all judicial officer of Patna Judgeship. The District Magistrate called a meeting on 16.11.2017 at 5 PM and the then District Judge has given a clear-cut message to all Class-3 and Class-4 employees not to involve in corrupt practices otherwise they will be taken to task. On receipt of the report from the Registrar, Civil Court, Patna vide its letter no. 25017 dated 17.11.2017 about the involvement of the Bench Clerk of the court of S.D.J.M., Patna, vide letter no. 151/2017 dated 17.11.2017, he was put under suspension and the intimation of the same was sent to this Court vide office letter no. 16681/Admn. dated 17.11.2017. It has further been informed that a general notice has been issued giving information to the advocates, lawyers, litigants and the general public for giving information about the staff involved in gratification, proper action will be taken against them. The entire records were placed before the then Hon'ble Chief Justice to consider the matter, wherein, he has given direction to the District Judge, Patna to give detailed and elaborate report in the matter which has been communicated to the District Judge vide letter no. 87012 dated 15.12.2017. On receipt of the said letter, the District Judge, Patna vide letter no. 18251 dated



18.12.2017 sent a detailed report in the matter of steps taken by the District Judge in the matter of controlling and regulating the activities of the staff of the civil court and also informed the action taken against those caught on camera engaged in taking bribe and given details of the employees who were put under suspension and also given details of staff attached to the corresponding judicial officer or the office or general officer and also informed this Court the date when they were put under suspension as well as information relating to initiation of departmental proceeding, appointing of Enquiry Officer as also the Presenting Officer and further informed that he has called all the judicial officials on 13.12.2017 at 1.30 PM to develop morality to prevent corruption in the civil court. It has further been said that they were directed to pronounce the next date of the proceeding and further said that he requested early completion of the enquiry. He also informed the next date of enquiry fixed for examination of the witnesses.

In the meantime, a petition dated 5.10.2018 was sent by the present petitioner to this Hon'ble Court against Sri R.N. Tripathi, A.D.J., Patna and other staffs of the Patna Judgeship making allegation of being involved in taking money, whereafter, a detailed report was called for from the District Judge, Patna who, in turn, vide letter no. 115 dated 6.3.2019 informed this Court the



action taken against the employees involved in the corruption cases and further said that the sting operation does not disclose conversation, demand or bargain for sale or purchase of any judicial order but confined to demanding money for some favor in connection with administrative matter. It has further been said that to prevent the recurring of incident of corruption, video camera in courts and offices of the civil courts of Bihar has been installed on the direction of the High Court to root out the corruption in the civil court and further denied the allegation made against him calling it as false, baseless and concocted.

Vide letter dated 27.3.2019, the Registrar General of this Court asked the District and Sessions Judge, Patna to submit a report to this Court at the earliest whereupon the present District and Sessions Judge, Patna vide letter dated 9.4.2019 submitted the aforesaid desired report received from Sri Vipul Sinha, Additional District & Sessions Judge-X, Patna who is the Enquiry Officer in connection with the departmental proceeding in which he has stated that on the request of the Presenting Officer, P.W. 1, 2 & 3 have been recalled and the enquiry proceeding has been fixed for the examination of P.W.2 Amit Kumar. It has further been informed that on 7.12.2018, he felt severe chest pain, which on clinical examination was diagnosed as acute coronary syndrome



whereafter he had gone to the Medanta Hospital, Gurgaon for his treatment where he was operated upon on 20.12.2018 and the doctor advised three months bed rest. After getting fitness, he resumed the duty on 1.4.2019. He gave assurance of early disposal of the proceeding. In response, the Registrar General of this Court vide letter dated 17.4.2019 requested him to keep strict vigil in connection with monitoring the proceedings.

In the counter affidavit, it has been stated that Sri Prakash Singh, P.W.5 who had done the sting operation and has been listed as a prosecution witness, has not turned up for his examination despite issuance of registered notice dated 22.12.2017 and 7.6.2018 whereafter the Presenting Officer filed a petition on 25.4.2019 with a prayer to issue fresh notice to Sri Prakash Singh, reporter of Republic T.V. for production of original video of the sting operation. The notice was served upon him and also sent through e-mail on the official website of the Republic T.V. It has further been said that the Reporter had full knowledge about the present departmental proceeding but was not turning up to give evidence. In order to secure his statement, Sri Prakash Singh was informed the date fixed for departmental proceeding through mobile no. 9934907200 whereupon he had assured of his cooperation in the departmental proceeding and he also assured



that he will produce the original CD of the sting operation. He further requested for fixing the date of enquiry after completion of parliamentary election as he was busy in covering the election and relating incident. This information was given by Sri Prakash Singh to the Presenting Officer who, in turn, requested the Enquiry Officer to issue a fresh notice to Sri Prakash Singh for participation in the departmental proceeding so that the video footage of the sting operation could be secured and also the oral statement may be recorded. In the meantime, Sri Dinesh Kumar, Advocate, addressed a letter dated 15.11.2018 to three different Hon'ble Judges of the Apex Court wherein allegation has been made of involvement of Special Judge (Excise) in corruption and it has been mentioned that the Presiding Officer acts on the dotted line on the advice of his Bench Clerk but, no decision has been taken on the administrative side of this Court. In the letter addressed to the Hon'ble Judges of the Apex Court, he has basically apprised that till date, no criminal case has been initiated in the matter against those found involved in taking money which is nothing but to compromise with the illegal activities in the judicial matter which has been going on in the civil court.

Thereafter, the petitioner filed a reply to the counter affidavit wherein he has made an allegation that the entire



explanation furnished in the counter affidavit is nothing but an eye-wash as he was of the view that the High Court is obliged under Article 227 and 235 of the Constitution of India to take action in the present episode and has further said that no answer has come from the High Court with respect to lodging the criminal case and to handover the investigation to the C.B.I. or to the Vigilance against those who are found involved in such nefarious activities. He has further stated that the statement on affidavit is nothing but defence of the bribe takers. It has further been stated that the departmental proceeding is totally a farce. He has also attached a letter addressed to the Registrar (Vigilance) with respect to delay in lodging of the criminal case and also stated that the promotion of given to R.N. Tripathi, Special Judge (Excise and Prohibition) in whose court room wrong was going on, exposes the circus of corruption, has resulted in massive public outrage against the judiciary of Bihar. The Hon'ble Apex Court should take note of the judicial inaction in the matter.

A counter affidavit has been filed on behalf of the respondent no.4 informing that the witness no.1, 2 & 3 have been examined, re-examined and cross-examined upon recall and have been discharged. Sri Prakash Singh, P.W.5, who is the reporter of Republic T.V. and conducted the sting operation has not turned up



for his examination. It has also been informed that he was given telephonic call to give his statement and production of the original CD. He has assured that he will appear and give his evidence after Parliamentary Election. Accordingly, 25.5.2019 was fixed for recording his statement and production of the original CD of the sting operation. Sri Prakash Singh, the star prosecution witness has shown his inability to appear on 25.5.2019 due to his engagement in the post Lok Sabha election activities for its channel and requested another date in the month of June, 2019. On his request, the next date was fixed on 1.6.2019 with a direction to the Presenting Officer to send notice to the Editor – in Chief of Republic TV through e-mail and also to inform Sri Prakash Singh, Reporter, Republic TV on his Whatsapp number as well as on his local address. On 1.6.2019, Sri Prakash Singh neither turned up nor produced the original CD of the sting operation. The Presenting Officer informed the Enquiry Officer that on 31.5.2019 Sri Prakash Singh has requested him through Whatsapp and also through voice call to fix another date in the enquiry preferably after 18-19th June, 2019 and, accordingly, the next date was fixed on 20.6.2019 and further an application was filed by the Presenting Officer on 12.6.2019 wherein he received an information from Sri Prakash Singh, Reporter of Republic TV of his inability to



participate in the proceeding in the premises of the civil court and requested for change of venue at different place and, accordingly, the venue was changed and was decided to hold enquiry in the premises of Bihar State Legal Services Authority and, accordingly, a request was made to Under Secretary. On 20.6.2019, the delinquents as also the Presenting Officer and Enquiry Officer were present in the premises of State Legal Services Authority but, Sri Prakash Singh did not turn up and did not produce the original CD of the sting operation and informed the Presenting Officer that he was busy with covering unfortunate death of children who were dying on account of acute Encephalitis Syndrome at Muzaffarpur and he is unable to appear for enquiry. The next date has been fixed on 25.7.2019 and, on that day, the departmental proceeding could not be completed awaiting the statement to be recorded of Sri Prakash Singh. On 2.8.2019, the date fixed for departmental proceeding, Sri Prakash Singh, P.W.5 appeared in the departmental proceeding, handed over 2 (two) C.D. with certificate under Section 65B of the Evidence Act, 1961, has not given oral evidence stating that there is no need for oral evidence.

A supplementary counter affidavit has been filed on 28.10.2019 stating that the enquiry has been completed and Enquiry Officer has submitted his report along with entire



exhibited materials along with C.D. and the same is under consideration before Hon'ble the Chief Justice and Hon'ble Inspecting Judge for kind consideration and perusal, further steps would be taken in the matter.

Learned counsel for the High Court has submitted that in the present case, the petitioner has sought relief of mandamus to give direction to lodge a criminal case on the basis of sting operation. He has made a frontal attack against some of the judicial officers. In paragraph nos. 6 & 14 made allegation against Sri R.N. Tripathi and has also made an allegation against the then District and Sessions Judge. Sri R.N. Tripathi, at the relevant time, was Special Judge (Excise & Prohibition) and further submitted that merely on the basis of Republic T.V. show giving a heading of "Cash for Justice" which was an unverified material, could not be a basis to file a criminal case rather only proper action could be taken on the basis of evidence collected as per law. It has further been submitted that no criminal case can be lodged only on the basis of news reporting which has been made viral by the Republic T.V., the person who has reported was not coming easily to give evidence, he appeared before the Enquiry Officer, submitted the C.D. with certificate of originality but, has not given any evidence even after lapse of one year and nine months, the substantive



material was not available to impel to lodge a criminal case. It has further been submitted that no sooner the news item was made viral, the High Court took prompt action by issuing a letter. The High Court instantly wrote a letter dated 15.11.2017 (Annexure-A) to the then District Judge to give a report about the news having been flashed in the media with respect to bribery and also directed to submit a report immediately on the action taken in this regard, whereupon, the District and Sessions Judge, vide letter no. 16535 dated 15.11.2017 informed the Court that the staffs found to be involved in corruption, were put under suspension with immediate effect vide order no. 146 dated 15.11.2017 and also submitted full details vide letter no. 17046 dated 25.11.2017 (Annexure-D) and letter no. 18251 dated 18.12.2017 (Annexure-F) by which the departmental enquiry was set up and Sri Vipul Sinha was appointed as Enquiry Officer and after proper enquiry, the then District Judge has submitted his further report vide letter no. 115 dated 6.3.2019 in which he has stated that in the video tape telecast through electronic media or in the news published by print media, there was no conversation, demand or bargain for sale or purchase of any judicial order, it only shows that employees of various courts and offices were demanding money for ministerial favour. It further said that the allegation made by the petitioner is an attempt



to tarnish the image of the judiciary and also to create a doubt in the mind of the litigants. He has further submitted that the present petition is a publicity interest litigation, not a public interest litigation. On the report, proper action was taken by the High Court. Without verifiable material, the First Information Report could not be lodged, sweeping allegation has been made against the judicial officials without any verifiable material which cannot be acceptable. If the evidence would come, certainly proper action would be taken. Purely, the present application reflects that it has been lodged to malign the judiciary and it does not require to take into consideration, inasmuch as, the petition is premature. In support of his submission, he has placed reliance on the two judgments, namely, Kishore Samrite Vs. State of Uttar Pradesh & Ors. reported in (2013) 2 SCC 398 (paragraph nos. 31 to 40) and another judgment in the case of Tehseen Poonawalla Vs. Union of India & Anr. reported in (2018) 6 SCC 72 (paragraph nos. 96 to 99). Applying the principle delineated therein, the present petition is fit to be rejected as having no material evidence rather in an ipsi dixit manner, the present writ application has been filed. Nutshell as per the High Court, the disclosure of bribery through news-item made viral in the Republic T.V., is an unverified material for lodging of the First Information Report. Unless some concrete



material is collected showing involvement of corruption, the police case cannot be instituted. It has been stated that the C.D. has been submitted by the person who had conducted sting operation, which is to be verified as to whether it is genuine or edited C.D. The person who conducted the sting operation has submitted the C.D. along with his certificate of genuineness provided under Section 65(B) of the Evidence Act.

In reply, learned counsel for the petitioner submits that the District Judge himself in his letter no. 251 dated 18.12.2017 and letter no. 115 dated 6.3.2019 (Annexure F & G) has conceded that the bribery has taken place and further said in paragraph no.14 of the counter affidavit, the High Court has stated that sting operation reflects involvement of several staffs in bribery. The District Judge was requested to submit a report. In turn, the District Judge responded which itself shows the prima facie case of bribery is made out. It is the duty of the High Court to lodge a First Information Report under the Prevention of Corruption Act. The prayer has been made that it should be investigated by the Central Bureau of Investigation. In support of his submission, he has placed reliance on the judgment passed in the case of State of M.P. & Ors. Vs. Shri Ram Singh reported in (2000) 5 SCC 88. He has further submitted that he had approached the Judges in the



Hon'ble Apex Court to which the petitioner has received reply dated 20.4.2019 wherein the Hon'ble Judges of the Apex Court has drawn attention to the provision of Article 235 of the Constitution of India which prescribes in specific manner the control of High Court over the subordinate judiciary and person belonging to the judicial services of the State. In such view of the matter, the submission has been made that the High Court has failed to discharge its duty to lodge First Information Report and that it might be possible that there may be another story apart from the story which is visual in the sting operation and there may be many persons who were beneficiary of such "Cash for Justice".

Having considered the rival contentions of the parties, we will examine whether it is a fit case where this Court should pass an order in the nature of mandamus for lodging a criminal case in the matter.

Corruption is the biggest enemy and threat for existence of our country, as it is eating away and making our democratic set up hollow, slowly but steadily entering into every walk of life and preventing our country to grow in full bloom. The menace of corruption has to be tackled with iron fist. The demon of corruption was perceived by members of Constituent Assembly and was discussed during debate. It is relevant to quote relevant



portion of the speech given by Mr. Radhakrishnan in the
Constituent Assembly which reads as follows:-

“----- Our opportunities are great but let me warn you that when power outstrips ability, we will fall on evil days. We should develop competence and ability which would help us to utilise the opportunities which are now open to us. From tomorrow morning – from midnight today – we cannot throw the blame on the Britisher. We have to assume the responsibility ourselves for what we do. A free India will be judged by the way in which it will serve the interest of the common man in the matter of food, clothing, shelter and the social services.

----- Intolerance has been the greatest enemy of our progress. Tolerance of one another's views, thoughts and beliefs is the only remedy that we can possibly adopt. Therefore, I support with very great pleasure this Resolution which asks us as the representatives of the people of India to conduct ourselves in all humility, in the service of our country and the word 'Humility' here means that we are by ourselves very insignificant. Our efforts by themselves cannot carry us to a long distance. We should make ourselves dependent on that other than ourselves which makes for righteousness. The note of humility means the unimportance of the individual and the supreme importance of the unfolding purpose which we are called upon to serve. So in a mood of humility, in a spirit of dedication let us take this pledge as soon as the clock strikes twelve.”



The fountain of justice cannot be allowed to be polluted and it is the duty of the Court to take hard decision to eradicate this disease as it may not take the shape of epidemic and pollute the foundation of democratic set up itself and it should be nipped in the bud at the earliest otherwise it is likely to cause turbulence shaking the faith of the people of republic and it may lead to destruction of socio-economic-political-system of a healthy, wealthy, effective and vibrant society. Corruption in a civilized society is a disease like cancer which, if not detected in time, is sure to render malignant the polity of the country, leading to disastrous consequences. Menace of corruption has been found to have increased enormously after first and second world war. At the earliest, it was confined to bureaucracy but, its tentacles have spread like a virus. Old civilizations have collapsed on account of burden of corruption in the administrative set up and it has become a big threat to each democratic set up. Some of the quotes on corruption by different persons are as follows:-

“Among a people generally corrupt liberty cannot long exist”:- Edmund Burke

“To oppose corruption in government is highest obligation of patriotism” :- G. Edward Griffin



“The worst affected from corruption is the common man” :- Kailash Kher

“Corruption is enemy of development and good governance. It must be got rid of. Both the government and people at large must come together to achieve the national objective”:-
Former President Pratibha Patil

“Corruption is a cancer: a cancer that eats away at a citizen's faith in democracy, diminishes the instinct for innovation and creativity; already-tight national budgets, crowding out important national investments. It wastes the talent of entire generations. It scares away investments and jobs.” :- Joe Biden

On corruption, it will also be appropriate to quote paragraph nos. 7 & 8 of the judgment passed in the case of Ram Singh (supra) which is as follows:-

“7. *Corruption in a civilised society is a disease like cancer, which if not detected in time is sure to malignise (sic) the polity of country leading to disastrous consequences. It is termed as plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as Royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the economy and destroys the*



cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.

8. *The menace of corruption was found to have enormously increased by first and second world war conditions. The corruption, at the initial stages, was considered confined to the bureaucracy who had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of Government surplus stores were required to be disposed of by the public servants. As consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them wide discretion with the result of luring them to the glittering shine of the wealth and property. In order to consolidate and amend the laws relating to prevention of corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject being Act No.49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of 1947 Act. The law relating to prevention of corruption was essentially made to*



deal with the public servants, as understood in the common parlance but specifically defined in the Act.”

But, the claim of the petitioner is that this Court should give direction to lodge criminal case and the same should be investigated by the C.B.I. The issue has been considered in the case of K. Saravanan Karuppasamy & Anr. Vs. State of Tamil Nadu & Ors. reported in (2014) 10 SCC 406 wherein the Court has referring to the judgment of the Constitution Bench in the case of State of W.B. & Ors. Vs. Committee for Protection of Democratic Rights reported in (2010) 3 SCC 571 said that the power under Article 32 and 226 of the Constitution of India are wide to pass order for investigation by any agency in suitable matter but, the court must bear in mind certain limitations on the exercise of these Constitutional powers.

The very plenitude of the power under the said Articles requires great caution and restrain in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in particular case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that the power should be exercised very cautiously and with circumspection, not in a routine manner, thereby should not be asked to investigate for



small matter, only where the incident has national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with large number of cases and with limited resources, and it will be very difficult to investigate even serious cases. It is relevant to quote paragraph no.18 of the aforesaid judgment which reads as follows:-

“18. Insofar as contention of Mr. Bhushan to entrust the matter for further investigation to CBI/SIT is concerned, time and again, it has been reiterated by this Court that such an order to conduct investigation by CBI is not to be passed as a matter of routine merely because the party has levelled allegations against the local police. The extra-ordinary power in handing over investigation to CBI must be exercised cautiously and in exceptional circumstances. In State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights, West Bengal & Ors., (2010) 3 SCC 571, a Constitution Bench of this Court held as under:-

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. Insofar as the question of issuing a



direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

Before coming to final view, it will be relevant to consider the objection raised by the High Court which has been raised in two parts, first part is, locus standi and maintainability and second part of the argument is that this case has been brought unnecessarily tarnishing the image of judiciary. Firstly, this Court will decide the maintainability of the present writ petition which has been dealt with in the case of Kishore Samrite (supra) wherein the Court has considered different facets such as abuse of process of Court and opined that a litigant who attempts to pollute the



stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final. The person must come with clean hand, is an absolute obligation and has repeatedly been reiterated by this Court. Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants and the High Court or the Supreme Court has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. The national emblem is based on ethos propounded in



Mandukoupnishad, itself reflects that truth prevails over untruth but, it has also been held that the person who is seeking justice must come with clean hand, there should not be hide and seek or adopt pick and choose policy but, everything should be straightway. It is relevant to quote paragraph nos. 31 to 39 which reads as follows:-

“31. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision.

32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with ‘unclean hands’. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

32.2. The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state



the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6. The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

32.7. Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

32.8. The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer : Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chauhal & Ors. (2010) 3 SCC 402].



33. *Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R. Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141, the Court held:*

“15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

“The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic ‘human-right’ of a system which purports to guarantee legal rights.”

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition.”

34. *It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.*



35. *With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.*

36. *The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : Tilokchand H.B. Motichand & Ors. v.*



Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287)].

37. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiore, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].

39. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as



a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530)."

These judgments also consider the issue of locus standi. In paragraph no.47 and 52, the principle has been culled out in the manner that the person who brings a petition even for invocation of a fundamental right must be a person having some direct or indirect interest in the outcome of the petition on his own behalf or on behalf of some person under a disability and/or unable to approach the justice delivery system for patent reasons. Still, such a person must act bona-fide and without abusing the process of law. Where a person is a stranger/unknown to the parties and has no interest in the outcome of the litigation, he can hardly claim locus-standi to file such petition. There could be cases where a public spirited person bona-fide brings petition in relation to violation of fundamental rights, particularly in habeas corpus petitions, but even in such cases, the person should have some demonstrable interest or relationship to the involved person, personally or for the benefit of the public at large, in a PIL. But in all such cases, it is essential that the petitioner must exhibit bona fide, by truthful and cautious exercise of such right. It will be relevant to quote paragraph no. 52 of the aforesaid judgment which reads as follows:-



“52. *On the analysis of the above principles, it is clear that a person who brings a petition even for invocation of a fundamental right must be a person having some direct or indirect interest in the outcome of the petition on his behalf or on behalf of some person under a disability and/or unable to have access to the justice system for patent reasons. Still, such a person must act bona fide and without abusing the process of law. Where a person is a stranger/unknown to the parties and has no interest in the outcome of the litigation, he can hardly claim locus standi to file such petition. There could be cases where a public-spirited person bona fide brings petition in relation to violation of fundamental rights, particularly in habeas corpus petitions, but even in such cases, the person should have some demonstrable interest or relationship to the involved persons, personally or for the benefit of the public at large, in a PIL. But in all such cases, it is essential that the petitioner must exhibit bona fides, by truthful and cautious exercise of such right. The courts would be expected to examine such requirement at the threshold of the litigation in order to prevent abuse of process of court. In the present case, both the appellant and Respondent 8 are total strangers to the three mentioned petitioners. The appellant, in fact, is a resident of Madhya Pradesh, belonging to a political party and was elected from Constituency Tehsil Lanji in District Balaghat at Madhya Pradesh. He has no roots in Amethi and, in fact, he was a stranger to that place. The appellant as well as Respondent 8*



did not even know that the persons on whose behalf they have acted as next friend had shifted their residence in the year 2010 to Hardeoia in District Faizabad. They have made false averments in the petition and have withheld true facts from the Court.”

Another point that has been raised by the High Court that this case has been brought with the sole moto to tarnish the image of the judiciary itself and, for that, it has been submitted that it is not a public interest litigation rather is a publicity interest litigation which has been frowned upon by the Hon’ble Apex Court. In order to understand the view of Hon’ble Apex Court in the matter of facet of justice delivery system, it would be proper to consider the judgment passed in the case of Tehseen Poonawalla wherein in paragraph no.101, the Hon’ble Court has given an observation that the strength of the judicial process does not lie to create fear of a coercive law of contempt rather on the strength of respect earned by the Court. The credibility of the judicial process is based on its moral authority. It is with that firm belief we should not invoke the jurisdiction in contempt in routine manner. But, facets and contour of public interest litigation has been dealt in paragraph nos. 96 to 98 which reads as follows:-

“96 Public Interest Litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction



was judicially recognised in situations such as those in Bandhua Mukti Morcha v Union of India²⁸. Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and under trials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the 28 (1984) 3 SCC 161 PART D adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable instrument and jurisdictional tool to promote structural due process.

- 97 *Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly mis-utilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant*



behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this court in State of Uttaranchal v Balwant Singh Chaufal. Underlining these concerns, this court held thus: (SCC p. 453, para 143)

“143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.”

98 *The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this court and the High Courts are flooded with litigation and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested*



interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space.”

In my view, the petitioner has locus standi to bring this petition as he is an advocate of this Court and he has every right and duty to protect the institution that too from corruption. This writ petition cannot be treated to be publicity interest litigation. The counter affidavit shows that on the basis of sting recording, a news item in the name of “Cash for Justice” was made viral, has become the basis of initiation of departmental proceeding. As has been informed, the enquiry proceeding has been completed, enquiry report has been submitted and the original CD has been handed over to the Enquiry Officer by the person who has done the



sting operation with certification of its genuineness. So, in view of the fact that on the basis of sting operation, which was made viral, the civil court staffs have been proceeded against departmentally, on the face of it, it appears that illegal act has been done by those who have been found involved. However, this Court does not feel it proper to straightway give direction to lodge a criminal case, but, in view of the two judgments i.e. in the case of Delhi Judicial Service Association Vs. State of Gujarat & Ors. reported in (1991) 4 SCC 406 and in the case of U.P. Judicial Officers Association Vs. Union of India & Ors. reported in (1994) 4 SCC 687 the Hon'ble Apex Court has given discretion only to the Chief Justice to form an opinion in the matter of lodging of criminal case. As the enquiry proceeding has already been completed, the probity lies to request Hon'ble the Chief Justice to look into the matter and to take decision in the matter of lodging criminal case in connection with news item made viral, giving heading "Cash for Justice". In such view of the matter, this Court directs that all the material should be placed before Hon'ble the Chief Justice who will certainly look into the matter as to whether it is as appropriate matter which requires lodging of criminal case, looking to the fact that sting operation was made viral, became subject matter of national debate which requires special attention in the matter.



Before parting with the judgment, we may express our view that the sting operation was broadcast on 15.11.2017 and much time has elapsed. Now all the materials have been collected in course of the departmental proceeding including the compact discs (CDs) which have been handed over in August, 2019 by the person concerned along with the certificate of genuineness. Thus, all the material should be placed before Hon'ble the Chief Justice and this Court requests Hon'ble the Chief Justice to take a decision accordingly with respect to lodging of a criminal case.

With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

Partha Sarthy, J : I agree.

(Partha Sarthy, J)

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