

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.**

**DISTRICT : AHMEDABAD.**

**CRIMINAL REVISION APPLICATION NO. OF 2014**

**SMT ZAKIA AHSAN JAFRI ... Applicant**

**VERSUS**

**SPECIAL INVESTIGATION TEAM (SIT)**

**&**

**STATE OF GUJARAT ..... Respondents**

**INDEX**

<b>SR. NO.</b>	<b>ANNEX</b>	<b>PARTICULARS</b>	<b>Page Nos</b>
1.	***	LIST OF DATES AND EVENTS.	A2-A19
2.	***	MEMO OF THE REVISION PETITION.	A20-A539
3.	"A"	Impugned Order of Ld. Metropolitan Magistrate, Ahmedabad dtd 26.12.2013.	1-440

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.**

**DISTRICT : AHMEDABAD.**

**CRIMINAL REVISION APPLICATION NO. OF 2014**

**SMT ZAKIA AHSAN JAFRI ... Applicant**

**VERSUS**

**SPECIAL INVESTIGATION TEAM (SIT)**

**&**

**STATE OF GUJARAT ..... Respondents**

**List of Dates**

27.02.2002	Train Burning Arson At Godhra 59 persons killed
28.02.2002- May 2002	Brute Reprisal Violence racks 14 districts of Gujarat serious and 19 districts totally
March-July 2002 (01.03.2002 & July 2002)	Interim and Final Reports of the National Human Rights Commission (NHRC) Indict State government for Breakdown of Constitutional Machinery and Recommend Transfer of Investigation; also comment on Partisan prosecutors being appointed and high level state complicity

- May 2002 KPS Gill sent by Central government to quell disturbances that are still continuing
- May 2002 Petitions filed by concerned citizens and Citizens for Justice and Peace (CJP) in Supreme Court asking for a transfer of investigation of major trials to the CBI relying on the NHRC recommendations
- 08.08.2002 Report of All Party Women's Parliamentary Committee that Looked into Various Aspects of the Violence Gender Violence, Violence on Children, Destruction of Homes, Properties and Business and made Recommendations
- 16.08.2002 Report of the Central Election Commission (CE) indicts the state government relying heavily on statistics provided by the State Intelligence Bureau (SIB) and Report of ADGP (Intelligence) RB Sreekumar
- 21/22.11.2002 Report of the Concerned Citizens Tribunal, *Crimes Against Humanity 2002*, headed by Justice VR Krishna Iyer, Justice PB Sawant

(both retired from Supreme Court) and Justice Hosbet Suresh (retired, Bombay High Court among others

26.03.2003 Assassination of Haren Pandya, former minister for state for Revenue, Gujarat

27.06.2003 Acquittal of all accused in the Best Bakery Case in the Vadodara Sessions Court (Judge HU Mahida)

August 2003 NHRC files a Petition praying for Re-trial and Transfer of the Best Bakery Case; Zahira Habibullah Shaikh and CJP also file an SLP with similar prayers

19.09.2003 Statement of Chief Secretary and Director General of Police, Government of Gujarat recorded by the Supreme Court.

SC Passes strong strictures against the Gujarat government remarking that it should observe its *Raj Dharma*

21.11.2003 Notice issued in T.P.(Crl) No. 194-202 of 2003.The Hon'ble Supreme Court stayed

Eight Major Trials. Trials including the a) Godhra trials (CR No.1-6/2002 & CR No.9/2002 related to the train burning incident, the b) Sardarpura Trial (Criminal Case No.275/2002 arising out of FIR No.46/2002 dtd 28.2.2002 of Bijapur police station; c) Gulberg Society, Meghaninagar (CR Nos No.67/2002 & .152/2002 & Cri Case No.1720/2002 d) Naroda Patiya (CR No.982/2002 & CR No.1622/2002); e) Deepda Darwaza (Sessions Case arising out of FIR Nos 60/2002); f) Ode (two trials) Sessions trial arising out of CR No.23/2002 and CR No.27/2002 (Ode Massacre, Anand District); g) British Nationals (Sessions Case arising out of FIR 1/26/2002; h) (In a subsequent Transfer Petition filed by the victims, the trial in the case of Naroda Gaam was also stayed by the Hon'ble Supreme Court on 23.08.2004.

2004

Hon'ble Supreme Court transfers Bilquis Bano case (Charge Sheet dated 19.4.2004 of the CBI) who's Investigation was transferred to CBI, for trial to Sessions

Court, Special Sessions Court, Mumbai, Maharashtra. Case was re-numbered in Maharashtra as Sessions Case No. 634/2004. (Earlier numbered as Sessions Case No. 161/04 when committed to the Court of District and Sessions, Panchmahals, Godhra).

12.04.2004

The Hon'ble Supreme Court while setting aside the judgment and order of the High Court of Gujarat, directed re-trial and also transferred the trial of the "Best Bakery incident" to Mumbai, Maharashtra. [*Zahira Habibullah Shaikh & Anr v/s State of Gujarat (2004(4) SCC 158) at Pg 196-197 (Para 66, 67, 68)*]

02.11.2007

Order passed by the Gujarat High Court in SCRA No. 421/2007 pertaining to the complaint dated 08.06.2006 by Zakia Jafri, inter alia, in view of the remedy available under Section 190 or 200 CrPC rejecting the Complainant Smt Zakia Jafri and Citizens for Justice & Peace prayer for registration of an FIR and investigation by the CBI. Applicant

appeal in the Hon'ble Supreme Court through SLP (Crl) 1088/2008.

03.03.2008 Notice issued by the Hon'ble Supreme Court in Zakia Jafri v/s Narendra Modi & 61 Others [SLP (Crl) No.1088/2008], filed against High Court order dated 02.11.2007.

26.03.2008 The Hon'ble Supreme Court in W.P. (Crl) No. 109 of 2003 (filed by NHRC) and other connected matters appointed a Special investigation Team (SIT) to submit a report on the 9 trials which were earlier stayed by the Hon'ble Supreme Court on 23.11.2003.

27.04.2009 The Hon'ble Supreme Court directed the SIT to investigate the Complaint dated 08.06.2006 of Zakia Ahsan Jafri. The Supreme Court passed this order in Zakia Jafri v/s Narendra Modi & Ors [SLP (Crl) No. 1088/2008], wherein, in addition to the 9 trials it was already investigating, the SIT would also probe allegations against Narendra Modi and 61 others. The CJP was also a Applicant.

- 01.05.2009 "Religious Extremists are Worse than Terrorists" rules the Supreme Court. The Hon'ble Supreme Court, in view of the supplementary charge sheets filed by the SIT in all the nine cases vacated the stay on the 9 trials but directed the SIT to continue further investigation. It further directed that Special Courts be set up and hearing should take place on a day to day basis. (Para 1,4,38,39,40)
- 08.05.2009 Hon'ble Supreme Court adjourned the SLP (CrI) No. 1088/2008 till July, 2009
- 19.01.2010 Interim Report submitted by the SIT in SLP (CrI) No. 1088/2008 by AK Malhotra (Zakia Jafri v/s Narendra Modi & Ors) . The Gujarat Government was directed to hand over all the documents, which have been requisitioned by the SIT without any delay.
- 06.04.2010 The Hon'ble Supreme Court directs SIT Members Geeta Johri and Shivdand Jha to be removed from the SIT.



06.05.2010

After extensive hearings on the application CrI.M.P. No.19816/ 2010 in Writ Petition (crl) No.37-52 of 2002, during which a special public prosecutor RK Shah hearing the Gulberg trial resigned, AK Malhotra was directed to examine all records in the possession of the SIT and submit a report about the veracity of the explanation by the SIT on each of the points raised in the said application. Said report to be submitted within 8 weeks. Restraint order in the pronouncement of judgement in the nine trials being monitored by the SIT. Officers Shivanand Jha and Geeta Johri were dropped from the SIT.

26.10.2010

A further investigation report against a former Joint Commissioner of Police, M.K Tandon and DCP PB Gondua was submitted by AK Malhotra to the Hon'ble Supreme Court. The restraint order on delivery of judgements passed on 06.05.2010 on all cases except Gulberg; Meghaninagar (CR 67/2002) was lifted.

Restraint Order on judgements in all trials except the Gulberg trial lifted.

- 23.11.2010 Shri Raju Ramchandran appointed as Amicus Curiae by the Hon'ble Supreme Court.(order passed in Zakia Jafri & Anr v/s Narendra Modi & Ors [SLP(Crl) No.1088/2008])
- 20.01.2011 Interim report (Note) submitted by Amicus Curiae- Raju Ramchandran which was also given to SIT.
- 15.03.2011 Order passed by the Hon'ble Supreme Court in Zakia Jafri & Anr v/s Narendra Modi & Ors [SLP (Crl) No. 1088/2008] wherein SIT Chairman was directed to examine each of the observations made by the Amicus Curiae in his Interim Report (Note) and if needed carry out further investigation and Report to be submitted by 25.04.2011.
- 05.05.2011 Order passed by the Hon'ble Supreme Court, taking reports on further

investigation as well as statements of the witnesses on record. Amicus Curiae-Raju Ramachandran was given the SIT reports/documents to examine the report, analyze it and come to his own independent assessment. He was authorized to interact with the witnesses, police officers and to form his opinion whether, on the basis of report, any offence is made out against any person. *(Pg 20 of the compilation of judgment/order at the end of Vol II of Protest Petition)*

12.09.2011

Final order passed by the Hon'ble Supreme Court in Criminal Appeal No.1765/2011 (SLP (Crl) No. 1088/2008)

29.09.2011

Applicant Zakia Nasim Jafri s letter to Dr RK Raghavan, with reference to the Order of the Hon'ble Supreme Court dated 12.09.2011 (in SLP 1088/2008) requesting the extensive Investigation papers and record as directed by the Hon'ble Supreme Court as also inquiring on the progress of the further

investigation ordered under Section 173(8)  
(ii)of the CrPC

- 16.11.2011 Zakia Nasim Jafri & Teesta Setalvad's (Co-Applicant) letter to Dr RK Raghavan, Ref: SLP 1088/2008.again expressing concern about repeated press reports based on "SIT sources" saying they were going to file a 'Closure Report"
- 16.01.2012 Zakia Nasim Jafri & Teesta Setalvad's (Co-Applicant) letter to AK Malhotra IO SIT again reminding the agency of their obligations to keep Complainant informed and also provide the Investigation record
- 08.02.2012 SIT files a Closure Report late evening of 08.02.2012 without following the Supreme Court Order related to Investigation Documents. The report is filed without requisite record.
- 09.02.2012 Application by Complainant Zakia Jafri pointing out Non-Compliance by the SIT of SC Orders (Paras 8 and ()) by producing

Report without Investigation  
Record/Documents

- 15.03.2012 Detailed Application by Complainant Smt Zakia Jafri with Written Arguments for Investigation Papers --Application under Section 173(2) of the Code of Criminal Procedure(CRPC) including Sections 74 and 76 of the Indian Evidence Act and under other Relevant Sections of the CRPC and Indian Evidence Act, 1872, in Metro Court 11
- 10.04.2012 Order of Magistrate Bhatt granting Complainant Investigation Papers. SIT given time until May 11 to submit documents.
- 07.05.2012 Documents provided by the SIT to the Complainant
- 10.05.2012 Application on Illegible and Incomplete Record (ineffective compliance by SIT) filed by the Complainant
- 25.05.2012 Reply on behalf of Himanshu Shukla, IO, SIT on the absent or illegible from the

compilation provided by SIT.( filed through R S Jambuvar, Special Public Prosecutor, SIT), in the Court No 11 of the Hon'ble Metropolitan Magistrate

- 28.05.2012 Zakiya Nasim Jafri's Application to Apply for Documents that Appear to be Absent from the Compilation provided by the Special Investigation Team (SIT),
- 30.05.2012 Himanshu Shukla's letter to Adv Sadik Shaikh in reference to Inspection of documents in Court of 11<sup>th</sup> Metropolitan Magistrate in the matter of Smt. Jakia Nasim Ahsan Jafri Vs. Narendra Modi & Others
- 02.06.2012 Zakiya Nasim Jafri's Affidavit in Rejoinder to the SIT Reply dated 25.05.2012 to the Application to Apply for Documents (Investigation Reports of Malhotra) that Appear to be Absent from the Compilation provided by the Special Investigation Team (SIT) dated 28.05.2012

- 21.07.2012                      Reply of Investigating Officer of Special Investigation Team Himanshu Shukla to the petition dated 16.07.2012
- 08.08.2012                      Himanshu Shukla's Affidavit with Application before the Metro Court
- 07.09.2012                      Affidavit of Himanshu Shukla IPS, DCP Crime and Investigation Officer of SIT under Proceedings in the Court No 11 of the Metropolitan Magistrate Ahmedabad,
- 25.10.2012                      Letter of Advocate Aparna Bhat to Advocate S M Vora regarding SLP (Crl) filed by Zakia Nasim Jafri seeking clarification of SC Order dated 12.09.2011 and requesting all copies of the Investigation Record as is a requisite as per law. Letter pointed out that Hon'ble Supreme Court Registry had given a Diary number 34592 to SLP and until pendency of matter the proceedings should not continue. Complainant Zakia Nasim Jafri's also files an Application Giving Details of Special Leave Petition

- 23.11.2012 Zakia Nasim Jafri's Application gives further details and progress of SLP 8989/2012 filed by the Complainant seeking Clarification of the Hon'ble SC Order dated 12.09.2011 and requesting all Investigation Papers including previous statements of several accused.
- 27.11.2012 Order of Magistrate Ganatra disregarding Complainant's Applications regarding pendency of SLP 8989/2012 and closing the Complainant's right to file a Protest Petition
- 03.12.2012 First hearing of second SLP seeking all documents: Complainant Zakia Jafri again approached the Hon'ble Supreme Court [SLP 8989/2012] for complete supply of all investigation papers. Order passed by the Hon'ble Supreme Court to supply earlier statements denied to complainant by SIT
- 10.12.2012 Order passed by the Hon'ble Supreme Court recording grievances of the complainant in SLP (Crl) No.8989/2012 that she will be unable to exercise her right to file a protest



petition without full access to investigation reports. Matter was referred to larger bench.

05.01.2013 Verification report on Missing and Illegible Documents by SIT and Order of the Court

16.01.2013 Affidavit of Himanshu Shukla IPS, DCP Crime and following Order of SC granting Complainant's Request for precious statements and providing 300 Pages of these that were Missing from the SIT Record. SC had passed Interim Orders on 10.12.2012.

07.02.2013 Final Order of the SC in SLP 8989/2012 granting Applicant (Complainant Zakia Jafri):- Hon'ble Supreme Court directed that the Reports of Investigation dated 12.05.2010, 17.11.2010 and 24.04.2011 under Section 173(8) of CrPC to be supplied to the Complainant to file her protest petition vis-a-vis complaint dated 08.06.2006. The Hon'ble Supreme Court clarified that the statements recorded in the inquiry shall only be used in the proceedings relating to the

complaint dated 08.06.2006 filed by the Appellant and shall not be used for any other purpose or in connection with any other case. Complainant was given 8 weeks time to file protest petition.

- 18.02.2013 Application of Complainant Smt. Zakia Jafri on the Hostile Attitude of the SIT reflected in the application of SIT dated 13.02.2013, pointing out that it was SIT that was responsible for a one year delay in filing all Investigation Papers
- 15.04.2013 Complainant Smt Zakia Jafri files her Protest Petition
- May 2013 SIT conducts oral arguments in support of their closure report
- 24.06.2013-  
25.09.2013 Complainant advocates and CJP conduct detailed Oral Arguments and Written submissions are also made. Detailed Documents in support of Arguments, Factual and Legal are also given to the Court

26.12.2013

Magistrate BJ Ganatra passes an Order giving the Complainant right to appeal. In effect this means rejecting the Protest Petition and accepting the SIT Closure Report.

Hence this Criminal Revision Application seeking Quashing of the Order and allowing the Protest Petition dated 15.4.2013 with its prayers for Further Investigation and Order for Transfer of Investigation.

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.**

**DISTRICT : AHMEDABAD.**

**CRIMINAL REVISION APPLICATION NO. OF 2014**

SMT ZAKIA AHSAN JAFRI

Aged: 75,

Alvi Row House, B/h Aziz Mohammed

Community Hall, Gorat, Surat- 395009

**Applicant**

( Orig. Complainant)

VERSUS

SPECIAL INVESTIGATION TEAM (SIT)

Block 11, Jeevraj Mehta Bhavan,

Old Sachivalaya,

Gandhinagar 382010.

State of Gujarat,

(Notice to be served through Ld.

Government Pleader, Gujarat High

Court, Ahmedabad)

**.....Respondents**

(Original Respondents )

APPLICATION UNDER SECTION 397  
READ WITH SECTIONS 401 & 482  
OF THE CODE OF CRIMINAL  
PROCEDURE 1973, AGAINST THE

JUDGMENT AND ORDER PASSED  
BY THE LEARNED METROPOLITAN  
MAGISTRATE B.J. GANATRA IN  
ANNEXURE "A" DATED 26.12.2013,  
PERTAINING TO THE FINAL  
REPORT SUBMITTED BY SIT AND  
PROTEST PETITION REGARDING  
ORDER PASSED ON 12.09.2011 IN  
RELATION TO SLP (CRIMINAL NOS)  
1088/2008 BY THE HON'BLE  
SUPREME COURT IN CONNECTION  
TO THE COMPLAINT DATED  
08.06.2008 OF SMT ZAKIA AHSAN  
JAFRI

TO;

THE HONOURABLE THE CHIEF JUSTICE AND  
THE OTHER HONOURABLE COMPANION JUDGES  
OF THE HONOURABLE THE HIGH COURT OF  
GUJARAT, AT AHMEDABAD.

THE HUMBLE APPLICATION OF THE  
APPLICANT ABOVE NAMED

**MOST RESPECTFULLY SHEWETH THAT:-**

1. The present revision is filed against the order of the rejection of Protest Petition dated 15.4.2013 filed by applicant Smt. Zakia Ahsan Jafri v/s Mr. Narendra Modi and Others on the

Complaint Dated 8.6.2006 & Against the Final Report of the Special Investigation Team (SIT) dated 8.2.2012 (CAUSE TITLE OF PROTEST PETITION). The Protest Petition was filed on 15.04.2013 filed following Orders of the Hon'ble Supreme Court on 12.9.2011 (in SLP(Crl) 1088/2008) and Clarificatory Order (in SLP 8989/2013) 07.02.2013 and is being annexed by way of separate affidavit as Annexure "E" Colly. The respondent accused named in the Complaint dated 8.6.2006 are Listed just above the Grounds to the present application.

2. That the applicant is the Original Complainant who filed the Complaint dated 08.06.2006 before the Director General of Police, Gujarat. The said Complaint was subject matter of Investigation by the Special Investigation Team (SIT) appointed by the Hon'ble Supreme Court. The SIT during the course of Investigation recorded statements and had submitted the Final report before the Learned Materopolitan Magistrate in Compliance of directions given by Hon'ble Supreme Court on 12.09.2011 & 07.02.2013, The Applicant had filed her Protest Petition as directed by the Hon'ble Supreme Court by Order dated 07.02.2013 on 15.04.2013. The issue before the Learned Metropolitan Magistrate was to consider the material and to decide whether prima facie a case is made out against the accused for taking cognizance.

The arguments commenced from 24.04.2013 and concluded in finally on 25.09.2013. The Applicant submits that Submissions for the Petitioner Applicant Began on 24.06.2013 and continued in Seventeen Individual Sessions until the last dates on 29.08.2013. Finally in September 2013, Written Submissions for both Parties were submitted with some additional documents. The Oral Submissions were given in English in the Original by the Petitioner Complainant on 29.08.2013 and then a full-fledged Gujarati Translation was also given to the Learned Magistrate on 25.09.2013.

3. The Learned Metropolitan Magistrate BJ Ganatra delivered the judgement dated 26.12.2013 wherein the Ld. Magistrate has refused to take cognizance and issue process against the accused named in the Complaint dated 08.06.2006 and has accepted the report submitted by the respondent no. 2. It is against this Order/Judgement that the present Criminal Revision Petition is being filed.
4. That the Applicant in detail had made Oral Submissions followed by Written Submissions on the Legal and Factual Aspects of the case. These detailed submissions will be placed on record of this Hon'ble Court by way of Annexures to a Separate Affidavit as will all the Documents and Compilations that were placed before the Learned Magistrate

during Oral Submissions and with Written Arguments. The Applicant craves leave of this Hon'ble Court to draw attention to those submissions at the time or arguments.

That the Applicant submits that the Order/Judgement dated 26.12.2013 passed by the Learned Metropolitan Magistrate suffers from gross legal, factual and jurisdictional errors which are required to be examined by this Hon'ble Court under its Revision Jurisdiction. The Impugned Order/Judgement of the Learned Metropolitan Magistrate dated 26.12.2013 has resulted in the serious miscarriage of justice and therefore the inherent powers of this Hon'ble Court provided by Section 482 of the Code of Criminal Procedure have also been invoked. It is settled law that the Learned Metropolitan Magistrate at this juncture was legally required to prima facie examine the material on record to find out whether case of reasonable suspicion to take cognizance against the accused was made out. At this juncture, it was not permissible for the Learned Metropolitan Magistrate to go into the veracity, truthfulness or otherwise of the material on record, which stage comes later during the trial. The Applicant had pointed out that there is more than sufficient material much beyond the legal requirement which was sufficient to take cognizance and issue process against all the accused. As a matter of fact, the Applicant had analysed the existing material against each one



of the accused separately to establish that prima facie they were involved in the act of Conspiracy and Abetment of Heinous Crimes under Section 120 B Indian Penal Code (IPC), 114 r/w 302 IPC, Section 116, IPC, Section 119, IPC, Section 166 IPC, Section 167, IPC, Section 175, IPC, Section 176, IPC, 177 IPC Section 179, IPC, Section 182, IPC; 186 IPC; 187 IPC, Section 188, IPC, Section 191, IPC, Section 192, IPC, Section 193, IPC, Section 195A, IPC, Section 196, IPC, 199 IPC, Section 200, IPC, Section 201, IPC, 203 IPC, Section 204, IPC, 217/218, IPC, 295 IPC, 295 A. IPC, 298 IPC, 153 A (IPC), 506 IPC, 144 and 154 of the Code of Criminal procedure (CrPC), Indian Police Act – 1861, Section 3 of the Prevention of Damage to Public Property Act 1984, Circular captioned “Communal peace”, GPM Vol-III, Chapter II, Chapter III, Chapter IV, DGP K. V. Joseph’s booklet (Instruction to deal with Communal Riots - strategy of approach), 1997 32, All India Service (AIS) Conduct Rules. Communal Riot Scheme; Press Council Act, 1965, Prevention of Objectionable Matter Act, 1976, Sections 36, 129, 131,

5. A bare reading of the Impugned Order/Judgement of the Learned Metropolitan Magistrate dated 26.01.2013 shows that the Proceedings that had taken place before the Hon’ble Supreme Court and the Orders passed by the Hon’ble Supreme Court particularly orders dated 12.09.2011 and

07.02.2013 were not only not understood properly but were distorted. There was utter failure by the Learned Metropolitan Magistrate in exercising his jurisdiction within the parametres of law. In fact it has looked at the material as if the evidence that has emerged should be adjudicated on, and the Ld. Magistrate is pronouncing Judgement after Trial had been conducted and evidence recorded; in the process completely failing to appreciate the limited role which was assigned to him in law, which has been repeatedly asserted by this Hon'ble Court in various judgements. The Learned Metropolitan Magistrate has also not exercised his powers to ensure fair investigation by directing further investigation wherever he came to the conclusion that the SIT's Investigation was either faulty or biased. The Learned Metropolitan Magistrate also failed to consider that in law he was also authorized to proceed with the matter by treating the Protest Petition itself as a Complaint, The fact that the Gujarat Carnage took place as a result of a Conspiracy of the most sinister kind by Political Bigwigs and those responsible for maintaining law and Order was made quite clear by the Reports of the NHRC as well as Orders passed from time to time by the Hon'ble SC. Undeniably, the offences of Conspiracy and Abetment were writ large and the only job in law assigned to the Metro Magistrate was to look at the abundant material to proceed prima facie against those who were involved in this

Conspiracy and Abetment of the SIT as an investigating agency.

6. The Applicant submits that the widespread violence that engulfed Gujarat spreading to 19 of the state's 25 districts – 14 very seriously - post the tragic burning to death of 59 persons in the S-6 Coach of the Sabarmati Express, from 27.02.2002 right until May 2002 when the Central government had to depute a high level officer KPS Gill to stem the relentless cycle of cynical violence, in early May 2002, is perhaps the worst ever record of reprisal communal violence in post-Independence India. It was not simply the number of lives lost, though the number — close to 2,000 — is not insignificant. It was the cold-blooded manner in which they were taken, as armed militias with high level government sanction, ensured a high level brutality in the killings, mutilation, rapes and burnings. Over 200 girls and women suffered sexual violence, 18,000 homes were gutted, 1,200 hotels were gutted. The unique feature behind the reprisal killings was that the loss of life and property was of the minority.
7. The Applicant humbly submits that since March 2002 when the National Human Rights Commission (NHRC) filed its

Interim and Final reports and 2003 and 2004 when the Hon'ble Supreme Court first pulled up the state government for absence to 'observe its Raj Dharma" and accused it of criminal negligence , "The Neros in Gujarat fiddled as Gujarat burned" serious allegations of top level criminal conspiracy in masterminding the violence have been made against the chief functionaries of the government. The NHRC concluded in its Report dated 31.05.2002 that *"there was a comprehensive failure of the State to protect the Constitutional rights of the people of Gujarat"*. The Applicant humbly submits that after the indicting reports of the NHRC, the CEC, the Report of the Women's Parliamentary Committee, all in 2002, the Hon'ble Supreme Court hearing petitions filed by citizen's legal rights groups, like the Citizens for Justice and Peace passed path breaking orders. The Supreme Court of India, severely indicting the Gujarat government even transferred two trials outside of Gujarat. (BEST Bakery and Bilkees Bano, 2004). The SC has been well aware of the larger conspiracy behind the 2002 carnage and the courts orders, one after the other, in different cases related to the 2002 carnage have reflected this. Various orders passed by the SC, including the path-breaking directions in the Best Bakery case, and other developments that ultimately led to the formation and reconstitution of the SIT on 26.03.2008 to further investigate eight of the crucial trials relating to the 2002 carnage. By August 2002 the

Government itself had recorded 185 cases of attacks on women of which 100 were in Ahmedabad city and 57 attacks on children of which 33 were in Ahmedabad alone. Totally, 225 women and 65 children were killed. Evidence from the State Intelligence Bureau (SIB) given to the Chief Election Commission (CEC) in August 2002 revealed that communal incidents had taken place in 993 villages and 151 towns spread over 153 assembly constituencies (out of a total of 182 in the state). By August 2002 (as recorded in the Report of the Women's Parliamentary Committee) as many as 132,532 persons had been displaced / forced to leave their houses & were living in 121 riot relief camps of which 58 were in Ahmedabad city. By 01.06.2002 (as recorded in the Report of the Women's Parliamentary Committee) there had been 4954 cases (2023 urban and 2931 rural) of residential houses having been completely destroyed. There were a further 18,924 cases of partially damaged houses (11,199 urban & 7095 rural) - i.e. more than 23,000 houses had been destroyed or damaged by the rioters. Thereafter a further 5000 urban houses and a 1000 rural houses were destroyed or damaged.

8. The Applicant would like as a background to submit how the Hon'ble Supreme Court has dealt with the 2002 carnage in its various proceedings/orders/judgements:

- (i) On 19.09.2003, in the Open Court, the Statement of Chief Secretary and Director General of Police, Government of Gujarat was recorded by the Supreme Court. The matter at hand was the acquittal of all accused by the Sessions Court at Vadodara in June 2003, an acquittal that finally led the Hon'ble SC to order re-transfer and trial in Maharashtra. At the stage when the chief secretary and SGO were cross examined, the Hon'ble SC was pulling up the government of Gujarat for filing a mere formability of an appeal, a travesty despite the Hon'ble Supreme Court watching. Then Chief Secretary PK Laheri and then Director General of Police, K Chakravarthi, (Accused Nos 25 subsequently in Smt Zakia Jafri's Complaint dated 08.06.2006) were examined by a bench presided over by the then Chief Justice on the issue of the absence of an independent directorate of prosecution resulting in the utter failure of the prosecutorial agency in the famed Best Bakery Case. DGP K Charkaravarthi had the ignominy of having to admit that *as the highest police authority in the state he had taken no steps even after the entire Habibullah Shaikh family started turning hostile one by one in the famed Best Bakery case on 17.05.2003.* That applicant would shortly compile and attach as

Annexure 'B' Colly by way of a separate affidavit very shortly. Annexures are a Compilation of the Hon'ble Supreme Court Orders related to the Carnage of 2002 including the Smt Zakia Jafri case. This particular order *dated 19.09.2003* is also part of the compilation and was handed over to the Magistrate at the outset of the Oral arguments on 24/25/26.06.2013.

- (ii) The Petitioner says and submits that in continuation of this monitoring process through which the Hon'ble Supreme Court kept an eagle eye on the progress of investigations and prosecutions in major cases in Gujarat, pursuant to the legal interventions of the National Human Rights Commission (NHRC) and citizens legal rights groups like the Citizens for Justice & Peace (CJP), on, 21.11.2003, the Hon'ble Supreme Court, that has been seized of the faulty FIRs, deviant investigations by the Gujarat police and partisan prosecutors being appointed in crucial cases by the Gujarat government, stayed eight crucial trials that were being conducted in this unlawful manner. That applicant would shortly compile this and Other Orders of the Hon'ble Supreme Court and attach them as annexure 'B' Colly by way of a separate affidavit This particular order *dated 21.11.2003* was also

handed over to the Magistrate at the outset of the Oral arguments on 24/25/26.06.2013. Through this Order in T.P. (Crl) No. 194-202 of 2003) the following trials were stayed: a) Godhra (Crime No. 1-6/2002 and Crime; No.9/2002); & Criminal Case Nos.1-6/2003 titled State v. Mohmad Rafudan Ansari & Ors. pending in the Court of Special Judge, POTA, Ahmedabad; Crime No.09/2002 titled State v. Junia Farooq Hassan & Ors.pending in the Juvenile Court, Godhra; b) Sardarpura (Criminal Case No.275/2002 arising out of FIR No.46/2002 dated 28.02.2002 of Police Station Bijapur, titled State v. Patel Rameshbhai Kanjibhai & Ors. pending in the Court of Sessions Judge, Mehsana, Gujarat; c) Gulberg Society, Meghaninagar (Crime No.67/2002 i) Sessions Case No.152/2002 titled State v. Kailash Lalchand Bhai Dhobi & Ors. pending in the Court of Sessions Judge, Bhadra, Ahmedabad; (ii) Criminal Case No.1720/2002 titled State v. Shankarji Hakaji Mali & Ors. pending in the Metropolitan Magistrate Court No. XI, Ahmedabad;(iii) Criminal Case No.296/2003 titled State v. Sandeep alia Sonu Ghunghru Val Valo & Ors. pending in the Metropolitan Magistrate Court No.XI, Ahmedabad; (iv) Criminal CaseNo.524/2002 titled State v. Vishal Badrilal Nayee



& Ors. pending in the Juvenile Court No.IV, Ahmedabad; d) Naroda Patiya (Crime No.982/2002 & Crime No.1622/2002); (i) Criminal Case No.982/2002 titled State v. Naresh Amarsingh Chhara & Ors. pending in the Metropolitan Magistrate Court No.XI, Ahmedabad, and (ii) Criminal Case No.1662/2002 titled State v. Padmendra Singh & Ors. pending in the Metropolitan Magistrate Court No.XI, Ahmedabad; e) Deepda Darwaza (Sessions Case arising out of FIR Nos 60/2002); f) Ode (two trials) Sessions trial arising out of CR No.23/2002 and CR No.27/2002 (Ode Massacre, Anand District); g) British Nationals (Sessions Case arising out of FIR 1/26/2002); (In a subsequent Transfer Petition filed by the victims, the trial in the case of Naroda Gaam was also stayed by the Hon'ble Supreme Court on 23.08.2004.)

(iii) The Applicant humbly submits that on 12.04.2004, decisively setting aside the judgement and Order of the Gujarat high court in the Best Bakery appeal, the Hon'ble Supreme Court, directed re-trial and also transferred the trial of the "Best Bakery incident" to Mumbai, Maharashtra. [*Zahira Habibullah Shaikh & Anr v/s State of Gujarat (2004(4) SCC 158) at Pg 196-197 (Para 66, 67, 68, 69)*]. In a separate but connected Order, the Hon'ble Supreme Court also

set aside unwarranted observations made by the Gujarat high court against human rights defender, Teesta Setalvad, secretary Citizens for Justice and Peace and advocate, Mihir Desai.

The Applicant says and submits that Paras 65, 66, 67, 68 & 69 of the historic Order are crucial to outline how the Hon'ble Supreme Court viewed the conduct of affairs related to the legal process of the Gujarat carnage cases.

*Para 65: In a country like us with heterogeneous religions and multiracial and multilingual society which necessitates protection against discrimination on the ground of caste or religion taking lives of persons belonging to one or the other religion is bound to have dangerous repercussions and reactive effect on the society at large and may tend to encourage fissiparous elements to undermine the unity and security of the nation on account of internal disturbances. It strikes at the very root of an orderly society, which the founding fathers of our Constitution dreamt of.*

*Para 66: When the ghastly killings take place in the land of Mahatama Gandhi it raised a very pertinent question as to whether some people have become so bankrupt in their ideology that they have deviated*

*from everything which was so dear to him. When large number of people including innocent and helpless children and women are killed in a diabolic manner it brings disgrace to the entire society. Criminals have no religion. No religion teaches violence and cruelty-based religion is no religion at all, but a mere cloak to usurp power by fanning ill feeling and playing on feelings aroused thereby. The golden thread passing through every religion is love and compassion. The fanatics who spread violence in the name of religion are worse than terrorist and more dangerous than an alien enemy.*

**Para 67:** *The little drops of humanness which jointly make humanity a cherished desire of mankind had seemingly dried up when the perpetrators of the crime had burnt alive helpless women and innocent children. Was it their fault that they were born in the houses of persons belonging to a particular community? The still, said music of humanity had become silent when it was forsaken by those who were responsible for the killings.*

*“Little drops of*

*Water, little grains of sand*

*Make the mighty ocean*

*And the pleasant land,*

*Little deeds of kindness,*

*Little words of love*

*Help to make earth happy*

*Like the heaven above”*

*Said Julia A.F. Cabney in “Little Things”.*

**Para 68:** *If one even cursorily glances through the records of the case, one gets a feeling that the justice delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial without any definite object of finding out the truth and bringing to book those who were responsible for the crime. The public prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court. The Court in turn appeared to be a silent spectator, mute to the manipulations and preferred to be indifferent to sacrilege being committed to justice. The role of the State Government also leaves much to be desired. One gets a feeling that there was really no seriousness in the State’s approach in assailing the Trial Court’s judgment. This is clearly indicated by the fact that the first memorandum of appeal filed was an apology for the grounds. A second*

*amendment was done, that too after this Court expressed its unhappiness over the perfunctory manner in which the appeal was presented and challenge made. That also was not the end of the matter. There was a subsequent petition for amendment. All this sadly reflects on the quality of determination exhibited by the State and the nature of seriousness shown to pursue the appeal. Criminal trials should not be reduced to be the mock trials or shadow boxing of fixed trials. Judicial Criminal Administration System must be kept clean and beyond the reach of whimsical political wills or agendas and properly insulated from discriminatory standards or yardsticks of the type prohibited by the mandate of the Constitution.*

***Para 69:*** *Those who are responsible for protecting life and properties and ensuring that investigation is fair and proper seem to have shown no real anxiety. Large number of people had lost their lives. Whether the accused persons were really assailants or not could have been established by a fair and impartial investigation. The modern day “Neros” were looking elsewhere when Best Bakery and innocent children and women were burning, and were probably deliberating how the perpetrators of the*

*crime can be saved or protected. Law and justice become flies in the hands of these “wanton boys”. When fences start to swallow the crops, no scope will be left for survival of law and order or truth and justice. Public order as well as public interest become martyrs and monuments. “*

- (iv) The Applicant says and submits that between May-July 2004 the Hon'ble Supreme Court ordered protection by the Central Paramilitary to 570 witness survivors and human rights defender Teesta Setalvad following direct threats from powerful accused.
- (v) Meanwhile, the Applicant humbly submits that in the matters related to the eight crucial and sensitive trials that has been stayed by the Hon'ble Supreme Court pursuant to legal initiatives by the NHRC and citizens legal rights groups like the CJP (on 23.11.2003), after a four and a half years, the Hon'ble Supreme Court on 26.03.2008 ordered transfer of investigation not to the Central Bureau of Investigation (CBI) as sought but to a Special Investigation Team (SIT) appointed by it under former CBI chief RK Raghavan. Certain issues related to the constitution of the team and the porosity with powerful accused in the Gujarat government kept getting raised from time to time.

(vi) To step back in chronological time a bit, the Applicant would like to emphasise at the outset that the Gujarat carnage of 2002 had been intense and widespread lasting from end February 2002 until May 2002 when the Central government had to depute KPS Gill as Special Advisor to the government to quell the mass targeted violence. That, of the 300 violent incidents all over the state that took place with sinister precision and conspiracy, while two of the worst in terms of intensity took place within Ahmedabad (Naroda Patiya and Gulberg Society) with over 200 brutal massacres, including daylight rapes and burnings the day after the Godhra train burning on 28.02.2002, there were dozens of other incidents of mass burning loot and arson that were allowed to take place between 28.02.2002 and upto early May 2002 when KPS Gill was sent in by former Prime Minister Atal Behari Vajpayee to help the state government control the violence. The Applicant would like to say and submit that while. Individual FIRs had been registered though unsatisfactorily, with respect to some of these offences, serious documentary evidence through State Intelligence Bureau records (SIB) and Phone Call records came into the public domain through the affidavits and depositions of serving police officers of

the Gujarat police. This confirmed earlier reports like that of the NHRC and Concerned Citizens Tribunal (*Crimes Against Humanity 2002*) headed by three judges, Justices Krishna Iyer, PB Sawant and Hosbet Suresh that concluded a high level conspiracy to allow widespread reprisal violence through serious crimes of commission and omission. Therefore, the applicant, herself a Victim Survivor who had to spend the night her husband, former Parliamentarian Ahsan Jafri was massacred in broad daylight alone at the Shahibaug police headquarters and who witnessed police officers in the barracks on leave while Ahmedabad burned, and who had been personally agitated at the high level failure to control violence took specific steps to register a case of criminal conspiracy against high level accused in the Gujarat government decided to lodge a criminal complaint of sinister, overall conspiracy. The applicant says and submits that she, Smt Zakia Ahsan Jafri assisted by Citizens for Justice and Peace (CJP), accessed these critical records and has tried, since 08.06.2006 to get a Criminal Complaint of high level Conspiracy to commit mass murder and others forms of violence, subvert legal authority, destroy evidence and intimidate witness survivors among other offences



registered and investigated. Towards this end, a complaint dated 08.06.2006 was first filed before the Director General of Police, Gujarat. Before proceeding with the chronology thereof, the Applicant would like to submit that this complaint (as can be seen in the body of the Complaint annexed to this Petition) against chief executive Narendra Modi and 59 Others, seeks to go far beyond the Gulberg Society case wherein she lost her husband and 68 others were also brutally massacred and seeks to arrive at the truth behind the sinister planning and systematic nature of violence that engulfed over 300 locations in the state.

(vii) The applicant would like to clarify that at the Gulberg society where she, Smt Jafri and her husband lived, a total of 69 persons were massacred in cold blood after young girls and women had also been raped. Over 200 distress phone calls, including several to the commissioner of police, Ahmedabad and chief executive of the state had brought no relief. However that case ongoing is at the trial stage and being monitored by the Hon'ble Supreme Court is *materially different*, both in expanse and scope, from the Complaint dated 08.08.2006 filed against chief minister Narendra Modi and 59 others that is the

subject matter of this Revision Petition. The Applicant says and submits that this clear distinction as viewed and treated by the Hon'ble Supreme Court but mischievously and malafidely confused by the SIT will be dealt with later.

*(viii)* **Complaint by Smt. Zakia Jafri - Applicant**

The Applicant says and submits that as narrated above, the Applicant had on 08.06.2006 attempted to get her complaint about mass level criminal conspiracy registered and investigated by the Gujarat police. Unsuccessful in this regard, the Applicant, Smt Jafri along with the Citizens for Justice and Peace approached the Hon'ble Gujarat High Court in February 2007 with prayers for directions to register a FIR against all accused (Respondents herein) as also with a direction to transfer investigation to an independent agency, the Central Bureau of Investigation (CBI).

On 02.11.2007, the Hon'ble Gujarat High Court through an Order passed in SCRA No. 421/2007 pertaining to the complaint dated 08.06.2006 by Zakia Jafri, relegated the Applicant to the remedy of pursuing her complaint before the Magistrate. That applicant would shortly compile this Order of the

Hon'ble Gujarat High Court with other Orders of the Hon'ble Supreme Court and attach these as annexure 'B' Colly **by** way of a separate affidavit .

Thereafter the Applicants jointly appealed in the Hon'ble Supreme Court through SLP (Crl) 1088/2008. On 03.03.2008, while issuing notice in the SLP (Crl) Nos 1088/2088, the Hon'ble Supreme Court in Zakia Jafri & Anr v/s Narendra Modi & 61 Others, filed against High Court order dated 02.11.2007, appointed an Advocate as Amicus Curiae to assist the Court. The Hon'ble Supreme Court took cognizance of the seriousness of the complaint and the grave issues involved. Hon'ble Supreme Court in its Order dated 03.03.2008 observed as under:-

*“...The High Court's order does not render the applicants remediless. But, various important aspects arise for consideration. In a given case, a person who has knowledge of the commission of a crime may not be examined by the police. The question is what is the remedy available to such person? We, therefore, issue notice only to respondent Nos. 1 and 2 and the Union of India. Though, in the proceedings, the Central Bureau of Investigation is respondent No.3, there is presently no need for issuing any notice to*

*the CBI, as we would like to have the views of the Union of India also.*

*Shri Prashant Bhushan, learned counsel has agreed to assist the Court as an Amicus- Curiae. We would also request other learned senior members of the Bar to assist the Court, as the question is of vital importance in the administration of criminal justice.”*

- (ix) The Applicant says and submits that on 27.04.2009, the Hon'ble Supreme Court in the said SLP directed that the SIT already appointed by it to further investigate the eight critical trials in which there were faulty investigations, should also look into the overarching complaint filed by Smt Zakia Jafri dated 08.06.2006. In passing this Order however, the Hon'ble Supreme Court, however, was also at pains to ascertain that the investigation should be fair and that it should not be interfered with by any officer associated with the State of Gujarat. On 27.04.2009 the Hon'ble Supreme Court passed the order and it is after that the investigations into the eight critical trials as also the Complaint dated 08.06.2006 (subject matter of SLP 1088/2008) began to be listed and heard together in the Hon'ble Supreme Court. The Order dated 27.04.2009 passed by the Hon'ble Supreme Court reads as follows:

*“...Having heard learned counsel for the parties we direct that complaint dated 08.06.2006 which the applicants herein claim to have sent to the DGP of Gujarat shall be examined by the Special Investigation Team (in short `SIT') constituted pursuant to the orders of this Court. The SIT shall look into the matter and take steps as required in law and give its report to this Court within three months.*

*Call this matter after three months.*

*This case shall be heard along with writ petition (Crl.)*

*No. 109 of 2003 and connected cases.”*

- (x) The Applicant says and submits that by this Order passed in SLP (Crl) 1088/ 2008, the Hon'ble Supreme Court directed the SIT (earlier appointed to further investigate the 8 major trials) to investigate the Complaint dated 08.06.2006 of the Applicant. The Applicant says and submits that on 01.05.2009, the Hon'ble Supreme Court, in view of the supplementary charge sheets filed by the SIT in all the eight trials, vacated the stay on them but directed the SIT to continue further investigation. It further directed that Special Courts be set up and hearing should take place on a day to day basis. The Applicant also submits that it is because of the monitoring of these trials by the Hon'ble Supreme Court that included

provided protection by the Central Paramilitary forces (CISF) to Survivor Witnesses, advocates and human rights defenders, that as many as 117 convictions to life imprisonment have taken place, a historic and unprecedented record. The Applicant craves leave to produce these Orders/Judgements as and when required. The Applicant would like to state that while a significant quality change in investigations and prosecutions came about because of the monitoring process set afoot by the Hon'ble Supreme Court, the SIT was still not conducting investigations impartially and fairly. The Applicant states that when in the Gulberg and Naroda Patiya trials, critical documentary evidence was sought to be suppressed by the SIT, survivor victims filed and obtained critical Orders under Section 173(8) of the CrPC between September, 2009 and April, 2010. The Applicant craves leave to provide these documents as and when required.

- (xi) The Applicant further submits that in the course of investigating the Zakia Jafri Complaint dated 08.06.2006, consistent hurdles and obstructions were put in the way by the government of Gujarat. On 19.01.2010, in an Interim Report submitted by the SIT in SLP (Cri) No. 1088/2008 by Shri AK

Malhotra, the Gujarat Government was directed by the Hon'ble Supreme Court to hand over all the documents, which were requisitioned by the SIT without any delay when, despite a specific ruling of the Hon'ble Supreme Court it had failed to provide documents to the SIT earlier. In its order dated 19.01.2010 the Hon'ble Supreme Court observed that:

*“... In regard to the investigations in SLP(Crl.) No. 1088 of 2008, an interim report has been submitted by the Special Investigating Team (SIT). In the said report it has been reported that having regard to the gravity, complexity and vast spread of the allegations across Gujarat State, a very large number of suspects and witnesses have to be examined. It is also reported that a large number of vital documents are still awaited from the Government of Gujarat. The Committee has prayed for grant of 5 months' further time for completion of the enquiry and submission of its final report in the matter. The Committee has also sought direction to the Government of Gujarat to hand over all the vital documents requisitioned by it from them.*

*Having perused the correspondence between the SIT and the State Government, filed as annexures with the*

*report, we direct the Government of Gujarat to hand over all the documents, which have been requisitioned by the SIT without any further delay. The SIT would try to complete the enquiry in the matter expeditiously and submit its report by 30.04.2010.”*

- (xii) As mentioned above, earlier, in the matter of the further investigations being conducted by the SIT and supplementary charge sheets being filed, critical documentary material was absent from the record leading to Survivors including witnesses to the Gulberg society and Naroda Patiya, Odh and Sardarpura massacres to file applications for further investigation. On the issue of the sensitive matter of the investigation into the complaint filed by the Applicant, it was found that some of the powerfully placed accused were *actually part of the officially constituted SIT*. Hence, when representations were made to the Hon'ble Supreme Court in this regard, the Court, on 06.04.2010 directed that two senior officers of the Gujarat government, i.e. Shri Shivanand Jha and Smt Geeta Johri not to associate themselves with the SIT. That applicant would shortly compile this Order with others and attach it as annexure 'B' Colly by way of a separate affidavit. Shri Jha is one of the accused in the Complaint dated



08.06.2006 and Smt Geeta Johri had been indicted for her role in the investigation into the extra judicial killing of Sohrabuddin and his wife, Kauser Bano through a recently passed judgement of the Supreme Court (January 2010) in the proceedings of Sessions Court No.235/2009, Sessions Court No. 236/2009, Sessions Court No 241/2009. Sessions Court No 242/2009, Sessions Court No 243/2009, Sessions Court No 245/2009, Sessions Court No 246/2009, Sessions Court No 270/2009 vide order dtd. 29.08.2012. At this juncture, special public prosecutor and assistant prosecutors RK Shah and Naina Shah had resigned their positions from the Gulberg case stating that they were being misled by the SIT and also that the behavior of the Judge was questionable. The Hon'ble Supreme Court had also therefore stayed all the trials. A month later, i.e. on 06.05.2010, the stay on the trials had been lifted but the stay on judgements in all trials was maintained. In late September 2010, the State of Gujarat in SLP 1088/2008 (Zakia Jafri and Citizens for Justice and Peace v/s state of Gujarat) took sudden and inexplicable objection to the continuance of Shri Prashant Bhushan after 19 months. Through an Order passed on 26.10.2010, the Hon'ble Supreme

Court passed the following Order that also included further investigation into the criminal culpability of then joint commissioner of police, MK Tandon and then DCP Zone IV, PB Gondia. The Order stated that:

*“... At the outset, Shri Prashant Bhushan has expressed unwillingness to continue as the Amicus Curiae and requested that he may be relieved from the case. We accede to the request and appoint Shri Rohinton Fali Nariman as an Amicus Curiae to assist the Court in this case. Shri Bhushan states that he will return the papers of the case received from the office in a sealed cover. On receipt of the record, the office shall forward the same to Shri Nariman. Report dated 20.10.2010 on further investigation against Shri M.K. Tandan Etc. has been filed by the Chairman and one of the Members of the Special Investigation Team. According to the report, the investigation is likely to be concluded within a fortnight. The report is taken on record.*

(xiii) On 23.11.2010 the Hon;ble Supreme Court directed that:

*“... Since Shri Rohinton Fali Nariman, Senior Advocate has expressed his inability to assist the Court in this case, we request Shri Raju Ramachandran, Senior Advocate and Shri Gaurav Agarwal, Advocate, to assist the Court in this case as Amicus Curiae. All*

*the papers received back from Shri Prashant Bhushan, learned counsel, in sealed cover shall be forwarded to Shri Gaurav Agarwal.”*

(xiv) That an Interim report (Note) was submitted by Amicus Curiae- Raju Ramchandran which was also given to the SIT. Order of 20.01.2011 recorded that :

*“... A note has been submitted by Shri Raju Ramchandran, learned amicus curiae, for our perusal. A copy of the said note has also been supplied to the Chairman, SIT, who is present in Court today.”*

(xv) Based on the Interim Note submitted by Amicus Curiae, the Hon'ble Supreme Court, on 15.03.2011, directed the SIT Chairman to examine each of the observations made by the Amicus Curiae in his Interim Report (Note) and if needed carry out further investigation and Report to be submitted by 25.04.2011. Order of 15.03.2011 stated that

*“...A copy of the note submitted by the learned amicus curiae has already been supplied to the Chairman, Special Investigation Team (SIT). Let the Chairman, SIT, look into the observations made by the learned amicus curiae against each of the findings given by the SIT on the allegations made in the complaint and submit his report thereon. If considered necessary, it will be open to the SIT to carry out*

*further investigations in light of the observations made in the said note. The report shall be submitted by 25.04.2011.*

9. The Applicant says and submits that during the period i.e. between the submission of the Interim Report/Note of the Amicus Curiae and the further Investigation ordered by the Hon'ble Supreme Court, another development took place. Suddenly and inexplicably, IPS Officer Rahul Sharma, a serving policeman who was one of the witnesses who had interacted with the Amicus was served with a show cause notice on why he should not be charge sheeted (28.01.2011) and finally charge sheeted on 13.08.2011, for committing the error of behaving lawfully and sharing certain call data analyses with the SC-appointed Amicus. The government of Gujarat headed by Accused Number 1 in the Complaint dated 08.06.2006, Narendra Modi, who has been both Chief Minister and Home Minister since 2001, specifically targeting those officers who stood up for the rule of law and the Indian Constitution.
10. From March, 2011 onwards when the further investigation into the Complaint began, the SIT began to display aggressive reluctance, bias and partisan behavior especially with regard to the recording of evidence of serving IPS officer

Sanjiv Bhatt leading him to directly approach the Hon'ble Supreme Court with an affidavit dated 14.04.2011.

xvi) The Applicant says and submits that with all this background, on 05.05.2011, the following Order was passed by the Hon'ble Supreme Court, taking reports on further investigation as well as statements of the witnesses on record:

*“....Pursuant to our order dated 15.03.2011, the Chairman, Special Investigation Team (SIT) has filed report on the further investigations carried out by his team along with his remarks thereon. Statements of witnesses as also the documents have been placed on record in separate volumes. Let a copy of all these documents along with the report of the Chairman be supplied to Shri Raju Ramachandran, the learned Amicus Curiae.*

*“...The learned Amicus Curiae shall examine the report; analyze and have his own independent assessment of the statements of the witnesses recorded by the SIT and submit his comments thereon. It will be open to the learned Amicus Curiae*

*to interact with any of the witnesses, who have been examined by the SIT, including the police officers, as he may deem fit.*

*“...If the learned Amicus Curiae forms an opinion that on the basis of the material on record, any offence is made out against any person, he shall mention the same in his report.”*

11. The Applicant says and submits that it is very clear that the Hon'ble Supreme Court has taken a materially different view of the matter, with the due seriousness it deserved. When the SIT appeared to clearly falter, the Hon'ble Supreme Court it asked the Amicus Curaie appointed by it to give his own independent assessment. As is clear from the a reading of the Amicus Reports dated 20.01.2011 and 25.11.2011, a materially different view of the evidence available was taken by the Amicus Curaie who had recommended the prosecution of A-1 Narendra Modi under sections of the criminal law (Sections 166 and 153a and 153b of the Indian Penal Code). That applicant would shortly compile and attach as **annexure 'B' Colly** by way of a separate affidavit a Complete set of Annexures filed before the learned Magistrate including the Interim and Final Reports of the Amicus Curaie, Raju Ramachandran.

xvii) The Applicant says and submits that through its final Order dated 12.09.2011, In his report to the Supreme Court dated 12.05.2010, IO AK Malhotra states:-

*“Though, this inquiry had the mandate of the Hon’ble Supreme Court of India, several difficulties/constraints were experienced in the enquiry, some of which are given below.*

*(1) The police wireless messages for the year 2002 were available by the Govt. of Gujarat as the same had been reportedly destroyed.*

*(2) No record/documentation/minutes of the crucial law & order meetings held by Govt. during the riots had been kept.*

*(3) Some of the public servants, who had retired long back, claimed loss of memory as they did not want to get involved in any controversy.*

*(4) The other category of public servants, who have recently retired*

*and provided with good post-retirement assignments, felt obliged to the State government and the present Chief Minister and therefore their testimony lacks credibility.*

*(5) The serving public servants, who have been empanelled for the higher posts, did not want to come into conflict with the politicians in power and incurred their wrath which affected their frank response.*

*(6) Those public servants considered upright by the complainants and cited as a witness in their support, confirmed various controversial incidents/events, yet they did not attribute the same to their transfers/postings to insignificant posts.*

*(7) In view of the aforesaid difficulties, mostly eyewitness account of the witnesses has been recorded and*



*taken into consideration during  
the inquiry. “*

12. The Applicant says and submits that pursuant to the directions of the Hon'ble Supreme Court, Shri A.K. Malhotra, former DIG (CBI) and one of the members of the Special Investigation Team, examined a number of witnesses and looked into large number of documents made available to him and a report dated 12.05.2010 was prepared by Shri A.K. Malhotra. It appears that the chairman of the SIT, thereafter, analysed and commented on the report which was submitted before this Hon'ble Court in SLP (Crl) No. 1088 of 2008 (subsequently numbered as Criminal Appeal No. 1765 of 2011) Another report of further investigation under section 173(8) Cr.P.C. dated 15.03.2011 was prepared by the SIT and the same was also submitted to this Hon'ble Court. Another Report of Further Investigation was submitted by Chairman SIT on 24.04.2011. The Learned Amicus Curiae submitted his report dated 25.07.2011. In his report the Amicus Curiae gave an opinion that offences are made out against the some of the accused named in the complaint filed by the applicant.

1. On 12.09.2011, the Hon'ble Supreme Court disposed of Criminal Appeal No. 1765 of 2011 (Arising out of SLP (Crl) No.

1088 of 2008 and vide judgement and order reported in (2011) 12 SCC 302 directed as follows:

*“...Para 3. The appellant lost her husband, a former Member of Parliament, in the calamitous events which took place on 28.02.2002, in the surroundings of Gulberg Society, Ahmedabad, where the appellant resided along with her family. An FIR relating to the incident was registered by the Police with Meghaninagar Police Station, Ahmedabad. After investigation, on the filing of the charge-sheet, the case was committed to the Court of Sessions, Ahmedabad. It was the case of the appellant that subsequently she received certain material which showed that the incidents which took place during the period between 27.02.2002 and 10.05.2002, were aided, abetted and conspired by some responsible persons in power, in connivance with the State Administration, including the Police. The appellant thus sought registration of another FIR against certain persons named in the complaint, dated 08.06.2006, for offences punishable under Section 302 read with Section 120B as also under Section 193 read with Sections 114, 186 & 153A,*

*186, 187 of the Indian Penal Code, 1860. However, as the police declined to take cognizance of her complaint, the appellant filed the aforementioned petition before the High Court. Having failed to convince the High Court that it was a fit case for investigation by an independent agency, the appellant-complainant, supported by an NGO, is before us in this appeal.*

*“...**Para 4.** On 03.03.2008 while issuing notice to the Union of India and State of Gujarat, an Amicus Curiae was appointed to assist the Court. Vide order dated 27.04.2009, the Special Investigation Team (for short "the SIT"), which had been constituted vide order dated 26.03.2008 to carry out further investigations in nine cases, subject matter of Writ Petition No. 109 of 2003, was directed 'to look into', the complaint submitted by the appellant on 08.06.2006 to the Director General of Police, Gujarat.*

*Pursuant to the said direction Shri A.K. Malhotra, former D.I.G. (C.B.I.) and one of the members of the SIT, examined a number of witnesses and looked into a large number of documents made available to him. A report, dated 12.05.2010, was submitted to this Court by the Chairman, SIT,*

*concurring with the findings of Shri A.K. Malhotra.*

*“..Para 5. In his report dated 12.05.2010, Shri A.K. Malhotra, inter alia recommended further investigation under Section 173(8) of the Code against certain Police officials and a Minister in the State Cabinet. Consequently, further investigation was conducted and a report dated 17.11.2010, was submitted by the SIT. On 23.11.2010, Shri Raju Ramachandran, Senior Advocate and Shri Gaurav Agarwal, Advocate, replaced the previous Amicus Curiae, who had expressed his unwillingness to continue.*

*“...Para 6. On 20.01.2011, a preliminary note was submitted by Shri Raju Ramachandran, the learned Amicus Curiae; whereon, vide order dated 15.03.2011, the SIT was directed to submit its report, and if necessary carry out further investigation in light of the observations made in the said note. The SIT conducted further investigation under Section 173(8) of the Code in Meghaninagar Police Station Crime Report No.67 of 2002--Gulberg Society case, and submitted a report on 24.04.2011. After examining the said*

*report, on 05.05.2011, the following order was passed:*

*"Pursuant to our order dated 15.03.2011, the Chairman, Special Investigation Team (SIT) has filed report on the further investigations carried out by his team along with his remarks thereon.*

*Statements of witnesses as also the documents have been placed on record in separate volumes.*

*Let a copy of all these documents along with the report of the Chairman be supplied to Shri Raju Ramachandran, the learned Amicus Curiae.*

*The learned Amicus Curiae shall examine the report; analyze and have his own independent assessment of the statements of the witnesses recorded by the SIT and submit his comments thereon. It will be open to the learned Amicus Curiae to interact with any of the witnesses, who have been examined by the SIT, including the police officers, as he may deem fit.*

*If the learned Amicus Curiae forms an opinion that on the basis of the material on record, any offence is made out against any person, he shall mention the same in his report."*

*"....Para 7. The learned Amicus Curiae has now submitted his final report dated 25.07.2011. In*

*light of the above conspectus and the report of the learned Amicus Curiae, the question for determination is the future course of action in the matter.*

*“Para 8.... We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by the SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report under Section 173 (2) of the Code to the Court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in M.C. Mehta (Taj Corridor Scam) Vs. Union of India & Ors.1, in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are (2007) 1 SCC 110 to be determined at the trial on the filing of the charge-sheet in the competent Court, according to the ordinary procedure prescribed by law.*

*“Para 9... Accordingly, we direct the Chairman, SIT to forward a final report, along with the entire*

*material collected by the SIT, to the Court which had taken cognizance of Crime Report No.67 of 2002, as required under Section 173(2) of the Code. Before submission of its report, it will be open to the SIT to obtain from the Amicus Curiae copies of his reports submitted to this Court. The said Court will deal with the matter in accordance with law relating to the trial of the accused, named in the report/charge-sheet, including matters falling within the ambit and scope of Section 173(8) of the Code. However, at this juncture, we deem it necessary to emphasise that if for any stated reason the SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or reasonable grounds for proceeding against any person named in the complaint, dated 08.06.2006, before taking a final decision on such 'closure' report, the Court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report strictly in accordance with law as enunciated by this Court in Bhagwant Singh Vs. Commissioner of Police & Anr.2. For the sake (1985) 2 SCC 537 of ready reference, we may note*

*that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) of the Code, decides not to take cognizance of the offence and to drop the proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.*

*“... Para 10....10.Having so directed, the next question is whether this Court should continue to monitor the case any further. The legal position on the point is made clear by this Court in Union of India & Ors. Vs. Sushil Kumar Modi & Ors.<sup>3</sup>, wherein, relying on the decision in Vineet Narain & Ors. Vs. Union of India & Anr.<sup>4</sup>, a Bench of three learned Judges had observed thus : "...that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which*



*the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive."*

13. The Applicant says and submits that thereafter, between September 2011- 08.02.2012 when the SIT filed its report in clear defiance of the Order of the Hon'ble Supreme Court cited above. The Applicant says and submits that the conduct of the SIT was questionable and malafide at the outset when it failed to follow the letter and spirit of the Order of the Hon'ble Supreme Court. The Applicant says and submits that on 29.09.2011, 16.11.2011 and again on 16.01.2011 the Complainant and Teesta Setalvad from the Citizens for Justice and Peace wrote persistently to Chairman, SIT RK Raghavan requesting a copy of the Investigation Records, expressing concern at media reports that SIT was going to file a Closure report etc etc. That applicant would shortly compile the detailed correspondence with a Complete set of Annexures filed before the learned Magistrate and attach the same as Annexure 'D' Colly by way of a separate affidavit.

14. The Applicant says and submits that despite these conscientious attempts by the complainant applicant she received a cold shoulder by the SIT and was shocked on 08.02.2012 when in the late evening the SIT filed its 541 page closure report without the Investigation Record/ Papers in clear violation and contempt of the of the Orders of the Hon'ble Supreme Court.

On the next morning itself, i.e. on 09.02.2012 the Complainant filed an application requesting that a copy of the final report as also pointing out the malafide intentions of the SIT. Between then and 15.03.2012, detailed arguments orally and in writing were made before the learned Magistrate. Details of the proceedings before the learned Magistrate including a detailed List of Dates (LOD) would be annexed shortly along with an affidavit with a Complete set of Annexures as Annexure "D" colly.

Finally on 10.04.2012, the Magistrate directed that the Complainant be given copies of the Investigation Papers and on 07.05.2012. This voluminous record, 63 box files running into 23,000 pages was thereafter handed over. The Applicant says and submits that a second round of legal battle ensued thereafter as on a perusal, the Applicant and her legal team found that key aspects of the Investigation Record, especially

the previous Investigation Reports submitted to the Hon'ble Supreme Court were not being submitted by the SIT.

15. Detailed applications and affidavits were filed by the Complainant in this regard from May-June end 2012 and finally, the learned Magistrate by his Order dated 21.07.2012, rejected her application leading her to file yet another Special Leave Petition (SLP [Crl] 8989/2012) before the Hon'ble Supreme Court seeking a clarification of the Hon'ble Supreme Court's original Order dated 12.09.2011. Through this period, the applicant humbly states the SIT maintained an attitude of hostility with the Complainant leading her to distinctly be concerned about its objective and non-partisan functioning.
16. The Applicant says and submits that the Special Investigation Team (SIT) was appointed by this Hon'ble Court in the batch of petitions filed by the National Human Rights Commission and others in Writ Petition (Crl) no.109 of 2003. The SIT was specifically created *to substitute* the Gujarat Police and it was carefully constituted by the Hon'ble Supreme Court after having been satisfied that the Gujarat Police had miserably failed in their duty to conduct an impartial investigation into the cases arising out of the riots. In fact, over a period of time, as can be seen from the records, on the application filed by persons supporting the victims (being Crl.M.P.No.19816/2009 in Writ Petition (crl) No.37-52 of 2002), two officers of the

Gujarat Police who were part of the SIT were removed from the SIT and the Chairman of the SIT had assured this Hon'ble Court that the remaining officer of the Gujarat Police would not be associated with the investigation. It is hence evident that the Hon'ble Supreme Court has been concerned about the constitution of the SIT and has ensured that SIT remains non-partisan and un-influenced by the Gujarat Police.

17. Therefore, the Applicant found it shocking, and pointed out in the SLP 8989/2012, that despite this close monitoring by the Hon'ble Supreme Court and clear directions, the subsequent investigation into her complaint and the final closure report has been filed through an officer of the Gujarat Police who has chosen to disregard the earlier reports of senior police officers who had submitted investigation reports before the Hon'ble Supreme Court. This fact is evident from the submissions of the prosecutor as recorded in the impugned order:

*“Moreover, the Hon'ble Supreme Court has entrusted the inquiry of this offence to Shri A. K. Malhotra. Shri A. K. Malhotra is a retired police officer and a member of the SIT. Therefore he is not a police officer as defined under the Criminal Procedure Code. Malhotra has tendered the report through SIT to the Hon'ble Supreme Court*

*in a sealed cover. This report has not been obtained by the investigating officer Shri Himanshu Shukla during the special investigation and therefore this report is not produced in the court. The inquiry of the complaint of Mrs. Zakia Nasim is entrusted to Shri A. K. Malhotra which has no place in the definition in the Criminal Procedure Code. He has no powers to investigate. The signatures of the witnesses have been obtained in the statements during the inquiry. Therefore these statements cannot be considered to be statements u/s 161 Cr.P.C. It is argued that the complainant is not entitled to the statements recorded during the inquiry by Shri Malhotra as prayed in the application. The report along with the entire material as per sec. 173(2) Cr.P.C. pertaining to the offence registered as CR No I-67/2002, has been produced as per the direction of the Hon'ble Supreme Court. At that time the I.O. Himanshu Shukla has not found it necessary to obtain the report of A. K. Malhotra produced in the Hon'ble Supreme Court. Under these circumstances the applicant is not entitled to obtain the report produced by A. K. Malhotra.*

*The report produced before the Hon'ble Supreme Court is a privileged communication between the Special Investigation Team and the Supreme Court and the said report is produced under 'seal cover' as per the clear directions of the Hon'ble Supreme Court. Thus, if this court directs to produce this report or give it to the complainant then it would be contrary to the order of the Hon'ble Supreme Court. Thus, it should be understood that the aforesaid report of A. K. Malhotra is for a limited purpose."*

18. The Applicant says and submits that it was, therefore, clearly evident that the SIT had by then clearly allowed the Gujarat police to take over the investigation and has also allowed the Gujarat police to disregard the earlier investigation conducted by the SIT. All the affidavits and applications are being signed by one Shri Himanshu Shukla who has been shown as the Investigating officer of this case. The Applicant states that it was submitted by an officer of the Gujarat police Crime Branch, Shri Shukla and accepted by the learned Metropolitan Magistrate that Shri Shukla has not taken into account the investigation conducted by Shri. A.K.Malhotra, a member of the SIT while submitting his final report of closure on the ground that the present investigation is limited to the offence

registered as Crime Report No.67/2002. The Applicant says and submits that this deliberate confusion despite the directions of this Hon'ble Court, after having monitored the case for over four years, were extremely clear. To repeat, the Hon'ble Supreme Court had directed:

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

19. The Applicant says and submits that however, the SIT, for reasons best known to it has violated the order by bringing an officer of the Gujarat Police to conduct further proceedings and who in turn has disregarded the investigation by the earlier member of the SIT and denied handing over copies of those reports on the ground that they were not

considered/requisitioned by him before he filed the closure report and also on the ground that the reports that the applicant had sought for were directed by this Hon'ble Court to be kept in a sealed cover. It is submitted that during the pendency of the proceedings before the Hon'ble Supreme Court, all the reports, including the report of the Amicus Curiae were kept in a sealed cover with only the Hon'ble Supreme Court and the learned Amicus having access to it. Some of these reports have been made available to the Applicant after the filing of the Closure report under Section 173(8) of the CrPC. It was not clear to the Applicant and was pointed out by her in SLP (Crl) 8989/2012, as to how Shri. Shukla, who seems to have access to all "privileged" reports, has selectively chosen to file some of the reports and not all of them before the learned Metropolitan Magistrate. It was further submitted by the Applicant that the Applicant in order to file her objections to the closure report, would need to review the entire material collected by the SIT and the conclusions drawn therein and compare each of those statements and conclusions to the final conclusion that has been drawn by Shri.Shukla. Being denied the same was hindering her pursuit in filing a proper and comprehensive objection to the closure report.

20. The Applicant further pointed out in SLP (Crl) Nos. 8989/2012 that the crimes enumerated in the Complaint filed by the



Application dated 8.6.2006 relate to a systematic and wider conspiracy executed at the highest level and hence statements and records involving accused and investigated by the SIT were applied for by the Complainant in her detailed affidavit dated 28.05.2012 and that these were denied by the SIT. The Applicant had pointed out that the order of the learned Metropolitan Magistrate would result in nullifying all the efforts made by this Hon'ble Court, finally culminating in the order dated 12.09.2011.

21. The Applicant says and submits that the documents which were critical but were missing from the documents provided by the SIT were:

- i) Preliminary Inquiry report of A.K. Malhotra dated 12.05.2010 submitted to this Hon'ble Court in SLP (Crl) No. 1088 of 2008.
- ii) Analysis/Comments by the Chairman SIT dated 14.05.2010 filed before this Hon'ble Court.
- iii) Reports of further investigation under section 173(8) of Cr.P.C. conducted by the SIT dated 17.11.2010, 15.03.2011 and 24.04.2011.
- iv) Besides as pointed out in detail at Page 135 of the SLP over 300 Pages

of Previous Statements of Accused referred to in the SIT statements were not provided to the Complainant Applicant by the SIT

22. The Applicant strongly averred that in view of the directions given by this Hon'ble Supreme Court on 12.09.2011, the report of A.K. Malhotra which was under Section 173(2) Cr.P.C. should have been given to the applicant in order to find out what has been done in the subsequent investigation culminating in supplementary charge-sheets under Section 173(8) Cr.P.C. She further submitted that In the absence of the investigation report filed by A.K. Malhotra, it would have been virtually impossible for the applicant to file her objection to the closure report filed by the SIT because in the closure report, the Gujarat Police ostensibly authorised by the SIT has mainly relied upon the investigation subsequent to A.K. Malhotra's report and has, therefore, tried to conceal it from the applicant as well as from the Court of the Metropolitan Magistrate as to what was said by A.K. Malhotra in his investigation report.
23. The Applicant says and submits that by separate Orders passed between December 2012 and February 2013. The Hon'ble Supreme Court held that:

(i) *“On 03.12.2012...We have heard Ms. Kamini Jaiswal, learned counsel appearing for the applicant, for some time. Before we hear the matter further, we direct Shri R.K. Raghavan, Chairman of the Special Investigation Team (SIT), to peruse the special leave petition and apprise us as to whether or not the documents, as specified on page 135 of the special leave petition, and stated to be forming part of the Closure Report, have been supplied to the complainant or not.”*

*The Applicant says and submits that following these developments and subsequent hearings on 10.12.2012, these 300 Pages of Statements were provided by the SIT to the Applicant.*

(ii) *Thereafter on 07.02.2013 the Hon'ble Supreme Court passed the following Order:-*

*“Pursuant to the above direction, the SIT submitted a final report to the Court concerned. Before the said Court, the appellant/complainant made an application for supply of all the materials filed before the said Court. According to the appellant, pursuant to the directions of the Magistrate though she was supplied certain materials, still the SIT has not provided all the*

*required documents. Not satisfied with the order of the learned Magistrate, the appellant has filed this appeal.*

*“ We have heard learned counsel appearing for the appellant, State as well as the learned Amicus Curiae. On going into the earlier direction of this Court as well as the impugned order passed by the Magistrate, we issue the following directions. The appellant is entitled to have copies of the report dated 12.05.2010 in two volumes, excluding the Chairman’s comments forwarded to this Court. The appellant is also entitled to have copies of reports dated 17.11.2010 and 24.04.2011 filed under Section 173(8) of the Criminal Procedure Code, 1973.*

*“...Since the statements recorded contain signature, it is clarified that if the signed statements are supplied, the same shall be treated as statements made under Section 161 of the Code of Criminal Procedure, 1973.*

*It is further clarified that the statements recorded in the inquiry shall only be used in the proceedings relating to the complaint dated 08.06.2006 filed by the appellant and shall not be used for any other purpose on in connection with any other case. We*

*also clarify that the present order is confined to the facts and circumstances of the complaint dated 8<sup>th</sup> June, 2006 and shall not be treated as a precedent, in any other case.*

*The appellant is granted eight weeks time for filing the protest petition from the date she gets the required copies as mentioned above. In view of the above conclusion and direction, the impugned orders of the learned Magistrate dated 16.07.2012 and 27.11.2012 are set aside to the extent mentioned above. The appeal is disposed of in the above terms.”*

24. The Applicant says and submits that it is clear from the Orders passed in first SLP (Crl) 1088/2008 and the Clarificatory Orders Passed in SLP (Crl) 8989/2012 that:

a) That the signed statements recorded as first part of the Inquiry contained *signature, but as per the Final Order of the Supreme Court in SLP 8989/2012 they shall be treated as 161 statements under the CRPC;*

b) That the Complaint dated 08.06.2006 is a distinct, separate and wider complaint in

expense relating to Conspiracy and abetment of crimes; the Gulberg Trial being heard currently in the Special Sessions Court, is as different trial relating to a different set of offences. The Application further adds that the deliberate obfuscation by the SIT and now also followed by the Magistrate in the Impugned Order is in direct violation of the Orders of the Hon'ble Supreme Court in this case;

c) That the entire Investigation Report including the one supplied before the Supreme Court is now, after the Orders of further Investigation were passed on 15.03.2011, is (a) material under Section 173(8) of the CrPC and should have been treated as such;

25. The Applicant says and submits that despite this clear position in law and fact first the SIT and thereafter the Learned Magistrate have erred substantively on the issues mentioned above.

### **The SIT Investigation**

A detailed analysis of the SIT reports as also the point by point failure of the SIT Investigation was also submitted to the learned Magistrate and will be placed on record by way of a separate affidavit shortly as annexure "F" Colly. The Applicant says and submits that two reports have been submitted by the SIT, dated 12.05.2010 and 08.02.2012. It is humbly submitted that a brief look at the conclusions drawn by SIT on the substantive issues and allegations laid out in the Complaint dated 08.06.2006 as first information is necessary. Some of the important issues in the SIT Investigation are analysed below:

**26. SIT Investigation Into Allegations Contained in the Complaint sated 08.06.2006 and Conclusions thereof.**

**I. Excerpts from the SIT Report (Shri AK Malhotra) dated 12.05.2010 giving a Gist of the Complaint:-**

"...1) The matter relates to post-Godhra riots which were State sponsored and orchestrated and unprecedented in their magnitude, spread, gruesomeness and brutality of the violence inflicted on a minority community. Besides the

spread and permeation of the violence throughout the State, as an indicator of the State's orchestration of complicity in the riots, there are other such pointers as well. For one thing, majority of the complaints were lodged by the police themselves which gave them the leverage to choose the accused and thereby hide and exculpate the real perpetrators of the violence, who did so pursuant to the protection given and licence allowed by the police themselves, obviously on instructions from their superiors, i.e. the political and executive authorities of the State.

“(2) In regard to episodes where there were numerous private complaints lodged by the victim survivors, the police authorities clubbed together such complaints so as to reduce them to one or two complaints, thereby eliminating from reckoning the real perpetrators of the violence and also truncating the magnitude, intensity and horrendous character of the killings of the minority community.

“(3) FIRs were thus registered, charge-sheets filed and cases committed to Sessions for trial



but this was all for record. In substance, however, these criminal prosecutions were a charade calculated to shield and exculpate the Chief Minister and certain other Cabinet Ministers and high-ranking Police officers and bureaucrats through whose command the riots were reinforced and fanned. ***(Internal Pages 3-4 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)***

27. The Applicant says and submits that the Complaint dated 08.06.2006 and subsequent investigations as also the Protest Petition dated 15.04.2013 dealt at length on the questionable decision of A-1 Modi to not only hand over bodies of the Godhra victims to a non-official person but to also get them transported to Ahmedabad and allow frenzied funeral processions to further fan the flames of communal violence. On the issue of handing over of the bodies to A-21 Jaideep Patel general secretary of the Vishwa Hindu Parishad, the SIT in both its report dated 12.05.2010 and 08.02.2012 reluctant and evasive about pinning responsibility for handing over the bodies of the Godhra Victims to a non-governmental person

that too from an organization like the VHP known for its poor record on communal harmony.

28. The Applicant says and submits that while it is clear as mentioned in Paragraph 24 above that the SIT was clear about the scope, expanse and ambit of its investigation laid out in the Complaint dated 08.06.2006, that of a widespread conspiracy in several districts of Gujarat post the tragedy at Godhra, to allow mobs to go unchecked, to kill, rape, maim and kill, still the SIT deliberately and willfully evaded drawing any link between the vital chains of this vast conspiracy that was discernible and clearly established from the SIT's own Investigation Record. Especially, the Applicant states that the SIT's partisan culpability is evident in the manner in which the SIT has evaded examination of the crucial phone calls made between A-1 Modi and A-21 Jaideep Patel, *to whom bodies of the Godhra victims are handed over, when phone call records were available with the SIT.*
29. The Applicant says and submits that an integral part of the Conspiracy hatched by A-1 Modi was conspiring with the Vishwa Hindu Parishad to plot and allow reprisal killings all over Gujarat. The first phone call that Modi makes after District Magistrate Ravi's fax reaches him at 9 a.m. on 27.02.2002, is, not to appeal for peace and calm, but phone secretary VHP,

Gujarat, Dr Jaideep Patel and direct him to Godhra. The Conspiracy between Modi and the VHP is hatched and unfurled to cynically ensure state-wide reprisal killings. Phone call records show these phone calls between PA to Modi AP Patel and Jaideep Patel immediately after the chief minister receives news of the Godhra tragedy. Phone call records made available by Rahul Sharma (IPS, Gujarat) also show that Powerful Accused were in touch with the chief minister's office (CMO) and the landline numbers of the chief minister. Details of the Lacunae in the SIT Investigation is contained is likely to be placed on record by way of an affidavit as Annexure 'F' Colly along with the Affidavit filed with a Complete set of Annexures and also in Written Submissions "B" (Factual) Related to the Complaint, Protest Petition and Evidence contained in the SIT Investigation Record.

30. **Conspiracy & Role Played by Chief Conspirators & Accused as Delineated in the SIT Report**

The Applicant says and submits that in the Malhotra Report dated 12.05.2010 available (@ Page 4 of the Compilation of Reports given to the Magistrate's Court and Complainant in Pursuance of the SC Directions in Order dated 07.02.2013 in SLP 8989/2012, the SIT lays down the scope and expanse of the applicant's Complaint. Thus it is clearly evident that the SIT, at least as far its positioning before the Hon'ble Supreme

Court is concerned does not obfuscate on its mandate and what was supposed to have been the scope of its inquiry and investigation which was at all times to investigate into a wider conspiracy. It is only after the matter is remanded back to a lower court in Gujarat that the SIT inexplicably changes its stance and not only questions whether serious information constituting prima facie an offence under Section 120A and 120B had indeed ever been made by the Applicant but worse, questions and abuses the Applicant's motives.

## **II. Conspiracy in SIT Reports**

".....(4)\_\_\_\_\_Applicant\_\_\_\_\_No.1\_\_\_\_\_ (Mrs. JakiaNasimAhesanJafri) has lost her husband who happened to be ex-Member of Parliament Shri AhsanJafri in the 'conspiracy offence' that occurred at least between 27.02.2002 and September, 2002, specifically in February, 2002.

The husband of Applicant No.1 was brutally killed along with at least 68 others on 28.02.2002, by miscreants by surrounding the Gulberg Society where Applicant No.1 lived along with her family at that time. The incident was one of the three dozen mass carnage cases that occurred over 19 districts of Gujarat. In the space of five days, 2500 lives were lost, 300 women

were victims of brute sexual violence, more than 18,000 houses burnt down and broken and property and businesses worth Rs.4,000 crores destroyed. Over 270 Masjids and Dargahs, associated with the worship and culture of the minority community also fell victim in this genocidal carnage. The Police registered a FIR in Cr. No. I. 67 of 2002 with Meghaninagar Police Station, Ahmedabad related to the specific incident where 70 of the 2500 persons were slaughtered at Gulberg Society but there is no composite FIR relating to the vast extent and serious crimes committed by State functionaries in Gujarat. Applicant No.1 is not the complainant of the aforesaid FIR (Gulberg Society case). ( @ Page 9 of the Compilation of Reports Supplied to the SC and to this Court after SLP 8989/2012 Order of 07.02.2013)

**(Page 4 of SIT, Malhotra Report to the Hon'ble Supreme Court, 12.05.2010 & In compilation given to the Complainant after the Clarificatory Order of the SC on 7.2.2013)**

## **II. A POLICE INACTION AS PART OF CONSPIRACY**

**"..ANNEXURE NO. XXV:**

“...(xxv) Police inaction facilitated riots as part of conspiracy, as detailed in paras 13, 14, 61 and 62 of the complaint dated 08.06.2006. In Para 13 of the complaint, some of the glaring examples of State sponsored events are given. In para 61 of the complaint, it is alleged that over two dozen survivors of the Naroda Patiya massacre case have confirmed that they made over a hundred distress calls to Shri P.C. Pande, then Commissioner of Police but that his mobile was permanently switched off. There was a similar callous response from most of the DCPs and Addl. CPs (of Ahmedabad City) as also by the Commissioner of Police, Baroda, Shri Tuteja. In para 60 of the complaint, telephone calls made from Gulberg Society to Shri P. C. Pande and the DGP are alleged but no police action despite presence of three mobile vans near the spot. It is also alleged in Para 61 of the complaint that police was aiding mobs who were attacking Muslims and that on 28th February, of the 40 persons shot dead by police in Ahmedabad City, 36 were Muslims. In Para 62 of the complaint, it is alleged that police acted as mute spectators to

acts of lawlessness, offences were not investigated properly, real culprits were not arrested and no timely preventive action was taken etc.

**(Page 117 of SIT, Malhotra Report to the Hon'ble Supreme Court, 12.05.2010 & In compilation given to the Complainant after the Clarificatory Order of the SC on 07.02.2013)**

**II. B. No Minutes as Part of Conspiracy**

“.....(xxvi) No minutes of the meetings held by the CM and senior bureaucrats were maintained and instructions were mostly conveyed through phone which served the twin objective of (i) field officers carrying out the conspiracy of pogrom against the minorities and (2) avoidance of the subsequent monitoring of actions by jurisdictional officers.

**(Page 127 of SIT, Malhotra Report to the Hon'ble Supreme Court, 12.05.2010 & in compilation given to the Complainant after the Clarificatory Order of the SC on 07.02.2013)**

**II. C. SIT HAD EVEN CONFRONTED A-1 ON**

**CONSPIRACY**

“.....7 ROLE PLAYED BY THE ACCUSED PERSONS,  
THEIR EXPLANATION AND OUR COMMENTS:

**“ A-I: Shri Narendra Modi, Chief Minister,**

**Gujarat State:-**

It has been alleged that Shri Narendra Modi then and presently Chief Minister, Gujarat State, the constitutionally elected head of the State and responsible for the fundamental rights, right to life and property of all citizens, regardless of caste, community and gender, alleged to be the architect of a criminal conspiracy to subvert constitutional governance and the rule of law, unlawful and illegal practices during the mass carnage and thereafter, protecting the accused, who played direct as well as indirect role and abetted the commission of the crime.

“.....On being confronted with the allegation leveled by Smt. Zakia Nasim that he being a Chief Minister and constitutionally elected head of the State unleashed, unlawful and illegal practices during the mass carnage and thereafter, protected the accused who played direct as well



indirect role and abetted the Commission of Crime, Shri Narendra Modi stated that the allegations were general in nature, vague, baseless. As per Shri Modi, he had been performing his functions with utmost respect to the Constitution and Rule of Law and that the meeting, to take stock of the situation and review the Law and Order situation on 27.02.2002, with high officials of the State was his constitutional duty. For doing his constitutional duty to hold an emergency review meeting, the complainants are leveling wild allegations of criminal conspiracy and subversion of rule of law. Shri Modi further stated that he had been lawfully functioning as a CM and carried out his responsibilities for the safety, security and development of the people of Gujarat. He also stated that he had already clarified his stand on the said meeting that the Law & Order be maintained at all costs and had also appealed to people to maintain harmony.

**(@ Page 164 of the SIT Report, Malhotra, to the Hon'ble Supreme Court dated 12.05.2010, Compilation of Reports given to the Learned**

**Magistrate's Court and Complainant in Pursuance of the SC Directions 2012 in Order dated 07.02.2013 in SLP 8989/ 2012)**

**II. D. ROLE PLAYED BY ACCUSED NO 1 IN**

**CONSPIRACY**

**"...ROLE PLAYED- BY THE ACCUSED PERSONS**

**AND THEIR EXPLANATION:**

**A-1: Shri Narendra Modi, Chief Minister, Gujarat State.**

It has been alleged in the complaint dated 08.06.2006 filed by Smt. Zakia Nasim that Shri Narendra Modi, the then and present Chief Minister, Gujarat (The constitutionally elected head of the state and responsible for the fundamental rights, right to life and property of all citizens, regardless of caste, community and gender) was the architect of a criminal conspiracy to subvert constitutional governance and the rule of law. It has also been alleged that he played a direct as well as an indirect role in protecting the accused of mass carnage and in abetting the commission of the crime.....

**“...ROLE PLAYED- BY THE ACCUSED PERSONS****AND THEIR EXPLANATION: A-1: Shri Narendra****Modi, Chief Minister, Gujarat State.**

..... “He has further stated that for doing his constitutional duty to hold an emergency review meeting, the complainants are leveling wild allegations of criminal conspiracy and subversion of rule of law. Shri Modi further stated that he had been lawfully functioning as s CM and carried out his responsibilities for the safety, security and developments of the people of Gujarat. He also stated that he had already clarified his stand on the said meeting that the law & order be maintained at all costs and had also appealed to people to maintain harmony. According to Shri Modi, he had asked the concerned officials to keep in touch with local Army authorities and had held series of such law and order review meetings thereafter and addressed the press also. Shri Modi has further stated that he had issued press statements appealing to people to maintain harmony and that his appeal to the public to maintain peace and communal

harmony was aired through Doordarshan. Shri Modi has further stated that he had requested both the Union Home Minister and the Defence Minister to expedite deployment of Army. (**@ Internal Pages 276 – 277, Volume II, of Final Report by SIT, Himanshu Shukla, before the Metropolitan Magistrate, Ahmedabad, dated 08.02.2012)**)

31. The Applicant says and submits that it is clear from a reading of these Paragraphs that unlike what the SIT is dishonestly stating now it had always been mandated to investigate the wider conspiracy into the Gujarat Carnage of 2002.
32. The Applicant would also like to lay out that even in the final report dated 08.02.2012 wherein the SIT files a closure report, the contents of the report clearly lay out that the SIT had investigated into allegations of Conspiracy. The conclusions of the Learned Magistrate therefore that the conspiracy was not subject matter of the investigation is not simply wrong in law, since any investigating agency, under Section 156(3) when empowered to investigate and confronted with clear and devastating evidence cannot turn a blind-eye from it, but also wrong in fact since *both the SIT reports clearly show that they had investigated the wider conspiracy angle.*

Further despite the fact that the Analysis of Phone Call records of PC Pande etc shows, as has been gone into detail in the Protest Petition at Pages 379-380 Volume II and the same will be compiled and placed on record as **annexure 'E' Colly** with a separate affidavit herein that of officials of the Chief Minister's Office (CMO) were in touch with the Commissioner of Police Ahmedabad at the crucial hours between 11.14 hours to 17.17 hours when Ahsan Jafri was being butchered, Gulberg Society was being attacked and daylight rape and arson was taking place at Naroda Patiya, the SIT in Callous disregard of all this information has simply ignored this Data Contained in the Phone Call Record Analysis. In this Connection, the Applicant would like to point out that in the Judgement in the Naroda Patiya case sentencing 31persons (29.08.2012) the leaned Sessions Judge has pulled up the SIT for its deliberately lacklustre investigations into Phone Call Records. This excerpt from the Judgement was placed before the Learned Magistrate during Oral Arguments, and will also likely to be placed on record as Annexure 'F' colly by way of a separate affidavit that places on record all the material placed on the record of the Magistrate's Court by the Applicant Complainant. The Applicant says and submits that the Learned Magistrate has erred materially in failing to see through the unprofessionalism and bias of the SIT.

**II. E. Police Inaction as Part of Conspiracy**

".....(xxv) Police inaction facilitated riots as part of conspiracy, as detailed in paras 13, 14, 61 and 62 of the complaint dated 08.06.2006. In Para 13 of the complaint, some of the 'glaring examples of State sponsored events' are given. In para 61 of the complaint, it is alleged that over two dozen survivors of the Naroda Patiya massacre case have confirmed that they made over a hundred distress calls to Shri P.C. Pande, then Commissioner of Police but that his mobile was permanently switched off. There was a similar callous response from most of the DCPs and Addl.CPs (of Ahmedabad City) as also by the Commissioner of Police, Baroda, Shri Tuteja. In para 60 of the complaint, telephone calls made from Gulberg Society to Shri P. C. Pande and the DGP are alleged but no police action despite presence of three mobile vans near the spot. It is also alleged in Para 61 of the complaint that police was aiding mobs who were attacking Muslims and that on 28.02.2002, of the 40 persons shot dead by police in Ahmedabad City, 36 were Muslims. In Para 62 of the complaint, it

is alleged that police acted as mute spectators to acts of lawlessness, offences were not investigated properly, real culprits were not arrested and no timely preventive action was taken etc.

**(Internal Pages 197 onwards of Final Report by SIT, Himanshu Shukla, before the Metropolitan Magistrate, Ahmedabad, dated 08.02.2012)**

**33. Communal and Criminal Mindset of the A-1 Modi**

The Applicant says and submits that crucial to the Complaint dated 08.06.2006, the subsequent Protest Petition dated 15.04.2013 and oral and written submissions therein was the establishment of the criminal and communal mindset of A-1 Modi as the chief conspirator. In this connection the petition says and submits that a look at the SIT's assessment of the evidence is crucial:

**III. Provocative speeches by A-1 Modi on Zee TV etc as Part of this Mindset**

**ALLEGATIONS 11 & 12 : Communal, Hate-ridden & Discriminatory Attitude of the Chief Minister WHO ALSO HIMSELF Indulged in Hate Speech in Violation of the law**

“...It may thus be seen that Shri Narendra Modi had clearly stated in his Zee TV interview that it was late Ahsan Jafri, ex- MP, who first fired at the violent mob and the provoked mob stormed the society and set it on fire. In this interview he has clearly referred to Jafri’s firing as ‘action’ and the massacre that followed as ‘reaction’... It may thus be seen that in spite of the fact that ghastly violent attacks had taken place on Muslims at Gulberg Society and elsewhere, the reaction of the government was not the type that would have been expected by anyone. The above discussion also shows that the chief minister had tried to water down the seriousness of the situation at Gulberg Society, Naroda Patiya and other places by saying that every ‘action’ has an equal and opposite ‘reaction’... (Modi’s remarks) implied justification of the killings of innocent members of the minority community... In spite of the fact that ghastly and violent attacks had taken place on Muslims at Gulberg Society and elsewhere, the reaction of the government was not the type that would have been expected by anyone. The chief minister had tried to water



down the seriousness of the situation at Gulberg Society, Naroda Patiya and other places by saying that every action has an equal and opposite reaction.” ***(Internal Page 153 of the SIT Report, Malhotra, submitted to the Hon’ble Supreme Court on 12.05.2010)***

### **III. A. Objectionable statements to Zee TV and**

#### **Times of India:**

“...A book entitled “Rights and Wrongs” published by Editors Guild Fact Finding Mission Report by Aakar Patel, Dileep Padgaonkar and B. G. Verghese contained the excerpts from the Zee TV interview conducted by Shri Sudhir Chaudhary with Shri Narendra Modi Chief Minister at Gandhinagar on 01.03.2002, has come to SIT notice. During the interview, when questioned about the Chamanpura massacre in which the former Congress MP, Ahsan Jafri was killed along with at least 20 others, the CM referred to reports that Jafri had first fired at the violent mob, which provoked mob and it thereafter, stormed the Housing Society and set it on fire. According to Zee TV correspondent Shri Narendra Modi referred to Jafri’s firing as

“action” and the massacre that followed as “reaction”. His exact quote was: “Kriya Pratikriya ki chain chal rahi hai. Hum chahle hain kin a kriya ho aur na Pratikriya” when the Zee TV correspondent when asked Shri Narendra Modi about the widespread violence in Gujarat post Godhra the latter’s reply is quoted below.

*“Godhra main jo parson hua, jahan par chalees (40) mahilaon aur bacchon ko zinda jala diya, is main desh main aur videsh main sadma pahuchna swabhavik tha. Godhra ke is ilake ke logon ki criminal tendencies rahi hain. In logon ne pahele mahila teachers ka khoon kiya. Aur ab yeh jaghanya apraadh kiya hai jiski pratikria ho rahi hai”.....*

“...It may thus be seen that Shri Narendra Modi had clearly stated in his Zee TV interview (01.03.2002) that it was Late Ahesan Jafri, Ex-MP, who had first fired at the violent mob and this provoked the mob who then stormed the society and set it on fire. In this interview, he has clearly implied that Jafri’s “action”. (opening of fire at the mob) had led to a "reaction", viz., large-scale Hindu violence against Muslims. His

further statement to Zee Tv that "day before yesterday 40 ladies and children were burnt alive at Godhra and the incident had shocked the Nation as well as people abroad and that the people belonging to this area had a criminal tendency and these people had earlier killed lady teachers and now they have committed this heinous crime for which the reactions are there."

Was too strong at a time when feelings were running high. This showed a measure of thoughtlessness and irresponsibility on the part of a person holding a high public office. His implied justification of the killings of innocent members of the minority community read together with an absence of a strong condemnation of the violence that followed Godhra suggest a partisan stance at a critical juncture when the State had been badly disturbed by communal violence. (Page 115, Malhotra Report, 12.05.2012)

"His (Modi) implied justification of the killings of innocent members of the minority community read together with an absence of a strong condemnation of the violence that followed

Godhra suggest a partisan stance at a critical juncture when the state had been badly disturbed by communal violence.” ***(Internal Pages 152-153 of the SIT, Malhotra Report, submitted to the Hon’ble Supreme Court, dated 12.05.2012)***

○ **III. B. Speech on the occasion of Gaurav**

**Yatra:**

“...As regards the public speech delivered at Becharaji. Mehsana District on 09.09.2002, as a part of Gaurav Yatra, Shri Narendra Modi has explained that the speech did not refer to any particular community or religion. According to Shri Modi, this was a political speech in which he has pointed out the increasing population of India and had remarked that “can’t Gujarat implement family planning’?” Shri Narendra Modi has claimed that his speech has been distorted by some interested elements, who had misinterpreted the same to suit their designs. He has also stated that there were no riots or tension after his election speech. The explanation given by Shri Modi is unconvincing

and it definitely hinted at the growing minority population.

***(Internal Page 160 the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)***

**III. C. Speech at Becharaji (continued)**

*“His (Modi) implied justification of the killings of innocent members of the minority community read together with an absence of a strong condemnation of the violence that followed Godhra suggest a partisan stance at a critical juncture when the state had been badly disturbed by communal violence.” (Page 153 of the SIT, Malhotra Report to the SC, dated May 2010)*

**III. D. Provocative Statements**

*“....Modi's statement “accusing some elements in Godhra and the neighbourhood as possessing a criminal tendency was sweeping and offensive coming as it did from a chief minister, that too at a critical time when Hindu-Muslim tempers were*

*running high.”* (Page 13 of SIT chairman RK Raghavan’s comments to the SIT report to SC 14.05.2010)

34. The Applicant says and submits that it is essentially this mind-set by the man at the helm that contributed substantively and in whole to the hatching of the Criminal Conspiracy as outlined in the Complaint dated 08.06.2006, further detailed in the Protest Petition filed on 15.04.2013 and elaborated substantively in the Oral and Written Submissions between June 2013-September 2013. The Applicant further states that the abject failure and refusal of the SIT to deduce clear elements of the Conspiracy despite its own observations about serious crimes being committed renders the investigation seriously questionable. Substantively and contradictory findings and conclusions have been reached by the SIT in the Final Report of the SIT dated 08.02.2012. It is not out of place to repeat that this shift and watering down of the SIT’s observations happened *after* the Hon’ble Supreme Court had finally disposed of the case and moreover, after the SIT had itself washed it’s hand of the further investigation leaving it entirely to the Crime Branch of Ahmedabad, a wing of the Gujarat police functioning directly under the direct political and administrative authority of A-1 Modi. In its final report dated 08.02.2012 SIT in a turnaround says that:

**III. E. Contrary Opinion in Final Report on  
Inflammatory Speeches**

“....As per Modi’s version, he had not and would never justify any action or reaction by a mob against innocents. He had denied all allegations in this regard.” Zee TV never sent a copy of the interview, says the SIT. Chaudhary correspondent told the SIT the Editors’ Guild report contained only excerpts and he did not have the original CD. He (zee TV correspondent) did recollect Modi’s reply that a mob “had reacted on account of private firing done by Jafri”, the SIT says. Chaudhary told the SIT Modi was of the view that he wanted neither action nor reaction. Modi reportedly said, “*Godhra main jo parson hua... pratikriya ho rahi hai,*” but Chaudhary could not recount the exact sequence.

**(Internal Pages 482-483, SIT Conclusions  
in Closure report submitted before the  
Magistrate on 08.02.2012)**

III. F. "As regards the public speech delivered at Becharaji, Mehsana district on 09.09.2002, as a part of Gaurav Yatra, Modi has explained that the speech did not refer to any particular community or religion. According to Modi, this was a political speech in which he has pointed out the increasing population of India and had remarked that 'can't Gujarat implement family planning?' Modi has claimed that his speech has been distorted by some interested elements, who had misinterpreted the same to suit their designs. He has also stated that there were no riots or tension after his election speech. No criminality has come on record in respect of this aspect of allegation."

*(Internal Page No. 272 of the SIT Conclusions in the Closure Report, SIT, Himanshu Shukla, submitted to the Magistrate dated 08.02.2012)*

35. **A-1 Modi Handing Over Bodies of Godhra Victims to Jaideep Patel A-21:** In continuation of the Conspiracy and



displaying his further Communal and Criminal Mindset, it was A-1 Modi who took the decision to hand over the Bodies of the Godhra Victims to A-21, Jaideep Patel of the VHP:- The SIT concludes in its first report (Malhotra, 2010) that the decision to shift the bodies to Ahmedabad was taken after a closed door meeting between Jayanti Ravi, Jaideep Patel, cabinet minister Ashok Bhatt, civil aviation minister Prabhatsingh Chauhan, Gordhan Zadaphiya and Modi. But, bizarrely, when it comes to the question of who decided that the bodies should be handed to the VHP, the SIT blames only the mamlatdar Nalvaya. **(Pages 20-24 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)** and even recommends departmental action against him. ML Nalvaya, executive magistrate of Godhra at the time, has stated before the SIT that the bodies of 54 victims were indeed handed over to VHP leaders Jaideep Patel and Hasmukh Patel on the instructions of Jayanthi Ravi, who was the Godhra district magistrate at the time. But Ravi, an IAS officer, denies this and claims Nalvaya, who was her subordinate, took the decision on his own.

36. The Applicant says and submits that even on this issue there are contradictions between the SIT's report dated 12.05.2012 and its final report submitted before the Learned Magistrate dated 08.02.2012.

**IV. The SIT Conclusions: A-1 Modi**

**Handing Over Bodies of Godhra Victims**

**to Jaideep Patel A-21:**

**ALLEGATION No. II: The CM's controversial decision against the advise of the Godhra Collector, DM Jayanti Ravi, to hand over the bodies of those victims killed in the fire on the Sabaramati Express to Jaideep Patel of the Vishwa Hindu Parishad (VHP) who is also A- in the Complaint dated 08.06.2006 a decision that allowed the bodies of the victims of the Godhra carnage to be taken to Ahmedabad and paraded in the streets before the cremation.**

“The CM inspected the spot and talked to some of the persons gathered there. Since, curfew had been imposed in the Godhra town, the Chief Minister decided to go to Collectorate and meet the people as well as press. At that time Shri Gordhan Zadafia and Shri Prabhatsinh Chauhan, the then Minister of Civil Aviation & Pilgrimage and being a local MLA, had also come and

they all went to the Collectorate. Smt. Jayanti Ravi has stated to SIT that in the meeting held at Collectorate, one Shri Jaydeep Patel, a VHP activist was also present. Smt. Jayanti Ravi has also stated that after holding discussions, a unanimous decision was taken that the dead bodies, which had been identified should be handed over to their relatives at Godhra itself and those bodies whose legal heirs or guardians had not come, could be sent to Sola Civil Hospital, Ahmedabad since, they belonged to Sabarmati Express heading towards Ahmedabad. Smt. Jayanti Ravi has categorically denied that decision was taken against her wishes. The decision to send the bodies to Sola Civil Hospital was taken in view of the fact that it was situated on the outskirts of Ahmedabad City and thus away from the crowded area for security reasons. It has further come to light that out of 58 burnt and dead bodies, 4 bodies belonging to Dahod, Vadodara, Panchmahal and Anand Districts were

handed over to their legal heirs/guardians after identification at Godhra itself. The remaining 54 dead bodies were to be sent with police escort to Sola Civil Hospital, Ahmedabad. Further, Shri Jaydeep Patel of VHP was to accompany them.....The above facts would go to establish that though a letter had been addressed by Mamlatdar, Godhra to Shri Jaydeep Patel of VHP, yet the dead bodies were escorted by the police from Godhra to Ahmedabad, where the same were taken charge of by the hospital authorities, District Administrative and Police Officers and handed over to the kith and kin of deceased persons after taking proper receipt....Shri P.C. Pande has stated that there had been no parading of dead bodies inasmuch as the trucks carrying the dead bodies under police escort reached Ahmedabad City between 0330 hrs to 0400 hrs on 28.02.2002, which means they had started from Godhra at least three hours earlier and as such there was no one to see them on the highway at

dead of the night. Shri Pande has also stated that in Ahmedabad City, the dead bodies were kept in Sola Civil Hospital situated on the outskirts of the City and that most of the dead bodies were handed over to their relations after proper documentation by 28.02.2002 morning. ..

“In view of the aforesaid discussions, the allegation that the CM’s decision to bring the dead bodies of those killed in Godhra carnage to Ahmedabad was with a view to parade them in the City is not established. Further, the allegation that the dead bodies were handed over to Shri Jaydeep Patel, is also not established, inasmuch as he only accompanied the dead bodies from Godhra to Ahmedabad, and that the custody of the dead bodies remained with the police escort and thereafter with the Sola Civil Hospital Authorities, Administrative and Police authorities. The allegation that the dead bodies were transported to Ahmedabad against the wishes of Smt. Jayanti Ravi is proved to be

incorrect. Shri M.L. Nalvaya Mamalatdar had acted in an irresponsible manner by issuing a letter in the name Shri Jaydeep Patel in token of having handed over the dead bodies which were case property, deserves to be dealt with through strong departmental action against him. **(Internal Page 21 of Pages 20-24 the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)**

**IV. A. The SIT Conclusions: A-1 Modi**

**Handing Over Bodies of Godhra Victims**

**to Jaideep Patel A-21:**

Two years later, in 2012 the SIT, in its' Closure report dated 08.02.2012 states that

“It may thus be seen that the journey from Godhra to Ahmedabad started around midnight and the dead bodies reached Sola Civil Hospital sometime between 0330 to 0400 hrs.... Further, though a letter had been addressed by ML Nalvaya in the name of Jaideep Patel of VHP and

the dead bodies were acknowledged by Hasmukh T Patel of VHP, yet the dead bodies were escorted by the police up to Sola Civil Hospital, Ahmedabad situated on the outskirts of Ahmedabad City. At Sola Civil Hospital, Patel handed over the letter to the hospital authorities and the local police as well as the hospital authorities took charge of the dead bodies...”

***(Internal Page No.467 at Pages 463- 468 of the SIT Closure Report, Himanshu Shukla before Magistrate, 08.02.2012)***

“...Nalvaya, Mamlatdar acted in an irresponsible manner by issuing a letter in the name of Patel in token of handing over the dead bodies which were case property and therefore, the government of Gujarat is being requested to initiate departmental proceedings against him. ***(Internal Page 467 of the Closure Report, SIT, Himanshu Shukla submitted on 08.02.2012 to the Metropolitan Magistrate, Ahmedabad)***

37. The Application says and submits that the SIT is vague and evasive about pinning responsibility on the critically irresponsible decision of first, a) allowing the bodies of the Godhra victims to be transported over 150 kilometres to Ahmedabad, not a normal practice since unclaimed bodies of tragedies (natural or manmade) are kept in the charge of the local authorities where such an incident, in this case a crime of magnitude has taken place; b) that in fact the decision of A-1 Modi was grossly abusive and intrusive of the local investigating authorities in this case the Railway Authorities who were already seized of the crime; c) that the collective act by all those present at the meeting at the Collectorate in fact amounted to a breach of law, procedure and seriously eroded the principles of Constitutional governance and yet the SIT is quick to seize the easy explanations given by powerful co-accused; d) handing over the bodies not to an official representative but to Jaideep Patel of the Vishwa Hindu Parishad, a communal and supremacist organization who is not only co-accused in the Complaint dated 08.06.2006 but is also an accused for leading violence in the Naroda Gaam trial currently being tried in a Special Court in Gujarat; e) SIT deliberately ignores the evidence available in its own records (Investigations) especially the Police Control Room records that were handed over by fellow A- 29 PC Pande *only after further investigation was ordered by the Hon'ble Supreme*



*Court on 15.03.2011;* f) that these PCR records show clearly that deadly, armed riotous mobs of the RSS, VHP etc were lying in waiting at 3 a.m. on 28.02.2002 when the motor cavalcade led by Jaideep Patel arrived,' g) that these riotous mob attacked the Sola Hospital staff as revealed from these PCR records contained in the SIT Investigation Papers; h) that even a High Court judge was attacked by the same mobs around 10 am that day; i) similarly, the SIT has been deliberately lax in not recommending any action against co accused –29 PC Pande who had first concealed and then produced evidence, both acts which are serious criminal offences under the IPC; j) the SIT has deliberately and willfully ignored the sworn affidavit by A-28 Ashok Narayan (Additional Chief Secretary Home) before the Nanavati Shah Commission on 01.07.2002 wherein he says that it was a high-level decision taken and orders issued by senior functionaries including the chief minister at Godhra before the bodies of the tragic Godhra train arson were handed over to Jaideep Patel, general secretary of the Gujarat Vishwa Hindu Parishad at Godhra. This affidavit of Ashok Narayan dated 01.07.2002 is part of the investigation record and is likely to be placed on record as Annexure 'G' Colly by way of a separate affidavit very shortly.

38. The applicant says and submits that it is curious that the SIT however does not hold Jaideep Patel to account since the letter is in his name nor questions the ministers who obviously concurred with the receipt for the handover being made in the name of an office bearer of the VHP. Neither does the SIT ask the obvious question about whether Nalvaya, a lower-level officer, could have taken such an irregular decision on his own without orders from the top, It is also a matter of serious question as to why the SIT, meant to be non-partisan is willing to believe District Magistrate Jayanti Ravi's version over Mamlatdar Nalvaya's version. In this connection the Applicant says and submits that the learned Magistrate too in his final Order dated 26.12.2012 materially erred appreciating this blatant lapse on the part of the SIT, the investigating agency, that, in effect had the effect of shielding and protecting powerful accused.

39. The applicant says and submits that there is significant corroborative evidence stated in her Complaint dated 08.06.2006, and examined by the SIT through its inquiry and investigations that the irregularity and illegality of handing over the bodies of the unfortunate victims of the tragic Godhra train burning to persons who did not hold responsible positions and led to the inflaming of sentiments and the widespread violence. The evidence gathered by the Concerned Citizens

Tribunal headed by Justices VR Krishna Iyer and PB Sawant is corroborated by the deposition of Gujarat's additional chief secretary (Home), Ashok Narayan made before the Nanavati Shah Commission when he says that it was decision taken and orders issued by senior functionaries including the chief minister at Godhra before the bodies of the tragic Godhra train arson were handed over to Jaideep Patel, general secretary of the Gujarat Vishwa Hindu Parishad. The learned Magistrate erred significantly in not appreciating the commission of serious offences as is evident from a look at this prima facie material substantively.

40. The Applicant says and submits that the Amicus Curiae in his report assessed the close meeting of minds between A-1 Modi and A-21, Jaideep Patel, thus;

*“.....7. Another aspect is the fact that VHP General Secretary Jaydeep Patel and Shri Modi were at Godhra on 27.02.2002. The statement of Jaydeep Patel that he did not meet Shri Narendra Modi at Godhra does not inspite confidence. This has to be examined as the Mamlatdar would not have handed over the dead bodies to a non-government person i.e. Jaydeep Patel*

*until and unless somebody very high told him to do so.”*

*(Raju Ramachandran Sr. Advocate with Gaurav Agrawal Advocate, 20.01.2011 New Delhi (Annexure IV File X Serial No.306 of the SIT Record/Papers).*

41. **Accused to Accused Contact, VHP Leaders and Politicians:** The Applicant says and submits that the “Clean Chit” given by the SIT is all the more questionable given its own conclusions in the Report to the Hon’ble Supreme Court dated 12.05.2010 and its Final report dated 08.02.2012 filed before the Learned Magistrate. In the following Paragraphs quoted below the SIT accepts that there was questionable contact between senior leaders and office bearers of the Vishwa Hindu Parishad (VHP) who subsequently were/are accused in several individual carnage cases and the then Minister of State for Home, Govardhan Zadaphiya, Accused Nos -5 in the Complaint dated 08.06.2006. The Applicant says and submits that strangely the very same SIT that finds the Gujarat police guilty of not properly investigating the “Accused-to-Accused” Contact as revealed through an Analysis of the Phone Call Records, falls guilty of the same charge by the time the Further Investigation has been, irresponsibly handed over to the Crime Branch Ahmedabad post Final Order of the

Hon'ble Supreme Court dated 12.09.2011. The Applicant says and submits that the SIT found evidence against Zadaphiya, MOS Home when the matter was before the Hon'ble Supreme Court and then once it had been remanded back to the Magistrate and the Gujarat Police (Crime Branch) took over the investigation all allegations were dropped.

**V. Accused to Accused Contact: VHP**

**Leaders and Politicians**

“...Shri Gordhan Zadaphiya has not been able to satisfactorily explain the calls made by the key accused persons to him on 28.02.2002, when the riots were at their peak and even thereafter...”

**( Internal Page 169 of Pages 168-169, SIT**

**Malhotra Report to the SC, 12.05.2010)**

42. The Applicant says and submits that the SIT when it was reporting to the Supreme Court found that there were “patently Partisan Investigations by Gujarat Police Top Cops to Shield Ministers and VHP men and Women”. The SIT accepted the allegation that the state police had carried out patently unprofessional investigations in the Naroda Patiya and Gulberg Society massacre cases. It however deliberately overlooked the cell phone records of Sangh Parivar members and BJP leaders involved in the riots — prominent among

them were the Gujarat VHP president Jaideep Patel and BJP minister Maya Kodnani.

**V.A. Accused to Accused Contact: VHP**

**Leaders and Politicians**

43. The Applicant says and submits that even the Final Report of the SIT dated 08.02.2012 while drawing conclusions on the possible complicity of Ministers and VHP officer bearers allows them to escape prosecution.

**V. B. ROLE PLAYED- BY THE ACCUSED**

**PERSONS AND THEIR EXPLANATION:**

**“...A-5: Shri Gordhan Pragjibhai  
Zadafia, formerly MoS, Home.**

“...Shri Gordhan Zadafia has not denied his acquaintances with VHP leaders as he himself had been associated with this organization....

It may be mentioned here that Shri Jaydeep Patel had made three phone calls to Shri Zadafia on his mobile on 27-02-2002 night at 2039 hrs, 2113 hrs & 2120 hrs at Godhra and Shri Zadafia also made a phone call to Shri Jaydeep Patel at 2003 hrs. The call details of Govt. mobile phone

no. 9825049145 of 27-02-2002 show that 12 calls were exchanged with accused Jaydeep Patel (Mobile No. 9825023887), 2 calls from accused Dr. Mayaben Kodnani (Mob No. 9825006729), 26 calls with Shri. R.J. Savani DCP, Zone-V, Ahmedabad City (Mob No. 9825049198), 7 calls from accused Bipin Panchal. In addition, 13 calls were made by Shri Zadafia to CM's office. Shri Zadafia has admitted to have known Dr. Mayaben Kodnani, Bipin Panchal, Raju Chomal, Kishan Korani and Babu Bajrangi, who are the main accused persons in Naroda Patiya and Naroda Gam. Shri Gordhan Zadafia has not been able to satisfactory explain the calls made by the key accused persons to him on 28-02-2002, when the riots were at their peak and even thereafter.

**Internal @ 285 – 286 of Pages 287-288,**

**Volume II, of SIT, Himanshu Shukla Final**

**Report dated 08.02.2012, )**

**V. C. Accused to Accused Contact: VHP**

**Leaders and Politicians**

“.....It has further come to light that Shri Bipin Panchal, one of the main accused in Naroda Patiya case, who had been evading arrest from 01.03.2002 onwards, was directly in contact with Shri Gordhan Zadafia on the day of riots (5 calls were received by Shri Zadafia on 28.02.2002; 04.03.2002 and 07.03.2002). As Minister of State for Home Zadafia was supposed to know that Bipin Panchal was a wanted accused. However, no evidence could be gathered during investigation to prove knowledge on the part of Shri Gordhan Zadafia to the effect that Shri Bipin Panchal had been made as an accused in the FIR of Naroda Gam case and had been absconding. Further the phone calls were made by Shri Bipin Panchal on the mobile phone of Shri Gordhan Zadafia and not vice-versa. Besides that Shri Bipin Panchal had claimed that he had spoken to Shri Gordhan Zadafia to seek help in expediting police action in connection with an arson case of his motorcycle show room in



Naroda Patia. In view of the aforesaid facts no case u/s 221 IPC is made out against Shri Gordhan Zadafia.

Investigation revealed that Vishwa Hindu Parishad was playing an active role in mobilizing Karsevaks to Ayodhya and Shri Jaydeep Patel was its Joint General Secretary. Ahmedabad City. Shri Gordhan Zadafia has not denied his acquaintances with VHP leaders as he himself had been associated with this organization. Though Shri Zadafia and Shri Jaydeep Patel could not recall the exact contents of their conversation on 27.02.2002, yet he claimed that in all probability it should be regarding one of the deceased in Godhra train incident. Shri Zadafia stated that Dr. Mayaben Kodnani was an MLA and she must have called regarding law and order situation at Naroda. Significantly, both these calls made by Dr. Mayaben Kodnani were incoming calls on the mobile phone of Zadafia. All the phone calls from VHP activists who were accused in Naroda

Patiya / Gaam cases on 28.02.2002 were also incoming calls on the mobile phone of Mr. Zadafia. In the absence of any other evidence, these calls made on the mobile phone of Shri Zadafia by itself would not be sufficient to make out a case of conspiracy against Shri Gordhan Zadafia.

**(Internal Page 286 of SIT/Himanshu**

**Shukla Final Report dated 08.02.2012@**

**Internal Page 284-288 submitted to MM**

**on 08.02.2012)**

**V.D. Faulty Investigation into Evidence**

**Contained in CDs/ Improper**

**Investigation into CDs**

“...Shri G.L. Singhal, SP, ATS, who remained the IO of Gulberg Society case and Naroda Patiya case, has stated before the SIT that he did not investigate into the call detail records of the mobile phones as well as landline details of the accused persons or any other person connected with these cases. He has admitted that he came to know about the production of the CDs containing the call details of the

various calls made/received from the mobile phones Ahmedabad City by Shri Rahul Sharma before the Nanavati-Shah Commission of Inquiry and Banerjee Committee, but did not approach him to get the copies of the CDs containing the CDRs of mobile phones. He has further admitted that he did not approach the cell phone service providers to get the call detail records of the cell phones operating from Ahmedabad City from 27-02-2002 onwards. He has stated to have interrogated Dr. Mayaben Kodhani, MLA and Jaydeep Patel, a VHP activist in Naroda Patiya case about their locations on 28-02-2002, but they had denied their presence on the spot at the time of incident. He has also stated that he could not confront them with their call details, as the same were not available with him.

This appears to be an intentional lapse on the part of Shri Tarun Barot, the then PI and now ACP, SOG, Ahmedabad and Shri G.L. Singhal, the then ACP, Crime Branch

and now SP, ATS, Ahmedabad and the same deserves to be dealt with major penalty departmental proceedings against them.

**(Pages 101-105 of SIT, Malhotra Report to SC, 12.05.2010)**

“... There appears to be a serious lapse on the part of Shri Tarun Barot, the then PI and now ACP, SOG Ahmedabad in not collecting a copy of the CD containing the call detail records of Ahmedabad City from Shri Rahul Sharma and the same deserves to be dealt with major penalty departmental proceedings. However no criminal case is made out against him”

**(Page 376, Volume II SIT Closure Report, Himanshu Shukla, filed before the MM, 08.02.2012)**

44. **Controversial Meeting of 27.02.2002**:The Applicant says and submits that it is regarding the Controversial Meeting of 27.02.2002 (a Law and Order Meeting) at which key Officials and Ministers were present and regarding which the Amicus Curiae had recommended Prosecution of A-1 Modi, the SIT's

unprofessionalism and malafides become even sharper. There are serious inconsistencies in both SIT reports as explained below.

**VI. SIT Report on Controversial Meeting of 27.02.2002**

The meeting which had taken place in the late evening of the day of the Godhra Incident at A-1 Chief Minister's residence was where controversial instructions were issued.

**"...ALLEGATION No. I :**

Instructions by Shri Narendra D. Modi, Chief Minister to DGP, the Chief Secretary and other senior officials to (allow to) give vent to the Hindu anger on the minority Muslims in the wake of Godhra incident during the Meeting held on 27.02.2002 evening in Gandhinagar, as testified in Affidavit No.4 of Shri R. B.Sreekumar.

&

**"...ALLEGATION No. IV :**

Data in the 'Concerned Citizens Tribunal' Report by panel of Judges, Justice Sawant

and Justice V. R. Krishna Iyer as in Para 10 of the complaint dated 08.06.2006) wherein it was mentioned, inter-alia, as :

What transpired in the days that followed the Godhra incident began with as the Chief Minister of the State announcing on 27.02.2002 through Akashvani Radio that there was an ISI conspiracy, and deciding against the advice of the Godhra Collector, Smt. Jayanti Ravi, to take the bodies of the burnt Kar sevaks in a ceremonial procession by road to Ahmedabad. The tragic Godhra killings were used and manipulated to justify pre-orchestrated mass carnage that enjoyed the political sanction at of the constitutionally elected Government. Top level meetings were held between the Chief Minister, some of his Cabinet and top level bureaucrats at which illegal instructions were issued to perform illegal acts. Proof of this was documented by a Citizens Tribunal constituted and headed by a former Judge of the Hon'ble Supreme Court, when a

former Minister (Late Shri Haren Pandya)  
testified about the details.

*(Pages 14-19 the SIT Report, Malhotra,  
submitted to the Hon'ble Supreme Court  
on 12.05.2010)*

45. The Applicant says and submits that, as against the above quoted statements in the SIT Report submitted by Shri Malhotra, the SIT while submitting it's Final Report has distorted the above statements and has given a given a substantially contradictory picture with regard to the meeting dated 27.02.2002. The Applicant is pointing out herein below the Contradictions in the Report submitted by AK Malhotra and the Final Report that was submitted before the Magistrate.
46. **No Minutes Maintained** :There is no dispute from any quarter that such a meeting was called by A-1 the chief minister Shri Modi at his residence late in the night on 27.02.2002. There is also no dispute that no minutes were recorded of a meeting as critical as this one. The reasons for this, according to the 2012 report by the SIT, is at page 13,
47. **Contradictory Conclusions in the Two SIT Reports:** In the two Investigation reports of the SIT there is a distinct contradiction on who was present at the meeting in the two

reports, which is to say one more person has been brought in as an alibi for A-1 chief minister by the time the SIT has given over its Investigation entrusted to it by the Supreme Court to the Crime Branch of the Ahmedabad (Gujarat) police. The Applicant says and submits that Prakash Shah makes a sudden appearance in the closure report under the guise of further investigation being conducted. It is unclear how A-1 Modi and the seven others named in the preliminary report in 2010 “forgot” to mention his presence during the inquiry/investigation conducted by AK Malhotra. During the recording of A-1i Modi’s statement before A.K. Malhotra on 23.03.2010, the accused number 1 had volunteered the “information” during his deposition before SIT that IPS officer Sanjeev Bhatt was **not present** at the 27.02.2002 meeting, even when the question had not been put to him.

Besides, there is a distinct shift in interpretation between what officials present at the meeting said and despite this no further Investigation in terms of recording further statements of a) Justices PB Sawant, b) Justice Hosbet Suresh; c) Rahul Sharma; d) RB Sreekumar; d) Sanjiv Bhatt or e) Narendra Modi (A-1) are even attempted. By this time the father of Shri Haren Pandya has passed away.



**VI. A. Controversial Meeting of**

**27.02.2002**

“.....No record/documentation/ minutes of the crucial law and order meetings held by the government during the riots had been kept”. *(Pages 13-19 the SIT Report, Malhotra, submitted to the Hon’ble Supreme Court on 12.05.2010)*

**VI. B. Controversial Meeting of**

**27.02.2002**

*Contradictions About Officials Present:*

The SIT (Malhotra) Report dated 2010 states that the following were present

“...Swarna Kanta Varma, acting chief secretary.

Ashok Narayan, additional chief secretary (Home).

K Chakravarthi, DGP, Gujarat.

PC Pande, police commissioner, Ahmedabad.

K Nityanandam, secretary (Home).

PK Mishra, principal secretary to CM.

Anil Mukim, secretary to CM

**VI. C. Controversial Meeting of**

**27.02.2002**

Two years later, 2012, the SIT's conclusions on its investigations following the Order of the Hon'ble Supreme Court dated 12.09.2012 there are changes. Himanshu Shukla's conclusions submitted before this Hon'ble Court dated 08.02.2012 now says that the following are present:

"....Swarna Kanta Varma, acting chief secretary.

Ashok Narayan, additional chief secretary (Home).

K Chakravarthi, DGP, Gujarat.

PC Pande, police commissioner, Ahmedabad.

K Nityanandam, secretary (Home).

PK Mishra, principal secretary to CM.

Anil Mukim, secretary to CM.

Prakash S Shah, additional secretary (law and order).

**VI. D. Controversial Meeting of**

**27.02.2002**

*Other Discrepancies/Contradictions in the Depositions of Persons present at the crucial meeting of 27.02.2002 between the two versions of the SIT:-*

*In 2010 (Malhotra) SIT Report states at pages 16-17 that*

**“...Swarna Kanta Varma:** “She has stated before (SIT) that she *does not recollect* as to whether CM instructed the police officers that the police should not come in the way of the Hindu backlash... She has pleaded loss of memory due to passage of time.” (There is no reference to whether Bhatt was present or not).

**“...Ashok Narayan:** “He does not recollect as to whether Nityanandam and Bhatt attended ... The chief minister said that the people were outraged by the heinous incident of Godhra and therefore effective steps should be taken to control the communal riots if any. He does not recollect any other words uttered by the CM”.

**“...K Chakravarthi:** (A statement similar to Narayan’s)... “He has denied to have told RB Sreekumar (as claimed in an affidavit before the Nanavati Commission by the then ADGP) that the CM had said in the meeting held on 27.02.2002 night that in communal riots police takes action against Hindus and Muslims on one to one basis and this will not do now and allow Hindus to vent their anger. He has also stated that as per his recollection, Bhatt did not attend this meeting”.

**“.....PC Pande:** “Has denied that the CM said... (let) Hindus vent their anger...”

*(There is no reference to whether Bhatt was present).*

**“...PK Mishra:** “Has denied that the CM said... (let) Hindus vent their anger... He does not recollect whether Bhatt attended the meeting...”

**“.....K Nityanandam:** “Has denied that the CM said that police should not stop (Hindu retaliation)...” (There is no reference to whether Bhatt was present).

**“....Anil Mukim:** “Denied to have attended this meeting but all other participants have confirmed his presence in the meeting...”

**VI. E. Controversial Meeting of**

**27.02.2002**

The SIT Report of 2010 (Malhotra) is dismissive of the evidence provided by a former Supreme Court and High Court Judge. At **Page 18 of the Malhotra Report submitted to the Hon’ble Supreme Court, SIT states that:**

“Shri Justice P.B. Sawant, Retired Judge of Hon'ble Supreme Court of India and Shri Justice Hosbet Suresh, Retired Judge of Bombay High Court, members of the Concerned Citizens Tribunal Gujarat 2002 that was conceived in response to the Godhra carnage on 27.02.2002, have stated that one Minister of the Gujarat Govt. namely Late Haren Pandya, appeared and deposed before the Tribunal on 13.05.2002,

on condition of anonymity, that he had attended a meeting on 27.02.2002 night at the residence of Shri Narendra Modi, CM, in which the latter had made it clear that there would be a backlash from the Hindus on the next day and that the police should not come in their way. According to Late Haren Pandya, Shri Modi also instructed the police officers and Civil servants that a Hindu reaction was expected and the same must not be curtailed or controlled. However, his deposition had not been recorded anywhere by the Tribunal. “

**The SIT Report dated 12.5.2010 goes on to conclude at Page 16:**

“It has further been established that Shri GC. Raiger, the then Addl. DG (Int.) was on leave and did not attend the said meeting. It has also been established that Shri A.K. Sharma, the then Secretary to CM

was on earned leave between 19.02.2002 to 05.03.2002 in connection with his sister's marriage and was not present in the said meeting. None of the senior officers, who had attended the said meeting, have confirmed the utterances made by Shri Narendra Modi, Chief Minister. The statement made by Shri R.B. Sreekumar is hearsay, which has not been confirmed by Shri K. Chakravarthi. Shri R.B. Sreekumar has no personal knowledge, as he did not attend the said meeting. The participation of Shri Sanjiv Bhatt has not been confirmed by any of the participants of the said meeting. As regards the deposition of Late Haren Pandya before the Concerned Citizens Tribunal, enquiries have established that the meeting convened at CM's residence, was an essentially law and order review meeting that was

held on 27.02.2002 and that none of the Cabinet Ministers attended the same. Late Haren Pandya was not even a Cabinet Minister at that time. Shri Gordhan Zadafia also did not attend this meeting, as he had stayed back at Godhra. In view of the version of all the senior officials of the Home and Police Department the testimony of Late Haren Pandya before the Tribunal becomes unreliable. No minutes of the 27.02.2002 meeting were prepared.

***“(Pages 13 & 19 the SIT Report, Malhotra, submitted to the Hon’ble Supreme Court on 12.05.2010)***

**VI. F. Controversial Meeting of 27.02.2002**

In his chairperson’s comments submitted to the Hon’ble Supreme Court along with AK Malhotra’s preliminary report, Raghavan (14.05.2010) observes: “The three officers (PC Pande, PK Mishra and Ashok Narayan) had been accommodated



in post-retirement jobs, and are therefore not obliged to speak against the chief minister or the state government". In other words, even while conceding that these officers were obligated to Shri Modi because of his largesse, SIT had treated their statements and excuses about lapse of memory as adequate evidence of Shri Modi's innocence. ...." "In the light of the above, a law and order meeting was in fact held by Modi at his residence late in the evening of 27.02.2002. However, the allegation that chief minister instructed the chief secretary, DGP and other senior officials to allow the Hindu community to give vent to their anger on the minority Muslims in the wake of Godhra incident is not established." ***(Page 19, the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)***

**VI. G. Controversial Meeting of 27.02.2002**

*Comments of SIT chairman, RK Raghavan,  
14.05.2012*

“Bhatt is considered an unreliable witness, especially because no official who is known to have definitely attended the meeting has spoken of his presence there.

Also he was considered too junior to have been invited to such a high-level meeting...

The three officers (PC Pande, PK Mishra and Ashok Narayan) had been accommodated in post-retirement jobs, and are therefore not obliged to speak against the chief minister or the state government.” *(Page 4 of Chairman R K*

*Raghavan’s comments, 14.05.2012).*

48. The Applicant says and submits that even in the first report submitted to the Hon’ble Supreme Court, the SIT preferred to reply on those officers who had capriciously been rewarded by A-1 for their complicity in serial crimes and their silence about the A-1 Modi’s illegal instructions issued on 27.02.2002 even denying the presence of Sanjiv Bhatt the sole officer who says to the contrary; was quick to dismiss the 161 statements of a former Supreme Court and High Court judge as “unreliable”

and RB Sreekumar's statement as hearsay showing the bent of mind that the SIT had already begun to display as the investigations progressed leading even the Amicus Curiae Shri Raju Ramachandran to come to a substantially erroneous conclusion.

49. The Applicant says and submits that Shri Raghavan is forced in his comments on the preliminary report to conclude that the officers thus lucratively promoted would have personal reasons to conceal the truth but, despite reaching this conclusion however SIT is happy to leave the crucial issue of whether those accused who were being asked to corroborate the illegal instructions could be actually believed when they denied what the chief minister said, un-investigated. Their views are taken as gospel truth even though they are seen as motivated by rewards from a culpable establishment.
50. The Applicant states that in any case, contrary to the inferences of SIT, as is clear from the reports of the Amicus Curiae who's Interim and Final Reports dated 20.01.2011 and 25.07.2011 have been made available to me (Annexure IV, File IV, Serial Nos 91 and Annexure IV File X Sr Nos 306 of the SIT record) he has arrived at an independent assessment that there is a *prima facie* case for Modi's prosecution, observing that whether Bhatt or the others are telling the truth

can only be determined through the examination and cross-examination of each of them during the trial. The reports of the Amicus Curiae will be likely to be annexed as **annexure 'C' Colly** along with a separate affidavit.

51. The Applicant says and submits that between the two reports of the SIT, there was a time span of two years and despite this, by the time the Investigation has been handed over to the Crime Branch of Ahmedabad by the SIT, i.e. 2012, the “lapse of memory” by certain officials has conveniently changed to complete remembrance/recall.

**Loss of Memory**

“She...(Swarnakantha Verma deputing for chief secretary Subha Rao) has further stated that she does not recollect as to whether CM instructed the police officers that the police should not come in the way of the Hindu backlash as the justice for Godhra was to be done on the next day during the Gujarat bandh called by VHP. She has pleaded loss of memory due to passage of time.

*(Page 18, the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)*

**Sanjiv Bhatt on 27.02.2002 Meeting**

“Shri Sanjiv Bhatt has stated that as per his recollection Shri G.C. Raiger, the then Addl. DG (Int.) was on casual leave till 28-02-2002, but had curtailed his leave and returned on 27-02-2002 evening. He has claimed to have received a message on 27-02-2002 late in the night from the Control Room that the Chief Minister had called for a situation review meeting at his residence. Shri Sanjiv Bhatt has further stated that since, Addl DG (Int.) was on leave, DGP had instructed him to attend the meeting along with the IB's assessment of the situation. He has claimed to have attended that meeting at CM's residence which was also attended by ACS (Home), DGP, CP Ahmedabad City and Secretary to CM. However, he does not recollect, as to who else attended the said meeting, but none of the Cabinet

Ministers were present there. He has further stated that he attended this meeting in his capacity as an Intelligence Officer, and as per his belief, it would not be professionally appropriate on his part to divulge the exact nature of discussions that took place during the said meeting. However, he would be duty bound to disclose the same to the best of his recollection and ability, as and when he is required to do so under legal obligation.

***(Page 18, the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)***

“The participation of Shri Sanjiv Bhatt has not been confirmed by any of the participants of the said meeting....

“.....In the light of the aforesaid discussions, it can be concluded that a Law & Order review meeting was in fact held by Shri Narendra Modi, Chief Minister at his residence late in the evening of 27-02-2002. However, the allegation that the Chief Minister instructed the Chief

Secretary, DGP and other senior to allow the Hindu community to give vent to their anger on the minority Muslims in the wake of Godhra incident is not established.

***(Page 19, the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)***

### **Further Contradictions in SIT reports**

#### **VI. H. Controversial Meeting of**

#### **27.02.2002**

In stark contrast to the SIT report of 12.05.2010 (Malhotra Report), the SIT conclusions in the final report submitted to the Magistrate dated 08.12.2012 state at pgs 26-28 that:-

***".....Swarna Kanta Varma:***She cannot recollect as to whether any minister was present there... On being shown a photo of Bhatt she has stated that she cannot recollect having met or seen him in this

meeting... She as denied that there was any mention by the chief minister (that) Muslims be taught a lesson or Hindus be allowed to vent their anger..."

**"...Ashok Narayan:** "Bhatt did not attend the meeting... He has further stated that no minister was present at the meeting... He has denied any utterances by the chief minister (that) Muslims be taught a lesson or Hindus be allowed to vent their anger..."

**"...K Chakravarthi:** "He has categorically stated that Bhatt did not attend the meeting at CM's residence and no such instructions as alleged were given... He has further stated that none of the ministers/politicians had attended the meeting..."

**"...PC Pande:** "Has out rightly denied the presence of any minister or Bhatt in the meeting... Pande has



categorically stated that no instructions to allow any freedom to any law breaker were given by the chief minister...”

**“...PK Mishra:** “Has categorically denied the presence of Bhatt at the meeting. He has also denied the presence of any minister at the meeting... Mishra has stated that it was not true that the chief minister talked in terms (like) let Muslims be taught a lesson and Hindus be allowed to vent their anger...”

**“...K Nityanandam:** “He has denied the presence of any minister or Bhatt at the meeting... He has also denied any such alleged observations made by the chief minister about Muslims being taught a lesson etc etc and Hindus be allowed to vent their anger”.

**“...Anil Mukim:** Has stated that he attended the meeting for some time and then left after taking permission

of Mishra... Has out rightly denied any utterances/instructions about Muslims being taught a lesson and the Hindus allowed to vent their anger, in his presence..."

**"....Prakash Shah:** "Has confirmed to have attended the meeting. He has denied the presence of any minister or Bhatt in the said meeting..."

**VI. I. Controversial Meeting of 27.02.2002**

*In its Conclusions, the SIT Final report dated 08.02.2012 states that:*

"The statement made by RB Sreekumar is hearsay which has not been confirmed by K Chakravarthi. It can be inferred that Bhatt is facing a lot of problems in service matters and, therefore, his evidence is ill-motivated and cannot be relied upon. In view of the versions of all the senior officials of the home and police department the alleged

testimony of late Haren Pandya before the Concerned Citizens Tribunal cannot inspire confidence”.

“In the light of the aforesaid discussions, it can be concluded that a law and order review meeting was in fact held by Modi at his residence late in the evening of 27.02.2002.

However, the allegation that the chief minister instructed the chief secretary, DGP and other senior officials to allow the Hindu community to give vent to their anger on the minority Muslims in the wake of Godhra incident is not established”. ***(Page 58-59 of SIT Conclusions in Final Report to MM, dated 08.02.2012).***

52. The Applicant says and submits that while a significant portion of the SIT's final conclusions submitted before this Hon'ble Court on 08.02.2012 are concentrated on ensuring that some crucial witnesses are discredited (*Pages 408-428*) and despite the fact that the SIT has itself earlier (2010)

expressed apprehensions that officers like Pande, Narayan, Mishra and Nityanandam had no reason or motivation to speak the truth about the instructions given within the four walls of the chief minister's residence, there have been no similar or rigorous efforts are made by the SIT to discredit the testimonies of senior police and administrative officials who have actually benefitted from being accomplices with the illegal and anti-Constitutional actions of the Narendra Modi regime.

53. The Applicant says and submits that many of these "problems" in service matters were in fact unleashed by the State of Gujarat under A-1 Modi after 30.09.2011 when the Hon'ble Supreme Court had passed it's final orders and remanded the Complaint dated 08.06.2006 to a Magistrate's Court. The SIT by now completely functioning as a department under powerful A-1 does not seek to dispassionately assess how and why these cases were unleashed on Bhatt when knowledge of his evidence against A-1 became public.

54. The Application says and submits that senior government official Anil Mukim escapes any censure/observation or action by the SIT for first denying his own presence at the 27.02.2002 meeting categorically (2010) then confirming (2012) his presence at the meeting two years later. At the time

of hearing of the Protest Petition before the learned Magistrate in June 2013, Anil Mukhim who has conveniently by now become an alibi to A-1 Modi was repatriated to a powerful and senior position within the Gujarat bureaucracy. Details of this were handed over to the learned Magistrate and can be seen here at Annexure “J” Colly annexed with a separate Affidavit.

55. The Application says and submits that the most shocking conclusion is the one drawn by the SIT, now completely under the control of A-1 who is both chief minister and home minister of the state.

**VI. J. Controversial Meeting of**

**27.02.2002**

SIT Shocking Conclusions at pg 241-242 of its conclusions submitted before the Magistrate’s Court dated 08.02.2012: ***“Even if such allegations (against Modi) are believed for the sake of argument, mere statement of alleged words in the four walls of a room does not constitute any offence”*** (Page 242, Volume I, SIT Compliance Report dated 08.02.2012)

56. The Application humbly submits that this conclusion alone and by itself ought to have conveyed the intrinsic and deep-rooted bias of the SIT against the Application individually and her comprehensive complaint dated 08.06.2006 and the fact that the Magistrate does not even comment upon it in his Order is a shocking and substantive loss for which reason alone the Order dated 26.12.2013 needs to be struck down..
57. The submissions made by the Application above with regard to the SIT that they were not borne out of the records and there were self-contradictions is supported by the Conclusion drawn by the Amicus Curiae on the Controversial meeting of 27.02.2002. The Application says and submits that the Conclusions drawn by Amicus Curiae Shri Raju Ramachandran on the crucial and controversial meeting of 27.02.2002, evidence related to it and how it ought to be treated are materially different from the SIT.

“ **NOTE BY THE AMICUS CURIAE (dtd 20.01.2011)**

*“.....7.Though SIT has concluded that there is no material to indicate that Shri Narendra Modi, the Chief Minister had issued any instructions to the officers on 27.02.2002 to permit the Hindus to give vent to the anger of the majority community, there are a number of circumstances which*

*prima-facie indicate that the matter requires a detailed investigation to examine the role of Shri Modi immediately after the Godhra incident to find out if there is any culpability to the extent that a message was conveyed that the State machinery would not step in to prevent the communal riots. Some of the circumstances which justify a more detailed investigation into this aspect have been separately enumerated in Chart-A enclosed herewith.*

***“.....From CHART-A (INTERIM REPORT DATED 20.01.2011) entitled ‘OBSERVATIONS ON FINDINGS OF THE SPECIAL INVESTIGATION TEAM.. CHART A***

*“....Allegation that ‘ A Statement was made by Shri Narendra Modi on 27.02.2002 in a meeting at his residence instructing the senior officers to allow Hindus to give vent to their anger. This is also supported by the late Shri Haren Pandya.’*

***“....OBSERVATIONS OF THE AMICUS:-***

*“....3. It may not be correct to rule out the presence of Sanjiv Bhat, IPS, D.C. [Intelligence] since ADGP [Intelligence] Shri G.C. Raigar was not available. There is no reason for him to make a wrong statement. He was willing to make a*

*statement if he was protected from legal repercussions of disclosing what transpired in the meeting.*

*“...4. It is difficult to believe that when the C.M. came back after the Godhra trip, no Minister was present at his residence. Hence, it may not be totally unbelievable that Shri Haren Pandya was present. Shri Haren Pandya is unfortunately dead, but the statements made by Late Shri Haren Pandya to Justice P.B. Sawant [Retd] and Justice H. Suresh [Retd] can be used, even if his statement is not been formally reproduced in the writing by the Citizen's Tribunal.*

*“...5. It has also been brought out that an enquiry was made from CM's office as to the identity of the Minister who had deposed before the Citizen's Tribunal and that the State Intelligence Bureau had verified the identity as that of Shri Haren Pandya. This also gives some corroboration to the fact that the CM's office was uncomfortable with the disclosure made by an unidentified Minister to the Citizen's Tribunal.*

*“.....6. The statement of Shri R.B. Sreekumar cannot be discarded as hearsay, in the light of Section 6 of the Evidence Act.*



*(Raju Ramachandran Sr. Advocate with Gaurav Agrawal Advocate, 20.01.2011 New Delhi (Annexure IV File X Serial No.306 of the SIT Record/Papers)).*

*The Final Report of the Amicus Curiae also clearly states `that there is material to prosecute A-1 Narendra Modi and some others and put the evidence, including Bhatt's evidence, to Judicial scrutiny “.Paras 23-28 of the Final Report are relevant:-*

*“Para 23. In my opinion, despite the aforesaid background, it does not appear very likely that a serving police officer would make such a serious allegation against Shri Modi, the Chief Minister of the State, without some basis. There is no documentary material of any nature whatsoever which can establish that Shri Bhatt was not present in the meeting on 27.02.2002. In the absence of the minutes of the meeting, there is again no documentary material available as to the participants in the meeting and what transpired at the said meeting. Therefore, it is the word of Shri Bhatt against the word of other officers, senior to him. The SIT has chosen to believe the word of the senior officers, i.e. senior*

*bureaucrats and police officers. However, I find that the SIT itself, in its Preliminary Report, has observed as follows [at p.13]:-*

*"...(3) Some of the public servants, who had retired long back, claimed loss of memory as they did not want to get involved in any controversy.*

*"...(4) The other category of public servants, who have recently retired and provided with good post-retirement assignments, felt obliged to the State Government and the present Chief Minister and therefore their testimony lacks credibility.*

*"...(5) The serving public servants, who have been empanelled for the higher posts, did not want to come into conflict with the politicians in power and incurred their wrath which affected their frank response."*

*"...24. I also find it difficult to accept the conclusion of the SIT that Shri Bhatt's statement is motivated, because he has an axe to grind with the State Government over issues concerning his career.*

*Further, in my opinion, it may not be proper to disbelieve Shri Bhatt at this stage, only because the other officers have not supported his*

*statement. Similarly, the delay in making the statement cannot be the sole ground to disbelieve the statement at this stage, especially in view of his explanation that as an Intelligence Officer who was privy to a lot of sensitive information, he would make a statement only when he was under a legal obligation to do so.*

*“25....It may be recalled that, in the aftermath of the Godhra carnage, the law and order meeting in question was called by the Chief Minister at about 11:00 P.M. It seems quite natural for an officer from the Intelligence to be called: The Chief Minister would, after all, have to be made aware of the intelligence gathered by the police till then. It is also an admitted position that Shri G.C. Raiger,*

*the then ADGP (Intelligence) was on leave on that day. The DGP, Shri Chakravarthi does not state that he had gathered intelligence from the office of Shri Raiger. It is also on record that Shri P.C. Upadhyay, the DC (Political and Communal) was also on leave on 27.02.2002 and Shri Bhatt was looking after the work of DC (Political and Communal). Shri Raiger states in his statement under Section 161 Cr.P.C. that Shri*

*Bhatt had accompanied him, in the past, to meetings called by the Chief Minister, though he says he used to wait outside with files or information. Thus, it is quite possible that Shri Bhatt was directed to attend the meeting on 27.02.2002 at the residence of the Chief Minister. The phone call records do not contradict the statement given by Shri Bhatt to the SIT. Considering the important and emergent nature of the meeting, the relative “juniority” of Shri Bhatt need not have come in the way of his attending the meeting, especially since the ADGP (Intelligence), Shri Raiger was not available. It is anybody’s guess as to why, in the absence of Shri Raiger, Shri O.P. Mathur [IGP (Security & Administration)], who was next in seniority, was not called for the meeting. This aspect, in my view, is of little significance in the context of an emergency meeting called at short notice in response to an escalating situation. Similarly, discrepancies about the exact language used or the time of the meeting at the Chief Minister’s residence at Gandhinagar on 28.02.2002 (because he was at Ahmedabad at 10:57 A.M.) are inevitable, considering the lapse of time.*

*(Significantly, there is no material to suggest that Shri Bhatt was either at Ahmedabad or some place other than Gandhinagar at any time after 10:57 A.M. on 28.02.2002.) There could be a discrepancy about the time of the meeting on 28.02.2002. Hence, I disagree with the conclusion of the SIT that Shri Bhatt should be disbelieved at this stage itself. On the other hand, I am of the view that Shri Bhatt needs to be put through the test of cross-examination, as do the others who deny his presence.*

*“.....26. Though the SIT, as the investigating agency, has taken a view, the question whether Shri Bhatt was present at the meeting on 27.02.2002 and whether Shri Modi had indeed made such a statement (as spoken to by Shri Bhatt) can only be decided by a court of law. It would not be correct to disbelieve the version of Shri Bhatt, at this prima facie stage, on the various grounds set out by the SIT or because other participants in the meeting have denied (either categorically, or to the best of their memory) his presence and the alleged statement made by Shri Modi. If Shri Bhatt stands the test of cross-examination, then regardless of the fact*

*that other witnesses have not supported his statement, a court of law may return a finding that Shri Bhatt indeed was present at the meeting on 27.02.2002, and that Shri Modi did make a statement as is being alleged by Shri Bhatt.*

*“.....27. Under the Cr.P.C., if there is some material which supports the allegation being made by the Complainant, a case for proceeding further is made out against the accused. Section 204 Cr.P.C. uses the expression "sufficient ground for proceeding". This Hon'ble Court has held that the learned Magistrate can proceed further, if there is a prima facie case against the accused. [See Dy. Chief Controller of Import & Export vs. Roshanlal Agrawal, (2003) 4 SCC 139, M.N.Damani vs. S.K. Sinha, (2001) 5 SCC 156]*

*“.....28. The stage for believing or disbelieving a witness arises after trial i.e. once the entire evidence is placed before the court for its consideration. It would not be correct to conclude, at this stage, that Shri Bhatt should be completely disbelieved unless there is clinching material available to the contrary, for example, if there is indisputable material which proves that*

*he was not present at the meeting, but somewhere else. No such material has been found.*

*Hence, it cannot be said, at this stage, that Shri Bhatt should be disbelieved and no further proceedings should be taken against Shri Modi.”*

***Specifically Ramachandran recommends in his final report that :-***

*“.... Point.41. Hence, the question to be examined is whether the making of the statement by the Chief Minister in the meeting on 27.02.2002, by itself, is an offence under law. In my opinion, the offences which can be made out against Shri Modi, at this prima facie stage, are offences inter alia under Sections 153A (1) (a) & (b), 153B (1) (c), 166 and 505 (2) of the IPC. (For convenience of reference, these statutory provisions are set out in a Schedule annexed hereto.) However, it would be for the Court of competent jurisdiction to decide whether Shri Modi has to be summoned for any or all of these offences, or for any other offence(s).”*

***(Raju Ramachandran Final Report dated 25.07.2011 also in the SIT Record)***

**58. Discriminatory and Unconstitutional Mindset of A-1 Modi**

The Applicant says and submits that this Mindset of A-1 Modi was evident in his (i) active connivance with the Bandh Call for 28.02.2002 and 01.03.2002 by the VHP that was supported by the BJP. The Applicant says and submits that this was a serious allegation made in the Complaint dated 08.06.2006, substantially argued in the Protest Petition, Oral and Written Submissions but has been dismissed lightly by the Investigating Agency, In this connection, the Applicant says and submits that it is important to remember that it was Hindu mobs mobilised by the local VHP and BJP leaders in the name of bandhs that had carried out the horrific massacres at Naroda and Gulberg Society on 28.02.2002 and those all over the state over the next days. March 1 was a state wise bandh when massacres at Randhikpur-Sanjeli, Sardarpura, Sesan, Odh, Pandharwada and Kidiad among others took place

The Applicant says and submits that this communal mindset was further compounded by a

(ii) discriminatory mind-set of A-1 Modi as seen from his conduct towards different sets of Victims distinguishing on religious grounds, his discriminatory amounts announced in relief that was roundly condemned by former chief justice of India Justice JS Verma who at the time was chairperson of the National Human Rights



Commission and his appointment of the Commission of Inquiry that too invited criticism.

The Applicant says and submits that, this Mindset was evident in actions by A-1 Modi as elected head of government in

(iii) not Prosecuting Hate Speech and Inflammatory Writing and worse, admittedly no action was taken by A-1 and other co-accused to prosecute inflammatory and provocative speech especially that which contained inflammatory and derogatory statements published in pamphlet form by the Vishwa Hindu Parishad (VHP).

The Applicant says and submits in this connection that A-1 Modi as Home Minister did not Act to prosecute Hate Speech.

(iv) Actually Overseeing the Destruction of Crucial Records from the Home Department and the Chief Minister's Office (CMO). The Applicant says and submits that in the course of detailed investigation into the Tampering and Destruction of Records at the time of filing the Protest Petition, significant in Written Arguments and Separate Submissions averments on this issue, where the office of A-1 Modi is culpable have been made. Details are annexed hereto in **Annexure "F" Colly.**

Specifically even the SIT has this to say about this attitude of A-1 Modi:

**VII. Anti Constitutional and Discriminatory**

**Attitude of A-1 Modi**

According to the SIT report of 2010 to the SC, the Gujarat government did not take any steps to stop the illegal bandh called by the Vishwa Hindu Parishad on 28.02.2002. On the contrary the BJP had supported the bandh calls on 28.2.2002 and 1.3.2002. **(Page 69-70, SIT, Malhotra Report to SC, May 2010)**

**VII. A. Discriminatory Attitude to Citizens**

“Narendra Modi, Chief Minister, has admitted to visiting Godhra on 27.02.2002. He has further admitted to visiting Gulberg Society, Naroda Patiya and other riot-affected parts of Ahmedabad city only on 05.03.2002 and 6 March 2002...This possibly indicates his discriminatory attitude. He went to Godhra, travelling almost 300 km in a day, but failed to go to the local areas, where serious incidents of riots had taken place and a large number of Muslims were killed.” **(Page 67 of the SIT Report, Malhotra,**

*submitted to the Hon'ble Supreme Court on 12.05.2010)*

**VII. B. Discriminatory Attitude of A-1 Modi**

“...Modi did not cite any specific reasons why he did not visit the affected areas in Ahmedabad city as promptly as he did in the case of the Godhra train carnage.”

*(Page 8 of Chairman RK Raghavan's comments on the PE Report, dated 14.05.2010)*

**VII. C. Discriminatory Attitude of A-1 Modi**

“.....Modi's statement accusing some elements in Godhra and the neighbourhood as possessing a criminal tendency was sweeping and offensive coming as it did from a chief minister, that too at a critical time when Hindu-Muslim tempers were running high.” *(Page 13 of SIT Chairman's comments on the Malhotra Report, dated 14.05.2012)*

**VII. D. Failure to Prosecute Hate Speech**

“...ALLEGATION NO. XVII: **Failure to take action against the print media making communally inciting reports though State Intelligence Bureau and some field officers had recommended for faction, as noted in the first**

**Affidavit dated 06.07.2002 of Shri R.B. Sreekumar during his cross-examination before the Nanavati-Shah Commission on 31.08.2004.**

During the course of enquiries by SIT, Govt. of Gujarat has intimated in writing that no action had been taken on the recommendations of Shri R.B. Sreekumar against the print media. This allegation, therefore, stands established.

**(Page 79 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)**

According to the SIT report of 2010 to the SC, despite detailed reports recommending strict action submitted to Modi by field officers of the State Intelligence Bureau, Modi as Home Minister failed to take action against a section of the print media that was publishing communally-inciting reports, inflaming base emotions. This had vitiated the communal situation further.

**(Page 79, SIT, Malhotra Report to SC, 12.05.2010)**

**VII. E. Anti - Constitutional Mindset that Destroys and Tampers with Records**

The SIT Report says *"The Gujarat government has reportedly destroyed the police wireless*

*communication of the period pertaining to the riots.” It adds, “No records, documentations or minutes of the crucial law and order meetings held by the government during the riots had been kept.”*

**(Page 13, SIT Report to SC, May 2010)**

59. The Applicant says and submits the findings of the learned Amicus Curiae with regard to these allegations contained in the Complaint about the provocative and hate-filled speeches of A-1 Modi and the discriminatory attitude of the chief minister are relevant:

*“...13. The observation of Shri Modi in a television interview on 01.03.2002 clearly indicates that there was an attempt to justify the violence against the minority community. This indicates a certain approach. The statement made by Shri Modi cannot be seen in isolation. It has to be seen in conjunction with other facts mentioned hereinabove which provides sufficient justification for a detailed investigation in the matter.*

*“.....11 This is one of the circumstances which indicates that the Hon'ble Chief Minister had not*

*taken enough steps to ensure that riots in Ahmedabad city were immediately controlled by his direct intervention.” (Interim Report of the Amicus Curiae dated 20.01.2011)*

60. The Applicant says and submits that this Biased and Partisan View of the SIT was apparent in dealing with the A-1 Modi when AK Malhotra recorded his statement on 27/28.03.2010. The Applicant craves leave to rely on a detailed reading of the statement to show the deliberate non-probative tenor of the IO's conduct at the relevant time. For the present however, the Applicant states the fact that there was a deliberate and willful and complete collapse of the law and order machinery in the state of Gujarat right until early May 2002 when KPS Gill was sent in by then the Union government is further proven by the letter dated 22.04.2002 sent by A-29 PC Pande then Commissioner of Police to A-25 then DCP Chakravarthi and A-28 Ashok Narayan (ACS Home) which copy as per law and the Standard Operational Procedure (SOP) had to reach A-1 Modi, then chief minister and home minister of the state. This letter written by a serious police officer clearly expresses concern at the brazen extortion and intimidation (coercive, criminal acts) by Ministers of the Gujarat government. This letter is available at D-38, Annexure III, File III in the SIT Record and had been handed over to the SIT by co-applicant in the Supreme Court in SLP (Crl) 1088/2008. Smt Teesta

Setalvad. This letter was contained in the annexures to then DGP-Intelligence Mahapatra's affidavit and spoke of Minister Bharat Barot openly moving around Ahmedabad extorting individuals and intimidating citizens. The Applicant says and submits that if such brazen criminal conduct could so easily be excused by top echelons of the Police, Administration and Political leadership, it certainly adds weight to the substantive allegations of a top level conspiracy and cover-up. The statement of A-1 Modi recorded by the SIT on 27/28, 2010 is available @ Annexure I, Volume II, Sr Nos 113 in the SIT Record.

#### **VIII. SIT Lets of A-1 Modi lightly**

##### **Narendra Modi's statement to SIT dated 27 & 28.03.2010**

Q. 41 (Malhotra for SIT). Please see a copy of the DO letter dated 22.04.2002 addressed by Shri P. C. Pande, the then CP Ahmedabad City with a copy to DGP and Addl. DG (Intelligence) about the undesirable activities of Sang Parivar activists. Was this letter brought to your notice? If so, what was the action taken by you in the matter?

Ans. In this connection, it is stated that I do not remember now, whether this issue was brought to my notice or not. But, it *has* been my and my Government's approach right from the first day, that a culprit is a culprit irrespective of his caste, creed, religion or socio political background, as nobody is above law.

61. The Applicant says and submits that the poor quality, unprofessional and biased investigation of the SIT Report(s) and Investigation can be understood and gauged from the Statement of A-1 Narendra Modi @ **Annexure I, Volume II, Serial Nos 113** of the SIT Record. A bare reading of the statement reveals how the SIT has deliberately and consciously let of a powerful accused. The Applicant craves leave to refer in detail to this Statement at the time required. In brief, a table outlining the SIT's Malafides with regards to this part of the Investigation is being put here for easy recall and reference.

Issues Ignored	SIT Statement of A-1 Modi dated 27/28.3.2010 @ Annexure I, Volume II, Serial Nos 113	Remarks/Observations of the Applicant
A-1 Modi not questioned on the Controversial Phone Calls from Mobiles Chief Minister's Office (CMO) to Accused (A-1 Jaideep Patel) from the VHP despite Evidence being available.	"...Q.56.Did you ever use the mobile phones of your personal staff, namely Shri Anil Mukim, the then Addl. PS to CM, Shri Tanmay Mehta, PA to CM, Shri Sanjay Bhavsar, OSD and Shri O.P. Singh, PA to CM?	The Applicant says and submits that the telephone Call Records showing phone from Mobile of PA of A-1 Modi (AP Patel) to general secretary VHP, A-21 Jaideep Patel immediately after DM fax is received by A-1 are



<p>O.P. Singh, PA to chief minister,(9.11.2009) statements before the SIT on 9.11.2009 &amp; 25.3.2011; Tanmay Mehta statement before the SIT dated 9.11.2009; Sanjay Bhavsar's Statements dated 6.11.2009, 15.4.2011&amp; 18.4.2011.</p> <p>OP Singh clearly says that CM would use his phone when he was out.  “....Sometimes when the CM is out ...and is staying overnight and the calls are received on my mobile phone, I hand over the same to the CM after ascertaining his willingness to talk. Normally the CM talks over my mobile phone only when there is an extreme urgency.”</p>	<p>Ans. Telephones are installed at my residence as well as my office Whenever, I go out, telephones are available to me. I have never used the mobile phones of my personal staff at headquarters. There was a mobile phone allotted to me in the year 2002, but I rarely used the same I do not recollect its number.</p> <p>Q.57. Whether Jaydeep Patel, Babu Bajrangi and Dr. Mayaben Kodnani, MLA were in touch with you during the riots from 28-2-2002 onwards?</p> <p>Ans. I came to know Babu Bajrangi through media reports and he is not known to me. Dr. Mayaben Kodnani is a MLA from BJP and used to meet me Jaydeep Patel is a VHP leader, who is also known to me. As far as I recollect, they never contacted me over phone during the riots.</p>	<p>Completely Ignored by the SIT.  These were made available to the SIT by co-Applicant Teesta Setalvad of the CJP before March 2010, filed in the Hon'ble Supreme Court on 10.8.2010 &amp; have been annexed at Pages 5-6, Pages 105-109, Pages 159-166 all @ Annexure Volume IV of Protest Petition which is <b>Annexure "E - 5 Colly"</b>. This will be placed on record by way of a separate affidavit very shortly,</p> <p>A.P. Patel who's Mobile Phone was used by A-1 Modi to Contact A-21 Jaideep Patel of the VHP immediately on news of Godhra Incident is the <i>only official from the CMO who's statement mysteriously the SIT does not record</i>. Despite this contention in the Protest Petition and Oral Arguments in this regard, the Learned magistrate has also ignored the weight of this prima facie evidence.</p> <p>Though OP Singh and A-1 Modi admit to the latter using his mobile phone on tour, the SIT is silent on this aspect.</p>
<p>Though there is evidence before the SIT on the fact that there were barely seven phone calls <i>in toto on 27.2.2002 and 28.2.2002 on the seven residential and office landlines of the chief minister, A-1 Modi is not questioned on this serious lapse given the fact that the state had been in turmoil on those two days.</i></p>	<p><b>Q and Answer 56 As above</b></p>	<p>The Applicant says and submits that the SIT deliberately ignores this evidence and does not place nay questions on this to the Accused at all. Analyses of A-1 Modi (Residential and Office) Phone Call records tell a strange tale that SIT has again, deliberately and conspicuously not investigated (<b>Annexed to the Protest Petition at Annexure Volume IV, Pages 93-100</b>). This Analysis carries startling details that show that from the seven landlines available to the chief minister at his office and residence, only a handful (barely six to seven calls</p>

		are received on the fateful day) of which one is from VHP strongman Jaideep Patel, also a co-accused. How could a political head of state records such few phone calls? <b>(Para 106 @ Pages 61-62 of Protest Petition Volume I)</b>
Clear Evidence that a Fax was also sent by DM Jayanthi Ravi to the chief minister's residence, that speaks of provocative sloganeering by Kar sevaks yet this issue is not examined/investigated by the SIT @ Sr Nos 1, File XLI, Annexure III	<p>Q.7. How and when did you come to know about the incident relating to burning of a railway coach of Sabarmati express near Godhra railway station on 27.02.2002?</p> <p>Ans. On 27-2-2002 around 9:00 hrs, I received an information from the Shri Ashok Narayan, the then ACS (Home) about the burning of a railway coach of Sabarmati Express near Godhra Railway Station.</p> <p>Q.8. What was your immediate reaction and what were the steps taken about this incident?</p> <p>Ans: - I held discussions with Shri Gordhan Zadafia, the then MoS (Home), Shri Ashok Narayan, the then ACS (Home) and other officials of Home and Police Department and asked them to collect the facts because the issue was going to be raised in the Assembly. I gave directions that necessary steps be taken that the other passengers should not be delayed, which may lead to tension. I also gave instructions that Godhra was communally sensitive place and that necessary steps like curfew etc. should be taken immediately to avoid any untoward incident and that senior police officers and extra force, if required</p>	<p>This Fax as per the SIT's own Index was sent by the DM (first information) and received by the Home department/control which is directly under A-1 Modi who is home minister of the state.</p> <p>The first thing that A-1 Modi does is contact Jaideep Patel.</p> <p>Also in the Home department meeting co-conspirators and he decide to drop the information that provocative sloganeering by Kar Sevaks had led to the sloganeering at Godhra and thus the Assembly is misinformed.</p>

	should reach the spot without any delay.	
Evidence of A-1 Modi actually giving a laissez faire to enraged members of the RSS/VHP etc who met him at the Railway Yard where the Burned Coach was Parked	<p>“... Q.12. How and when did you reach Godhra on 27.022002? Who others accompanied you to Godhra?</p> <p><b>“Answer.....(latter part)...</b> “.....The dead bodies of the victims were lying covered in the railway yard. I climbed up in the burnt coach and inspected the scene of occurrence. The crowd present over there was aggravated and expected from the Govt. that the culprits should be punished at the earliest. I assured the crowd that the culprits would be brought to book and that they should maintain the peace. Thereafter, I went to Civil Hospital and saw the injured admitted over there. I talked to some of them and assured them all help and best treatment. I also asked them about the details' of the incident and their version almost tallied with the version given by the persons present at the Railway Station. From Civil Hospital, I went to Collectorate and held a meeting with the Govt. and police officials. I asked them about the details of the incident. At that time, Shri Ashok Bhatt, the then Health Minister, Shri Gordhan Zadafia, the then Home Minister were also present there. Shri Prabhatsinh Chauhan, the then Transport Minister had also reached Godhra and met me there, but I do not remember whether he was present in the Collectorate or not.</p>	Transcripts of the Tehelka's Operation Kalank (found to be authenticated Cooroborative evidence by the Special Sessions Court Naroda Patiya judgement delivered on 29.8.2012) are available at Annexure III, File XIII, D-129 of the SIT record but are completely ignored by the SIT
Evidence of Orders to Illegally Conduct Post	<b>No Questions Put by SIT</b>	The A-1 Modi was personally present when

<p>Mortems of the Burned Godhra Victims, out in the Open in the Railway Yard in Violation of SOP(Gujarat Police Manual) not probed by SIT</p>		<p>these Illegal Post Mortems took place in the Open, Photographs were allowed and relayed by the media, electronic media and email allowing Godhra to become cause for revenge and anger all over the state. The Applicant says and submits that as can be seen in the Photograph at Page 100 @ Annexure "G Colly" to be filed shortly with a separate affidavit with complete annexures which is a page from the Special Sessions Court Judgement(1.3.2011) into the Godhra train burning, Corpses were indeed placed out in the open at the Railway Yard.</p>
<p>A-1 Modi not questioned sharply on how a man in responsible office could even consider a) transporting bodies of Godhra victims to any place outside since they were subject matter of an Investigation and this would amount to interference in the investigation; b) handing over the bodies to a person like Jaideep Patel from an Organisation like the VHP who's communal antecedents are well known</p>	<p><b>Q.13, 14. 15 and 16</b>  <b>Q.13.</b> Who took the decision for the Transportation of dead bodies to Ahmedabad and on what basis?   <b>Ans.</b> In the meeting held at Collectorate, a collective decision was taken in consultation with all those present there to transport the dead bodies of the victims to Ahmedabad. I instructed that the dead bodies should be kept at Sola Civil Hospital on the outskirts of Ahmedabad so that the tension should not mount. This decision was taken in the light of the fact that it was learnt that most of the victims belonged to Ahmedabad and other places beyond Ahmedabad and that their relatives need not come to Godhra for their identification and claiming the dead bodies, as Godhra town was under curfew.   <b>Q.14.</b> Did Smt. Jayanti Ravi, the then Collector, Godhra object to the transportation of the dead-bodies to Ahmedabad?   <b>Ans.</b> It was a unanimous decision in the meeting to take dead bodies to Sola Civil Hospital, Ahmedabad,</p>	<p>The SIT has utterly disregarded the fundamental aspect of the conspiracy which was the mindset of the A-1 Modi to give the go bye to established norms and legalities and actually use the VHP to create calculated violence, targeted rape and arson in Gujarat's districts in constructed reprisal for Godhra.</p>

	<p>as most of the victims belonged to Ahmedabad and nearby places.</p> <p>Further, Smt. Jayanti Ravi, t then Collector &amp; District Magistrate, Godhra was of the view that the dead bodies should be immediately taken from Godhra as the same would have mounted further tension in Godhra city.</p> <p>Q.15. Did you know Shri Jaydeep Patel, the then VHP General Secretary and whether he met you at Godhra and made a request that he should be allowed to accompany the dead bodies to Ahmedabad?</p> <p>Ans. I know Jaydeep Patel, the then VHP General Secretary. I do not remember to have met him at Godhra. After the decision was taken to transport the dead bodies to Ahmedabad, it was the duty of the District Administration to chalk out the modalities for its transportation. I do not know the details, as to how and when the dead bodies reached Ahmedabad. However, the custody of the dead bodies remained with the District Administration, police officers and the hospital authorities.</p> <p>Q.16. Did you meet the media persons at Godhra?</p> <p>Ans. While, I was at Collectorate Godhra, a lot of press reporters and media persons had assembled there I briefed them about the incident and informed them that the culprits would not be spared and that a compensation of two lakhs per victim would be paid I also appealed to public through them for maintenance of peace. I also informed the media that on the bass of facts</p>	
--	--	--

	narrated to me by the persons present on the spot as well as injured persons, the incident appeared to be a serious and preplanned conspiracy	
<p>SIT does not grill A-1 Modi when the latter gives himself away in Answer 19 to the question of “who attended the meeting on 27.2.2002” at A-1 Modi’s residence.</p> <p>SIT does not probe why no Officer from Intelligence was present or how come no Minutes of the Meeting had been maintained.</p>	<p><b><u>Q.19 and Answer</u></b>  Q.19. When and where did the aforesaid meeting on 27.02.2002 take place? Who all were present in the said meeting? Who were the Ministers/MLAs present in the meeting?</p> <p>Ans. The meeting took place at my residence office for about half an hour Smt. d Swarna Kanta Varma, the then acting Chief Secretary, Shri Ashok Narayan, the then ACS (Home). Shri K Chakravarthi, the then DGP Shri P.C. Pande, the then CP, Ahmedabad City, Shri K. Nityanandam, the then Home Secretary, Dr. P.K. Mishra and my other PS Shri Anil Mukim were present in the meeting. As far as I recollect, Shri G.C. Raiger, the then ADG (Int.) was not present. Shri Sanjeev Bhatt, the then DC (Int.) did not attend, as this was a high level meeting. None of my Cabinet colleagues were present in the said meeting.</p>	<p>The Applicant says and submits that Modi gives himself away by volunteering that “Sanjeev Bhat DC Int) did not attend” when he had not been questioned on this officer by SIT at all.</p> <p>SIT neither does ask the next logical question as to why, if not Bhatt, no other officer from Intelligence attended as is required under the specific provisions of the Gujarat Police Manual.</p>
<p><b><i>A-1 Not Grilled on Destruction and Tampering of Records</i></b>  There is/was Substantive Evidence that the SIT had in its own record (Annexure IV, File I, Sr Nos 23 &amp; Annexure III, File XV, Sr Nos D-156 SIT Papers/Record that reveal that Documents were destroyed by the Gome Department headed by A-1 Modi on 31.3.2008 while the Hon’ble Supreme Court was seized of the Cases related to 2002. A detailed</p>	<p><b>No questions put by SIT</b></p>	<p>The Applicant says and submits that Tampering with Evidence and Destruction of Records are criminal offences substantive in any case that affects the course of public justice. The SIT in both its reports admits that several crucial documents are missing and tampered with and yet does not see it proper to hold any powerful accused to account even though these accounts were destroyed while the Supreme Court was</p>

<p>LOD on Tampering and Destruction of the Fax register of the CMO, the Itinerary of the CMO, the Minutes of Meetings etc can be seen at Annexure "U" Colly herein Documents from the Air Log Travel of the A-1 CH etc are also Missing and yet no questions are put to him</p>		<p>hearing cases and by the Home department that A-1 Modi heads.</p>
<p>No questions on Mens Rea in Allowing attack on Applicant's Husband Shri Ahsan Jafri</p>	<p><b>Q.32.</b> Did you know Late Ahsan Jafri, Ex-MP, who was residing in Gulberg society?</p> <p><b>Ans.</b> I had not known Late Ahsan Jafri, Ex-MP, as he was elected as MP sometime in 1970's, when I was not even in politics. I was told subsequently that Late Ahsan Jafri, Ex-MP was residing in Gulberg society and had been killed during the attack on the society.</p>	<p>The Applicant says and submits that the Mens Rea and Animus of A-1 Modi against Shri Ahsan Jafri was mischievously ignored by the SIT, given the fact that that the latter contested against him for the assembly elections to the Rajkot Assembly Constituency just a week before the Godhra Incident (i.e. on 21.2.2002 is deliberately and mischievously by SIT. <b>Para 154 @ Pages 85-86 Volume I Protest Petition at Annexure "E" Colly</b> which is to be filed shortly annexed to a separate affidavit.</p>
<p>No Probing on the Falsehood contained in the Answer to question about Gulberg Society Attack and what time A-1 Modi came to know of the attack on Gulberg Society</p>	<p><b>Q.31 and answer</b> <b>Q.31.</b> Did you receive any information about an attack by a mob on the Gulberg Society? If so, when and through whom? What action did you take in the matter?</p> <p><b>Ans.</b> To the best of my recollection, I was informed in the Law &amp; Order review meeting held in the night about the attack on Gulberg society in Meghaninagar area and Naroda Patiya.</p>	<p>The Applicant says and submits that from the SIB records and evidence given before the tribunal including SIB messages from the record clearly point to the fact that A-1 Modi knew of the attack on Gulberg Society through the day at least by 2 p.m.; as did A-31 co accused PK Mishra, former PS to the CM and other co-accused like ACS (Home) A-28 Asok Narayan. An incident like the one that took place at Gulberg (and Naroda Patiya) was more than likely to have been known by high powered accused by the time A-1 Modi addressed the Media at the Shahibaug Circuit house around 4 p.m. that day</p>
<p>SIT does not probe why A=1 Modi visited the sites of the Post Godhra Massacres so late</p>	<p><b>Q. 34 and answer</b> <b>Q.34.</b> Did you visit Gulberg Society on or around 03.03.2002 along with one Jagrupsinh Rajput and others including</p>	<p>The Applicant says and submits that though this distinctly callous and discriminatory attitude discloses the mind of A-1 Modi it is not probed further by SIT</p>

	<p>Ministers? If so, please describe your visit and the scenario over there.</p> <p>Ans. I visited Gulberg society, Naroda Patiya and other not affected parts of the Ahmedabad City on 5-3-2002 and 6-3-2002. During these visits, I had also visited different relief camps. Shri Jagrupsinh Rajput was a Congress leader at that time and he did not accompany me. However, I do not know, who were the persons present there. I did not meet anyone</p>	
<p>SIT does not get an answer to when KPS Gill was sent as an advisor to the Gujarat government by the ruling NDA dispensation at the Centre</p>	<p><b><u>Q. 37 and Answer</u></b>  Q.37. When was Shri K.P.S. Gill, former DG of Punjab, appointed as an Advisor to the Chief Minister and when did he arrive in Gujarat? Please give the details of your meetings with him. What were the suggestions given by Shri K. P. S. Gill to bring normalcy and peace in the State?</p> <p>Ans. Shri K.P.S. Gill, former DGP of Punjab, who was neither a Hindu nor a Muslim and being an experienced police officer was invited to give useful suggestions to improve the situation in the State. Shri K.P.S. Gill held a number of meetings with the officials of Home and Police Department, as well as the leaders of Hindu and Muslim communities. After taking stock of the situation Shri K.P.S. Gill had advised me to transfer the jurisdictional officers. In view of his suggestion, all police officers were transferred.</p>	<p>The Applicant says and submits that the SIT displaying its preconceived bias does not even probe further when it does not receive any answer to this question.</p>



<p>SIT again proves the Criminal Behaviour of Minister is A-1 Modi's cabinet on the streets of Ahmedabad in a similarly casual and cavalier fashion</p>	<p><b>Q and Ans 40 and 44</b>  <b>Q.40.</b> Please see a copy of DO letter dated 19.04.2002 addressed by Shri P. C. Pande, the then Commissioner of Police, Ahmedabad City to DGP with a copy to Addl.DG (Intelligence) and ACS (Home) about the alleged involvement of Shri Bharat Barot, a Minister in the Government in a rioting incident. Was this letter brought to your notice? If so, what was the action taken by you in the matter?</p> <p>Ans. Shri Ashok Narayan, the then ACS (Home) had brought this matter orally to my notice and I had reiterated my earlier instruction to the concerned.</p> <p><b>Q.44.</b> Did your Cabinet Colleagues namely Shri Haren Pandya, the then Minister for Revenue, Shri Ashok Bhatt, the then Health Minister led the mobs in Ahmedabad with Shri Bharat Barot, a sitting MLA was at the forefront?</p> <p>Ans. This is absolutely incorrect. There was no such instance like that.</p>	<p>The Applicant says and submits that as mentioned in the narrative, despite the letter of A-29 PC Pande to A-25 DGP K. Chakravarthi (also received by A-1 and A-28 ACS Home Ashok Narayan) about the criminal, intimidatory behavior of the Ministers like Bharat Barot in Modi's cabinet the SIT simply deals with these serious accusations like classroom questions and answers not pushing further, neither attempting in any way to gather independent information.</p>
<p>SIT does not probe the serious question of which there is evidence in the Extra Judicial Confessions by convicted accused in the Naroda Patiya massacre (Tehelka Sting Operation), Suresh Richard Chara that A-1 Modi visited Naroda Patiya in the late evening of 28.2.2002 and congratulated those men who had raped young women.</p>	<p><b>Q and answer 46</b>  <b>Q.46.</b> Did you let off your escort in the evening on 28.02.2002 and visit Naroda Patiya to congratulate the accused persons for committing heinous crime?</p> <p>Ans. This is absolutely false. On 28-2-2002 evening, I held a press conference at Circuit House, Annexe, Shahibaug and thereafter, returned to Gandhinagar. The allegation has been</p>	<p>The Applicant says and submits that the issue of A-1 Modi a chief minister letting off his escort and visiting the Naroda Patiya area should have been independently probed by the SIT through securing movements/ vehicle logs etc of the A-1 Modi's vehicle, interrogating drivers and other staff of security. Instead the SIT has dealt with this issue, as others in a formalistic fashion.</p>

	maliciously made against me.	
SIT simply accepts A-1 Modi's opinion on the communal speech at Becharaji and does not grill him further	<p>Q.52. Please see a text of the public, speech delivered by you at Becharaji, Mehasana District on 9-9-2002, as a part of Gaurav Yatra. Particularly the portion reproduced below:</p> <p>"What brother, should we run relief camps? (Referring to relief camps for riot affected Muslims). Should I start children producing centers there, i.e. relief camps? We want to achieve progress by pursuing the policy of family planning with determination. We are 5 and our 25!!! (Ame panch, Amara panch, referring the Muslim, polygamy). On whose name such a development is 'pursued? Can't Gujarat implement family planning? Whose inhibitions are coming in our way? Which religious sect is coming in the way? Why money is not reaching to the poor? If some people go on producing children, the children will do cycle puncture repair only? "Did these, remarks refer to the Muslims?</p> <p>Ans. This speech does not refer to any particular community or religion. This was a political speech, in which I tried to point out the increasing population of India, in as much as I stated that "Can't Gujarat implement family planning?" My speech had been distorted by some interested elements who had misinterpreted to suit their designs. It may be mentioned here that no</p>	The Applicant says and submits that given the National Commission for Minorities (NCM) had pulled up the government for this communal speech, given the fact that co-accused A-25 DGP K Chakravarthi had in a written note told then ADGP-Intelligence not to submit a copy to the NCM, this attitude of the SIT lets off A-1 Modi lightly.

	riots or tension took place after my election speech.	
SIT was in the possession of records (Home Department of the Gujarat Government) that showed the MHA Delhi was constantly writing to the state government, as was the Governor of the state pointing to discrepancies in figures between the Compilation of Figures by the State Intelligence and the Home Department of Gujarat government headed by Modi and also controlled by A-28 ACS Ashok Narayan, A-34 Nityanandan, Home Secretary, A-5 Govardhan Zadaphiya etc.	<b>The SIT puts no questions to A-1 Modi on this</b>	The Applicant says and submits that these gross discrepancies were placed before the Ld Magistrate and are also being enclosed herein in <b>Annexure "S" Colly</b> . For example there are letters [from the Government of Gujarat (GOG) home department files] written by Union Home Secretary Kamal Pandey to different Officials especially PS Shah (Addl Secretary Home) pointing towards discrepancies. These can be seen in <b>Annexure S Colly</b> compiled from SIT record: A) Annexure III, File XLI D-196(Volume I Sr Nos 59); B) Annexure Annexure III, File XLI D-196(Volume I Sr Nos 115); C) Annexure III, File XLI D-196(Volume I Sr Nos 125); D) Annexure III, File XLI D-196(Volume I Sr Nos 128. The SIT not only did not confront A-1 Modi with these gross discrepancies but also concealed these records from the Hon'ble Supreme Court and the learned Amicus Curiae.

**62. Cabinet Ministers IK Jadeja and Ashok Bhatt were positioned in the DGP office and Ahmedabad City Control Room respectively by the CM**

The applicant says and submits that the unfolding of the sinister Conspiracy and its actualization into action, following the criminal instructions issued on the night of 27.02.2002 at the residence of A-1 Chief Minister Modi consisted of

stationing of senior Ministers with no connection to the law and order maintenance portfolios in the State Police Control Room, Gandhinagar and City Control Room, Shahibaug, Ahmedabad. This aspect of political bigwigs directly interfering with the statutory functioning of the police machinery led to lawlessness of a huge scale all over Gujarat from 28.02.2002 onwards. The SIT has dealt with this serious allegation in the following manner, again in contrast to the assessment by the learned Amicus Curiae appointed by the Hon'ble Supreme Court.

63. The Applicant says and submits that it was and is her considered assessment laid down in my complaint after her personal experiences on the night of 28.02.2002 at the Shahibaug police station after my husband had been brutally murdered and thereafter corroborated through evidence and statements of other witnesses that the interference by the powerful political functionaries of the state into the functioning of the police and district administration during phases of prolonged violence have been long identified by advocates of police and administrative reform as the main cause behind the failure of the police to take prompt action available under the law, protect lives and property. (ii) therefore the applicant says and submits as outlined in her complaint that it is unheard of for the political top brass to instruct ministers to remain

physically present at the state and city control rooms, especially when this episode is followed by a complete breakdown of law and order in 14 of the state's 25 districts. IK Jadeja, accused in the complaint, was the minister of urban housing in 2002 while Ashok Bhatt, also accused, was the health minister at the time, departments of the government administration in no way concerned with the maintenance of law and order. Hence the applicant humbly states that neither had any business being at the police headquarters. Even In his Comments dated 14.05.2012 to the Hon'ble Supreme Court, the Chairman SIT RK Raghavan admits to this being a controversial and unlawful decision:

**IX. Cabinet Ministers IK Jadeja and Ashok Bhatt were positioned in the DGP office and Ahmedabad City Control Room respectively by the CM**

**“.....E. ALLEGATION V. Cabinet Ministers IK Jadeja and Ashok Bhatt were positioned in the DGP office and Ahmedabad City Control Room respectively by the CM**

“In a controversial move, the government of Gujarat had placed two senior ministers — Ashok Bhatt and IK Jadeja — in the Ahmedabad city police control room and the state police control

room during the riots. These two ministers were positioned in the control rooms with “no definite charter”, fuelling the speculation that they “had been placed to interfere in police work and give wrongful decisions to the field officers”. “The fact that he (Modi) was the cabinet minister for Home would heighten the suspicion that this decision had his blessings.”

*(Page 12 of Chairman RK Raghavan’s comments, 14.05.2012)*

**IX. A. Cabinet Ministers IK Jadeja and Ashok Bhatt were positioned in the DGP office and Ahmedabad City Control Room respectively by the CM**

“ It may thus be seen that Shri K. Chakravarthi has categorically stated that Shri Ashok Narayan had conveyed to him that it was the Government’s decision to place the aforesaid two Ministers in the Control Rooms. Some of the witnesses have partially denied, while others have confirmed the presence of Shri I.K. Jadeja and Shri Ashok Bhatt in the State Control Room and Shahibaug Control Room respectively. However, almost all the police officers have

stated that they did not interfere with the working of the police in the Control Room. This was a very controversial decision taken by the Govt. to place two of its Ministers in the State Police Control Room as well Ahmedabad City Police Control Room. Though evidence is available to establish that both the Ministers visited the respective Control Rooms, yet there is no evidence to establish that they passed on instructions to the police officers to deal with the riots in a particular manner. In view of this, the allegation is only partially proved. “

*(Page 32 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)*

**IX. B. Cabinet Ministers IK Jadeja and Ashok Bhatt were positioned in the DGP office and Ahmedabad City Control Room respectively by the CM**

“.....(xvii) Two years later after perusing the Reports of the Amicus Curiae dated 20.01.2011 and 25.07.2011, and despite of them, the SIT comes to an even stronger and more questionable conclusion:-

“Therefore, the allegation that the two ministers were positioned in the state control room and Ahmedabad city police control room by the chief minister is not established. Significantly, IK Jadeja remained at state police headquarters for 2/3 hours as per his own admission but did not interfere in the police functioning. Late Ashok Bhatt's presence in the city police headquarters on the relevant day, if any, was very negligible and it cannot be termed of any material value. In the absence of documentary/oral evidence of any directions given by these two ministers to police officials, it cannot be said at this stage that they conspired in the perpetration of riots or did not take any action to control the riots”. **(Page No. 474-475 of the SIT Closure Report dated 08.02.2012).**

64. The Applicant says and submits that the vacillation in the SIT investigation with relation to the extremely serious allegation of Political functionaries directly interfering in police functioning



leading to the complete and deliberate breakdown of law protection and enforcement can be seen from the two conclusions mentioned above in the SIT reports. In stark contrast the Amicus Curiae Interim report dated 20.01.2011 states that

*“8. The positioning of 2 Cabinet Ministers having nothing to do with the home portfolio in the office of DGP and the State Police Control Room respectively is another circumstance which reflects that there was a direct instruction from the Chief Minister. Though Shri Jadeja says that he had gone to the DGP's office on instructions of Shri Gordhan Zadafia, MoS [Home] this is highly unbelievable. It is obvious that the Chief Minister had positioned these 2 Ministers in highly sensitive places which should not have been done. In fact, these 2 Ministers could have taken active steps to defuse the riots, but they did nothing, which speaks volumes about the decision to let the riots happen. It does not appear that these 2 Ministers immediately called the C.M. and told him about the situation at Gulberg and other places.*

*“9. SIT merely relied upon the statements of the police officers to conclude that these 2 Ministers*

*did not give any instructions to Police Department, but it appears highly unlikely that 2 Cabinet Ministers of the Government of Gujarat would have not given some kind of directions when the CM had directed them to remain present.*

*“..10. It is obvious that the 2 Ministers were fully aware of the developing situation in Gulberg Society, Naroda Patiya etc. in Ahmedabad City. They were duty bound to convey the situation to the Chief Minister and were required to do everything possible to save loss of lives. If the stand of the CM that these 2 Ministers were positioned so as to effectively control the law and order situation is correct, then there would have been a far quicker action to control the riots in Gulberg Society and Naroda Patiya atleast.”*

*“...11. No tangible action seems to have been taken by the police high ups in the Police Department, namely Commissioner of Police, to control the riots at Gulberg Society. Gulberg Society is not very far away from the Office of Commissioner of Police, Ahmedabad.”*

65. The Applicant says and submits that in the Final Report of the Amicus Curiae dated 27.07.2011 Shri Raju Ramachandran concludes that

**“...IV. NATURE OF OFFENCE(S)**

**PRIMA FACIE MADE OUT:**

*35. The next question which arises is that, if the statement of Shri Bhatt is to be believed, then what offence(s) are made out against Shri Modi. The direct role of Shri Modi is limited to allegedly making this statement on 27.02.2002. Though it is alleged that, with a view to ensuring that his instructions were carried out by the Police Department, Shri Modi had positioned 2 of his cabinet colleagues at the State Police Control Room and the Ahmedabad City Police Control Room respectively, the SIT has come to the conclusion that the Ministers did not interfere in any manner with the functioning of the Police. The material collected by the SIT does not indicate that these 2 ministers interfered with the working of the police department at the time the riots were taking place. However, there is the possibility that the very presence of these 2 Ministers had a dampening effect on the senior police officials, i.e. the DGP and the*

*Commissioner of Police, Ahmedabad, if indeed Shri Modi had made a statement (as alleged) the previous night. This is again one of the circumstances which can be taken into account and examined during the course of trial.*

*“....36. The Chairman, SIT in his earlier comments dated 14.05.2010, found as follows [at p. 5]:*

*“It has been conclusively established that the two Ministers were indeed operating from the two Control Rooms for a few days from 28.02.2002 onwards. There is however no information to establish that they interfered with police operations during the time they were there. Nor is there information that this arrangement was at the instance of the Chief Minister himself, although there is every likelihood that this had at least his tacit approval. It is quite possible that DGP Chakravarthi was unhappy with this arrangement. He has, however, denied that he ever gave expression to his resentment, as suggested by Shri R.B. Sreekumar, the then ADGP in his Affidavit before the Nanavati Commission and statement made before the SIT. (Vide pages 28-32 of the enquiry report)”*

“....37. However, in the present forwarding remarks to the Further Investigation Report, the Chairman, SIT has taken the view that [at p. 5]:

“It is true that two Ministers, Shri I.K. Jadeja and Late Ashok Bhatt, were positioned reportedly to monitor the law and order situation. One of them, viz., I.K. Jadeja remained at the Police Headquarters for about two to three hours on 28.02.2002. The presence of a second Minister, viz., Ashok Bhatt, supposed to be stationed at Ahmedabad City Police Control Room on 28.02.2002 was not established. No evidence is available to suggest that they ever interfered with the Police operations to bring the situation under control, or that they conspired in the perpetration of the riots.”

“....38. Thus, it would appear that – in respect of Shri Ashok Bhatt – the Further Investigation Report is at variance with the Preliminary Report. It is pertinent to point out that the Preliminary Report had relied on Shri Ashok Bhatt’s own statement that he visited the Control Room on 28.02.2002 for about 10 minutes, and concluded that “the allegation about the positioning of Shri Ashok Bhatt, the

*then Health Minister, in the Control Room, Ahmedabad City appears to be correct, but there is no evidence to prove his interference in the Police work.” In light of this admission, the doubt expressed by the SIT in the Further Investigation Report about the presence of Shri Ashok Bhatt in the Control Room on 28.02.2002 is without basis. Thus, it stands established, as per the SIT’s Preliminary Report, that the 2 Ministers were present in the Police Control Rooms at Gandhinagar and Ahmedabad respectively.*

*“.....39.If Shri Sanjiv Bhatt is to be believed, the message conveyed by the Chief Minister (at the meeting held at his residence on 27.02.2002), was further conveyed by the very stationing of the 2 Ministers in the Police Control Rooms. While there is no direct material to show how and when the message of the Chief Minister was conveyed to the 2 Ministers, the very presence of political personalities unconnected with the Home Portfolio at the Police Control Rooms is circumstantial evidence of the Chief Minister directing, requesting or allowing them to be present. As already noted, the Chairman, SIT himself has found that their positioning in the*

*Police Control Rooms had, at least, the Chief Minister's "tacit approval".*

66. The Applicant says and submits that from this it is clear that prima facie evidence was ignored by the SIT, too much emphasis on powerful co-accused from the political and bureaucratic establishment who had benefitted from illegality and criminality and moreover are co-accused in the Complaint dated 08.06.2006; serious differences and inconsistencies between the preliminary and further investigation reports of the SIT; complete disregarding of the valuable assessments made by Amicus Curiae Shri Raju Ramachandran together are just further, concrete instances of the obfuscation and evasiveness of the SIT investigation overall and the learned Magistrate erred substantively and materially in failing to adduce the logical conclusions from the admissions that senior political functionaries did in fact physically visit and sit in the City and State Control rooms at Ahmedabad and Gandhinagar respectively, in a brazen and unusual decision that crucially affected adversely and interfered with police functioning to protect lives and save property and book powerful accused with high connections and patronage.

67. **Police and Administrative Complicity as Part of the Conspiracy**

The Applicant says and submits that her Complaint dated 08.06.2006 had several substantive allegations, backed by evidence of both Political Interference in Police Functioning as outlined further in the Protest Petition dated 15.04.2013 and made again in the Oral and Written Submissions that followed. Read in toto, they sought to build a pattern of command responsibility that filters down to the ground level inaction by senior policemen allegedly instructed to inaction and complicity by the conspiracy at the top. Victims got no response despite scores of distress calls made to senior police officials. Survivors from Naroda Patiya made over a hundred distress calls to PC Pande, then commissioner of police but his mobile was always switched off. There was a similar callous response from most of the additional CPs and DCPs of Ahmedabad city. In many instances policemen even aided mobs in their lawlessness. The Applicant says and submits that there are contradictions between the SIT Preliminary report and the Conclusions in the final report dated 08.02.2012. The Protest petition has made out a strong case of Command Responsibility and Criminal Culpability of High Level Officers from the Administrative and Police Services, who collaborating with A-1 Modi refused to follow their statutory duties, refused to respond to help and actually



allowed areas under attack (in Ahmedabad, Vadodara, Mehsana and different parts of the state) to be left unprotected and unmanned leading to widespread massacres, rape, loot and arson.

68. The Applicant says and submits that in the Jurisdictional Area (Zone IV, Ahmedabad) of former Ahmedabad joint commissioner of police MK Tandon in whose area around 200 Muslims were killed has been found guilty of deliberate dereliction of duty. (Following the 2002 riots however, far from being censored or worse, he got one powerful promotion after another until he retired as additional DGP in June 2007.) His junior, former DCP, PB Gondia has also been found guilty of allowing the massacres. But for from any penal action, he today holds the powerful post of IGP, state CID). The Applicant says and submits that even the SIT admits to the gross outcome of this criminal collusion.

**X. Police and Administrative Complicity as Part of the Conspiracy**

“.....If the two had carried out their duty, hundreds of Muslims could have been saved...

“...However, Shri M.K. Tandon failed to respond to these distress calls made by Sr. PI Erda and did not bother to enquire about the latest position

over there and also that whether the two Dy. SsP, one PI and one section of CISF sent by Shri P.C. Pande had reached there or not. It was highly irresponsible on his part to have inquired through a Control Room message sent at 1545 hrs enquiring as to whether, there was any incident relating to loss of life in Gulberg Society. Unfortunately, by that time Gulberg Society had been set ablaze and a number of lives including that of Late Ahasan Jafri, Ex-MP had been lost.”

*(Pages 48 of the SIT Report, Malhotra, submitted to the Hon’ble Supreme Court on 12.05.2010).*

“...The plea/defence put forward by Shri M.K. Tandon is far from satisfactory. As per the call detail records of his mobile phone, his location remained in Bapunagar-Rakhial area between 1225 hrs to 1324 hrs. Further, he remained in Revdibazar, Relief road areas (Dariyapur P.S. & Kalupur P.S.) between 1351 hrs to 1542 hrs. His location was noticed at Meghaninagar only at 1628 hrs. The FIRs of Cr. No.I 23/02, 27/02, 28/02, 29/02 & 30/02 have been scrutinised. FIR no. 23/02 was registered on 28-02-2002 at 2130

hrs on the basis of complaint received from PSI in respect of the various incidents that had taken place between 1215 hrs to 2100 hrs. However, the FIRs of Cr.No. 27/02, 28/02, 29/02 & 30/02 pertain to incidents of 28-02-2002 of Dariyapur P.S. at different timings, but the FIRs were registered only on 15-03-2002, i.e. after a period of 15 days and as such the same had been manipulated by way of receiving complaints from three PSIs of Dariyapur P.S. with a view to match the timings of the incident of Gulberg Society on 28-02-2002 to enable Shri Tandon to explain his absence from Gulberg Society. The delay in the registration of these four cases needs explanation.

***(Pages 49 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010).***

“...The explanation given by Shri M.K. Tandon for his absence from the Gulberg Society despite the distress messages received from PI Erda is totally unconvincing and will not cut any ground. Last but not the least Shri M.K. Tandon had received two calls on 01-03-2002 at 1137 hrs for 250

seconds and 1256 for 161 seconds from accused Jaydeep Patel and two calls on 01-03-2002 at 1458 hrs for 32 seconds and at 1904 hrs for 61 seconds from accused Smt. Mayaben Kodnani for which he has not been able to give any satisfactory reply.

***(Pages 49 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010).***

69. The Applicant says and submits that until investigation by SIT was ordered on the complaint dated 08.06.2006 contained in the Special Leave Petition 1088/2008 by the Hon'ble Supreme Court, neither of these officers was in any way held to account by the Gujarat government. Even today, though the SIT found the conduct of (senior police inspector) KG Erda in informing his superiors in good time. Yet, strangely enough, in the Gulberg case it is Erda, not his superiors, who have been charge-sheeted.

**X. A. Police and Administrative Complicity as Part of the Conspiracy**

“The then DCP, Zone-IV, under whose jurisdiction Meghaninagar and Naroda Patiya police stations were located, it is well

established, did not visit Gulberg Society before 16:00 hrs. In my view, Gondia virtually ran away from Naroda Patiya at 14:20 hours when the situation was very serious and virtually uncontrollable and also did not reach Gulberg Society despite the distress calls made by police inspector Erda and instructions given by Tandon and Pande. Gondia had also received three calls on his mobile phone from Dr. Mayaben Kodnani on 28.02.2002, 01.03.2002 & 02.03.2002 at 1039 hrs, 1339 hrs & 1249 hrs respectively. He had also received three calls on 28.02.2002 at 11:40 hrs, 11:52 hrs & 12:20 hrs, two calls on 01.03.2002 at 10:04 hrs & 11:35 hrs and two calls on 02.03.2002 at 11:56 hrs & 1848 hrs from accused Jaydeep Patel, for which Gondia has not been able to give any explanation. (*Page 50-51 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010*)

**X. B. Police and Administrative Complicity as Part of the Conspiracy**

“.....However, the additional force could not reach in time, which resulted in a big carnage at Gulberg Society. It is evident that Shri M.K.

Tandon and Shri P.B. Gondia did not visit Gulberg Society under various pretexts. Moreover, both of them were in touch with the main accused persons, namely, Mayaben Kodnani and Jaydeep Patel. This is suspicious. Their role needs to be investigated by way of conducting further investigation in Gulberg Society case and Naroda Patiya case u/s 173 (8) Cr.PC.

***(Pages 50-51 of the Preliminary Report, Malhotra, SIT, 2010)***

**X. C. Police and Administrative Complicity as Part of the Conspiracy**

“....12. During further investigation efforts were made to ascertain whether Shri Tandon could be part of the conspiracy of these offences. However, adequate evidence of this nature did not come up. Generally conspiracy is hatched in private and the evidence collected is usually circumstantial. In case of Shri Tandon, certain actions on his part suggest his bonafide intentions of controlling the rioters. Curfew was imposed in Naroda Patiya area by Commissioner of Police on his request. From Naroda Patiya

area, he went to Dariapur which is communally very sensitive.

“.....As far as telephonic contact with Dr. Mayaben Kodnani and Jaydeep Patel is concerned, it was revealed that Dr. Kodnani was MLA from Naroda constituency and Jaydeep Patel was Joint General Secretary, VHP, Ahmedabad Unit. These individuals were interrogated but they expressed inability to recollect the contents of the conversations and claimed that these must be regarding law and order situation. Responding to a few telephone calls, a day after the offence, from certain local leaders who are later prosecuted in the offence by itself does not make one as part of the conspiracy unless the contents of the conversation are known. Therefore, it would not be appropriate to presume that he was part of the conspiracy, just on the basis of telephone calls.(@ Internal Pages 7-8 of Further Investigation Report dated 17.11.2010 of the Compilation of Reports given to the Magistrate’s Court and Complainant in

**Pursuance of the SC Directions 2012 in Order dated 07.02.2013 in SLP 8989/ 2012)**

“.....17. Investigation revealed that Shri P. B. Gondia had received 3 calls on his Mobile phone from Dr. MayabenKodnani on 28.02.2002, 01.03.2002 and 02.03.2002 at 10.39 hours, 13.39 hours and 12.49 hours respectively. He had also received 3 calls on 28.02.2002 at 11.40 hours, 11.52 hours and 12.20 hours, 2 calls on 01.03.2002 at 10.04 hours and 11.35 hours and 2 calls on 02.03.2002 at 11.56 hours and 18.48 hours from accused Jaydeep Patel. Interrogation of Dr. Mayaben Kodnani, Jaydeep Patel and P. B. Gondia did not reveal anything significant as they stated that they were unable to recall the exact contents of these phone calls and claimed that these must be in connection with law and order situation. Notably, all these calls were incoming as far as P. B. Gondia is concerned. As Dr. Kodnani was the local MLA and Jaydeep Patel, a local leader, the reason given by them is probable. Shri Gondia claimed that 7 rioters had been killed as a result of firing ordered by him by the police personnel. Police records show that



110 rounds of bullets and 183 teargas shells were fired by the police personnel under him on 28.02.2002 though it did not show any firing resorted by him personally. Furthermore, from Naroda Patiya he went towards PithadiyaBambha from where some incidents of rioting had been reported. In any case, he was instrumental in controlling a riot situation at Moti Manor Hotel and Rosary School on the way. Therefore, Shri P. B. Gondia cannot be prosecuted for conspiracy/abetment. @ **Internal Pages 9- 10 of Further Investigation Report dated 17.11.2010 of the Compilation of Reports given to this Court and Complainant in Pursuance of the SC Directions 2012 in Order dated 07.02.2013 in SLP 8989/ 2012)**

**X. D. Police and Administrative Complicity as Part of the Conspiracy**

“.....19. As indicated earlier, sufficient evidence has not come on record regarding involvement of these two police officers in the conspiracy/abetment of the offences. However, it can be safely concluded that both these officers were negligent in their duties. They

demonstrated profound lack of judgment that seriously undermined their credibility and damaged their effectiveness in dealing with the situations. All the three major incidents took place in area under their control and they left the locations for handling by the junior officers. They did not take any preventive action on 27.02.2002 while any police officer worth the name could imagine the seriousness of the situation. Therefore, it would be relevant to examine whether these officers can be held liable u/s 304-A of IPC which deals with causing death by rash and negligent act.

**(@ Internal Pages 10 and 11 of Further Investigation Report dated 17.11.2010 of the Compilation of Reports given to this Court and Complainant in Pursuance of the SC Directions 2012 in Order dated 07.02.2013 in SLP 8989/2012)**

“...23. As regards criminal liability of Gordhan Zadafia u/s 221 IPC in the matter of Bipin Panchal, no evidence could be found that Zadafia was aware of the fact that Bipin Panchal has been named as an accused and was absconding.

The phone calls had been received by Gordhan Zadafia from Bipin Panchal and not the other way. Bipin Panchal in his interrogation has claimed that he had spoken to Mr. Zadafia for seeking his help in expediting police action in connection with an arson case of his motorcycle show room.

**“.....Conclusion**

“....26.In view of the facts, circumstances, evidence and legal position discussed in the preceding paragraphs, it is concluded that the evidence is not sufficient for prosecuting these three individuals namely Shri M. K. Tandon, Shri P. B. Gondia and Shri Gordhan Zadafia. However, the conduct of Shri M. K. Tandon and Shri P. B. Gondia was totally unprofessional and unbecoming of senior police officers. Therefore, it is proposed that the Government should be requested to launch departmental proceedings for major penalty against Shri M. K. Tandon, the then JCP (since retired) and Shri P. B. Gondia, the then DCP. It is also proposed that the departmental proceedings be completed in a time bound manner, preferably in a period of six

months. Since Shri M. K. Tandon had retired on 30.06.2007, Government of Gujarat would be asked to examine whether it would be still possible to proceed against him under the Services Rules.

**(@ Internal Pages 13-15 of Further Investigation Report dated 17.11.2010 of the Compilation of Reports given to this Court and Complainant in Pursuance of the SC Directions 2012 in Order dated 07.02.2013 in SLP 8989/ 2012)**

**X. E. Police and Administrative Complicity as Part of the Conspiracy**

“.....Sufficient evidence is not available to establish Shri M. K. Tandon was a part of criminal conspiracy hatched by the accused persons at the aforesaid two locations. Some of the actions on the part of Shri Tandon like imposition of curfew at Naroda Patiya and his immediate shifting to Dariyapur, a communally sensitive area, establish his bonafides. The various acts of omission and commission would warrant a serious departmental action against Shri M. K. Tandon.(@ Internal Page 99-100, Volume I, of

**Final Report in SLP 1088/2008 dated  
08.02.2012, Himanshu Shukla SIT filed before  
MM)**

70. The Applicant says and submits that, by the time the matter is out of the eagle eye and watch of the Hon'ble Supreme Court by which time the SIT has washed its hands of the entire further investigation, leaving it entirely and only to the Crime Branch, Ahmedabad, under the political control of A-1 Modi, the final report is filed on 08.02.2012. The SIT, is forced to concede that the actions of Tandon and Gondia were questionable. However, in its view a simple departmental inquiry was all that was called for. Going back on its own earlier findings, SIT now also exonerates Tandon and Gondia for being in close telephonic contact with two accused persons: Dr. Mayaben Kodnani and Shri Jaydeep Patel.

**X. F. Police and Administrative Complicity as**

**Part of the Conspiracy**

**“.....(x) SIT- Role of Tandon**

“In case of Tandon, certain actions on his part suggest his bonafide intentions to control the riots. Initially, he visited Gulberg Society and lobbed tear gas shells and dispersed the mob. Subsequently he proceeded to Naroda Patiya

and on his advice curfew was imposed in Naroda Patiya area by the commissioner of police. Further, from Naroda Patiya area, he went to Dariapur which was communally very sensitive. *(Page 496 of the SIT's conclusions dated 08.02.2012 submitted before the Learned Magistrate).* “Objective assessment of the situation reveals that Tandon did not appreciate the circumstances professionally and acted in a negligent manner by not taking any appropriate action about the grave situation at Gulberg Society/Naroda Patiya area. It would not be out of place to mention here that Tandon was very well aware about the situation at Gulberg Society in as much as he had sent a message to the police control room at 1405 hrs on 28.02.2002, that late Ahsan Jafri and others had been surrounded by a mob and were required to be shifted immediately. Despite the fact that he was well aware of the inflammatory situation at Gulberg Society, yet he chose not to go there. *(Page 497 of the SIT SIT's conclusions dated 08.02.2012 submitted before the Learned Magistrate).*

**“.....(xi) SIT- Role of Gondia**

“Investigation has further revealed that Gondia had left Naroda Patiya at 1420 hrs despite the fact that a huge mob of Hindu and Muslim rioters had gathered there while the curfew was in force. His leaving the location for Pithaliya Bambha was totally unjustified, especially when there was no information of any situation being graver there than at Naroda Patiya. In case Gondia realized that he was in a position to leave the location, then he should have gone to Gulberg Society and not to Pithaliya Bambha.”

***(Page 498-499 of the SIT's conclusions dated 08.02.2012 submitted before the Learned Magistrate).***“The conduct of Tandon and Gondia was unprofessional and unbecoming of senior police officers”. (However) the basic requirements for prosecution under the above section (304A) are that the acts (including omission) must be rash or negligent... Considering all the circumstances, evidence on record and the defence available with the suspect police officers (Tandon and Gondia) it may not be possible to prosecute them for the

offence under section 304 (A) as proposed by amicus curiae... ***(Page 502-503 of the SIT's Final Report, Himanshu Shukla dated 08.02.2012 submitted before the Learned Magistrate)***

71. The Applicant says and submits that in stark contrast the Amicus Curiae, Shri Raju Ramachandran recommended action under law against both then Joint Commissioner of Police MK Tandon, A-33 in the Complaint dated 08.06.2006 and DCP, Zone IV, PB Gondia (not an accused in the Complaint).

**“...III. ASSESSMENT OF THE ROLE OF SHRI M.K. TANDON, THE THEN JOINT COMMISSIONER OF POLICE, AHMEDABAD AND SHRI P.B. GONDIA, THE THEN DEPUTY COMMISSIONER OF POLICE, AHMEDABAD:**

“....30. The SIT has further examined the role of the 2 police officers, namely Shri M.K. Tandon, the then Joint Commissioner of Police, Sector-II Ahmedabad and Shri P.B. Gondia, the then Deputy Commissioner of Police, Zone – IV Ahmedabad and has reiterated its view that no criminal offence is made out against these officers.



*“....31. I had, in my note dated 20.01.2011, suggested that prima facie a case under Section 304A IPC was made out against these 2 officers. I have gone through the statements recorded by the SIT, and also discussed the same in my interaction with the witnesses and the SIT. There are a number of factors which persuade me not to accept the SIT’s conclusions, and I may mention only a few of them below:*

*“....a)There is no reason for Shri M.K. Tandon to have left the Gulberg/ Naroda area in the absence of a much greater problem elsewhere in his jurisdiction at the relevant time (i.e. around 12:40 P.M.).*

*“....b)There is no reason for Shri M.K. Tandon not to have rushed back to Gulberg after 2 P.M., when he knew the situation was getting out of control, and that the situation in the area where he was situated was not that grave. In any event, there is a complete absence of any supervision by him (of the situation in the Gulberg area between 2 P.M. and 3:45 P.M.), which prima facie shows negligence.*

*“...c) There was no reason for Shri P.B. Gondia to have left Naroda Patiya area at 2:20 P.M. when the situation was explosive and police firing had been resorted to, in the absence of a more critical situation somewhere else.*

*“.... 32. In fact, in paragraph 19 of the Further Investigation Report, the SIT has stated that “...it can be safely concluded that both these officers were negligent in their duties”; nevertheless, the SIT concludes that no offence under Section 304A IPC is made out. I am not able to persuade myself to agree with this conclusion, and am of the view that a case under Section 304A IPC as well as under Section 166 IPC is made out, at this prima facie stage. However, due to subsequent developments, this issue may not be required to be looked into further by this Hon’ble Court.*

*“.....33. It has been brought to my notice that, on the basis of evidence led during the course of trial in the Gulberg Society case, an application under Section 319 Cr.P.C. has been filed by the victims to summon the police officers, including Shri P.C. Pande, Shri M.K. Tandon and*

*Shri P.B. Gondia, as accused, to face charges inter alia under Section 302 IPC. The trial court, however, made the following order on the said application on 31.05.2011:-*

*"12. As discussed above, the SIT has further investigated the case and report of the investigation is submitted before the Hon'ble Supreme Court and Hon'ble Supreme Court has seized with the matter about Shri M.K. Tondon and other police officers and other persons may be arranged as accused or not and therefore at this stage this Court cannot entertain this application."*

*"....34. I am not privy to the evidence led before the Trial Court which purportedly goes to show that there is criminal liability of the said police officers. It would be appropriate for this Hon'ble Court to direct the Trial Court to consider the said application on the evidence which has been brought before it. The Trial Court may also be directed to consider the Further Investigation Report submitted by Shri Himanshu Shukla to this Hon'ble Court on 26.11.2010, and the statements recorded by him, and to pass appropriate orders in accordance with law. The*

*Trial Court may also be directed to consider whether an offence under Section 304A IPC is made out. It is respectfully submitted that, since the SIT has conducted a statutory investigation under Section 173 (8) Cr.P.C., the report is required to be filed in Court, and it is for the competent court to pass necessary orders after hearing the concerned parties.”*

72. **Policemen who behaved Legally and Constitutionally Punished/ Policemen who Broke the Law and allowed Death and Destruction Rewarded**

The Applicant says and submits that a substantive link in the chain of criminal conspiracy build up in the Complaint dated 08.06.2006 and thereafter through the Protest Petition was critically linked to the sinister policy of ‘rewards and punishment’ resorted to by the political executive in Gujarat headed by A-1 Modi in effect ensuring that police officers who did their duty were penalized and those who performed illegal acts and fell in line with the Conspiracy executed at the very top, were in fact rewarded. The SIT report does record how compliant police officers were rewarded and Upright officers penalized. The upright officers who were penalised for performing their constitutional obligation include IPS officers

RB Sreekumar, Rahul Sharma, Vivek Srivastava, Himanshu Bhatt and Satish Chandra Verma.

**XI. Punishments and Rewards**

“...It is true that there were a few such transfers which were in fact questionable, especially because they came immediately after incidents in which the officers concerned had known to have antagonized ruling partymen.... Neither police officer would however admit he had been victimised. (Is it any surprise given the fact that a highly vindictive government was in power?).

***( Page 8 of the chairman RK Raghavan’s comments, 14.05.2010)***

“...Although, the aforesaid witnesses have stated that they can not comment on their transfers, yet the same appear to be of unusual and fishy.

***(Page 35 at Pages s 32-36 of the SIT Report, Malhotra, submitted to the Hon’ble Supreme Court on 12.05.2010).***

73. The Applicant says and submits that the upright officers who were penalised for performing their constitutional duty include

IPS officers Rahul Sharma, Vivek Srivastava, Himanshu Bhatt and Satishchandra Verma.

**XI. A. Punishments and Rewards**

*“It is true that there were a few such transfers which were in fact questionable, especially because they came immediately after incidents in which the officers concerned had known to have antagonised ruling party men... Neither police officer would however admit he had been victimised (Page 8, Chairman RK Raghavan’s Comments to SC, May 2010).*

74. The SIT preliminary report admits to the allegation that police officers who allowed riots to fester were rewarded with lucrative postings. MK Tandon, who was the joint commissioner of police of Sector 2, Ahmedabad and in whose region more than 200 Muslims were butchered to death, was given the important posting of IG, Surat Range, soon after the riots. In July 2005, he was appointed to the post of ADGP (law & order) at the state police headquarters, a position with statewide jurisdiction. Tandon retired from the same position. PB Gondia, deputy to Tandon, was DCP Zone IV at the time. He now enjoys the powerful post of inspector general of police of State CID. In addition to these police officers, there were other controversial bureaucrats who have remained in high

government favour despite their black track-records. Among them are G Subba Rao (then chief secretary); Ashok Narayan (then ACS, Home); PK Mishra ( then PS to Modi); PC Pande (then Ahmedabad CP); Deepak Swaroop (then IGP, Vadodara Range); K Nityanandam (then secretary, Home); Rakesh Asthana (presently commissioner of police, Vadodara city) and DG Vanzara (now in jail for staging encounter killings).

75. **Intelligence Warnings being Igbores by Government and Accused (Prelude, Build Up of Violence)** The Applicant says and submits that the SIT Investigation Reports and Conclusions on the Valuable Evidence Provided through the documentary evidence (affidavits and register) and 161 statements of former ADGP-Intelligence, RB Sreekumar are similarly superficial, unprofessional and partisan. SIT has a) ignored the wealth of documentary evidence provided in this evidence especially the detailed SIB messages that show a sinister build up of communal temperatures, uncontrolled by the state's home department headed by A-1 Modi and other functionaries; b) disregarded the critical SIB reports sent by him to government at the contemporaneous time; c) ignored the fact that as chief of the State Intelligence he and other officers had strongly recommended the prosecution of Hate Speech/Writing in the published materials of the Vishwa Hindu Parishad (VHP) and newspapers like *Sandesh*; d) not

given any serious investigative attention to the illegal instructions given to RB Sreekumar by A-1 Modi and other powerful co-accused which were noted by him in a Confidential Register; e) ignored the import of the vital Intelligence assessment of the criminality of the speech made by A-1 Modi at Becharaji, Mehsana on 09.09.2002; f) the significance of this officer's evidence given the fact that the Central Election Commission went by it and refused to allow early elections in August 2002.

76. The Applicant says and submits that it is because the evidence in the form of substantive prima facie information provided by this evidence of RB Sreekumar that the SIT has deliberately and consciously displayed an unprofessional bias against him and the evidence provided by him and the Learned Magistrate has erred substantively in not seeing through these machinations of the SIT and pointing out the lacunae and deviations of the investigation.. Among the documentary evidence produced by Shri Sreekumar were:

(1). A report titled 'Current Communal Scenario in Ahmedabad City' prepared by Sreekumar and sent to the then ACS (Home) Ashok Narayan for appropriate action on 24.04.2002. The report made the following points:



a) Riot victims had lost faith in the criminal justice system. Police officers were dissuading victims from lodging complaints against BJP and VHP members; b) Officers were watering down the charges in complaints and clubbing FIRs' c) The VHP and Bajrang Dal were exhorting businesses not to give employment to Muslims; d) The VHP was distributing pamphlets with communally inflammatory material; e) Inspectors in charge of police stations were ignoring the orders of their superiors and complying instead with direct verbal instructions from BJP leaders;

**77. SIT's Lax Investigation to Inflammatory Pamphlets of VHP**

The Applicant says and submits that the hateful propaganda in various VHP Pamphlets attributed to the VHP, Paldi Ahmedabad (office bearers Chinnubhai Patel and Vankar) fell squarely within the Supreme Court's definition of hate speech under sections 153a, 153b, 505 of the Indian Penal Code. Yet A-1 Modi, chief minister and home minister of the state had reacted casually to serious recommendations to act that came

from his own Intelligence Department. The Applicant says and submits that worst and most significant of all, Ashok Narayan had in his statement before the SIT dated 12/13.12.2009 @ Annexure I, Volume I Serial Nos 62/63 in the SIT papers clearly stated that chief minister and accused 1 was non committal about action on hate speech.

**XII. SIT Lets of A-1 Modi Lightly on Non-Prosecution of Hate Speech**

**Ashok Narayan's statement to SIT dated 13.12.2009**

Que (*by Malhotra*). Please see a letter dated 16-4-2002 addressed to the DGP with a copy to you regarding the two pamphlets in circulations in large number in Gujarat for which action was proposed u/s 153-A & 153-B IPC after taking legal opinion from the Law Department. What action was taken on this communication?

Ans. The issues raised by ADG (Int.) in this letter were discussed with the DGP. However, I don't recollect any action taken thereon. However, it may be added here that several such pamphlets were brought to the notice of DGP, myself and Chief Secretary but in such cases the name of the printer/publisher had not been mentioned.

Accordingly, we had impressed upon the police to trace out the culprits responsible for these pamphlets but unfortunately no material could be collected in this regard, with the result no action would be taken in this regard.

**XII. A. SIT Collusive and Lenient on Prosecution of Hate-filled on VHP pamphlets**

“VHP had issued a pamphlet containing elements of communal instigation for which a proposal had been sent to DGP with a copy to ACS (Home) for examining the legal action against them. The material in the pamphlets was meant to generate anti Muslim feelings by resorting to selective reference to various books, newspapers, etc. referred to gang rapes, cutting of breast of Hindu women and similar provocative information, economic and social boycott of Muslims and exhorting the Hindus to take retaliatory action against Muslim violence in an organized manner.

“...No purposeful legal action against publication and distribution of pamphlets inflaming communal passions etc.

“.....As regards the undesirable activities of Vishwa Hindu Parishad and Bajrang Dal in indulging in extortion of money and publishing/distributing pamphlets containing the elements of communal instigation, a report was sent earlier in point of time by CP, Ahmedabad and he had discussed with ACS (Home) who said that he would bring it to the notice of the Govt.(Page 55-56of the SIT Report, Malhotra, to SC dated 12.05.2010)

“....ALLEGATION NO. XVII:

**Failure to take action against the print media making communally inciting reports though State Intelligence Bureau and some field officers had recommended for faction, as noted in the first Affidavit dated 06.07.2002 of Shri R.B. Sreekumar during his cross-examination before the Nanavati-Shah Commission on 31.08.2004.**

During the course of enquiries by SIT, Govt. of Gujarat has intimated in writing that no action had been taken on the recommendations of Shri

R.B. Sreekumar against the print media. This allegation, therefore, stands established

**(Page 79 the SIT Report, Malhotra, to SC dated 12.05.2010)**

## 78. SIT's Lax Investigation to Inflammatory Pamphlets of VHP

### VHP Pamphlets in Investigation Record

SIT Record	Protest Petition	Remarks of Applicant
<p>These Pamphlets @ Several Places in SIT Record:-</p> <p>I.VHP Pamphlets at D-21 Annexures to First Affidavit of RB Sreekumar (July 2002)</p> <p>II. Annexure III, File XIX D-161 (Pages 47, 48 and 58) – Regional Offices of IB to ADGP-Int (GC Raigar) February 2002</p> <p>III. Annexure III, File XXXIV, D-176 “Copies of reports submitted to ADGP (Intelligence) GC Raigar (A-60) and DGP K Chakravarthi (A-25 ) pertaining to Communal Riots 2002 from February 2002 to September 2002.</p>	<p>Annexed also @ Pages 144-156 @ Annexure Volume I Protest Petition which is annexed herein @ Annexure E-1 Colly to Revision</p>	<p>SIT has created a serious lapse in Concealing this Evidence from the Hon'ble Supreme Court and the learned Amicus Curiae:-</p> <p>Official SIB Record were given by then DGP to SIT in January 2010 before submission of First report to the Supreme Court on 12.05.2010 and before Amicus Curiae Raju Ramachandran asked to look into Evidence (05.05.2011)</p> <p>SIT has concealed this evidence from both Supreme Court and Amicus Curiae. Page 151 VHP Pamphlets (Annexures Volume I to Protest Petition) also to be found at Annexure III, XXXIV, D176, Page No.42 in SIT Papers. Given by then DGP to SIT in January 2010 before submission of First report to the Supreme Court on 12.05.2010 and before Amicus Curiae Raju Ramachandran asked to look into Evidence (05.05.2011)</p> <p>SIT has concealed this evidence from both Supreme Court and Amicus Curiae.</p>

Contentions in SIT Report		Protest Petition
<b>Malhotra Report</b>	<b>Final Report</b>	I. Paras 126 - 197 @ Read Pages 70 - 99 of

<u>To the Hon'ble SC on 12.5.2010</u>	<u>SIT Final Report</u>	Volume I Protest Petition at <u>Annexure E</u>
<u>Hate Speech</u> Page 69 (Zee News A-1) Page 79 (VHP Pamphlets)-- already dealt with Page 152 (Zee TV/TOI -- A-1) Page 160 (A-1 Becharaji Speech)	<u>(8.2.2012)</u>  <u>Hate Speech</u> Volume I, Pages 106-107 (VHP Pamphlets) already dealt with Volume I Page 130-133 (A-1, Zee News etc) Volume I, Page 147 (Print Media) Volume I Page 252-254 (Objectionable statements by CM on Zee TV and Times of India) Volume II Page 272 (Becharaji speech)	Colly herein II.Paras 233-237 @ PAGES 112-117  III.Paras 969-984 @ Pages 446-450 Volume II of the Protest Petition

The Applicant says and submits that as the Table above reveals, the SIT has simply not addressed the serious criminal lapses of i) the Vishwa Hindu Parishad a collaborator in the Conspiracy that distributed these pamphlets in violation of the law and incited violence; b) not examined the legal validity of these pamphlets given the fact that the official address of the VHP, Ahmedabad is printed; turned a blind eye to lapses by senior echelons of the Police and Administration who were apprised well in time, at the time of Continuing Violence, Extortion in different parts of Gujarat and the fact that the Gujarat State Intelligence Bureau had recommended their prosecution; that the SIT's motive in not pursuing this aspect of the Conspiracy was nothing less than to shield A-1 Modi, chief minister and home minister of the state who carried departmental responsibility for strict prosecution and action.

79. The Applicant says and submits SIT not only found this report to be genuine, it also found reports prepared by a few other officers which corroborated Sreekumar's reports. Questioned by the SIT on this, Ashok Narayan confirmed receiving this Intelligence report but claimed loss of memory on whether he had placed it before the chief minister. The Applicant says and submits that it is and was A-1 Modi as chief minister and home minister directly responsible (Gujarat government Rules of Business) to direct and Order the Prosecution of Inflammatory writings in *Sandesh* as recommended by Police Officers Rahul Sharma, Commissioner of Police DD Tuteja and finally ADGP Intelligence RB Sreekumar, and yet the SIT does not even dare question A-1 Modi on these lapses in functioning. The SIT is clearly overawed and influenced by the powerful position that A-1 Modi occupies and hence has been extremely lenient with him while recording his statement on 27/28.03.2010 available in the SIT Investigation papers and the same is to be annexed as annexure 'H' Colly to the affidavit of the applicant shortly. The SIT has again let off the co-accused and accused no. 1 very lightly deliberately not questioning them sharply about these criminal lapses. The Magistrate has further erred substantively in not seeing through these designs of the SIT that has failed at so many levels in its investigations.

80. The applicant says and submits that Shri Sreekumar prepared another report dated 20.08.2002 highlighting continuing communal tension, and emphasising that the minorities continued to complain of unjust police action and shoddy investigations, fellow accused, A-28 Ashok Narayan accepted before the SIT that the government didn't act upon this report. The SIT does not conclude that the inaction by the political and administrative wing of the higher eckelons of the Gujarat government, ***willfully ignoring the recommendations of its State Intelligence Wing not only goes against the Standard Operating procedure as contained in the Gujarat Police Manual but combined with other criminal lapses amounts to high and gross levels of conspiracy.*** RB Sreekumar prepared yet another report dated 28.08.2002 regarding internal security trends in the light of the ensuing Assembly polls. Ashok Narayan told the SIT that he could not recall the action taken by him on the said letter.

81. The applicant says and submits that former ADGP, Intelligence, Gujarat, RB Sreekumar then filed three affidavits before the Nanavati-Shah Commission. The first detailed the failure of the state and central intelligence bureaus in preventing the Sabarmati train carnage. The second alleged that the Modi government deliberately didn't act on the reports of the state intelligence bureau. And in the third, he recorded



how he was pressurised by Modi's officials to give favourable reports on the law and order situation to facilitate an early Assembly election. Shri Sreekumar also detailed an account of a meeting chaired by the then chief election commissioner JM Lyngdoh on 09.08.2002 in which the latter had castigated home department officials for presenting wrong facts. The CEC Order dated 16.08.2002 had noted:

*“Significantly, additional director general of police RB Sreekumar stated before the commission that 151 towns and 993 villages covering 154 out of 182 Assembly constituencies in the state were affected by the riots. This falsifies the claims of other authorities.”*

82. The Applicant says and submits that the SIT accepts the version(s) of powerful bureaucrat and policemen on the assessment of the IB Reports when a Constitutional Body like the Central Commission as late as August 2002, *disagreed with the home department (Gujarat) under A-1 Modi's assessment and gave greater weightage to the Assessment of the State Intelligence under RB Sreekumar.*
83. The Applicant says and submits along with his third affidavit, Sreekumar also produced an audio recording to establish that state home secretary GC Murmu, home department official Dinesh Kapadia and the state government's special

prosecutor Arvind Pandya had tried tutoring and intimidating him into not telling the truth before the Nanavati-Shah Commission. The applicant says and submits that this serious allegation of top level officials attempting to tutor policemen and bureaucrats in not telling the truth has been also dealt with in a cavalier and casual fashion by the SIT in both its report to the Hon'ble Supreme Court and its final report.

The applicant says and submits that the SIT, despite having found the audio recording to be genuine has simply alleged that Sreekumar produced it as an act of pique only after he was superseded for a promotion! The applicant says and submits that even assuming for a moment that to be true, did it not require an SIT, that too an SIT appointed by the Hon'ble Supreme Court to assess and investigate the seriousness of this allegation? The SIT has deliberately failed to draw connections in the *mens rea* of the Government of Gujarat in trying to subvert the course of criminal justice. The Applicant says and submits that the the SIT appears to have deliberately failed to appreciate is the consistency in Shri Sreekumar's stand against the Modi government's communal and political agenda since the filing of his first affidavit far back in July 2002 while he still held the post of ADGP Intelligence.

The Applicant says and submits that the SIT deals with this allegation there is no reference to the First three affidavits filed by RB Sreekumar *before his supersession that moreover contained valuable information of the build-up to violence before 27.02.2002 etc etc. SIT ignores the fact that ACS Home Ashok Narayan admits RB Sreekumar's contentions to be true and simply discredits this witness on the issue of the Government making a different assessment of the Rath-Yatra*

**"XIII. Intelligence Warnings being Ignored by Government and Accused (Prelude, Build Up of Violence)**

"...The State Govt. has not made available the files in which the aforesaid references were dealt with. However, keeping in view the versions of Shri Ashok Narayan and Shri K. Chakravarthi, the facts about Rath-Yatra and discussions that took place between ACS (Home) as well as reply sent to Shri R.B. Sreekumar vide his DO letter 09.09.2002, it cannot be said that no action had been taken on letters dated 22.04.2002, 15.06.2002, 20.08.2002 and 28.08.2002. The allegation is therefore not substantiated.

*(Pages 54-60 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)*

**XIII. A. No Action on State IB Reports by Government**

“...ALLEGATION NO. VIII: No follow up action was taken (by the Gujarat Government/CM) on the reports sent by R. B. Sreekumar on 24.04.2002, 15.06.2002, 20.08.2002 and 28.08.2002 about anti-minority stance of the Administration. Copies of these reports are appended in second Affidavit dated 06.10.2004 of R.B. Sreekumar to the Nanavati Commission.

This would by itself go to show that the reports sent by Shri R.B. Sreekumar were not well thought of and not based on realities, but were his personal views and perception.” *Pages 54-58 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)*

**XIII. B. SIT Accepts Accused Version Rather than that of Central Election Commission (CEC)**

Coming to another report on the prevailing Law & Order situation sent by letter dated 30-08-2002 with the approval of Shri Sreekumar, it may be mentioned that the gist of presentation made before the Election Commission on 09-08-2002, was included in the same. In a nutshell Shri Sreekumar projected in this letter that the communal tension continued and the communal gap had widened between Hindus and Muslims and that any minor issue would reignite communal passions resulting in clashes as had been witnessed in Dhoraji, Rajkot on 17-08-2002. Shri Ashok Narayan has stated that he sent a DO letter dated 09-09-2002 to Shri Sreekumar that his assessment of Law & Order situation conveyed on 20.08.2002, was not in tune with the feedback received from other agencies. Shri Ashok Narayan has further pointed out that some feeling of insecurity amongst the minority community was understandable in isolated pockets, but the same did not indicate the feelings of insecurity anymore. Shri Ashok Narayan disagreed with the views of Shri Sreekumar on the ground that no broad based

inputs were relied upon by him before arriving at a conclusion. As regards the letter dated 28-08-2002 Shri Ashok Narayan, the then ACS (Home) has stated that he did not recall the action taken by him on the said letter, but the suggestions made therein seemed logical and in normal course action must have been taken by the Home Department. Shri K. Chakravarthi has stated that as far as police department was concerned, he had given directions based on his suggestions. However, the relevant files on the subject have not been made available by the Govt. of Gujarat.

***(Page 60 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)***

**XIII. C. SIT Accepts the Version of A-1 Modi Over the Findings of the Central Election Commission (CEC), A Constitutional Authority**

“As regards the allegation relating to submission of false report to the Election Commission, in which it was reflected that the Law & Order situation, in Gujarat was normal and that a cordial atmosphere existed for holding the

elections in the State, Shri Narendra Modi has stated that it was incorrect to say that the Govt. projected a false report is the Election Commission. Shri Modi has further stated that even before August, 2002, Panchayat elections for 1700 villages were held peacefully in the months of March-April, 2002 and the next Assembly elections were held in December, 2002 and that too peacefully and in view of this position the allegation is far from the truth. In this connection, it may be added that Shri Subba Rao has narrated the various points indicative of normalcy as the Law & Order situation had more or less stabilised and the State remained relatively incident free, inmates in the relief camps declined from 1.33 lakh to 10,000/- all board examination including (UPSC exams) were held with normal attendance, panchayat elections in nearly 1700 villages held without any major incident, all Haj yatris from State numbering about 6000 went back safely to their villages and religious festivals like Rath-Yatra, Maha-Shivratri, Moharrum, Poonam Mela at Ambaji and Ursh at Bhaliyad Pir Durgah were

held peacefully. Shri Subba Rao has further stated that based on the aforesaid indicators, it was submitted to the Election Commission that the State Administration was ready to discharge any task which might be entrusted to it. Further, Shri Ashok Narayan, the then ACS (Home) has stated that the Home Department was not anxious that the elections should be held at that time, but assured the Election Commission that given the necessary additional force from the Central Govt, Law & Order situation would be maintained and safety of voters ensured, in case the elections were held in near future. According to Shri Ashok Narayan the contention of Shri Sreekumar that 154 Assembly Constituencies out of 182 were affected by the Communal riots was arrived at by applying yardsticks, which were determined by the Govt. in Revenue Department in relation to distribution of foodgrains and other items of relief...”

**Page 85 of Pages 79 – 86, &**

**Page 159 - 160 of the SIT, Malhotra Report**

**dated 12.05.2010 submitted to Hon'ble SC**



Also at Volume I Pages 13-14  
 Volume 1 Pages 147-156 (SIT on Misinforming  
 CEC) @ Pages 150-152 confirms RB Sreekumar  
 but @ 156-157 concludes to the contrary  
 Volume I, Pages 182-197  
 Volume 1, Page 270 - 272 (Spills over into  
 Volume II) of SIT Final Report dated 8.2.2012

84. The applicant says and submits that the overarching bias of the SIT towards the powerful accused is revealed with the manner in which the assertions of A-1 Modi are blithely accepted vis a vis the contrary views of the Central Election Commission (CEC) in August 2002 and the A-1 is not countered with the fact that the Report of the CEC itself disagrees with the answers regarding “normalcy” projected by the state government both in 2002 and then by A-1 Modi in his statement to the SIT in March 2010. The applicant craves leave to detail this aspect of the argument as and when required.
85. **Illegal Instructions in Confidential Register:** The Confidential Register maintained by RB Sreekumar between April-September 2002 contained contemporaneous recordings of illegal instructions issued to him by A-1 Modi and other co-accused in the Complaint dated 08.06.2006 including A-

Subha Rao, A- PK Mishra and others. The applicant says and submits that the Confidential Register of RB Sreekumar is in the Investigation Record and also available and will be placed on record of this proceedings as Annexure 'M' Colly to the affidavit of the applicant separately. This Register carries crucial entries about:

- a) the verbal instructions in this register from 16.04.2002 to 19.09.2002.
- b) They contain illegal instructions from the A-1 chief minister, A-27, then Chief Secretary Subha Rao , A-28, then ACS (Home), Ashok Narayan & A- 31 PS to A- Modi PK Mishra etc fell in the category of directives to commit criminal offences like
- c) illegal tapping of telephones,
- d) proposal to eliminate persons,
- e) submission of false reports to suit the political interest of the ruling BJP etc
- f) not to document and closely cover the illegal activities of the ruling party and its sister bodies like RSS, VHP and Bajrang Dal,
- g) report about the activities of a State Minister who had appeared before the

Justice VR Krishna Iyer Concerned

Citizens Tribunal

- h) consider elimination of those trying to disturb Ahmedabad Rath-Yatra or planning to spoil same,
- i) to provide (false) situation assessment report indicating normalcy in the State for facilitating early Assembly elections and
- j) in general instructions to send intelligence estimation reports in tune with the political strategy and tactics of the ruling party

86. The applicant says and submits that the SIT, from the outset, in both its reports, that submitted before the Hon'ble Supreme Court in May 2010 and its final report dated 2012, has chosen *not to examine the evidence provided in each of the individual illegal instructions* and not even confront each accused with them. Instead, the applicant says and submits it has expended considerably energy in investigating the motive behind the Register being maintained and the timing of it becoming public, i.e. after the officer had been denied promotion. The Applicant says and submits that it is a well established principle in criminal law and the law of evidence that any evidence of a serious crime needs to be seen on its own,

without prejudgement, any motives behind it can subsequently be used to evaluate its overall merit.

87. The Applicant says and submits that the obvious bias of the SIT is revealed from the fact that both in the preliminary and the further investigation, the SIT has concentrated all its energies on discrediting the evidence of Sreekumar by focusing solely on a register maintained by him of illegal verbal instructions. The SIT concluded that “the register maintained by RB Sreekumar cannot be considered a reliable document as the same appears motivated and no credence can be placed upon the same. Moreover, there is no corroboration to the oral version of RB Sreekumar by any of the independent witnesses.” I say and submit that the term “independent witnesses” the SIT meant powerful, co-accused in the Complaint dated 08.06.2006, bureaucrats like A-28 Ashok Narayan, A-25 K Chakravarthi and A-29 PC Pande who are co-accused in her complaint for being accomplices in the criminal conspiracy behind the mass crimes in the state of Gujarat. The Applicant further says and submit that by the SIT’s own admission these bureaucrats were rewarded with post-retirement assignments by Modi and thus did not seem to have spoken honestly yet SIT calls them “independent” while seeking to label RB Sreekumar’s “motive” in providing valuable evidence of unconstitutional and unlawful behavior of

senior political, bureaucratic and police functionaries as “personal.”

The SIT reports have dealt with this evidence thus:-

**XIV.“....ALLEGATION NO.III: Numerous illegal instructions given verbally (by the CM) to officials as detailed in third affidavit dated 09.04.2004 by R.B. Sreekumar to the Nanavati Commission. (First information contained in Complaint dated 08.06.2006)**

“... No disclosure was made by Shri R.B. Sreekumar about the said register in his deposition before the Commission on 31.08.2004 or in any of the two affidavits filed by him on 15.07.2002 & 06.10.2004. It is rather amusing that this register saw the light of the day for the first time in the year 2005, when Shri R.B. Sreekumar filed a copy of the same along with his third affidavit filed before the Nanavati-Shah Commission of Inquiry on 09.04.2005. It may be mentioned here that this affidavit was filed by Shri R.B. Sreekumar after his super-session in promotion in February, 2005.

“...In view of the aforesaid discussions, the register maintained by Shri R.B.Sreekumar

cannot be considered to be a reliable document as the same appears motivated and no credence can be placed upon the same. Moreover, there is no corroboration to the oral version of Shri R.B. Sreekumar by any of the independent witnesses. The allegation is, therefore, not established.”

***(Page 28 the SIT Report, Malhotra, submitted to the Hon’ble Supreme Court on 12.05.2010)***

88. The SIT, while on the one hand failing completely and substantively in examining each separate information contained in the Register about gross unconstitutional and unlawful instructions by A-1 Modi and other fellow accused simply concludes at Page 22 of the Malhotra Report dated 12.05.2010 (after four whole pages!) that the motive of RB Sreekumar’s are suspicious and hence any evidence, even crucial information related to the illegal and criminal instructions by higher echelons of the political leadership and bureaucracy are not worthy of investigation.
89. The Applicant says and submits that the SIT clearly reveals a Predetermined and partisan mindset when it comes to evaluating the evidence provided by RB Sreekumar and in fact tries to play Judge and Jury rather than restrict itself to Investigation, a task in which it fails miserably. The Applicant

further says and submits that the four affidavits filed by former director general of police RB Sreekumar before the Nanavati Commission were crucial in filing her complaint dated 08.06.2006 and the SLP 1088/2008 before the Hon'ble Supreme Court. The applicant says that more than the analysis narrated in the affidavits, it was the mountain of evidence including vital state intelligence bureau (SIB) records that provide a well documented account of the refusal of the state government to act on the warnings given by its own intelligence wing of growing violence and build-up even before the Godhra tragedy of 27.02.2002.

90. In its report though the SIT deals with this allegation but is conspicuously silent on the annexures to the first affidavit of RB Sreekumar that show a sinister build up of communal violence prior to 27.02.2002 and especially on the failure of the Gujarat state home department headed by A-1 Modi and senior police officials on actions on the criminal and inflammatory hate speech of A-1 at Becharaji on 09.09.2002.

#### **XV. Constitutional Breakdown (CEC)**

##### **".... ALLEGATION NO.VI:**

The very fact that the Commission agreed to hold the elections in 3-4 months time and that the elections were finally held peacefully on 15.12.2002 goes to vindicate the stand taken by

the Govt. The allegation that the State Home Department gave misleading reports about normalcy in the State to Central Election Commission to ensure early Assembly elections are therefore not conclusively established. No responsibility can be fixed in the matter, as the exercise was a joint effort. **(Pages 85-86 the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)**

91. **SIT Failure to Investigate the Build Up of Arms Gathering and Mobilisation prior to 27.02.2002**

The Applicant says and submits that the SIT Investigations are similarly wanting and biased in assessing the Import and Significance of *Tehleka's Operation Kalank* that consists of Extra Judicial Confessions of Powerful Accused. The Tehelka Sting Operation is Crucial on Four Counts:

(1) Establishing the Sinister Build-Up Prior to 27.02.2002 (Serious Questions related to the Arms Gathering by these Persons have been deliberately ignored by the SIT. These issues have been detailed @ **Paras 245-260 @ Pages 120-126, Volume I Of the Protest Petition.**



(2) Armed and Provocative Behaviour of Kar Sevaks Before 27.02.2002 and on that Day (UP State Intelligence, SIB Messages and Tehelka'

(3)The Tehelka Sting Operation is also crucial with regarding to establishing the Conspiracy hatched and set into motion by A-I and collaborators whom he met in person at the Railway Yard, Godhra. Details of this are contained in Annexure "G" Colly likely to be filed with a separate affidavit and alongwith Annexure "F" Colly shortly.

**XVI. SIT on Tehelka Evidence**

As regards the accusations made by Babu Bajrangi in his extra judicial confession made before Tehelka reporter, Shri K. K. Mysorwala, Sr. PI, Naroda P. S. has stated that accused Babu Bajrangi wanted to become a hero amongst the Hindus and had made several statements in this regard. As regards the Babu Bajrangi's allegation about the inaction on the part of police made before Tehelka reporter, Shri Mysorewala had explained that the same, was incorrect and that Babu Bajrangi made, such statement to show

that how incorrect and he was with the police and also a hero amongst the Hindus. Shri Mysorewala has out rightly denied the allegation that he had refused to give protection to the Muslims and had stated that he had personally shifted 27 Muslims with burn injuries to hospital, protected 600 Muslims in the police station premises, when a Hindu mob of more than 2000 persons were about to attack them, shifted 2855 Muslims to relief camps between 28.02.2002 and 04.03.2002 in addition to 450 Muslims, who had taken shelter in SRP Group-II premises. In view of the aforesaid position, the allegation that the police was aiding the mobs who were attacking the Muslims and that the police acted as mute spectators to the unlawful acts etc. is not substantiated. (**@ Page 273, Volume II, SIT Final Report before the MM. Himanshu Shukla dated 08.02.2012)**)

**Allegations carried by Tehelka magazine:**

“.....Shri Babu Bajrangi has stated that Shri Ashish Khetan had given him a script and he simply read out the same and that none of those

facts were correct. After going through the facts stated by these persons during the sting operation, it appears that they were bragging and that most of the facts stated by them are innocent. Further, they were not questioned as to how and when Shri Narendra Modi gave them three days time. The facts about a gun factory owned by Shri Haresh Bhatt and changing the judge thrice by Shri Narendra Modi are unacceptable by any stretch of imagination inasmuch as no such gun factory could be unearthed by the police and Shri Modi was not competent to transfer could be unearthed by the police and Shri Modi was not competent to transfer the Judges, as the same is the prerogative of the Gujarat High Court. There are many factual inaccuracies in the statement of Babu Bajrangi inasmuch as he has stated that there were 700-800 dead bodies in Naroda Patiya and that the Commissioner of Police had instructed the policemen to throw it at different places in Ahmedabad City, as it would be difficult to explain the same. This is absolutely incorrect inasmuch as only 84 dead bodies were found at

Naroda Patiya and 11 persons were reportedly missing. In any case this evidence has already been adduced in the Court and the matter is sub judice and hence no further comments.” ( **SIT Final Report dated 08.02.2012 on Page 274, Volume I, SIT Final Report dated 08.02.2012**

When confronted with the interviews given by Shri Haresh Bhatt, the then MLA, Babu Bajrangi and Rajendra Vyas, President, VHP Ahmedabad City to Shri Ashish Khetan, Special Correspondent, Tehelka, Shri Narendra Modi has stated that the allegations leveled against him were false and incorrect. He has further stated that this issue was raised in November 2007, after about six years of incident and that too at the time of elections in December 2007. Further, these issues were again raked up in April 2008 when the SIT was appointed by the Supreme Court. Shri Modi has also stated that this issue was again raised on 22.02.2010, when he was to appear before the SIT for his examination. According to Shri Modi, the whole episode is motivated and stage managed and that he had

no personal knowledge about the authenticity of the said CD.

( SIT Final Report dated 08.02.2012 on Page 273-274, Volume I, SIT Final Report dated 08.02.2012

**92. Partisan prosecutors appointed:** The Applicant says and submits that one of the unique aspects of the Gujarat 2002 riots was the subversion of the post- violence justice process by the very government meant to protect life and punish the perpetrators. In a concerted bid to ensure that the guilty are not punished the government of Gujarat's powerful functionaries appointed lawyers as public prosecutors who were from organizations who had called the Bandh and sponsored the post Godhra violence. The Investigation reports while accepting this calculated policy strategy implemented to subvert the rule of law, does not find it worthy of any criminal charge.

93. It is shocking therefore that though the SIT found allegations against many of the other prosecutors to be true: Chetan Shah, a VHP member who, at one point, had faced trial under

Terrorist and Disruptive Activities (Prevention) Act (TADA) for the alleged killing of nine members of a Muslim family, was appointed as public prosecutor in June 2003 for a period of three years. *(Page 156 of the Preliminary Report, dated 12.05.2010)*. HM Dhruv, who had defended Chetan Shah in the TADA case, was appointed as a special prosecutor in the Gulberg Society and Naroda Patiya cases, the SIT has simply left this serious allegation inconclusive.

94. Piyush Gandhi, an ABVP and VHP leader, was appointed as public prosecutor in Panchmahal in March 1996 and he continued in the same post till 01.09.2009. Gandhi conducted the trial of several riot cases including that of the Shabana- Suhang gang rape and murder case.

#### **XVII. Partisan Prosecutors Appointed**

“...It appears that the political affiliation of the advocates did weigh with the government for the appointment of public prosecutors.” *(Page*

**158 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010)**

“....The allegation is partly substantiated. **(Page 238 of the SIT Report, Malhotra, submitted to the Hon'ble Supreme Court on 12.05.2010))**.

“.....It has been found that a few of the past appointees were in fact politically connected, either to the ruling party or organisations sympathetic to it.” **(Page 10 of Chairman R K Raghavan's comments).**

“.....On pages 156- 157 of his preliminary report, Malhotra records that a pro-VHP advocate, Raghuvir Pandya, was appointed as government pleader in the Vadodara district and sessions court in 2002. Pandya conducted the trial of the infamous Best Bakery case which resulted in the acquittal of all the accused. Malhotra's remarks: “Supreme Court of India had passed serious strictures on the role played by Pandya in this trial which deserves to be brought to the notice of the Bar Association for suitable action as deemed fit.” In his report Malhotra lists five more instances of VHP or RSS leaders being appointed as public prosecutors: “Political

consideration and affiliation of the advocates weighed heavily with the government” in these appointments. But he contradicts himself saying, ‘No specific allegation of professional misconduct on the part of any of the public prosecutors has come to light’.

***(Page 158 of the SIT Report, Malhotra, submitted to the Hon’ble Supreme Court on 12.05.2010)***

95. The Applicant says and submits that this loose and cavalier observation by the SIT has been made without a close look at the progress of various criminal trials related to 2002. Especially the fact that it was due to the ready ideological services offered by these partisan officers of the law that hasty anticipatory bail being granted to many of the accused in the Sardarpura and Odh cases apart from other trials with special public prosecutors not opposing it. The Applicant says that this was a serious consideration that weighed with the Supreme Court when it ordered further investigation into the cases and yet the SIT has simply not looked at the fallout of this partisan policy with any seriousness.



96. The Applicant states that while the SIT investigation did find that Dilip Trivedi, Mehsana district general secretary of the VHP was a was a public prosecutor in Mehsana district between April 2000 and December 2007, with more than a dozen public prosecutors working under him and that his conduct left much to be desired until he was removed following orders of the Gujarat high court, the SIT does not reach any conclusion on this allegation. . Mehsana was among the worst riot affected districts. Two riot cases in Mehsana in particular — the Deepda Darwaza killings in Visnagar town and the Sardarpura massacre — were most horrific. The Applicant says and submits that during Tehelka's sting investigation, 'Operation Kalank', in a conversation with the undercover reporter, Trivedi had boasted about how he had camped in every district of Gujarat holding meetings with government prosecutors, VHP workers, police officers and defence advocates to ensure bail and acquittals for the Hindu accused. He had proudly told *Tehelka* that out of a total 74 riot-related cases in Mehsana, only two had resulted in conviction. During the same

sting operation, a government pleader for the Gujarat government, Arvind Pandya, who had given a detailed account of the systematic subversion of justice by VHP and RSS-affiliated prosecutors across the state had also been exposed and was forced to quit as advocate for the government before the Nanavati Commission.

97. The Applicant says and submits that she would like to draw the attention of this Hon'ble Court to some of the Other findings of the learned Amicus Curiae on recommendations by the SIT (when it was reporting directly to the Hon'ble Supreme Court until 12.9.2011). It is no surprise that the self same SIT, once the Final Order was passed, and the monitoring seized changed its colours and became completely the handmaiden of the Gujarat police. In his Interim Report dated 20.1.2011, Shri Ramachandran recommends that:-

<p><u>IX.</u></p> <p>The allegation is that the Government of Gujarat has been seriously indicted by this Hon'ble Court due to fresh investigation in <i>Bilkisbano case</i> by CBI and retrial of <i>Best Bakery case</i> outside the State of Gujarat.</p>	<p>1. The SIT has concluded that the trials in both the cases are over. Some accused have been convicted and some accused have been acquitted and the appeals are pending before the High Court.</p> <p>2. The SIT has recommended that the matter requires to be handled by State of Gujarat to take departmental action for major penalty against K. Kumaraswamy, Jt. C.P. Baroda City and Ramjibhai Pargi, former ACP, in light of observation of the learned Sessions Judge, Greater Bombay. It also recommends setting up of a Committee by Government of Gujarat to fix responsibility on the officials. [pg.238]</p>	<p>1. The investigative agencies let off the accused in <i>Bilkisbano case</i>. If the CBI had not stepped in, the accused would have gone unpunished. Similarly, in <i>Best Bakery case</i>, it appears that the prosecution was done in a shoddy manner to protect the accused.</p> <p>2. The recommendations of the SIT that the Government of Gujarat should set up a committee perhaps needs to be reconsidered. It would be appropriate if these two cases are examined by SIT so as to fix responsibility on the investigating/ prosecuting officials and suitable directions can thereafter be issued by this Hon'ble Court to take action, either under the Indian Penal Code [depending on whether it reveals offences under IPC] or departmental action for misconduct. The acts of the investigating/ prosecuting agencies may attract Section 201 of IPC.</p>
<p><u>XV.</u></p> <p><u>The allegation is that pro VHP lawyers were appointed as public prosecutors which had adverse affect on the trial of the riot accused.</u></p>	<p>The finding of the SIT is that though the political affiliation of the advocates weighed with the government in their appointment as Public Prosecutors, there is no specific allegation in showing favour by them to any of the accused persons involved in the riots, either at the time of grant of bail or during the trial.</p>	<p>The issue may not survive because of the intervention by this Hon'ble Court whereby Public Prosecutors have been appointed in an independent manner. However, this may be required to be looked into further in light of the subsequent letter of Ms. Teesta Setalvad. [p.244]</p>
<p><u>XXI &amp; XXII.</u></p> <p><u>These allegations</u></p>	<p>The SIT has stated that the allegations were vague</p>	<p>In so far as Shri Jadeja is concerned, the documents</p>

<p><u>relates to in action against senior police officers as they did not carry out proper investigation of riot related cases, especially the Bilkisbano rape case.</u></p>	<p>and general and there was nothing against any specific officer. It is further stated that the CBI had not recommended any action against Shri Jadeja, SP Dabhod in the Bilkisbano case. [p.101]</p>	<p>relating to Bilkisbano case need to be scrutinized by SIT. The basis on which the CBI has concluded that no departmental action is required to be taken against Mr. Jadeja has to be examined before any conclusion be drawn.</p>
<p><u>XXIII.</u> <u>The allegation is that the CD relating to telephonic calls of BJP leaders and police officers were not looked into by the Investigating Officers of Gulberg Society and Naroda Paitya.</u></p>	<p>The SIT has found that Shri Tarun Barot, the Investigating Officer of the case and Shri G.S. Singhal, the ACP, Crime Branch intentionally did not examine the cell phone records, though it was available to them, and therefore, major penalty departmental proceedings should be initiated against them. [105]</p>	<p>The Government of Gujarat may be directed to take departmental actions against these two officers immediately within a time bound manner.</p>

“...SPECIFIC RECOMMENDATIONS FOR SIT:

1) Shri M.K. Tandon and Shri P.B. Gondia be prosecuted under Section 304A IPC.

2. The SIT may examine the role of the Investigating Agency in the *Bilkisbano rape case* and make recommendations to this Hon'ble Court, whether it reveals commission of any criminal offence or misconduct.

3. The SIT may be directed to look into the role of the Crime Branch officers, namely DCP Vanzara and ACP Chudasama as to their role in the investigation of Gulberg Society and Naroda Patiya cases.
4. The SIT may examine the role of the prosecuting agency in *Best Bakery case* and recommend suitable action against those who are responsible.
5. SIT may look into the role of police officials in the Gulberg Society and Naroda Patiya cases [apart from those who are already facing charges].

SPECIFIC RECOMMENDATIONS IN  
RELATION TO GOVERNMENT OF  
GUJARAT:

1. Departmental action, as suggested by the SIT, be taken against K. Kumaraswamy, the then Jt. CP Baroda City and Ramjibhai Pargi, former ACP.

2. As recommended by the SIT, departmental action be taken against Shri Tarun Bharot, Inspector and Shri G.S. Singhal, ACP Crime Branch for faulty investigation of the riots cases.

98. The Applicant says and submits that the contempt and disregard that both the SIT and the Government of Gujarat now in full and complete collusion is evident from their failure to act on their (SIT's) own recommendations and ensure that a Committee assesses the functioning of errant and complicit officers. As far as the latter, Government of Gujarat is concerned, the Applicant humbly submits that it has always had scant regard for the directives and suggestions of Constitutional Bodies.

99. Detailed submissions with evidence was laid out in the Protest Petition Volume I and II (with Annexures Volume I to IV) to show, point by point how the Special Investigation Team (SIT) had exceeded its Jurisdiction, where the SIT had failed to conduct Further Investigation following the Order of the Hon'ble Supreme Court dated 12.09.2011, wherein the SIT has acted in a biased manner and has not acted impartially and that a prima facie case for Cognisance against accused is

made out. The Copy of the Protest Petition (both Volumes) is to be placed as Annexure E Colly with a separate affidavit before this Hon'ble Court to which the applicant craves leave to refer at the time of arguments. However, some Salient Points therein are as follows:

100. The applicant says and submits that the hearing before the Learned Magistrate started on the hearing before the Learned Magistrate started on with SIT arguing on 24.02.2013 and concluding their arguments on 19.06.2013. The applicant submits that Submissions for the applicant began on 24.06.2013 and continued in Seventeen Individual Sessions until the last dates on 29.08.2013. Finally in September 2013, Written Submissions for both Parties were submitted with some additional documents. The Oral Submissions were given in English in the Original on 29.08.2013 and then a full-fledged Gujarati Translation was also given to the Learned Magistrate on 25.09.2013.

101. The applicant says and submits that the Compilation of Legal and Factual Submissions made by the applicant are to be placed on record as annexure "F" Colly with the Affidavit before this Hon'ble Court. That the detailed list of Submissions are detailed by way of Separate Affidavit and List of annexures of the applicant and are to be annexed therein

as annexures "G" to "W" Colly with the said affidavit very shortly.

### **Error on Facts**

102. The Petitioner says and submits that during the entire period of the hearing of the Protest Petition before the Learned Magistrate, existing evidence from the investigation papers was marshaled to show clear indicators of a high level criminal conspiracy and abetment to ensure that mass murder and other offences are committed against innocent citizens. Detailed arguments were made by the advocates for the Applicant between June-August 2013 and a strong case laying out the prima facie evidence of strong suspicion that offences have been committed was made out to enable prosecution of the powerful accused. The Protest Petition filed by Zakia Jafri on April 15, 2013 made a strong case for charge sheeting chief minister Narendra Modi and 59 others, further investigation into the biased and malafide investigation by the SIT and transfer of investigation away from the SIT.

103. The Applicant says and submits that a Detailed Para-wise Table of Pointers to Important Issues Raised in Protest Petition dated 15.4.2013 will enable easy understanding of the



issues involved and these will be produced as and when required.

104. The applicant says and submits that the Ingredients of the Conspiracy detailed herein were contained in her Complaint dated 8.6. 2006 and further detailed relying on the Investigation Papers by the Applicant in the Protest Petition dated 15.4.2013. They were emphasized at great length in Oral and Written Submissions during the hearing of the Protest Petition. These include:

- a. Prior to 27.2.2002 there were constant intelligence reports about the anti social activities of the Kar Sevaks from proceeding to and from Ayodhya and these were deliberately ignored allowing a restive public atmosphere to grow all over the state; at this relevant time, Narendra Modi was not just the Chief Minister at that time but also the Home Minister of cabinet rank and hence in charge of police appointments, transfers, actions against them and overall law and order situation.
- b. After the burning at Godhra took place the Chief Minister made statements which were provocative including RSS and VHP leaders at Godhra and members of his cabinet
- c. On 27.2.2002 VHP and BJP called for a Gujarat Bandh on 28.2.2002 and India Bandh on 1.3.2002. No efforts

- were made to prohibit such Bandh. The state government and ruling party in fact supported the Bandh;
- d. On 27.2.2002 itself the Chief Minister reached Godhra within hours. The post mortems were performed in an unlawful manner, in the presence of A-1 and fellow accused ministers and others, in full public view with the bodies being placed/paraded in public and these were allowed to be photographed which photographs were subsequently used for provocation;
  - e. The decision was taken by the Chief Minister to have the bodies sent to Ahmedabad which itself was a decision to provoke people. In addition the bodies were handed over not to the police but to Mr. Jaydeep Patel of Vishva Hindu Parishad (VHP);
  - f. On 27.2.2002 at night a meeting took place at the Chief Ministers residence where there were clear orders with criminal intent were given by the Chief Minister to allow the Hindus to vent their feelings against Muslims
  - g. Despite intelligence reports that massive mobilisations were being done by VHP, etc. no preventive arrests were made, no curfew imposed till it was too late, army not called or deployed till it was too late.
  - h. On 28.2.2002 when massive carnage took place the police in most of the cases was inactive. No perpetrators

were arrested, no FIRs lodged, no action against the police, etc.

- i. On 28.2.2002 two Cabinet Ministers were posted in Police Control Room at Ahmedabad. This would indicate clear interference with police work since it violates all provisions of the law and police functioning.
- j. On 28.2.2002 and 1.3.2003 when much of the violence took place the police in most places was totally inactive and this could only be attributed to high level instructions not to act and save lives. It has been argued that if a high level conspiracy of this sinister kind had not been hatched, the same State Government should have promptly taken action against the negligent or errant officers under whose watch such targeted violence erupted. Instead of taking action against them, the police officers who permitted the carnage were granted lucrative promotions and even post retirement posts. On the other hand those police heads who prevented violence were systematically victimized.
- k. The relief and rehabilitation measures were extremely tardy and this was even commented by the National Human Rights Commission;
- l. Hate speeches were systematically used as part of the criminal conspiracy to further heighten the communal divide and hate-filled atmosphere, raise tensions and for

these actions A-1 the Chief Minister was personally responsible as were co-conspirators from the government fraternal organisations who are also co accused in the Complaint dated 8.6.2006 . Those newspapers which generated hate speech and helped fuel mob mass anger were in fact given commendatory letters signed by the Chief Minister personally.

- m. Written instructions/recommendations by senior policemen from the field and state intelligence to the home department headed by the A-1 the chief minister to swiftly and systematically prosecute hate speech were deliberately ignored as part of the Conspiracy and wilful subversion of the Constitutional scheme, rule of law and the legal framework;
- n. There were officers who were being given instructions at the highest level to not take any action against perpetrators actually connived in this Conspiracy;
- o. There were innumerable examples of breakdown of Constitutional machinery, failure to take preventive measures, failure to take any action during the time the carnage was taking place, complete hash of the relief and rehabilitation measures and actively ensuring that rioters were neither prevented nor acted against by the authorities.

105. The Applicant says and submits that her Complaint and the Protest Petition was not against the foot soldiers, it was against those in positions of power and responsibility, bound under Indian law and the Constitutional scheme to preserve the sanctity of the rule of law, who did all within their power to ensure perpetrated mayhem and who allowed the foot soldiers to commit mass murder, rapes, looting and arson and subsequent destruction of evidence and subversion with complete impunity. This Complaint and Protest Petition is to hold accountable those who created the environment for the foot soldiers to get provoked and enabled them to operate. It was against those who did not act against the foot soldiers.

106. The central theme of the Complaint and the protest petition was that if you looked at the events in a holistic way then a case for conspiracy and aiding and abetment, apart from hate speech is made out. Conspiracy can be proved only circumstantially and by looking at the connection between various events. It is to be made out by looking at the larger picture. Mere fact of not imposing curfew on time can be attributed to callousness or negligence but looking at this in the context of what had happened before and after it can throw a new light on the subject. You don't look at just the individual event but at the larger picture. That was the Applicant, Smt. Zakia Jafri's case and that was the case the

Hon'ble Supreme Court had asked SIT to investigate. The applicant says and submits that the Learned Magistrate has failed substantively to appreciate the vast scope and extent of the Conspiracy that was hatched despite concrete evidence of strong suspicion of it being in operation.

107. The applicant would like at this stage to briefly outline prima facie evidence of serious offences starting with Conspiracy under Sections 120A and B of the IPC, 107, 306 of the Indian Penal Code (IPC) that have been made against powerful accused and laid out in the Protest Petition and Oral and Written submissions thereof. The Applicant says and submits that A-1 Narendra Modi, as chief minister and minister of home affairs of cabinet rank, that involves direct charge of preserving public peace, along with several of the Powerful Accused arraigned in the Complaint dated 8.6.2006 face Fifteen Serious Charges of:

- I. Willfully Ignoring Messages from State Intelligence about the Violent Repercussions of the RSS-VHP called 'Mahayajna' before the tragic Godhra incident on 27.2.2002 and deliberately not initiating precautionary measures that are imperative under Standard Operational Procedure (SOP); messages from 7.2.2002 to 25.2.2002, including specific ones that stated that batches of 2,800 and 1,900 kar

sevaks had left for Faizabad-Ayodhya and had been behaving provocatively and aggressively against minorities on the way. As cabinet minister for home and chief minister, he is directly responsible. MOS Home Gordhan Zadaphiya is a constant Co-Conspirator. Co-accused, ACS Home Ashok Narayan has admitted these messages were received by the GOG Home department. The Applicant details herein the prima facie evidence related to this

**Evidence of this :-** Official Documents Including over one dozen messages of the State Intelligence Bureau to the political head of the home department, Narendra Modi, other senior bureaucrats named as co-conspirators in the Zakia Jafri Complaint including accused former Director General of Police, K Chakravarthi; Tehelka's Operation Kalank that was authenticated by the CBI following an Order of the NHRC dated 5.3.2008 also contained direct evidence of collection of arms, ammunition including dynamite by several VHP and RSS men before 27.2.2002. All these messages are part of the SIT Investigation Papers **at Annexure III, File XXXIV D-17**. These will be placed on record by the

applicant shortly in a proper compilation as annexure 'G' Colly to the affidavit along with this Application.

The applicant says and submits that the Magistrate erred substantively in failing to appreciate this prima facie evidence as pointer towards a criminal conspiracy and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

- II. Deliberately concealing knowledge of the provocative, anti-Muslim sloganeering by kar sevaks at the Godhra station when the Sabarmati Express reached five hours late on 27.2.2002, which information had been sent to him directly by DM/Collector Jayanti Ravi and willfully failing to take stern action and allowing violent incidents to escalate after the train left Godhra by about 1.15 p.m. especially at Vadodara station where a Muslim was attacked and killed and at Anand where the train stopped hereafter ensuring that the state allowed a hate-filled and threatening atmosphere against Muslims build right up to Ahmedabad where the train finally reached around 4 p.m. and where bloodthirsty slogans were being



shouted. FIRs in 19 brutal incidents against Muslims are recorded on 27.2.2002 in Ahmedabad itself. Curfew was not imposed despite these incidents resulting in deaths breaking out.

**Evidence of this :-** Fax Message Sent by DM Jayanti Ravi and Message of the SIB are available @ ***Annexure III, File XLI at Serial Nos 1 and Annexure IV, File IX, Serial Nos 241-in the SIT record.*** These will be annexed as annexure 'G' colly with a separate affidavit and submits that the Magistrate erred substantively in failing to appreciate this evidence of strong suspicion as pointer towards a criminal conspiracy and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013..

- III. Conspiring with the Vishwa Hindu Parishad to plot and allow reprisal killings all over Gujarat. The first phone call that Modi makes after DM Ravi's fax reaches him at 9 a.m. on 27.2.2002, is, not to appeal for peace and calm, but phone secretary VHP, Gujarat, Dr Jaideep Patel and direct him to Godhra. The Conspiracy between Modi and the VHP is hatched and unfurled to cynically ensure

state-wide reprisal killings. Phone call records show these phone calls between PA to Modi AP Patel and Jaideep Patel immediately after the chief minister receives news of the Godhra tragedy. Phone call records made available by Rahul Sharma (IPS, Gujarat) also show that Powerful Accused were in touch with the chief minister's office (CMO) and the landline numbers of the chief minister.

**Evidence of this** :- Page 5-6, Annexure Volume IV to Protest Petition contains AP Patel's Phone Records

and at Annexure IV, File V and VI in SIT Papers annexure "G Colly" with the affidavit that will be filed soon; Conspicuously, the SIT records statements of all officials of the chief minister's office (CMO) following CJP's submission of the phone records to the Supreme Court but does not record A.P. Patel's.

The applicant says and submits that the Magistrate erred substantively in failing to appreciate this evidence of strong suspiciob as pointer towards a criminal conspiracy and that this should also be read as an additional ground for quashing the

Order of the Learned Magistrate dated 26.12.2013..

- IV. Brazenly supporting the Bandh call called by the VHP and allowing the streets and public spaces of Gujarat to be used for mass attacks and violence. By 12 noon on 27.2.2002, state intelligence and the police were aware of the Bandh call; Yet deliberately no preventive steps were taken; the bandh was used by the police machinery to clear the streets of ordinary citizens so that aggressive mobs could target minority populations and their establishments. The first message directing preventive measures that comes from the GOG home department against Modi is past 10 p.m. on 28.2.2002 when over 200 persons have been massacred in broad daylight in Ahmedabad alone. Only two Preventive Arrests in Ahmedabad on 27.2.2002 that two of persons belonging to the Minority Community despite the fact that over 2 dozen attacks had taken place on Muslims all over the state on 27.2.2002 itself. Only two Preventive Arrests in Ahmedabad on 27.2.2002 reveal that of the two of persons arrested on 27.2.2002 from Astodia, both belonged to the Minority Community.

The National Human Rights Commission (NHRC) commented on the state's dubious response vis a vis preventive measures in general and preventive arrests in particular.

**Evidence of this** :- Message from the State Intelligence warning of the serious implications of the VHP bandh is available @ (Annexure IV, File XX, Serial Nos 374, Page Nos 8289 I the SIT Papers/ Record and the message from the GOG home department sent out at 10.15 p.m. on 28.2.2002 is available @ **Annexure III, File XLI, Sr Nos 15**, SIT Papers/Records (to be annexed with the affidavit with this application as Annexure "H" Colly); Also provided herein @ Statistics of Preventive Statistics of Preventive Arrests are available @ Annexure III, File I, D-2, Pages 254-255, SIT Record/Papers to be annexed as annexure 'S' Colly with the affidavit with this Application.

The applicant says and submits that the Magistrate erred substantively in failing to appreciate this prima facie evidence as pointer towards a criminal conspiracy and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

V. Cynically, and illegally allowed Post Mortems Illegally out in the Open at the Railway Yard, Godhra where the burnt and mutilated corpses were laid in full view of an aggressive and irate crowd of RSS and VHP men and women, who were gathered there in violation of Curfew Orders @ Godhra. Deliberately allowing photographs of the burnt corpses to be taken and widely circulated by the RSS-VHP and media in general, despite it being prevented under law; Modi dispatching Accused Nos 2-Ashok Bhatt to oversee illegally conducted post-mortems; Modi was himself present when these post-mortems were conducted out in the open @ the railway yard in front of a mob of RSS and VHP men;

**Evidence of this** :- Phone call records between Modi and Ashok Bhatt, former health minister (since deceased) are evidence of how the latter was dispatched to Godhra; the Godhra Sessions Court judgement 69/2009/ 86/2006. 204/2009 @ Page 105 (to be annexed with the affidavit with the application as Annexure "G" Colly); This was handed over to the Court on 29.8.2012 comments on the illegality of the post mortems and also has a

vivid photograph showing the bodies lying in the open in the Railway Yard at Godhra; it is Annexed here as; Section 223, 4(vi), Volume III Gujarat Police Manual lays down specific legalities to be followed for post mortems that specifically direct no photographs of gory bodies being allowed.).

The applicant says and submits that the Magistrate erred substantively in failing to appreciate this prima facie evidence as pointer towards a criminal conspiracy and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013..

- VI. Personally instigating individual RSS-VHP men and women at the railway yard at Godhra assuring them that enough time will be allowed by the Modi-led government and administration to extract a revenge for Godhra.

**Evidence of this :-** Excerpts of the authenticated Tehelka Transcripts of Ramesh Dave, Rajendra Vyas of the VHP Haresh Bhatt of the BJP and Bajrang Dal. Anil Patel of the VHP, Dhimant Bhatt of the RSS,, Dhawal Patel and Arvind Pandya from the Tehelka Transcripts available @ **Annexure III, File XIII, D-129 in SIT Records and statements**

**available at Annexure I Volume I and II** of the SIT record to be annexed with the affidavit separately in this application as annexure "G" Colly.

- VII. Directing that the unidentified bodies of Godhra train victims should be handed over to Jaideep Patel, a non-governmental person, that too belonging to a supremacist and communal VHP to be brought to Ahmedabad where aggressive funeral processions in full public view were allowed. Modi directed this at a meeting at the Collectorate in the evening of 27.2.2002 before he returned to Gandhinagar. Jaideep Patel was allowed to be present at an official meeting at the Collectorate. Jaideep Patel is a co-conspirator and also facing trial for mass crimes in the ongoing Naroda Gaam case. Modi is specifically guilty of allowing the escalation of violence from Godhra to other parts of Gujarat and taking decisions contrary to law.

**Evidence of this :-** DM Jayanti Ravi's statement to the SIT dated 15.9.2009 @ Annexure I Volume I, Sr Nos 19 in the SIT record (to be annexed with the affidavit with this application as annexure "H")

Colly), clearly states Jaideep Patel was present at the meeting at the Collectorate though Modi and Jaideep Patel, both denied it.

The Applicant says and submits that the Magistrate erred substantively in failing to appreciate this prima facie evidence as pointer towards a criminal conspiracy and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

VIII. Specifically instructing his top policemen and administrators not to act evenhandedly in the days to follow and “allow Hindus to vent their anger.” Two senior bureaucrats present at the meeting have stated that cabinet ministers were present at a meeting that went on well past midnight. Haren Pandya, a minister in Modi’s cabinet in 2002 had given evidence of this to the Concerned Citizen’s Tribunal headed by Justice Krishna Iyer and PB Sawant in 2002 itself. Later in 2009 a serving officer from the state intelligence, Sanjiv Bhatt also gave the same evidence before the SIT and the Supreme Court.



**Evidence of this :-** (i) Statement of Haren Pandya to the CCT dated 13.5.2002 @ *Internal Page 82 Volume II of the Concerned Citizens Tribunal Report in section on State Complicity @ Annexure III, File, I, D-2, D-3, D-4 of the SIT Record/Papers* (to be annexed with the affidavit in this application as annexure "I" Colly); (ii) On 27.10.2005, in the Fourth Affidavit, R.B. Sreekumar before the Nanavati Commission dated 27.10.2005 stated that K. Chakravarthi, DGP Gujarat (A-25) had given information of the same words being uttered by A-1 Modi at the meeting on 27.2.2002 ; (iii) On 11.07.09 Statement of Shri R.B. Sreekumar, formerly Addl.DG (Int.), Gujarat to the SIT (Annex I, Vol I Sr. No.5, SIT Papers/Record) where he confirmed this; (iv) On 12.08.2009, Statement of Shri Vitthalbhai Pandya, father of Late Haren Pandya, R/o, Paldi, Ahmedabad (*Annex I, Vol I Sr. No.12, SIT Papers/Record*) where he stated that his son Haren Pandya had told him about attending the meeting at the residence of A-1 on 27.2.2002 in the late evening as also of the provocative instructions given by A-1; (v)

On 28.8. 2009, Justices P.B. Sawant and Justice Hosbet Suresh gave two separate statements. Both eminent Judges, retired Supreme Court and High Court respectively, also stated that three serving IPS officers, Sami Ullah Ansari, Himanshu Bhatt and Vinod Mall also deposed before them in person requesting anonymity but confirming that such illegal instructions were issued. (*Annexure I Volume I Sr.Nos 16 & 17 of the SIT Record/Papers*) ( to be annexed with the affidavit with the application as Annexure "E" Colly) ; (vi)

On 30.10.2004, Mr. Rahul Sharma stated in his deposition on oath before the Nanavati Commission that when he spoke to his superior officer DGP, Gujarat, A-25 Chakravathi on 1.3.2002 at about 10:22 p.m. to request to make more force available for him at Bhavnagar, the DGP told Mr. K Chakravarti also told him that "the bureaucracy had been completely neutralised".

Amicus Curiae Raju Ramachandran has clearly stated in his Interim and Final reports before the Supreme Court (20.1.2011 & 25.7.2011) that Evidence regarding the unlawful and incendiary words spoken at the meeting of 27.2.2002 should be tested in a trial.

IX. Preventing the Imposition of Curfew. Curfew was deliberately not imposed at Ahmedabad while over 3,000 RSS workers were allowed to gather at the Sola Civil Hospital where Jaideep Patel arrived with the bodies of the Godhra victims at about 4 a.m. The crowd was aggressive and violent as proved from the police control room records. No steps were taken to disperse the crowd that attacked the hospital staff and doctors, a High Court judge, Violent funeral processions were allowed to wind through the streets of Ahmedabad for several hours at two locations; worst Acharya Giriraj Kishore was given police escort to come and further provoke the aggressive mob; the cremations took place only in the evening and attacks on Naroda Patiya, Naroda Gaam and Gulberg Society where over 200 persons were massacred (and rapes allowed) in broad daylight on the same day, 28.2.2002, while violent and aggressive funeral processions were willfully allowed by Modi and the police and administration.

**Evidence of this** :- Messages from the Police Control Room records that were first denied to SIT but thereafter produced in a CD by former

Commissioner of Police, PC Pande, after the Supreme Court ordered further investigation on 15.3.2011 show a slew of such messages that reveal Mobs of RSS/VHP workers gathered from 3 a.m. onwards; hospital staff attacked etc:- Page No. 5794, 5796-97 & 5826, Annexure IV, File XIV of the SIT record. (to be annexed hereto as Annexure "J Colly", @ Paras 559-560 @ Pages 224-247 of Protest petition, Volume I, and annexed with the Affidavit with this Application as **Annexure "E-2 Colly"** herein

The Applicant says and submits that the Magistrate erred substantively in failing to appreciate this prima facie evidence as pointer towards a criminal conspiracy and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013..

- X. Making a pretence of verbally calling in the Army on the late evening of 28.2.2002 but not actually allowing its deployment in Ahmedabad, Godhra and Bhavnagar and Varodara until 2.3.2002 and 3.3.2002. Worse badly affected districts like

Mehsana, Panchmahals, Dahod, Anand, Kheda were not given an Army or Paramilitary at all.

**Evidence of this:** - Documents related to the Correspondence of the GOG Home department available in the SIT Papers and to be annexed with the affidavit with this Application as Annexure "S" Colly.

The applicant says and submits that the Magistrate erred substantively in failing to appreciate this prima facie evidence as pointer towards a criminal conspiracy.

- XI. Fourteen out of Gujarat's 25 districts were allowed to burn, and another five also erupted into violence, as Ministers were specifically deployed by Modi to interfere with Police functioning and sit in the State Control Room and Ahmedabad City Control Room; in Eleven Districts where Violence was controlled, the Police Officers in Charge were given Punitive Transfers to send a Political Message. Modi heads the Home department that bends the Police Bureaucracy and Police to his Will.

XII. A-1 Modi allowed violence to continue unabated until early May 2002 when KPS Gill was sent by PM Vajpayee to the state; the National Human Rights Commission (NHRC), April and July 2002 and Central Election Commission (CEC) were misled about the spread and intensity of violence. This was willful subversion of the justice system. The Subversion of the Home Department under A-1 in which co-accused, Gordhan Zadaphiya, MOS Home, A-5, Ashok Narayan, ACS Home, A-28, and K Nityanandam, Secretary, Home, A-34 played an active part included deliberately misinforming the Ministry of Home Affairs of the Government of India about the extent and spread of violence:- Correspondence exists to reveal how senior VHP and RSS men were being kept out of the FIRs and charge sheets related to serious massacres being filed by the Ahmedabad Crime Branch; how violence was recurrent and was being allowed with even ministers like Bharat Barot directly involved.

**Evidence of this** :- the NHRC and CEC Reports as also the correspondence between the NHRC and chief secretary Subha Rao, also an accused (Accused Nos- 27) are clear testimony of this

subversion; ACS Home Ashok Narayan's letters to DGP available in SIT record show the subversion in keeping names out of FIRs etc (to be annexed with an affidavit with this application as Annexure "L" Colly).

The applicant says and submits that the Magistrate erred substantively in failing to appreciate this prima facie evidence as pointer towards a criminal conspiracy and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013..

XIII. Partisan prosecutors belonging to the RSS-VHP were appointed to ensure that cases were killed in their infancy; bail was easily granted to powerful accused until the Supreme Court stepped in, in 2003 and 2004. Two trials, the Best Bakery trial and the Bilkees Bano cases were transferred out of the state.

**Evidence of this** :- Judgements of the Supreme Court on 12.4.2004 and 1.5.2009 and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013..

The Applicant says and submits that the Magistrate erred substantively in failing to appreciate this prima facie evidence as pointer towards a criminal conspiracy.

XIV. Hate Speech, in violation of Indian Criminal Law, was indulged in by Modi himself, on 27.2.2002 and right until the infamous Becharaji speech made top set off his election campaign on 9.9.2002 and also cynically permitted by the Home Department under him to spread poison and incite violence against Muslims and Christians. The State Intelligence under ADGP-Int RB Sreekumar had specifically recommended prosecution of the VHP for a series of incendiary pamphlets but this was ignored. SP Bhavnagar, Rahul Sharma too had recommended the prosecution of Sandesh, the Gujarati mainstream newspaper for publishing false and provocative photographs and reports. Both the NHRC and Editor's Guild had also strongly recommended prosecution of those guilty of hate speech. Modi had, instead sent congratulatory letters to those newspapers who had spread lies and venom. RB Sreekumar, Rahul Sharma and Sanjiv Bhatt are among the officers persecuted by



the Gujarat government under Modi (home minister).

**Evidence of this** :- Modi's speech and its transcript is clearly communal; Gujarat's Intelligence department responding to the National Commission for the Minorities (9.9.2002) clearly assessed the deleterious impact of the speech ; Official letters of then ADGP Sreekumar dated 16.4.2002, then SP Bhavnagar, Rahul Sharma and then CP Vadodara all strongly recommending prosecution of VHP's hate pamphlets and the Sandesh newspaper –all part of the SIT record-- were ignored by the political head of the GOG Home department, Modi. Ashok Narayan's statement to SIT dated 13.12.2009 available in the SIT Record @ Annexure I Volume I states that Modi was extremely dismissive of these repeated requests for prosecution. (to be annexed is a compilation of these crucial documents from the SIT Record @ Annexure "M" Colly\_ with an affidavit with this application).

The applicant says and submits that the Magistrate erred substantively in failing to appreciate this prima facie evidence as pointer towards a criminal conspiracy and that this should also be read as an

additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013..

XV. A-1 Modi is guilty of ordering the Destruction of Crucial documents including Wireless Intercepted Messages, Vehicle logs, Police Control Room records and others on 30.3.2008, four days after the Supreme Court appoints the Special Investigation Team (SIT) on 26.3.2008. He has headed the Home ministry portfolio since that date. **Evidence of this** :-Pages 70-77 of the Compilation that consists of documents from the SIT Record; Annexure IV, File I Sr Nos 23 (to be annexed with an affidavit with this application as Annexure "U" Colly).

The applicant says and submits that the Magistrate erred substantively in failing to appreciate this prima facie evidence as pointer towards a criminal conspiracy and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013..

**108. Criminal Mind-set, Mens Rea and Modus Operandi of A-1****Modi**

The Applicant says and humbly submits that substantive issues raised by her in the Complaint and Protest Petition were simply brushed aside by the Magistrate or ignored. The Applicant says and submits that Accused No. 1, Narendra Modi was Pracharak of RSS for nearly two decades. During the chief ministership of Keshubhai Patel, the RSS head had pushed the name of Modi as the chief minister of Gujarat around September 2001. He actually became CM on 7.10.2001. Thereafter, he fought an MLA bye-election from Rajkot and was declared as elected from the said constituency on 22.2.2002. Five days after his being declared as the elected MLA from Rajkot, the tragic Godhra incident took place on 27.2.2002. Narendra Modi was brought into Gujarat politics to vehemently push the aggressive supremacist Hindutva ideology. He was keen to establish himself within the BJP as a hardline supporter of Hindutva. He came into Gujarat politics with a pre-determined mindset. Therefore, when VHP/RSS/ Bajrang Dal and DurgaVahini wanted to have the 'Mahayagna' at Faizabad, Uttar Pradesh to commemorate the anniversary of the demolition of the Babri Masjid and ensure the building of a Ram Temple there, (which had taken place on 6.12.1992), inspite of repeated messages from the State Intelligence Bureau (PB Upadhyaya and Sanjiv Bhatt) from

7.2.2002 to 25.2.2002, warning the Government about this Mahayagna and its repercussions and also that 2,800 karsevaks had left Ahmedabad on 22.2.2002 and another batch of 1900 had left on 24.2.2002, no precautionary measures were taken by the government and its home department headed by A-1 Modi. Conspiracy as Actually Committed by A-1 Modi, a supporter of the Babri Masjid Demolition deliberately was, as political head of the Gujarat Government's Home Ministry (Cabinet Minister for Home) to deliberately ignore the warnings of the blatant communal mobilisation evidence of which is available from the SIT Records (Faxes of the SIB etc) before 27.2.2002. A List of Dates (LOD) describing events from 9 a.m. to 1 p.m. handed over to the Magistrate's Court along with a Note on the Communal and Criminal Mindset of A-1 Modi was submitted to the Court. In this the facts/incidents upto 1 p.m. on 27.2.2002 are covered. These facts have been covered at **Paras 32 – 59 (Pages 30-41) of Volume I, Protest Petition; Paras 459-463 at Pages 205-207 of Volume I of the Protest Petition** have been covered. All these SIB Messages are available @ **at Annexure III, File XXXIV D-176** of the SIT Record and have been given separately to the Magistrate's Court annexed to the LOD (to be annexed with an affidavit with this application as Annexure "G" Colly). They have been detailed in the Annexure to this Note as well for convenience. Prelude from

**Tehelka Tapes @ Pages 120-126, Volume I, Protest Petition, Volume I** (Annexure "G" Colly). The A-1, therefore, supported the 'Mahayagna' as it was in commemoration of the act of the demolition of the Babri Masjid, which also he had supported. The A-28 ACS (Home), Ashok Narayan in his statement before the SIT dated 12.12.2009 has admitted these State Intelligence Bureau (SIB) messages.

The Applicant says and submits that substantive arguments related to the Conspiracy, role of powerful accused including A-1 have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

109. The applicant says and submits in the Protest Petition and Written and Oral Arguments. It was argued that, in the ordinary course whenever there is a message by the State Intelligence, necessary instructions are issued by the Home Department/DGP to the concerned officers. But no such instructions were issued as this build-up of communal mobilization was allowed. In fact no actions were initiated though the State Government was also informed of the return of karsevaks from Faizabad and the apprehension of the breach of law and order. The Sabaramti Express which had

left Faizabad (UP) on 26.2.2002 carrying a group of karsevaks had witnessed a violent incident at two railway stations, including Rudauli, (Uttar Pradesh). In particular incidents took place at two places including Rudali where stabbing and attacks also followed. Though the home department of the State headed by A-1 was aware of this fact and was also aware of the fact that the same provocative slogan shouting will take place at other railway stations including Godhra, no action was taken. The Applicant says and submits that substantive arguments related to this aspect and ingredient of the Conspiracy, role of powerful accused including A-1 have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand.

110. The applicant says and submits that admittedly, when the Sabarmati Express reached Godhra (at about 7.15 am on 27.2.2002—it was five hours late), the kar sevaks were shouting provocative, anti-Muslim slogans. Thereafter the said incident took place resulting in burning of two coaches, of which S-6 was badly burnt. To complete the narration, the train reached Vadodara after leaving Godhra at 1-1.30 p.m. where karsevaks had assaulted three persons, one of them being Abdul Rashid who died. From Vadodara the train reached Anand around 2.20 p.m. where again violence took place and karsevaks indulged in violence, killing of one person

and causing injury to two persons.—they were all Muslims. From Anand the train finally reached Ahmedabad railway station around 3 p.m. where the karsevaks were shouting bloodthirsty slogans (“*Khoon ka badla Khoon*”) threatening revenge against all Muslims. At Ahmedabad railway station, stabbing, stone pelting incidents etc. also took place. No preventive actions were taken at the highest levels of the state’s political, administrative or police hierarchy and the communal temperature was deliberately allowed to escalate all over the state, especially Ahmedabad, on 27.2.2002.

**(Paras 574-587 @ Pages 254-260, Volume I Protest Petition).** (to be annexed as Annexure “G” Colly\_ with an affidavit with this application) Further the Applicant says and submits that the Fax message of the incident was sent by DM Smt. Jayanti Ravi to the CMO, Home Department and Revenue Department, which was received at 9 a.m. of 27.2.2002. In the said message, it was clearly mentioned that the karsevaks were shouting provocative, anti-Muslim slogans. In addition, Sanjiv Bhatt, State Intelligence had also sent a message to the CS, HS,CM, MOS Home and DGP Gandhinagar confirming the fact that kar sevaks were shouting provocative slogans **(Both messages are available in the SIT Records @ .Annexure III, File XLI at Serial Nos 1 and Annexure IV, File IX, Serial Nos 241-in the SIT record)** (Annexure “G” Colly of the affidavit to be filed very shortly)

111. Further the applicant has argued at length in the Oral and Written submissions supporting her Protest Petition that the A-1 already having a mindset, indulged in act of Conspiracy and Abetment with other accused and other accused inter se which will be clear from the following:-

- a. After receiving the fax message from Jayanti Ravi, Collector/DM, two telephone calls were made by A-1 to Jaideep Patel (A-21), General Secretary of the VHP from the Mobile: 09825037439 belonging to the PA of A-1 Modi, AP Patel. The PA's (A.P. Patel) statement is the only one that the SIT has conspicuously avoided recording though statements of five other officials from the Chief Minister's Office (CMO) have been recorded. A-1 issued instructions to Jaideep Patel, (A-21) who was at that time at Naroda, and who, thereafter, left for Godhra reaching there around 12 noon. The first manifestation of the Criminal Act of Conspiracy took place between A-1 and A-21 when A-1 as the Chief Minister and head of the Government, instead of instructing the police and bureaucratic machinery about the fall out and repercussions of the incident and directing precautionary and preventive steps, called the VHP General Secretary and plotted revenge. An agreement to indulge in acts of criminal nature was arrived at between them. What was done by A-21 after reaching Godhra is clear i.e. he mobilized the VHP cadres at Godhra, instigating them against



ordinary Muslims. The Conspiracy, was, therefore clear, between A-1 and A-21, which was to instigate and mobilise the VHP cadres against ordinary Muslims. This was done by A-1 because of his pre-determined mindset of aggressive Hindutva and anti-Muslim prejudice/bias. **(Page 5-6,Annexure Volume IV to Protest Petition has AP Patel's Phone Records)**. Also See Annexure IV, File V and VI in SIT Papers).( to be annexed as Annexure "G" Colly\_with an affidavit with this application)

b. Further the applicant had argued in great detail that the A-1 chief minister Narendra Modi, after receiving the fax, manifesting criminal intent and conspiracy, A-1 did five things:

- (i) **A-1 Modi Conspiring with VHP (A-21) to Manipulate Godhra into Mass, Statewide Reprisal Killings** He called the VHP Gujarat general secretary to go to Godhra. What Jaideep Patel did in Godhra was to instigate other VHP men and Hindus against the Muslims. Therefore, Modi conspired with Jaideep Patel to instigate negative and aggressive feelings of RSS, VHP workers against Muslims. Otherwise, there was no need for him to inform the VHP man (and be in close contact with him) knowing fully well that after the Godhra incident, tensions may escalate and what was required was restraint and specific measures to strengthen the law and order situation. He, therefore commits an omission in not discharging his duty; he in fact by his conduct allowed communal tension to escalate.

(Jaideep Patel is now facing trial for his direct involvement in the Naroda Gaam carnage);

- (ii) **Suppressing Information about the Provocative Sloganeering by Kar Sevaks.** The other part of conspiracy is in suppressing the official intimation that karsevaks were shouting provocative slogans. In furtherance of this Conspiracy, A-1 called a meeting at his residence at Gandhinagar at 10.30 a.m. The persons who participated in the said meeting and became party to the conspiracy were Minister of State for Home, Gordhan Zadaphiya (A-5), Ashok Narayan, ACS Home, (A-28), K Chakaravarthi DGP, Gujarat (A-25) PC Pande, CP Ahmedabad (A-29), and K. Nityanandam, Home Secretary, (A-34) and other members of the Chief Minister's Secretariat. With the consent of all, it was decided to suppress the fact that the State Intelligence was constantly warning about the mobilisations by the VHP, BD and Durga Vahini in relation to 'Mahayagna' at Faizabad-Ayodhya and its repercussions. It was also decided to suppress the message received from Collector Godhra, Smt. Jayanti Ravi that karsevaks were shouting provocative, anti-Muslim slogans when the train reached Godhra. This Note (for the State Assembly) was prepared at the meeting to suppress the fact that anti-Muslim slogan shouting by kar sevaks was a provocation which led to the incident. A-5,

Zadaphiya read out this statement in the assembly. The background of Zadaphiya is that he was also a VHP member. His statement to the SIT (24.9.2009) states that a VHP activist Ashwinbhai Patel who was on the train had informed Zadaphiya of the incident at 7.30 a.m. This is in fact even before the time of the actual train burning.

(iii) At 1 p.m. on 27.2.2002, as mentioned above, the correct facts were not put before the State Assembly. Mayabehn Kodnani, (A-16), MLA from Naroda Patiya became a part of the Conspiracy by not informing the Assembly of the correct facts and Gordhan Zadaphiya (A-5) who had already become part of the Conspiracy, read out the Note that was prepared at the residence of A-1, suppressing the fact of provocative slogan shouting by the kar sevaks. This was deliberately done because A-1 had already mobilized the VHP cadres at Godhra by immediately sending Jaideep Patel (A-21) there. It may be noted that even the State Legislature/Vidhan Sabha was not informed about the fax message of the Collector and only the note prepared in the meeting at the residence of A-1 was read out in the Vidhan Sabha at 1 p.m. by Gordhan Zadaphiya (A-5);

(iv) **Proof of Criminal Conspiratorial Mindset of A-1:** A very important fact that emerged in the investigation, is a direct statement under section 161 CrPC, given by Sureshbhai Mehta, then Minister for Industries (dated 15.8.2009). Mr

Mehta categorically said to the SIT, "I was sitting by the side of Narendra Modi, chief minister who remarked that Hindus should wake up now." This direct statement of Mr Suresh Mehta completely supports the fact that A-1 had a pre-disposed mind-set which was biased against Muslims and he had acted in pursuance of the said mindset in hatching the Conspiracy that resulted in a Carnage of Muslims from 28.2.2002 until April/May 2002.

(v) **Allowing Post Mortems Illegally without Following procedures Out in the Open, Allowing Photographs of Gory Corpses and Allowing Violation of Curfew Orders @ Godhra.**

The Applicant says and submits that, In furtherance of the Conspiracy, A-1 also involved Ashok Bhatt (A-2) Minister of Health, who left Gandhinagar for Godhra on the instructions of A-1 and reached Godhra at 1 p.m. It is clear from the record of the telephonic conversations available with the SIT that, before A-2 reached Godhra, he had several telephonic conversations with A-1. That Ashok Bhatt was sent to Godhra as part of the Conspiracy is clear from the series of acts which took place at Godhra including the manner in which the post mortems were deliberately conducted. This will be dealt with a little later. But it is clear that A-1 Modi with his deeply entrenched anti-Muslim mindset was constantly subverting the state's

responsibility of upholding law and order and was allowing his political ideology to override it.

The Applicant further says and submits that there were four phone calls between A-1 Modi and A-2 Bhatt at 13:53:44 hours, 14:50:44 hours, 15:05:09 and 15:38:10 hours all before A-1 Modi left for Godhra (**Page 42, Protest Petition, Vol I**). The Co-Conspirators, namely, Ashok Bhatt, Minister for Health (A-2) and Jaideep Patel, VHP, (A-21) and Gordhan Zadaphiya, Minister of State for Home (A-5) who reached Godhra around 4 p.m., in furtherance of what A-1 Modi had directed, decided to hold *en masse* post mortems of 58 dead bodies near the burnt Coach out in the open to further provoke the aggressive crowd of RSS-VHP workers present there. Before carrying out the post mortem, no identification of dead bodies was done, relatives were not called or were present which was in violation of existing laws and procedures.

The Applicant says and submits and has pointed out in detail in the Protest Petition and Written Submissions submitted before the Court

that The Conspiracy was furthered between 1330 hours and 2230 hours (Controversial meeting). Between 1330 – 1530 hours on 27.2.2002 after the assembly proceedings, A-5 Zadaphiya left for Godhra. Accused No. 1 gets four calls from A-2 Ashok Bhatt on the mobile number of his PA, OP Singh, informing A-1 about the situation in Godhra. A-2 Mr. Ashok Bhatt (now deceased) had admitted that it was he who had instructed local doctors through the Civil Surgeon at Godhra for the post-mortem. A-2 Mr Ashok Bhatt who was in regular touch with A-1 Mr. Modi left for Godhra at 9.30 a.m. according to his statement to SIT and reached around 12-12.30 p.m. As the inquest was over, a decision is taken by A-2 taking instructions from A-1 to conduct post-mortems in the railway yard itself where the dead bodies are lying. Decision was taken to start hasty post-mortems (Phone call records). SP Raju Bhargava (A-46) is directly responsible along with DM Jayanti Ravi for allowing these post-mortems in public in violation of law and in violation of Curfew Orders. Admittedly, according to DM Ravi and SP Bhargava, by 11 a.m. latest curfew had

been declared in Godhra town; yet large crowds of the VHP were allowed to assemble at the railway yard where the burned corpses had been lined up and view the post mortem that, shockingly took place in public.

The calls made by Ashok Bhatt and those from the Mobile of Om Prakash Singh has again not been discussed by the SIT. The call details show that A-1 (chief minister) was in touch with A-21 Jaideep Patel as well as with A-2 Ashok Bhatt. The making of calls by A-2 Ashok Bhatt to Accused No. 1 shows that the Inquest of dead bodies was done after taking instructions from A-1, the chief minister. The A-1 had used the mobile of Om Prakash Singh. In the statement given to the SIT by Singh (9.11.2009), he accepted that A-1 spoke on his mobile when there was an extreme emergency. He only says that he did not see A-1 talking to anyone on his mobile phone. The SIT's conclusions that CM was not in touch with "controversial persons Maya Kodnani and MrJaideep Patel during riots" is contrary to the documents on record. A-1 was therefore in

touch with both Maya Kodnani (A-16) and MrJaideep Patel (A-21). The Applicant humbly submits that like on other substantive counts where the Magistrate has erred considerably, the same error is committed when he fails to see any prima facie pattern or evidence from the phone call records, *who calls whom, when*. What is surprising is that when call records concerning other accused were used to argue their presence at various sites (including Narendra Modi's presence) the same Magistrate in the same Judgment discards them by giving a complicated analysis of how Cell Phone towers work and how merely because a particular towers shows a cell phone in a given area at a given time it does not prove that the phone was actually in that area at that time.

The decision to conduct the post mortem in violation of law was a part of Conspiracy of which A-1 was the Chief Architect. by allowing the post mortem in the open, at the Railway Yard, as also allowing photographs to be taken and circulated widely, the RSS-VHP with these Conspirators had a clear design to escalate



anti-Muslim feelings and provoke violence against Muslims. They became successful in their design which is clear from the brutal violence that started the same day and intensified from 28.2.2002, continuing for several months. In the Godhra Sessions Court Judgement **(Sessions Case Nos 69/2009/86/2006. 204/2009 @ Page 105; This was handed over to the Court on 29.8.2012 and is to be annexed as Annexure "G" Colly with an affidavit shortly with this application)** there is a photograph showing the Bodies of the unfortunate victims laid out in the Railway Yard;, that the autopsy was carried out illegally, post mortem was not carried out by panel of two doctors, no attempt was made by the Medical Officer to collect Blood Tissue Samples from dead bodies for being sent to FSL for examination and that no attempt was made to ascertain the presence of any inflammable liquid, petrol, diesel, kerosene acid etc on the dead bodies. Page 100 of the Sessions Court Judgement has a photograph showing the dead bodies lying out in the open at the Railway Yard Godhra. Photographs and videos of the bodies

too were allowed freely in violation of strict provisions of the Gujarat Police Manual in the presence of A-1 and a murderous crowd of the RSS-VHP workers at the Godhra Railway Yard. Illegal post mortems also took place in the presence of A-1, A-2, A-5 and A-21 in their presence. Under the law, it is the inquesting authority that has to decide whether to send the dead bodies for post-mortem or not. But in the present case PM of almost all bodies were over by 18.45 hours, the time when inquest report was signed in the presence of A-1, A-2 and A-5 obviously following their directions. The question which the SIT has simply not bothered to ask is, under whose orders, the Post-mortem was being conducted in the Railway Yard itself without any facility and equipments and also by doctors who were not trained to do Post Mortem? The motive behind this was clear: The Applicant humbly states that these critical aspects that add up to the ingredients of a sinister conspiracy have been brushed aside by the Ld Magistrate.

Photographs and videos of the bodies too were allowed freely in violation of strict provisions of the Gujarat Police Manual in the presence of A-1 and a murderous crowd of the RSS-VHP workers at the Godhra Railway Yard. Illegal post mortems also took place in the presence of A-1, A-2, A-5 and A-21 in their presence. **(Section 223, 4(vi), Volume III Gujarat Police Manual** handed over separately to the Court and also to be annexed as Annexure "H" Colly with an affidavit with this application). Under the criminal law, it is the inquesting authority that has to decide whether to send the dead bodies for post-mortem or not. But in the present case PM of almost all bodies were over by 18.45 hours, the time when inquest report was signed in the presence of A-1, A-2 and A-5 obviously following their directions. The question which the SIT has simply not bothered to ask is, under whose orders, the Post- mortem was being conducted in the Railway Yard Itself without any facility and equipments and also by doctors who were not trained to do Post Mortem? The Magistrate too is utterly silent on these brazen and cynical violations of the law and procedure

that amounted to serious provocations to public peace. The applicant says and submits that, the warning of SIB aside, this kind of aggressive mobilization at the site of the Burnt Railway Coach, out in the open, was allowed by A-1 and his Collaborators in violation of the Curfew Orders promulgated by 10.15-10.30 a.m. in Godhra city on 27.2.2002. But on even this aspect the Magistrate is silent not even holding the Collector or DM Godhra of any lapses.

112. The applicant says and submits that the Analyses of A-1 (Residential and Office) Phone Call records tell a strange tale that SIT has again, deliberately and conspicuously not investigated ( **Annexed to the Protest Petition at Annexure Volume IV, Pages 93-100**) (to be annexed as annexure "E" Colly with an affidavit with this application) were also completely ignored by the SIT Investigation. This analysis carries startling details that show that from the seven landlines available to the chief minister at his office and residence, only a handful (barely six to seven calls are received on the fateful day) of which one is from VHP strongman Jaideep Patel, also a co-accused. How could a political head of state records such few phone calls? **(Para 106 @ Pages 61-62 of Protest Petition Volume I)**

113. The Applicant says and Submits that A-1 Modi by brazenly Supporting the Bandh Call allowed the Streets to be Used for Mass Attacks and Violence. Further, the fact that, the VHP declared a bandh for 28.2.2002 –a fact that was known by 12 p.m. on 27.2.2002 (according to a Message of the SIB) **(Annexure IV, File XX, Serial Nos 374, Page Nos 8289 I the SIT Papers/ Record given to the Court)** which was supported by the ruling BJP, is sufficient evidence to prove that the mobilization of VHP cadre at Godhra was in furtherance of Conspiracy and A-1 Modi had completely caste aside his role as head of Government responsible for upholding law and order. The SIB Message that was sent out before 1 p.m. on 27.2.2002 warned of likely violent repercussions on the occasion of the bandh as well as communal mobilisation by the VHP, and therefore advises bandobast and other strict precautionary measures. **(This SIB Message was handed over as on 26.6.2013 to the Magistrate's Court)** ( to be annexed as annexure "G" Colly with the affidavit )

Therefore, another crucial aspect that ought to have been probed deeply by the SIT but was completely and deliberately ignored is, that, when the statement was made in the State Assembly at 1 p.m., the VHP had already announced a Gujarat bandh by about 12 noon which was supported by the

ruling BJP. The state government did not oppose it. No statement is made in the Assembly that the state government is opposing the Bandh. A-1 was, therefore, aware that the Bandh would give further opportunities for provocation and give a free hand to the RSS, VHP and Bajrang Dal to lead violent mobs and vent of their ire on innocent Muslims, yet officially, neither as Home Minister, nor as Chief Minister, did he make any statement to ensure that strict preventive action is take, arrests of communal miscreants are made etc, in spite of the State Intelligence field reports and warnings.

114. The Applicant says and submits that the A-1 by supporting the Bandh violated the law laid down against Bandhs by the ***Supreme Court (Communist Party(M) of India vs Bharat Kumar & Ors, Supreme Court, 1998 (1) SCC 201)*** and thus obstructed the lawful functioning of the state machinery. Rajendrasinh Rana (BJP) (A-18) has accepted the responsibility for giving the Bandh call. Nalin Bhatt (A-17) also was party to the decision as also Kaushik Mehta, VHP (A-19). **The Bandh Call was, therefore, part of the conspiracy as it served the following purposes:**

- (i) It allowed the RSS/VHP/BD/BJP men to behave aggressively and indulge in unlawfully violent activities and

(ii) The Bandh was used by the police machinery to clear public places and ordinary movement so that aggressive mobs of these organisations could target minority populations and establishments (thereby neutralizing ordinary peoples and movements);

(iii) A-1 deliberately did not allow the police and other state machinery to take action i.e. omission from discharging their lawful and statutory duties.

(iv) A-25, K Chakravarthi, DGP Gujarat, A-29 PC Pande, Commissioner of Police, Ahmedabad, and A- 38, Shivanand Jha, Additional Commissioner of Police Ahmedabad (**also Other Accused in Charge of Commissionerates and districts**) are criminally culpable for not following the law and the Standard Operational procedure as, deliberately no Curfew is declared in Ahmedabad, Vadodara and many parts of the state despite clear-cut warning signals all through 27.2.2002 and no arrests are made.

No official communication was given to observe law and order and maintain peace and calm in Gujarat.

The Bandh call given by the Vishwa Hindu Parishad was known to officialdom by 12.30 p.m.

openly supported by the ruling BJP and became an occasion to allow VHP-RSS mobs to roam the streets of Gujarat with impunity. The first ever message from the Home department headed by A-1 Modi to round up communal elements

and act is given after 10 p.m. on 28.2.2002 when more than half of the pre-planned massacres have taken place. Desai gave copies of this message to the Judge from the SIT Papers (This message given to the SIT by Sanjay Bhavsar from the CMO is handed over to the Court. **(Annexure III, File XLI, D-196, Volume I, Serial Nos 15)(Statements of Rajendrasinh Rana, State BJP President and SIB Messages on the Bandh call were handed over to the Magistrate's Court)** (to be annexed as Annexure "G" Colly" with an affidavit soon with this Application). The Supreme Court Judgement on the Bandhs being illegal confirming the Hon'ble Kerala High Court judgement handed over to the Court and are annexed here)

The applicant says and submits that substantive arguments related to the Conspiracy, role of powerful accused including A-1 have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should



also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013..

115. The applicant says and submits that A-1 with Anil Mukhim, additional Principal Secretary and OP Singh left for Ahmedabad airport from Gandhinagar on the afternoon of 27.2.2002. But instead of going directly, they deliberately took a detour and passed through Meghaninagar and Naroda areas. The fact that they were at Meghaninagar and Naroda is clear from the locational analysis of Anil Mukhim's Mobile Phone which showed that at 15:33:40 on 27.2.2002 he was there accompanied by A-1 and OP Singh. From Ahmedabad airport they left for Vadodara by plane and from Vadodara by helicopter to Godhra. They reached Godhra at about 1645 hours as per a SIB message. At the helipad they were received by Ashok Bhatt (A-2) and DM Jayanti Ravi. When they reached the spot at the railway yard where the burnt coaches were kept, a large crowd of RSS-VHP persons had already assembled and the post mortems were going on. In violation of the curfew, a large mob, consisting mostly of RSS and VHP cadres was allowed to assemble. **(Paras 61-63 @ Pages 41-43, Protest Petition, Volume I & Details @ Paras 472-487 @ Pages 210-216 of the Protest Petition)** A-1 entered inside the Burnt Coach (S-6), came out and spoke to

the Media as well as VHP and RSS supporters. It is during this time that the postmortems on the dead bodies start. A-1 was therefore party to the decision to conduct postmortems (illegally in the open railway yard). The Applicant says and submits that when he talks to the press there are several VHP workers present. Mr Jaideep Patel (A-21), Ashok Bhatt (A-2) and Zadaphiya (A-5) were present when A-1 visited the railway yard which is where the mutilated and burnt corpses have been allowed to have been kept in the open. It is at that point of time that a decision was taken to hand over the dead bodies to Mr Jaideep Patel (A-21) of the VHP for being taken by road to Ahmedabad.

(Statement before the SIT and Affidavit before Nanavati Commission of Jayanti Ravi, DM Godhra, Statement of SP, Godhra Raju Bhargava, A-2 Ashok Bhatt, A-5 Gordhan Zadaphiya and A-21 Jaideep Patel were given to the Court and are to be annexed as Annexure "H" Colly with an affidavit with this application).

116. The applicant says and submits that substantive arguments related to the Conspiracy, role of powerful accused including A-1 have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also

be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013..

117. The applicant says and submits that as integral to the Conspiracy that was being hatched, A-1 and other collaborators, at Godhra directly met and gave provocations and encouragements to aggressive, communal leaders of the VHP/RSS as can be prima facie seen from the evidence provided by the *Tehelka* Sting Operation which is part of the SIT record. This was when he proceeded to the Railway Yard at Godhra immediately on arrival by helicopter from Godhra. These interviews in the Sting operation spoke about what was stated by A-1 Narendra Modi at the spot. The Operation Kalank (Sting Operation by *Tehelka*) telecast in October 2007 is part of the SIT Investigation Papers but the investigating agency has ignored this strong corroborative evidence completely. The *Tehelka* transcripts have been relied upon by Naroda Patiya Special Court Sessions on 29.8.2012 as strong corroborative evidence. **[ This has been dealt with @ Paras 111-125@ Pages 66-70, Volume I, Protest Petition & Pages 120-126, Volume I, Protest Petition, Volume I ( Excerpts of Ramesh Dave, Rajendra Vyas, Haresh Bhatt, Anil Patel, Dhimant Bhatt, Dhawal Patel and Arvind Pandya from the *Tehelka* Transcripts available @**

**...Annexure III, File XIII, D-129 in SIT Records as Also their Statements @**

**Annexure II, Volume II, Sr Nos 107 (Ramesh Dave),  
Annexure II, Volume II, Sr Nos 108 (Rajendra Vyas),  
Annexure I Volume II, Sr Nos 116 (Haresh Bhatt),  
Annexure II, Volume II, Sr Nos 113 (Anil Patel),  
Annexure II, Volume II, Sr Nos 98 (Dhimant Bhatt),  
Annexure II, Volume II, Sr Nos 114 (Dhawal Patel),  
Annexure I, Volume I, Sr Nos 46 (Arvind Pandya)  
were handed over to the Court on July 3-4, 2013 and  
are being Annexed here for wasy reference).\_(to be  
annexed as Annexure "G" Colly\_with an affidavit with this  
application)**

118. The applicant states that another Comprehensive List of Dates on the Tehelka Sting Operation dated 3.7.2013 was handed over to the Court. Since the filing of the Zakia Jafri Complaint on 8.6.2006, *Operation Kalank*, the Sting Operation by Tehelka (October 2007) had provided further evidence of Conspiracy were handed over to the Court). Ashish Khetan the journalist who recorded the extra judicial confessions, was made a prosecution witness in the Naroda Patiya Case, Gulberg case and Naroda Gaam case. The Naroda Patiya judgement delivered on 29.8.2012 (Pages 750-791, Chapter II, STING OPERATION, judgement in Naroda Patiya Case

excerpts handed over to the Court ) used the Tehelka Tapes authenticated by the CBI has strong and reliable corroboratory evidence. (The NHRC Order dated 5.3.2008 Ordering CBI to Authenticate the Tehelka Tapes, Pages 133-136--, Annexure Volume I, protest Petition was pointed out to the Court). The SIT, the investigating agency in both cases, the Naroda Patiya case and the Zakia Jafri Criminal Complaint dated 8.6.2006 had played a contradictory role. In the Naroda Patiya trial, it had used Tehelka's Sting Operation as reliable corroboratory evidence but when it came to Power accused like A-1 and Others in this case, valuable evidence through the Sting Operation had been ignored completely. All those persons who's extra-judicial confessions strongly indict A-1 have simply stated in their 161 statements before the SIT that they were "acting" for Ashish Khetan in the Sting Operation and the SIT, has simply accepted this defence at face value and refused to probe further. One of the persons against whom the Sting Operation had been conducted by Tehelka, Arvind Pandya had filed an FIR against Dhimant Purohit of Aaj Tak, Television channel that had telecast the sting operation. The Gujarat High Court in Spl Crl appln Nos 2195/2007 had, on 9.5.2012 quashed the malicious FIR. (This judgement of the High Court was also handed over to the Court). The Applicant says and submits that the Learned Magistrate too has erred substantively in completely ignoring this strong evidence of

suspicion of offences committed have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

119. The Applicant submits that, this evidence proves that A-1 after reaching Godhra showed the same mindset and added to the provocation against ordinary Muslims in front of a large aggressive RSS-VHP crowd which had illegally gathered at the spot. All other co-conspirators namely A-1, A-2, A-5, A-4 and A-13 were present at the time and, therefore, supported the stands taken by the A-1.
120. Thereafter, after these exhortations to fellow conspirators, the Applicant says and submits that A-1 went to Collectorate to meet press and the public. At the Collectorate besides Zadaphiya (A-5), Prabhatsingh Chauhan (A-4), Min for Civil aviation and Pilgrimage as well as local MLA (A-13) joined the Conspiracy. Besides them, Jaideep Pate A-21 was also present at the Collectorate according to DM Jayanti Ravi. A-1, A-4, A-5, A-21, and A-13 entered into a Conspiracy by taking a unanimous decision that unidentified bodies shall be sent to Ahmedabad (Sola Civil Hospital) and that dead bodies will be handed over to Jaideep Patel (A-21). Superintendent of

Police, Raju Bhargava (A-46) agreed with the decision and in collusion with Conspirators allowed the subversion and violation of the law. Carrying dead bodies outside the territorial jurisdiction of a place where offence has been committed was totally illegal as the dead bodies of the Godhra victims were subject matter of the Railway police investigation. Further there was no question of handing over these dead bodies to Jaideep Patel (A-21), General Secretary VHP. There was gross interference in the investigational process which is the exclusive domain of the Police Authorities. The A-1, A-2, A-4, A-5, A-21 and A-46 thus acted against the law and subverted the legal process of investigation. These offences were committed as part of larger criminal conspiracy to take the Godhra tragedy, to the rest of Gujarat and exploit the aggressive communal feelings of the Hindus. Instead of containing the fallout of the Godhra tragedy, the conspiracy was hatched to ensure outbreak of widespread violence. It is on record that the dead bodies were brought and kept at Sola Civil Hospital Ahmedabad for facilitating the parading of dead bodies and funeral processions the next day which further triggered the aggressive communal feelings, resulting in the carnage.

121. The Applicant says and submits that the other substantial error by the Magistrate lies in not accurately assessing the

decision taken by A-1, in execution of this sinister conspiracy to not contain the communal conflagration at or limit it to Godhra but cynically and consciously as revealed by him to fellow minister Suresh Mehta, cynically carry Godhra to the rest of Gujarat. The Applicant says and submits that if the intentions of the men at the helm had been to contain the violence, the post mortems would not have been conducted in public in the gruesome manner in which they were, and worse they would have been kept at Godhra for a period till they were properly identified and given to their relatives. Instead, with sinister and criminal intent, A-1 took the decision to dispatch them through a VHP strongman and co-accused (with whom A-1 is in touch since morning) A- 21 Jaideep Patel to reach Ahmedabad by next morning for the proposed funeral processions and parading. A 3,000 strong crowd of RSS activists, thirsting for blood is awaiting these at 3 a.m. at the Sola Civil Hospital on 28.2.2002, hospital staff are attacked, a high court judge is also attacked. Detailed maps of the route of the parades and funeral processions of the dead bodies were supplied to the Magistrate's Court **(and are to be annexed to the Protest Petition, Volume II in Colour and also in Black and White at Annexure "J" Colly with an Affidavit with this Application)** and the correlation between the parading and the carnage was established. All this is ignored by the Magistrate and despite all this evidence from the SIT records, the



Magistrate Ganatra in a questionable conclusion that during funeral processions no untoward incident had happened which is belied by SIT's own records. Yet another material document that provides a link in the chain of conspiracy is the statement given by retired IAS officer Shankar Menon to the SIT on 12.12.2010 which reveals the mindset of Narendra Modi A-1 continuing to give effect to the conspiracy. In the statement, Shankar Menon has said that A-1 also addressed another meeting of political workers at Godhra where he assured aggressive RSS-VHP cadres that the police would not interfere in their thirst for revenge against innocent Muslims. (Annexure I Volume II, Sr Nos 179 in SIT Record given to the Court and is to be annexed hereto in Annexure "H" Colly with an Affidavit with this Application).

122. This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

123. The fact that the dead bodies were handed over to Jaideep Patel A-21 at Godhra and he handed over the dead

bodies to Dr Belani at Sola Civil Hospital has also been mentioned in the SIT Report but yet it failed to draw any adverse inference from this important fact that totally contrary to law the dead bodies were transferred from the jurisdiction where offence was committed and were handed over to a private person when the dead bodies being part of the investigation cannot be so tinkered with. It is shocking that such a gross illegality has been brushed aside by SIT. The facts are clear: that the dead bodies were handed over to Jaideep Patel, (A-21) VHP General Secretary as part of Conspiracy on the instructions of A-1 Modi who was holding the highest position of Chief Minister. The Applicant would like to point out that in relation to this aspect that the SIT has been at pains to deny and unfortunately the Magistrate has overlooked, the specific observations of the Amicus Curiae's in Chart A Sub-Para 7 of the Interim Report dated 20.1.2011 are critical:

*“...7, Another aspect is the fact that VHP General Secretary Jaydeep Patel and Shri Modi were at Godhra on 27.02.2002. The statement of Jaydeep Patel that he did not meet Shri Narendra Modi at Godhra does not in spite confidence. This has to be examined as the Mamlatdar would not have handed over the dead bodies to a non-government person i.e. Jaydeep Patel until and unless somebody very high told him to do so.” (to be*

annexed hereto in Annexure "B" Colly with an affidavit in this application).

124. Incidentally, while the SIT is at pains to ignore this, DM Jayanti Ravi in her statement to the SIT has been categorical, Jaideep Patel was at the Collectorate when the Official briefing by A-1 was taking place. (Statement of Jayanri Ravi dated 15.9.2009 is to be annexed hereto in annexure "H Colly" with an affidavit with this Application)

This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

125. The applicant says and submits that after ensuring escalation of violence from Godhra to other parts of Gujarat and and taking decisions contrary to law, A-1 Modi left Godhra by road for Vadodara accompanied by Anil Mukhim, his Principal Secretary. From there he returned by airplane and reached Ahmedabad airport at 2153 hours. By this time in Ahmedabad city, several violent incidents had occurred, 19 FIRs had been lodged and yet only two Preventive Arrests were made, who

belonged to the Muslim Community. This dereliction of duty took place in the jurisdiction where PC Pande (A-29) was Commissioner of Police. While returning to Gandhinagar again, they (A-1 plus others) took a diversion towards Naroda and Meghaninagar which were out of the way. Mukhim's Mobile phone location shows that at 22:01:18 hours they were in the vicinity of Meghaninagar.

126. It may be noted that of the major incidents that exploded in 14 districts of the State of Gujarat, among the worst was Naroda Patiya where 196 persons were massacred in broad daylight the next day; four were killed in Naroda Gaam and 69 at Meghaninagar on 28.2.2002. It can be safely inferred from these facts that A-1 in order to give effect to the Conspiracy, visited these areas to and fro on his visit to Godhra with a clear mind to instigate RSS-VHP workers to indulge in mass violence against Muslims. The fact that Babu Bajrangi, Maya Kodnani, Kishan Korani, Bipin Panchal, Ashok Sindhi, Atul Vaidya, Bharat Telli, Mangilal Jain, Bipin Patel, Jaideep Patel among other active members of the RSS-VHP-Bajrang Dal are accused in these three incidents prove that A-1 Modi, during his visit to these places, had instigated these persons from the VHP-RSS which resulted in violence the next day. In addition, it is critical to mention that Jaideep Patel (A-21) co-conspirator of A-1 is also an accused in Naroda Gaam.

The said trial is still going on before the Special Court. Jaideep Patel A-21 belongs to Naroda and he reached back to Ahmedabad from Godhra to give effect to the Conspiracy that was hatched to indulge in mass violence against Muslims.

127. These pieces of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

128. The applicant says and submits that after reaching Ahmedabad, A-1 called an urgent meeting at his residence at Gandhinagar around 10.30-1045 p.m. This meeting was attended by Ministers in the Cabinet, DGP Chakravarti, ACS Home Ashok Narayan, Commissioner of Police, PC Pande, K Nityanandan, Home Secretary, PK Mishra, Principal secretary, CM, Swarnakantha Verma (deputing for chief secretary Subha Rao) and Anil Mukhim from the CMO. (Two Volumes of Compilations of Statements related to the 27.2.2002 Meeting were handed over to the Court on 18.7.2013 and (a) Statements of Protagonists at the Meeting (All except two are Co-accused); (b) Statements of RB Sreekumar, Vithalbhai

Pandya, IB Officers and Drivers related to Sanjiv Bhatt's movements etc and are to be annexed as Annexures "I Colly", "I-1 Colly" and "J Colly" with an affidavit with this application.)

129. The applicants says and submit that the Magistrate erred substantively on his assessment of the Meeting at the residence of A-1 on the night of 27.2.2002. The crucial meeting of 27.2.2002 at Chief Ministers office took place in the night. This was a law and order meeting where he ordered the officers not to take any action against the Hindus and allow them to vent their feelings. If this is correct, this is a clear case of conspiracy. Obviously none of the conspirators are going to agree that this was said. Sanjeev Bhatt, a serving officer, is the only witness, who on that day was in charge of Intelligence (since his superior was on leave as was his colleague from the department) has said that he was present at the meeting and vouched for the fact that the Chief Minister uttered these words with criminal intent. Most others who were present either denied that Sanjiv Bhatt was present or said that they did not remember that he was present. The Applicant says and submits that since this was a crucial law and order meeting on such a sensitive date, it is clear that some officer from the State Intelligence Bureau would be present and be asked to be present. The SIT as is later detailed is deliberately lax on it's questioning of A-1 the chief minister and the SIT

fails to investigate who from the State Intelligence was present at all. The Magistrate too by glossing over these critical submissions commits a grave error. A-1 who is also the home minister is not asked as to whether anyone from intelligence was called for this meeting and if not why not. No uncomfortable questions are put to Modi. Bhatt has submitted an affidavit of his driver to prove that he had on that night gone to Chief Ministers house. Bhatt was transferred after that and the logbook of the car remained with the next user of the car. It could have been easily found out from the logbook as to whether Sanjiv Bhat's car had gone to Chief Minister's residence on that day. SIT easily accepts the argument that Log Book has been lost. The senior police officer (serving) who testifies to this loss, Joint Commissioner Crime AK Sharma is also a co-Accused in this Complaint responsible for gross criminal negligence in Mehsana district where he was suddenly asked to take over, replacing Anupam Gehlot, SP who was responsible for prompt rescue and saving lives. SIT does not probe the destruction of the record.

130. The Applicant humbly states that the Learned Magistrate further controversially concludes that since the last recorded call made by Sanjiv Bhat from his phone was at 8.40 P.M. when he was at Ahmedabad and not at Gandhinagar. From this he comes to the rather specious conclusion that at 10.30

P.M. he could not have been at Gandhinagar; this was despite the fact that it is common knowledge that the travelling time by car between Ahmedabad to Gandhinagar is 30 minutes and Bhatt could easily have made it there at night time.

The Applicant says and submits that the fact that A-1 made his statement is also proved by the following:-

- i) Haren Pandya, sitting Minister in the A-1 Narendra Modi's government voluntarily appeared before the Concerned Citizens Tribunal on 13.5.2002 and gave information about the provocative instructions given by Accused No.1 Modi at this meeting. He was mysteriously killed on 26.11.2003. **The Tribunal Report states that**

“ 14. Modi played an active role along with at least three Cabinet colleagues, to instruct senior police personnel and civil administrators that a “Hindu reaction was to be expected and this must not be curtailed or controlled.” *Internal Page 76 of Volume II of the Concerned Citizens Tribunal Report @ Annexure III, File, I, D-2, D-3, D-4 of the SIT Record/Papers*“... 1.7. The Tribunal received direct information through a testimony from a highly placed source of a meeting where the chief minister, two or three senior cabinet colleagues, the CP of Ahmedabad, and an IG police of the



state were present. This meeting took place on the late evening of February 27. The meeting had a singular purpose: the senior-most police officials were told that they should expect a “Hindu reaction” after Godhra. They were also told that they should not do anything to contain this reaction.

***(Internal Page 82 Volume II of the Concerned Citizens Tribunal Report in section on State Complicity @ Annexure III, File, I, D-2, D-3, D-4 of the SIT Record/Papers. Report of the Concerned Citizens Tribunal was released on 21-22.11.2002.)***

131. The Applicant says and submit that it is questionable how the Magistrate has dismissed this evidence. SIT is dismissive of this evidence. (12.5.2010, Malhotra Report, Page 19):“In the light of the aforesaid discussions, it can be concluded that a. Law & Order review meeting was in fact held by Narendra Modi, Chief Minister at his residence late in the evening of 27-02-2002. However, the allegation that the Chief Minister instructed the Chief Secretary, DGP and other senior officials to allow the Hindu community to give vent to their anger on the minority Muslims in the wake of Godhra incident is not established.” How the SIT could enter into the area of

appreciation of evidence, is beyond common understanding of the law. A-1 Modi's criminal intent and statement of 27.2.2020 are further proved by the following:-

(ii) On **27.10.2005**, in the Fourth Affidavit, R.B. Sreekumar before the Nanavati Commission dated 27.10.2005 stated that K. Chakravarthi, DGP Gujarat (A-25) had given information of the same words being uttered by A-1 Modi at the meeting on 27.2.2002 and again on 28.2.2002 (**Annexure III File III , D-24 of the SIT Papers**)

(iii) On **30.10.2004** Mr. Rahul Sharma stated in his deposition on oath before the Nanavati Commission that when he spoke to his superior officer DGP, Gujarat, A-25 Chakravathi on 1.3.2002 at about 10:22 p.m. to request to make more force available for him at Bhavnagar, the DGP told him that he would be given one SRP company by the next morning and if possible he would make some Boarder Wing Home Guard and army columns available whenever they become available to him. Mr. Rahul Sharma states on oath that DGP Mr. K Chakravarthi also told him that **“the bureaucracy had become completely neutralised”**. Mr. Rahul Sharma states on oath that he could not state what the DGP meant by

stating that bureaucracy was completely neutralised. **(Para 773 at Page 344 of the Protest Petition)**

1. **On 11.07.09** Statement of Shri R.B. Sreekumar, formerly Addl.DG (Int.), Gujarat to the SIT **(Annex I, Vol I Sr. No.5, SIT Papers/Record)** where he confirmed what the K Chakravarthi (A-25) had told him on the morning of 28.2.2002 about the provocative words uttered by A-1, the night before.

2. **On 12.08.2009**, Statement of Shri Vitthalbhai Pandya, father of Late Haren Pandya, R/o, Paldi, Ahmedabad **(Annex I, Vol I Sr. No.12, SIT Papers/Record)** where he stated that his son Haren Pandya had told him about attending the meeting at the residence of A-1 on 27.2.2002 in the late evening as also of the provocative instructions given by A-1.

3. **On 28.8. 2009**, Justices P.B. Sawant and Justice Hosbet Suresh gave two separate statements. Both eminent Judges, retired Supreme Court and High Court respectively, also stated that three serving IPS officers, Sami Ullah Ansari, Himanshu Bhatt and Vinod Mall also deposed before them in person requesting anonymity but

confirming that such illegal instructions were issued. (**Annexure I Volume I Sr.Nos 16 & 17 of the SIT Record/Papers**). SIT does not record the statements of these officers in this regard.

4. SIT does not record the statements of these officers except that of Vinod Mall on 9.12.2009. No question is put to Mall about his knowledge of illegal instructions being issued. (**Reference: Annexure I Volume I, Serial Nos 59 Pages 222-223 of the SIT Record/ Papers**). Justice Sawant has stated that three other officers had met the Tribunal and stated that Instructions from Above 'not to act' had been given by A-1.

(viii) On **25/26.11.2009** the Statement of Sanjiv Bhatt before SIT (**Annexure I Volume I, Sr.No.51 and 52 of the SIT Record/Papers**) was recorded. Bhatt states that following a call from the control room that chief minister had called a situation review meeting at his residence and since his senior ADGP (Int) was on leave, the DGP had instructed him to attend the meeting to contribute with the IB's assessment of the situation. Bhatt mentioned that Ashok Narayan, ACS Home, K.Chakravarthi, DGP, P.C. Pande, CP and Anil Mukhim PS to the Chief Minister were present.

Bhatt who stated that he had attended the meeting also stated that none of the cabinet ministers were present. He also stated that he had attended this meeting in his capacity as an Intelligence Officer representing the State IB and had put forward the State IB's assessment of the situation. He also stated that it may not be professionally appropriate on his part to divulge the exact nature of the discussions that took place but he would be duty bound to disclose the same to the best of his ability when he would be required to do so under a legal obligation.

(ix) **On 14.04.2011** - Affidavit of Sanjiv Bhatt filed directly before the Hon'ble Supreme Court. **(Annexure IV File X Serial No. 302 of the SIT/Report Papers)** in which it was stated that A-1, Chief Minister Narendra Modi, uttered the following controversial words: "that so far in communal riots police takes action on one to one basis and that this will not do now. Allow Hindus to give vent to their anger." **(Para 406 at Page 167 of the Protest Petition)**

The documents mentioned above that were handed over to the Learned Magistrate both at the time of Oral Submissions and then again with

Written Arguments are to be annexed as annexed shortly with a separate affidavit as Annexures "I Colly", "I-1 Colly" and "J Colly".)

This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

132. The Applicant says and submits that SIT, far overstepping it's brief as an Investigating agency has tried to play the role of Judge and Jury and has questioned the presence of Sanjiv Bhatt, whose statement is on record under 161 CrPC as also an Affidavit on oath before the Hon'ble Supreme Court, stating that he was present at this meeting, representing the SIB. In this meeting A-1 made the following statement: "that so far in communal riots police takes action on one to one basis and that this will not do now. Allow Hindus to give vent to their anger." The Applicant says and submits that the Magistrate has erred in not going beyond the inadequate and puerile conclusions of the SIT Report. The SIT ignores the fact that none present at the meeting could have said that such a

statement was made since it would amount to participating in offences above mentioned. Besides, SIT also ignores the fact that those who supported A- 1 were favoured by the A-1 by granting plum posts and promotions.

133. The Applicant says and submits that, worst of all, the Learned Magistrate errs substantively in not pulling up the SIT when the SIT concludes at page 241 of its closure report that even if A-1 had made such a statement it does not amount to an offence though such a statement, if uttered, is a clear offence under Sections 107, 120b, 153a, 153b and 166 of IPC, abetting the Conspiracy hatched with others to allow mass killings of Muslims to satisfy the thirst for revenge. PC Pande (A-29) has stated in his statement before the SIT that this meeting lasted past 1 a.m. Anil Mukhim and Swarnakantha Verma who were both present, mention the presence of cabinet ministers at the meeting, SIT completely ignores the fact that in the law and order meeting presence of intelligence officers was absolutely essential. Besides, Mr. Bhatt was, on the given day, in charge of Intelligence (Communal) and therefore it was natural that he was called for the meeting.

134. The Applicant says and submits that the SIT had conducted no further Investigation into the 27.2.2002 meeting except with an aim to belittle the evidence and Sanjiv Bhatt between the time

of the final Order of the Hon'ble Supreme Court dated 12.9.2011 and submission of its final report on 8.2.2012. This given the fact that the SIT has already by this time abdicated all pretence at independence and apart from the cavalier manner in which the statements of two retired Judges (Concerned Citizens Tribunal) Justice PB Sawant and Hosbet Suresh have been dealt with by the SIT, the SIT has deliberately belittled the two independent witnesses who were present at the meeting. The Applicant says and submits that it is shocking that the Magistrate has not dealt with these aspects at all. Of the six persons present, four are co-accused in the complaint being conspirators and collaborators. Two of the six, Svarnakantha Verma, former ACS (deputing for chief secretary Subha Rao), and Anil Mukhim, OSD to the chief minister had clearly stated in their 161 statements before SIT that cabinet ministers were also present. SIT had not bothered to further investigate this aspect nor recorded their statements again. The Presence of Ministers at A-1 Modi's residence is accepted by Swarnakanta Verma (then ACS Home acting for chief secretary) as also by Anil Mukhim (then OSD to A-1) but the SIT Report totally ignores and falsely states in its final report dated 8.2.2012 that they denied presence of Ministers. SIT misrepresents its own evidence. The Magistrate errs substantively in not looking at these gross anomalies.



135. The Applicant says and submits that only those senior administrators and bureaucrats who are co-accused in the criminal complaint of Zakia Jafri (then DGP Chakravarthi – A 25, then CP Ahmedabad PC Pande A-29, then Home Secretary K Nityanandam A-34, then ACS Home Ashok Narayan, A -28, then Additional Principal Secretary to the chief minister PK Mishra had stated that no politicians were present had their statements recorded three-five times by the SIT. The Learned Magistrate has erred significantly in failing to see this. and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

136. The Applicant says and submits that the Inquiry, Investigation and Further Investigation into the Conspiracy before and after the infamous meeting has revealed the unprofessionalism and bias of the SIT. Its very functioning was partisan, senior officers failing to maintain a discreet distance from powerful accused in the government of Gujarat. This can be deduced from the following:-

- (i) SIT's unprofessionalism was clear in that highly confidential information about Sanjiv Bhatt's presence (that became known only after he deposed before SIT in November 2009) and was not known to anyone, was leaked to powerful

accused in order to allow them to create a false and weak defence. A-1 Modi's statement was recorded on 27/28.3. 2010. It is in question-answer format as follows:-

"...Ques. 19:-When and where did the aforesaid meeting take place? Who all were present in the said meeting? Who were the ministers/MLAs present in the meeting?

"...Ans The meeting took place at my residence office for about half an hour. Smt Swarnakantha Verma, the acting chief secretary, Shri Ashok Narayan, the then ACS (home), Shri K Chakravarthi, the then DGP, Shri PC Pande, the then CP, Ahmedabad city, Shri K. Nityanandam, the then home secretary, Dr PK Mishra and my other PS, Shri Anil Mukhim were present in the meeting. As far as I recollect, Shri GC Raigar, then then ADG (Int) was not present. Shri Sanjiv Bhatt, the then DC (Int) did not attend as this was a high level meeting. None of my cabinet colleagues were present in the said meeting."

How did he know about Bhatt's presence except for the obvious leak from the SIT? A-1 Modi should not have been privy to this

confidential information but in his over zealous bid to conceal his guilt he stated what revealed this lapse.

- (ii) From the SIT's own investigation and a variety of statements of witnesses and accused, the timing of the controversial meeting that took place at the residence of A-1 after the latter had returned from Godhra could have lasted from 30 minutes to 2 hours. The timing and structure of the meeting can be decided only after detailed examination of evidence in trial. Reading from PC Pande's statement before the SIT given on 14.01.2012, it is clear that the meeting could even have gone on till 1 a.m. on 28.2.2002.
- (iii) In the 161 statements of two drivers (Tarachand Yadav and Kishore Mali) of the State IB **(161 Statements @ Annexure II, File II, Sr Nos 123 & 126; Annexure II, Volume II, Serial Nos 127 of the SIT Papers/Record)** clearly state that an Official log Book recording Bhatt's movements on that day (27.2.2002) were available and submitted as per course to the IB, SIT's investigation papers makes available only a letter that states that no such record is available! The SIT has not made any observations on the obvious disappearance or

destruction of this Log Book of Vehicle movements of Sanjiv Bhatt that would have proved one way or another his movements and location. SIT has again failed miserably to investigate these disappearances, destructions and lapses.

- (iv) Legally the chief minister's secretariat is bound under Standard Operating Procedure to maintain minutes of meetings: that a meeting was held on 27.2.2002 is not being disputed, the fact minutes are missing puts onus under section 106 of the Evidence Act on the accused. The SIT has been extremely lax about ignoring the absence of written records, minutes and the crimino-legal liability regarding the same.
- (v) It was also argued that evidence of a person who is dead, evidence that would have gone against the pecuniary interest of the witness if alive, or make him liable for criminal prosecution (as Haren Pandya's testimony undoubtedly would have done) is valid evidence under Section 32(3) of the Indian Evidence Act. A judgement (TS give Citation) was handed over to the Court.
- (vi) Sections 461 and 462 of the Gujarat Police Manual (handed over to the Court) outline the duties of the State Intelligence Bureau; the Complainant

Counsel has argued that such a meeting, if indeed it was a Law and Order meeting, should have the presence of an official of the IB. If Raigar was on leave, and the next in seniority OP Mathur was on leave, and Bhatt was deputing as DCP-Communal on 27.2.2002 as has been accepted and admitted by the SIT, he could well have been present at the meeting. The SIT final report is completely silent on this aspect. SIT completely ignores the fact that in the law and order meeting presence of intelligence officers was absolutely essential. Besides, Mr. Bhatt was, on the given day, in charge of Intelligence (Communal) and therefore it was natural that he was called for the meeting.

- (vii) No significance is attributed by SIT to the fact that Minutes of Meeting were not maintained though the burden under Section 106 of Evidence Act would be on those who were required to maintain them. Standard Operating Procedure demands that the chief minister's secretariat maintain such Minutes.
- (viii) Moreover, SIT has ignored the evidence given by Haren Pandya's father, Vithalbhai Pandya has made a statement corroborating what Mr. Haren

Pandya said but the father's statement is not even considered by SIT.

137. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

138. The Applicant says and submits that the impact of the Conspiracy hatched from the morning of 27.2.2002 after the Godhra tragedy, consolidating into the criminal, inflammatory and unconstitutional instructions given by A-1 can and should be judged by the deliberate abdication of the rule of law from different districts where collaborator accused acquiesced and where Mobs were allowed to go on a violent rampage with targeted violence against the Minorities, VHP strongmen were collaborators in this. A-1 had first contacted Jaideep Patel, Gujarat secretary of the Vishwa Hindu Parishad after getting news of the Godhra tragedy. The Assembly that is in the midst of the Budget session too does not sit after 28.2.2002,

inexplicably. The concentration of powers in the cabinet minister for Home Affairs has lain with A-1 since 2002, giving him sole control on the ACRs (confidential reports) of serving IAS/IPS officers and their postings (Rewards or Punishments). This concentration of power and use for furtherance of the Conspiracy to subvert the criminal justice system, rule of law and justice delivery has also been borne out by the statements of then MOS Home Govardhan Zadaphiya. This evidence has been ignored by the SIT. **(Powers of the chief minister and home minister are outlined in the Gujarat Government Rules of Business handed over to the Court).** (To be annexed as Annexure "C" Colly with an affidavit to this Application)

139. The Applicant says and submits that, as already designed in the Conspiracy, the Motor Cavalcade carrying 54 dead bodies under the control of Jaideep Patel (A-21) along with the police force started from Godhra at about 10 p.m. and passed through Sevalia, Ambav, Thasra, Dakor, Umreth, Lingda, Allindra, Nadiad, Salun, Vanthwadi, New Maninagar, Ghodasar, Ishanpur, Juhapura, Thaltej, Gujarat High Court and finally reached Sola Civil Hospital at 3.34 hours (PCR Message, SIT Records). To cover a distance of 153 kms from Godhra the Cavalcade took six hours. It can be inferred that the cavalcade of which Jaideep Patel and other leaders like

Hasmukh Patel were a part were stopping on the way and instigating violence. Gordhan Zadaphiya (A-5) and Ashok Bhatt (A-2) as per their own statements before the SIT, also reached Ahmedabad around the same time from which it can be further inferred that they were accompanying the cavalcade. At Sola Civil Hospital the dead bodies were handed over to the Civil Surgeon, Dr Pushpa Belani by Jaideep Patel (A-21). Nadiad and Ghodasar apart from Sevalia recorded brute violence in the days that followed. **(Page 49-50, Protest Petition, Vol. I)** (to be annexed as Annexure "J" Colly with an Affidavit with this Application).

140. The applicant says and submits that, of the 58 tragic deaths that took place in S-6 of the Sabarmati Express, four bodies that belonged to Dahod, Vadodara, Panchmahal, Anand districts were handed over to relatives there. In all, 54 dead bodies were sent to Ahmedabad. Of these, 19 of the unidentified dead bodies were cremated by the hospital authorities on 28.2.02 at Gota Cremation ground, near the Sola Civil Hospital by the District Administration and police officers with the help of the *sarpanch* of Gota. The undue haste in carrying out these cremations while the city of Ahmedabad was on fire has not been explained by SIT. The failure to follow regular procedures related to unidentified bodies has also been left deliberately unexplored. Twelve of



the brutally charred bodies were brought to Ramol, Ahmedabad since many of the persons belonged to Ramol (among them were ordinary worshippers who had joined the trip to Ayodhya wrongly dubbed *kar sevaks*) and another two of the dead belonged to Khokhra. These were cremated by about 2 p.m. at the Hatkeshwar cremation ground about 4 kms away from Ramol).

141. The Applicant says and submits that, within less than half an hour of the dead bodies reaching Sola Civil Hospital, in the early hours of the morning before dawn, 3,000 persons (according to PCR these were RSS workers) gathered at Sola Civil Hospital. This obviously shows that information had already reached them about the arrival of the Dead Bodies in the Motor Cavalcade. It is shocking that instead of the police being present on the spot and not permitting the public to assemble, 3,000 RSS workers were allowed to assemble, which happened because of conspiracy hatched by A-1 along with the other accused i.e. Ministers and Senior Police Officers and Bureaucrats. The Police did not reach despite the fact that a PCR message at 1:59 hours was sent by the Control asking for SRP deployment. There is no answer why in spite of prior information, 3,000 RSS workers were allowed to gather and sufficient bandobast was not provided. Not only was sufficient bandobast not given inspite of intimation that violence may

erupt at any time, after 7 a.m. more crowds were allowed to gather, the traffic was blocked and the crowds started attacking the doctors and other medical staff and vandalizing the hospital property. **(Paras 805-813 Protest Petition Volume II @ pages 356-366)**

142. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

143. The Applicant says and submits that the investigation records tell a gory story. In anticipation of the procession of VHP activists, known for their rabid anti-minority speeches and mobilizations accompanying the bodies from Godhra, panic messages demanding *bandobast* and protection are sent from local police authorities anticipating trouble. But there is no response from either the DGP's office (responsible for law and order in the state) or the Commissioner of Police's office (responsible for the Ahmedabad Commissionerate).

144. These critical wireless messages reveal that from 1:51 hours of 28.2.2002, and again at 1:59 hours there was panic expressed by local vans demanding protection from SRP platoon immediately. That no such enforcements were sent by the higher-ups is apparent since the conspiracy hatched three hours before of letting mobs control the streets had been cynically hatched. By 2:44 hours on 28.2.2002, the motor cavalcade had reached Sola Civil Hospital and there is another confirmatory message at 4:00 hours of this fact. By 6:55 hours, i.e., within three hours an aggressive mob of swayamsevaks belonging to a sister organization of the ruling party, Rashtriya Swayamsevak Sangh (RSS) has already gathered at the Civil Sola Hospital (**Page No. 5794, Annexure IV, File XIV of the documents**). Another message 20 minutes later at 7:14 hours informs the Police Control Room that is under the charge of Accused No. 29 (Commissioner of Police) that a large mob has gathered (**Page 5796 of Annexure IV, File XIV of the SIT documents**). Again another message three minutes later at 7:17 hours (**Page 5797 of Annexure IV, File XIV of the SIT documents**) says that another mob of 500 was holding up the traffic. This message is received by Control and passed on to Sola 1. An hour later, at 8:10 hours, a message records that three SRP platoons were sent from Police Control to Sola Hospital for bandobast. (**Page 5826 of**

**Annexure IV, File XIV of the SIT documents).** Thereafter, through the day wireless messages record that there are aggressive and tense crowds at the Hospital, en route and both locations of the cremations.

145. The applicant says and submits that the SIT kept the Hon'ble Supreme Court and the Amicus Curiae in the Dark about documents that point to Conspiracy. This voluminous documentary evidence was concealed by both IO AK Malhotra and late on Himanshu Shukla. The absence of any reference to these PCR messages in even the Final report reveals the sinister motive of the SIT behind this. **(Paras 805-813 Protest Petition Volume II @ pages 356-366)**

**(Note:** Incidentally these documents were made available to the SIT only after 15.3.2011, when former Ahmedabad CP, PC Pande, suddenly produced 3,500 pages of scanned messages on CDS that in this instance are described as "Wireless Message Book of Police Control Room, Ahmedabad City Control Room for date 28/2/2002". They had been concealed by him earlier. SIT has not thought to question or penalize him for this criminal omission in a matter related to a matter of such grave importance. A letter from secretary CJP, Teesta Setalvad (April 21, 2011 **(Annexure IV, File VII, serial Nos 118 of the SIT Record/Papers)** to AK Malhotra, IO SIT about the sudden memory returning to A-29 former Commissioner of

Police PC Pande when, *only after the Supreme Court orders further investigation on 15.3.2011 does he produced CDs with 3,500 pages of scanned Police Control Room messages of the Ahmedabad City.* Pande's memory lapse for nine years is ignored by the SIT. The role and motive of the SIT was and is clearly to not investigate serious charges thoroughly and protect powerful accused.

146. The applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

147. The Applicant says and submits that, to show that the Government under A-1 as its head, abandoned its legal and Constitutional duties, is the glaring fact that in this tense situation Giriraj Kishore, Vice President of VHP arrived at the Ahmedabad airport and a message was given to provide police escort. The government headed by A-1 allowed Acharya Giriraj Kishore of VHP to come to the Sola Civil

Hospital by providing him special escort knowing full well that it will further inflame the atmosphere and result in violence. A-1 allowed this to happen as it facilitated the Conspiracy which he had hatched. Acharya Giriraj Kishore in fact came to Sola Civil Hospital before 11 a.m. where he spoke to media persons and was present there for 10-15 minutes. **(Pg 248 Protest Petition, Vol I)**. In the statement he made the following provocative statement,

*“ I appeal to Muslim brethren to condemn the attack and asked them not to put Hindus patience to test. Hindus are maintaining restraint, but if such incidents do not stop there can be a counter reaction which may be uncontrollable;”* ([www.rediff.com](http://www.rediff.com)). (Annexure Volume II, Protest Petition).

He further elaborated that *“Do I have to say that for every action there is a reaction? It would be very difficult for the Hindus to maintain patience at such a heavy price.”* **(Annexure Volume II, Protest Petition** to be placed as Annexure “E-3 Colly” to the Affidavit to be filed separately and which is annexed to this application. ).

Here is what Giriraj Kishore said to *Star News* on 27.2.2002. (Some words were censored out because they were deemed highly objectionable): Acharya Giriraj Kishore (Vice President, VHP): (Panel Discussion) (Incidents like this (Godhra) show the psyche of a

community): “What is the reason for the pilgrims, they were attacked when they came from Amarnath? What was the reason? That is the psyche, I say!”....“Communal violence can be checked only...why this incident happened, who did it, what is the psyche behind it? This should be studied.” (Annexure Volume II, Protest Petition).

148. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate’s Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

149. The Applicant says and submits that, to further add to mob violence against Muslims, the Funeral Processions were taken to Gota Crematorium which is at a distance of three kilometres from Sola Civil Hospital and also Hatkeshwar Crematorium which is 18-20 kilometres away. These processions were taken through the city with aggressive crowds accompanying them shouting provocative slogans. In fact the procession that began at 10.30 hours concluded only

at 1830 hours (Malhotra Report). It is also on record that Acharya Giriraj Kishore also accompanied the funeral procession upto Gota crematorium. The fact that A-1 as head of the government allowed the unidentified bodies to come to Ahmedabad for cremation, allowed RSS-VHP persons to gather at the hospital, allowed Acharya Giriraj Kishore to address the crowd and media and allowing the funeral processions to take place, speaks volumes about the conspiracy and abetment resulting in the daylight incidents of murder, rape and arson which took place throughout Ahmedabad and other parts of Gujarat. Shivanand Jha (A-38) Additional Commissioner of Police, K Srinivas Collector, Ahmedabad (A-30) and MK Tandon, Joint CP Ahmedabad (A-33), all became the active participants in the conspiracy and abetment at the Sola Civil Hospital and the subsequent violence that erupted thereafter. The Applicant says that the Sola Police station is at a one-two kilometre distance from the civil hospital. The cremation that began at 1030 hours concluded only at 1830 hours (Malhotra Report) though the distance was only three kilometres. (Incidentally, the same day while this huge procession was allowed, huge mobs accompanied by at least 15,000 RSS and VHP men, led the murderous attack on Gulberg Society, Naroda Patiya and Gaam). Deliberately, the top brass in the state police and city police administration did not respond to repeated pleas for



security and help from the wireless vans of the police and the State IB. Detailed empirical evidence, deliberately ignored by the SIT shows how aggressive mobilization of mobs had taken place to ensure an aggressive parading of dead bodies as per the plan hatched at Godhra by accused No. 1 and other co-accused and subsequent targeted unleashing of violence. Yet, I.O. Malhotra of the SIT ignores this wealth of evidence and states that though the processions were under heavy police escort they passed off peacefully! Malhotra's report also admits that 12 of the dead bodies brought by Accused No. 21 (Jaideep Patel) were allowed by high level police and administrative authorities (Accused No. 30, K. Srinivas, Collector, Ahmedabad; Accused No. 29, PC Pande; Accused No. 38, Shivanand Jha) to be taken to Ramol and thereafter cremated at Hatkeshwar cremation ground 18-20 kilometres away. (Accused No. 33 MK Tandon is also punishable for the offences connected with this illegal parading of dead bodies in breach of prohibitory orders and curfew.

150. The Applicant says and submits that the SIT Investigation reports both of IO Malhotra (12.5.2010) and Shukla (8.2.2012) conspicuously skip a careful analysis of these records collected by them and provided to the complainant after rigorous arguments under Section 173(2). SIT also ignores the spate of virulent speeches being made before after and during

the Godhra incident on 27.2.2002 To recap, the bodies could reach Ahmedabad by next morning for the proposed funeral procession instead of being dispatched to respective districts in contravention of clear procedures laid down, in the "Gujarat Police Manual", in an all out bid to inflame the anger of the funeralists, which could be converted into a violent communal reprisal Ten dead bodies were taken to Ramol, and a massive funeral rally of thousands of aggressive slogan shouting "mourners" took the bodies to Hatkeshwar crematorium from 10 a.m. in the morning until evening. Around 10.30 a.m. or so, some crowds also went berserk and attacked a Muslim Hotel at Thakkarbapa Nagar, close to Naroda and also a High Court Judge belonging to the minority community. Finally the cremation took place at 1830 hours. According to the Malhotra Report under Allegation No. II: "The CM's decision to bring dead bodies of those killed in Godhra train fire in Ahmedabad and parade them in Ahmedabad city", 19 of the 54 dead bodies brought from Godhra which could not be identified were allowed to be cremated in a massive funeral procession, violating laws and regulations (of preserving unidentified dead bodies until claimed by relatives) at the Gota Cremation Ground, accompanied by VHP leaders like Acharya Giriraj Kishore, at a three kilometre distance from the Sola Civil Hospital. The procession encouraged by the powerful conspirators was also in violation of curfew orders that were

imposed in Ahmedabad only around 1240 hours on 28.2.2002. SIT has in a clear display of utter negligence and bias misled the Hon'ble Supreme Court that no aggressive mobilisations took place around these acts of parading the dead bodies in funeral processions in such a calculated manner. A similar denial of the ground realities can be found in DCP Crime Branch, Himanshu Shukla's report (Allegation II, Parading of Dead Bodies) dated 8.2.2012. Both reports deliberately gloss over the systematic preparations and mobilizations of crowds by the conspirators.

151. **Illegality, Criminality and Subversion.** The Applicant says and submits, that, in another illegal instruction issued by A-1, A-2 and A-3, two ministers of the state cabinet were positioned in the City (Shahibaug, Ahmedabad) Control Rooms. They were positioned there to directly interfere with the functioning of the police and prevent the police from carrying out its statutory functions. Ministers in Control Room on 28.2.2002 were :- Ashok Bhatt Minister for Health (A-2) & IK Jadeja, Minister for Urban Development (A-3). The fallout of violence in 14 of Gujarat's districts systematically and in a similar pattern as has been argued at length during the regular arguments provides evidence of the fallout of this move.

152. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

153. **Fallout of the Conspiracy to Obstruct Lawful Preventive Measures.** The Applicant says and submits that, out of the persons present at the meeting, Ashok Narayan (A-28), Chakravarti and Nityanadan (A-34) were already part of the Conspiracy as they had attended the meeting at 10.30 convened by A-1 at his residence. The instructions given by A-1 as head of the government to DGP Chakravarti, A-25, Ashok Narayan A-28, PC Pande A-29, PK Mishra (A- 31) to subvert the rule of law in execution of the Conspiracy and Abetment, were carried out by these people as they failed to discharge their legal and mandatory duties. They in fact accepted the said instruction of A-1 and thus became a part of the Conspiracy and Abetment of crimes that took place from 28.2.2002 onwards. It is clear that though they were aware of incidents happening all over the State on 27.2.2002 itself with

heavy communal mobilisations by RSS-VHP, no preventive arrests were made and no decision was taken to control the law and order problems as they has succumbed to and had accepted the command of the head of Government, who had allowed the VHP/RSS/Bajrang Dal to take over the State by neutralizing the law and order machinery. The Accused Nos Ashok Narayan (A-28, K Chakaravarthi (A-25), K Nityanandam (A-34), PC Pande (A-29), PK Mishra (A-31) by not doing their duties mandated by law, abetted and conspired in the crimes with A-1 and other co-Conspirators. The first message available in the SIT records (**Annexure III, File XLI, Sr Nos 15 SIT Papers/Records**) is a message dated 28.2.2002 of 2215 hours instructing round-up and arrests. This is referred to in the SIT report but SIT has deliberately and in a partisan manner not dealt with the criminal delay in preventive action and its impact as part of the pre-planned conspiracy. Moreover, this message has been sent after many of the massacres have been allowed and over 300 persons have been burned, raped and killed. Another message in the same file (**Annexure III, File XLI, Sr Nos 14 SIT Papers/Records**) has been clearly tampered with (this aspect has been ignored by the SIT and will be dealt with separately. Documents available in the SIT Record/Papers (handed over in a Compilation to the Court on 22.8.2013 “ Official

Statistics/Documents on Police Firing, Preventive Arrests, Curfew Orders etc”) clearly point to the following:-

- (i) Only two Preventive Arrests in Ahmedabad on 27.2.2002 that two of persons belonging to the Minority Community; (Annexure III, File I, D-2, Pages 254-255, SIT Record/Papers)
- (ii) A total of 193 serious criminal cases against women and children were registered between February- May 2002; that the intra-Parliamentary Committee of Women had recommended special steps that were not taken;
- (iii) Curfew Orders from different locations in Gujarat including Ahmedabad, Gandhinagar, Mehsana, Godhra town, Panchmahals, Dahod, Anand, Vadodara, Sabarkantha provided from the SIT record and included in this compilation show that Violence continued unabated until early May 2002 when KPS Gill was sent by the Central government.
- (iv) Details of Army Deployment (except in Ahmedabad) show that Mehsana was not given any Army or Paramilitary assistance

despite being the worst affected after Ahmedabad and Panchmahals; neither were Dahod, Sabarkantha nor Anand; Bhavnagar received deployment late; only Godhra town received the deployment not rural Panchmahals where violence was widespread and targeted;

154. The Applicant says and submits that it is the Senior echelons of the political, police and administrative hierarchy who have been named as Accused are responsible. **(Paras 828-924 @ Pages 373-416, Volume II, Protest Petition)** and the Magistrate has erred substantively in not assessing this prima facie evidence in its entirety.
155. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

156. The Applicant says and submits that, the Protest Petition details at length the wide spread and gradation of violence, arguing that, in at least 11 districts (out of 25 in the state of Gujarat) where Superintendants of Police and Commissioners acted Constitutionally and legally, violence was contained. **(Paras 523-529@ Pages 230-233, Volume I Protest Petition)**. All such IPS and IAS officers who had behaved legally had been punished and sidelined and the SIT report(s) admit this. Attempts to foment violence from the higher echelons were resisted in some districts by upright police officers and administrators. This has been argued at length with the details of such districts, especially Mehsana and Bhavnagar being given to the Court. In terms of intensity of violence, Ahmedabad city with maximum police force and Army was ironically the worst with officially 326 persons admittedly killed; the second was Panchmahals with 93 deaths minus the 59 persons who died in the train; Mehsana District with 61 deaths; Vadodara City with 36 deaths, Ahmedabad Rural with 33 deaths and Sabarkantha with 32 lives being lost; Kheda 31 dead; Dahod 24 dead and Banaskantha 20 persons being killed; Anand 28 among others. (these are official figures; the total of charge sheets in individual cases show the figures to be higher). Official records provided by the SIT itself show that violence continued unabated until May 2002. Compilation to the Court on 22.8.2013 “ Official



Statistics/Documents on Police Firing, Preventive Arrests, Curfew Orders etc”.

157. The Learned Magistrate has failed to absorb the gravity of the violence and incidents and the criminal, administrative responsibility for this failure to protect lives and property.

158. **Other and Continuing incidents of Violence in Ahmedabad including forcible closure of Relief Camps include-**

Accused Culpable: Amit Shah (A-10), Nalin Bhatt (A-17). Kaushik Mehta (A-19), Kaushik Patel (A-7) ACP MT Rana (A-57), DCP Jebaliya (A-43) KK Mysorewala (A -56 ), KG Erda (A-55). The Violence in Mehsana (3<sup>rd</sup> worst affected district) was exacerbated by the actions of Niteen Patel, Minister for Finance (A-9) and Naran Laloo Patel, MLA and Minister for Transport (A-12) aided and abetted by Amrutlal Patel, Collector Mehsana (A-51) and AK Sharma, SP Mehsana (Subversion) (A-36).

The Violence in Anand district that recorded over 35 deaths for which Dilip Mani Patel MLA (A-14) and CD Patel, MOS Tourism and MLA, Petlad, Anand (A-8) were responsible. The violence in

Kheda (Ghodasar and many other incidents) directly implicate Kuldeep Sharma (A-32) whereas Violence in Vadodara implicates DD Tuteja, then CP Vadodara, (A-48), Bhagyesh Jha, Collector, Vadodara (A-49). The continuing subversion including intimidating witnesses to turn hostile implicate Madhu Srivastava, MLA (A-15), a fact admitted in the SIT report. Sudhir Sinha, former CP Vadodara (A-41), Rakesh Ashthana, IG Vadodara (A-34), Deepak Swaroop, IG Vadodara (A-14) S. Kumaraswami, IGP (A-42) are also directly implicated in the subversion of justice process.

Violence in Bharuch/Forcible Closure of Relief Camps

Anju Sharma, Collector (A-47)

Violence in Sabarkantha

Ranjitsin Chavda, Minister for Cottage Industries (A-6)

Nitraj Solanki, SP Sabarkantha (A-50)

Rajkot

PN Patel, Collector (A-53); Upendra Singh, SP (A-52) (Pages 232-233 of the Protest Petition, Volume I) The applicant says and submits that the

Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

159. The Applicant says and submits that the conspiracy committed by the A1 as head of the Home department included victimizing and punishing those officers and bureaucrats who had functioned legally and rewarding those who actively participated in the criminal act of conspiracy, abetment and other criminal offences. A detailed list of these has been provided to the Court. The Learned Magistrate failed to assess the import of this evidence.

160. The applicant says and submits that, the matter of grave assesment before the Learned Magistrate was to ask, that, faced with a tragedy like the Godhra train burning that had claimed 58 lives, how would a government and administration respond, and equally critically how would an independent

agency appointed to fairly and rationally evaluate the quality of this response go about its job, asked Counsel for Complainant making a powerful case for evaluating criminal culpability by top echelons of the police and administration. The only way an agency could have developed and evaluated whether or not the ingredients in a sinister chain of criminal conspiracy, abetment and criminal culpability by public officials was actually made out was in evaluating the government, administration and police response, before, during and after the outbreak of such systemic widespread and persistent mob violence. For instance:-

- a) Could the government, administration and police have anticipated Godhra?
- b) Was there a systemic prelude or build up of communal atmosphere before the train burning?
- c) Once the incident took place was there an immediacy and seriousness in stemming any retaliation given the nature of communal violence and Gujarat's history in this regard, were hate speeches and hate writings curtailed and prosecuted when they occurred or were generated or were they encouraged, were perpetrators punished?
- d) On the issue of deployment of the army, the issue to be assessed in terms of impact on the ground

was threefold:-: was the Army actually called in on time, in which districts was it deployed; and was it given adequate powers under the law (Sections 129/130 of the CRPC read with Rules of the Gujarat Police Manual) to function independently to save lives, property?

161. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

162. The Applicant says and submits that the SIT, deliberately and conspicuously compounding it's failures, did not record Statements of Independent Witnesses like the NHRC (including former Chief Justices of India) and the Election Commission (including the CEC Lyngdoh, it did not record statements of independent witnesses Major Zameeruddin Shah of the 54<sup>th</sup> Infantry Division in charge of the Gujarat operation. Neither did the SIT seek independent data from the Army choosing in its all out bid to shield the accused, to

believe the chief collaborators of the criminal conspiracy. The SIT preferred at all points to believe the versions of Powerful Accused, Not probe these further.

163. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

164. The Applicant says and submits that Ahmedabad, Panchmahals and Mehsana were the worst affected districts followed by Vadodara, Banaskantha, Dahod and Anand among others. The 161 statement of then SP, Mehsana, Anupam Gahlot who appeared before the SIT on 22.1.2010, revealed how this officer traversed the length and breadth of the district to save lives of the Minorities, ensuring he was a hand's on Policeman in Charge unlike the Commissioner of Police, Ahmedabad, PC Pande who sat mute spectator in his cabin at Shahibaug while Ahmedabad burned! Pande was rewarded for this by the chief conspirator, home minister A-1

Modi, retiring as Director General of Police (DGP) for the state; thereafter still benefiting from post retirement postings! On the other hand, Gahlot who had ensured the safety of over 1,000 persons taking shelter in a Dargah that was sought to be mob attacked was transferred along with other officers like Rahul Sharma from Bhavnagar district that had similarly done a worthy and upright job. The Applicant says and submits that these first round of transfers coming as they did around 24.3.2002 had also been objected to by then DGP K Chakravarthi but the Learned Magistrate failed to appreciate this.

165. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

166. The Applicant says and submits that, serious incidents of violence had taken place in Ahmedabad and rest of the state on 27.2.2002 itself with warnings of these coming in through

the state intelligence (SIB) –all carefully documented in the protest petition, **(Para 450@ Pages 191-192 has a Table of Messages from SIT record, Volume I, Protest Petition; Paras 504-510 @ Pages 223-226, Volume I Protest Petition; Paras 596-598@ pages 263-264, Volume I, Protest Petition; Paras 810- 813 @ Pages 360-363, Volume II, Protest Petition)** yet Pande and other senior officers like Shivanand Jha and others made a mockery of laws around preventive detention. Special schemes within the Gujarat Police Manual and a Special Communal Riots Scheme (1997) demands that every commissionerate and district maintain not just a list of “communal goondas” who need to be arrested when there is threat of violence but also a list of fanatically minded persons who stoke the flames of communal violence. Yet in Ahmedabad, Vadodara, Sabarkantha, Vadodara, Panchmahals, Dahod, Banaskantha, Ahmedabad Rural, Vadodara Rural Patan and Kheda there was complete inaction in this regard. In Ahmedabad there were only 2 arrests made at Astodia on 27.2.2002 and that two of Muslims, Counsel for the Complainant pointed out.

167. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has



been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

168. The Applicant says and submits that the Protest Petition analyzing the Mobile Phone Call records that are a part of the SIT Papers/record (**Pages 268-276, Volume I & Pages 373-423, Volume II, Protest Petition**) has traced the chain of command responsibility from an analysis of the Phone Call records of Top Police Officials of Ahmedabad City and the Chief Minister's Office (CMO). These analyses reveal that PC Pande did not move out of his office after returning from the Sola Civil Hospital on 28.2.2002; that at the height of the attacks of Naroda Patiya and Gulberg while he sat holed up in his office at Shahibaug, there was a sustained contact between him and the CMO (Fifteen Calls between 11.40 am and the evening) suggesting that A-1 Modi was in the constant know of happenings on the ground). Why did he not budge out from the safety of his chamber? Unlike Rahul Sharma, SP Bhavnagar and Anupam Gehlot, SP Mehsana who risked their lives trying to save lives here was a Commissioner and a Chief Minister who were sitting in the safety of their cabins and offices!!! The criminally culpable conduct of Joint CP Tandon and DCP Gondia was also revealed in that every time they

received serious messages to go towards Naroda or Meghaninagar (where Gulberg is located) they moved in opposite directions towards Rewadi Bazar.

169. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

170. The Applicant says and submits that, a serving officer of the Gujarat government, then SP, Bhavnagar, Rahul Sharma who actually averted serious mass by putting his life at risk; and who functioned independently of his political masters (including then MOS Home and accused, Gordhan Zadaphiya) and arrested powerful BJP and VHP men and women for indulging in violence and other criminal acts; who preserved the mobile phone records that implicate powerful persons for conspiring and collaborating in violent mass crimes post Godhra in 2002; who disagreed with fabricated charges in the charge sheets in the Gulberg and Naroda Patiya cases

prepared by the Crime Branch, Ahmedabad is charge sheeted for revealing this incriminating evidence to the Amicus Curiae Raju Ramachandran appointed by the Supreme Court. This is a crucial way in which the Hone department under A-1 has abused its constitutional and legal obligations. It has been coercive and intimidatory to those who have performed their lawful duties, saved and protected lives, preserved evidence to prosecute those guilty of mass crimes.

The Applicant says and submits that the Central Administrative Tribunal (CAT) had stayed the operation of the charge sheet in 2012, making Rahul Sharma among the twelve officers severely punished by the Modi-led Gujarat government for upholding the rule of law and the Indian Constitution. Sharma had been suddenly transferred out of Bhavnagar on March 26, 2002 (just as was Anupam Gehlot, SP Mehsana) simply because he had prevented Bhavnagar, a stronghold of Zadhapiya led VHP and BJP from becoming a cauldron of communal violence despite provocative hate speeches and other violent attempts. Brought to the Ahmedabad Crime Branch and assigned to assist the investigations into the Naroda Patiya and Gulberg massacres this officer had made his discomfiture known and official when the Crime Branch had tried to create a false line of argument in the first charge sheets filed in these cases. The Gujarat police come directly under A-1 Narendra Modi, holding cabinet

rank as home minister. While holding the post of DCP Crime Branch, and while he and his superior AK Surolia had summoned Mobile Data records of all users in Ahmedabad city, the SIT had done nothing to analyse this data or put it to efficient use in their investigations. While testifying before the Nanavati-Shah-Mehta Commission in August 2004 Sharma had made copies of this mobile phone data public. In January 2010, it was Rahul Sharma who had provided this critical evidence to the Amicus Curiae Raju Ramachandran. His reward? A show cause notice by the vindictive Gujarat government!

(Details of these proceedings were provided to the Court in two separate compilations. **(Petition by Rahul Sharma before the CAT, dated 30.8.2011 & Order dated 3.4.2012 handed over to the Court in a separate compilation on 27.8.2013)** In the proceedings before the CAT, Rahul Sharma had provided details to the SC-appointed SIT about the reluctance of mobile phone records to provide full user details; and despite the fact that the representative of one such company had stated that he was under pressure from both the Gujarat police and political bigwigs in the state, the SIT had chosen not to investigate this at all. The Learned Magistrate failed to appreciate this.

171. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

172. The Applicant says and submits that A-29 PC Pande, A-38 Shivanand Jha are criminally culpable for the Non Response of the Fire Brigade. Over 47 Distress Messages from the Police Control Room made on 28.2.2002 to the Fire Brigade Urgently demanding help at a time when Naroda Patiya, Naroda Gaam and Gulberg Society were under systemic Mob attack were met with a sinister and conspiratorial silence, revealed Desai reading from two tables in the protest petition that detailed this evidence. Pande as Commissioner of Police is answerable for this lapse, yet SIT chose to completely ignore this evidence from the SIT investigation own record. No statements of any of the Fire Brigade officials have been recorded, nor any attempts made to unearth the Fire Brigade register and analyse this.**(Para 810 @ Page 360 & paras 816-827 @ Pages 365-373, Volume II, Protest Petition)**

**references to PP)** (Compilation “Evidence from SIT Records (PCR) Reveal Non Response from Ahmedabad Fire Brigade submitted to the Court, 22.8.2013).( to be annexed as annexure “P” Colly to the affidavit annexed to this application.)

**The Learned Magistrate failed to appreciate evidence of strong suspicion of commission of serial offences including the offence of Conspiracy.**

173. The applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate’s Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

174. The applicant says and submits that voluminous evidence shows that, Intelligence reports were ignored. State IB Messages before Godhra were deliberately ignored; worse after the outbreak of violence post Godhra, IB Reports submitted by ADGP Sreekumar were deliberately ignored by A-1 since they suggested strong corrective measures to enable a return to normalcy. IB Reports dated 24.4.2002,

15.6.2002, 20.8.2002 and 28.8.2002. This whistleblower witness also maintained a 'Conscience Register' detailing all illegal instructions given by A-1 and other powerful collaborators. **(Annexure III, File III, D-40 of the SIT Record)**

The SIT, instead of rationally and independently investigating the substance of the series of illegal instructions alleged to have been given by A-1 Narendra Modi to him and other senior echelons of the administration and police, the SIT had spent over 20 pages of its report in simply arguing that keeping such a conscience register was wrong.

Sreekumar was ADGP (Armed Units) until he was made ADGP-Int on April 9 2002 after which he was hurriedly shunted off on September 17-18 2002 for failing to be a compliant officer, Sreekumar had during his tenure as Intelligence chief, contemporaneously, documented not just the deliberate laxity of the chief minister and other cabinet colleagues to restore normalcy, ensure justice and reparation but had in fact in continuance of a diabolic conspiracy, deliberately sought to mislead the National Human Rights Commission (NHRC), Central Election Commission (CEC) but also actively instructed against officers acting lawfully. Four critical reports were filed by Sreekumar during his tenure as Intelligence chief, dated 24.4.2002, 15.6.2002, 20.8.2002 and 28.2.2002. In the first report he had stated that senior

ministers of the government and MLAS were influencing Police Station Inspectors (over and above the authority of their seniors) to obey political masters and not arrest Hindu communal elements who had been named by Victims in the FIRs related to Mass Crimes; he had said that despite warnings of acute tension and violence being fomented on February 27, 2002 after the Godhra incident, only two preventive arrests had been made in Ahmedabad, that compliant public prosecutors were deliberately being appointed by the state government to ensure easy bail for powerful accused and a subversion of the justice system. These reports had been sent by Sreekumar to the Home Department headed by A-1 Modi, Ashok Narayan, ACS Home but were completely ignored by the state government. Ashok Narayan states in his statement recorded by the SIT that though he had spoken in detail to A-1 Modi the chief minister about extortion and violence by BJP-VHP-Bajrang Dal activists as late as April 2002, the CM was dismissive of the same. The SIT in its closure report is deliberately silent on the substance of the evidence that Sreekumar has provided through these intelligence reports despite a 161 statement of Maniram a senior officer in Modi's government who had completely corroborated what Sreekumar had written. In his statement dated



18.12.2009, ADGP (Law and Order) till 2003 Maniram **(Annexure I Volume I Serial No 66 of SIT Papers)** stated that "The communal riots continued during the months of March and April, 2002 in the whole of Gujarat. It was sometime in the first week of May, 2002 that Shri K.P.S. Gill, former DGP of Punjab was appointed as an Adviser to the Chief Minister. Shri K.P.S. Gill held a meeting on 4-5-2002 at C.R.P.F. camp which was attended to by the DGP Shri K. Chakravarthi, Shri P.C. Pande, the then CP, Ahmedabad, Shri R.B. Sreekumar, the then Addl. DG (Int.), Shri M.K. Tandon, Jt. CP, Sector-II, Ahmedabad City and myself whose names, I do not recollect. In this meeting, Shri K.P.S. Gill reviewed Law & Order situation in the State. The DGP and the Commissioner of Police gave their assessments of the current situation as normal due to effective police action and painted a rosy picture about Law & Order situation in the State. I informed Shri Gill that the tension continued to prevail in Ahmedabad City amongst the Hindus and Muslims. I further pointed out to Shri Gill that officers who were responsible for not preventing the riots resulting in loss of life and property in their jurisdiction should be immediately transferred irrespective of their status and good officers posted back. I also mentioned it to Shri Gill that wherever effective officers had been

posted, the Law & Order situation was under control like whole of Saurashtra, South Gujarat namely Surat City, Naysari, Bharuch, Valsad and Dang districts Shri R.B. Sreekumar, the then Addl. DG, (Int.) fully supported me and endorsed my views. Shortly thereafter, the concerned police officers at all the levels were transferred as a result of which the riots could be controlled in May 2002 itself. "This explodes the theory put forward by A-1 Modi and ardently supported by the SIT that within 72 hours all was normal in Gujarat. All documents are to be annexed to the affidavit annexed to this application as annexure "M" Colly.

175. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

176. A series of rank shocking and illegal instructions were given by A-1 Modi who instead of being concerned with establishing

intra-community harmony and peace was instructing higher echelons of officers to tap the phones of MOS Revenue Haren Pandya (simply because he appeared before the Concerned Citizens Tribunal and deposed about the meeting of February 27, 2002, tapping the phones of political opponents and worst of all “instructions to eliminate Muslim ...extremists...” etc (List of Instructions are given below). Instead of questioning Modi about the content of the illegal instructions (statement recorded on 27-28.3.2010, argued Desai, SIT had been content to simply ask a formal question about the register. The SIT Closure Report is a cosmetic exercise The Conspiracy and Abetment hatched at the very highest levels of the political hierarchy in Gujarat was hatched by persons in power to ensure that the Conspiracy does not end in a day; that it continues for Months when the violence does not stop and Subversion occurs and this Conspiracy and Abetments by Collaborators Officials includes a refusal by Public Servants to follow the law and instead ensure that the Law is Violated. Even if Sreekumar had, instead of maintaining a Contemporaneous Conscience Register, deposed about a series of blatantly unlawful and illegal instructions by A-1 Modi to the SIT was not SIT obliged in law to test the facts in trial? Why then does the SIT file a closure report with such voluminous and critical evidence? The SIT had clearly manifest a mindset where it has believed only those powerful

accused arraigned in the complaint alleged Desai ignoring upright and independent witnesses, including senior officers of the Gujarat government like Sreekumar. Sreekumar had warned the state government through a letter dated 3.11.2004 that he was in the possession of tapes and transcripts that exposed the coercive tactics being used against him even before he was denied legitimate promotion to the post of DGP Gujarat. In a significant judgement in Sreekumar's favour (September 2007), the Central administrative tribunal (CAT) had quashed the 9-point charge sheet against him said Desai but for the SIT Courts do not matter. SIT was clearly holding a brief for the powerful guilty accused. Among the nine points for which Sreekumar had been charge sheeted included revealing facts before the Nanavati Commission. In a detailed and well-reasoned judgement, the CAT, quoting Sardar Patel, India's first Home Minister and HM Seervai's India's Constitutional expert, had held that senior officers were bound to the law and the Constitution and should not be servile to the illegal dictates of a section of the government who give malafide orders. In effect the CAT ratified completely the stance of RB Sreekumar while being ADGP-Intelligence maintained a Conscience Register recording illegal instructions and independently serving the interests of the Rule of Law and Constitutional Governance. The SIT had ignored all these facts and dismissed the valuable evidence provided by Sreekumar.

**(Two Volumes of 161 Statements Related RB Sreekumar's Evidence given to the Court; Separate Compilations of the CAT Judgement Exonerating Sreekumar also given to the Court--Paras 283-242 @ Pages 134-185, Volume I, Protest Petition)** Instead of looking at the facts and contents of the IB Reports (dated 24.4.2002, May 2002, 15.6.2002, 20.8.2002 and 28.8.2002) the SIT had spent reams on trying to adjudge whether such a register ought to have been maintained. The Home department under A-1 Modi conspicuously did not maintain any minutes of any meetings nor record proceedings of meetings, possibly because of the dubious instructions given therein and the Conspiracy to subvert the lawful functioning of the police and administration.

The Learned Magistrate failed to appreciate this gamut of evidence. (to be annexed as annexure "M Colly" and "M-1" Colly to the affidavit annexed to this application.)

The applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an

additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

177. The Applicant says and submits that the significance of the contemporaneous evidence provided by Sreekumar stemmed from the fact that he exploded the myth that violence was controlled within 72 hours, he stressed on the deliberate subversion of the criminal justice system --- illegal freedoms given to the BJP and sangh parivar criminals; gave independent assessments of lives lost in police firing and mob violence to the NHRC and CEC (the CEC accepted Sreekumar's version) and in fact dared to report the rank communal speech made at Becharaji by A-1 Narendra Modi. Soon after Gill was appointed as special advisor to the Gujarat government by the Centre in early May 2002 (because violence did not stop) Sreekumar had suggested that culpable and complicit officers like CP Ahmedabad PC Pande and others should be transferred. Gill had followed these suggestions and transfers did take place thereafter Desai said. Yet SIT deliberately chose not to record statements of officers of the CEC, KPS Gill nor esteemed former CJI and officers of the NHRC. Why ?

178. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see

through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

179. The Applicant says and submits that the critical evidence of the other whistleblower officer, former ADGP Intelligence RB Sreekumar lay in the fact that a)he had recorded that then DGP Chakravarti had told him about the criminal instructions issued by A-I Modi at the meeting of 27.2.2002 ("Hindus should be allowed to vent their anger on the streets and the police should not be impartial"); b) he had filed five critical SIB reports recording the illegal functioning of the police and bureaucracy as also the subversion of the criminal justice system; c) he had urged prosecution of Sandesh newspaper and VHP hate pamphlets; d) he had recommended the transfer of criminally complicit officers, a recommendation that had been implemented by KPS Gill sent in by the Central government; e) he had given independent reports to the Chief election Commission (CEC) that had been relied upon and f)he had recorded the illegal instructions given by A-1 Modi to him in an unofficial register; g) he had sent the SIB reports on

the virulent hate speech of A-1 Modi at Becharaji to the National Commission of Minorities despite his bosses illegally ordering that he not do so. He too like Sharma and Sanjiv Bhatt who were also charge sheeted was rewarded with a charge sheet and denied promotion. Bhatt's criticality lay in that he had sent messages from the SIB on 27.2.2002 mentioning the provocative sloganeering by the kar sevaks that led to a crowd gathering near the Godhra railway station.

The SIT deliberately did not record any statements of as many as 17 Independent witnesses related to Sreekumar's evidence and instead chose to rely on those who are listed as Co-Conspirators-Collaborators in the Complaint. **(A list of these was provided to the Court on 27.8.2013). The Learned Magistrate failed to appreciate this.**

180. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.



181. The Applicant says and submits that the **Subversion of**

**Justice Accused included:-**

(i) Misleading the Hon'ble Supreme Court, the National Human Rights Commission, the Chief Election Commissioner, the National Commission for Minorities, the Parliamentary Committee of Women and the Ministry for Home Affairs; This a continual chain in the crime of conspiracy that continues until today.

(ii) Doctoring FIRs, allowing powerful accused to go scot free. The very fact that SIT had to be appointed for further investigation is proof of the unreliability of the state's commitment to honestly prosecute heinous offences.

(iii)Appointing Partisan prosecutors with ideological bent towards the RSS/VHP were deliberately appointed to enable easy bail to those accused involved in the post-Godhra killings and to ensure that the guilty are not punished.

(iv)Tampering with and Destruction of Records in Violation of the law as laid down in the Gujarat Police Manual and especially when and while the Hon'ble Supreme Court had been seized of the matters since 2.5.2002 and the SIT appointed on

26.3.2008. (Critical records were destroyed according to the SIT papers (**Paras 212-222 @ Pages 107-109, Volume I, Protest Petition & Para 510 @ Pages 225-226, Volume I, Protest Petition & Para 639 @ Pages-276-277, Volume I, Protest Petition; Para 647 @ Page 283, Volume I Protest Petition; Para 805 @ Page 356, Volume II, Protest Petition**) on 30.3.2008, five days after the SIT was appointed. (to be annexed as annexure "U Colly" to the affidavit to this Application very shortly.)

(v)The Subversion of the Home Department under A-1 in which co-accused, Gordhan Zadaphiya, MOS Home, A-5, Ashok Narayan, ACS Home, A-28, and K Nityanandam, Secretary, Home, A-34 played an active part included deliberately misinforming the Ministry of Home Affairs of the Government of India about the extent and spread of violence. This correspondence reveals inaccurate statistics were being sent to the MHA, Delhi by the Home Ministry under Modi, A-1; how senior VHP and RSS men were being kept out of the FIRs and charge sheets related to serious massacres being filed by the Ahmedabad Crime Branch; how violence was recurrent and was being

allowed with even ministers like Bharat Barot being mentioned in extortion related crimes by then CP, PC Pande. Evidence of this is available in the correspondence records from the Government of Gujarat Home department provided to the SIT and includes the following (April 2002) and yet has been completely ignored by the SIT:-

- Page 129, Compilation of Statistics handed over to Court on 22.8.2013 from Anenxure III, File XLI, D-196, Volume I, Sr Nos 34; SIT Records (to be annexed shortly as annexure "S" Colly by way of an affidavit );
- Page 146, Compilation of Statistics handed over to Court on 22.8.2013 from Anenxure III, File XLI, D-196, Volume I, Sr Nos 59; SIT Records); (to be annexed as annexure "S" Colly to the affidavit to be filed soon in this application.);
- Pages 151-157, Compilation of Statistics handed over to Court on 22.8.2013 from Annexure III, File XLI, D-196, Volume I, Sr Nos 114; SIT Records), (to be annexed as annexure "S" Colly\_ to the affidavit annexed to this application.);
- Page 158 a letter from Home Department to ADGP-Int that says that "the same statistics of de ad and injured sent daily to the government of

India are becoming less” and that Joint Secretary Home has pointed out this discrepancy; Compilation of Statistics handed over to Court on 22.8.2013 from Annexure III, File XLI, D-196, Volume I, Sr Nos 115; SIT Records) (to be annexed as Annexure “S” Colly to the Affidavit shortly to this Application.);

- Pages 165-168 (letter of Ashok Narayan A-28 to K Chakravarthi A-25 , Compilation of Statistics handed over to Court on 22.8.2013 from Annexure III, File XLI, D-196, Volume I, Sr Nos 128); (to be annexed as Annexure “S” Colly to the Affidavit to this Application.);

182. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate’s Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

**183. Accused Implicated in the Abovementioned Paragraphs:**

Narendra Modi, chief minister and cabinet minister for home(A-1), Ashok Bhatt, former law minister, now deceased (A-2), IK Jadeja, Minister (A-3), Gordhan Zadaphiya, former MOS Home (A-5), Subha Rao, former Chief Secretary (A-27); K Chakravarthi, former DGP, Gujarat, (A-25), PC Pande, former CP, Ahmedabad (A-29) AK Bhargava, DGP, Gujarat (A-26); GC Raigar, ADGP Int (A-60); VM Parghi, former DCP Ahmedabad (A-54); Tarun Barot, Crime Branch (A-58); KR Kaushik, former CP (A-61)Narendra Amin, DCP (A-59); Amitabh Pathak. Former IG (now deceased) and AK Sharma, former ADGP, DGP, Gujarat (A-36)

184. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

185. The applicant says and submits that, despite repeated observations and findings from independent authorities like the

NHRC (April-July 2002) and subsequent reports, CEC (August 2002), Gujarat High Court and Supreme Court that deliberate and systematic attempts were made by chief functionaries of the political executive to paint a false picture of normalcy, repeated indictments had documented how the ground level situation in Gujarat was otherwise. Violence and rioting continued even while the CEC visited the state in August 2002, Muslim students could not give their examinations in the state and as late as February 8, 2012, the Gujarat High Court indicted the government on its obdurate refusal to re-construct and repair shrines and places of worship belonging to the minority community. Both SIT reports, the one submitted before the Supreme Court (Malhotra, 12.5.2010) and the final report (Shukla, 8.2.2012) deliberately made light of this serious allegation in the complaint, misrepresenting the findings of the CEC and believing instead A-37 former chief secretary Subha Rao over two officers former ADGP RB Sreekumar who had spoken up against the false representations by others before the CEC. Para 20 of the CEC Report in fact clearly chose to accept the State Intelligence Bureau's independent assessment of widespread disturbance in 20 districts of the state, continued violence in July-August 2002 and an all pervasive sense of insecurity and fear among the minority community. In fact the CEC also recorded how its team had found that powerful accused roamed free, having

got bail from the courts and plaint prosecutors had made a farce of the criminal justice system in the state. Worst of all, the CEC while refusing to bow to the state's coercive demand to hold elections in August 2002 (the assembly had been dissolved on July 19, 2002) had remarked that when electoral rolls were in disarray, over a hundred thousand displaced from their villages and homes in cities, how could elections, if held be free or fair? **(CEC Report @ Annexure III, File II, Sr Nos D-39, SIT Papers; Ref @ Para 950 @ Pages 440-441, Volume II, Protest Petition, Para 986 @ Page 451; Para 1025 @ Page 464, Paras 1036-1039 @ Pages 470-471; Para 1042-1043 @ Pages 472, Volume II, Protest Petition)** (to be annexed as annexure "L" Colly to the affidavit to this Application.) The Applicant says and submits that, the SIT mocking this finding of an independent and statutory CEC that had relied upon two independent officers of the state government, chose to believe those top echelons of the state administration and bureaucracy who had connived and conspired with the chief executive to misrepresent the situation on the ground. What was the SIT's motives in accepting Subha Rao's statement at face value and ignoring the findings of the CEC? The Learned Magistrate has failed to appreciate the facts and implications of this gross subversion.

186. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

187. The Applicant says and submits that, despite the fact that the criminal complaint dated 8.6.2006 specifically made allegations of the deliberate and callous destruction of 270 Dargahs and Masjids, and even quoted extensively from Justice Krishna Iyer, PB Sawant and Hosbet Suresh's Concerned Citizens Tribunal Report (Crimes Against Humanity 2002), the SIT had simply ignored this aspect of the mass crimes that were committed. The Gujarat High Court judgement dated 8.2.2012 had come down heavily on the Gujarat government for its attitude with regard to the destruction of minority places of worship stressed that several independent, statutory and Constitutional body had found serious and grave complicity in the handling of the post Godhra carnage. The matter is pending before the Hon'ble Supreme Court. The SIT had adduced despite substantial and



significant evidence that no wrongs had been committed by the powerful.

**(Copies of the CEC Report and Subha Rao's statement dated 23.3.2010 recorded by AK Malhotra were given to the Court.)** (to be annexed as Annexure "L Colly" to the affidavit annexed to this application.)

188. The applicant says and submits that despite strong strictures by four or five statutory bodies commenting harshly on the complete breakdown of the rule of law in 2002, a breakdown that could be attributed not just to dereliction of duty but criminal negligence, the Special Investigation Team completely ignored contemporaneous investigations conducted by the National Human Rights Commission (NHRC) headed by former chief justice of India JS Verma in 2002. Worse, it did not take their detailed assessment after field visits to the state into consideration. The Zakia Jafri criminal complaint dated 8.6.2006 seeks to assign criminal culpability to this dereliction of duty.

189. The question before the Magistrate's Court was when, four to five Constitutional and Statutory bodies, the National Human Rights Commission (NHRC), Central Election Commission (CEC), Supreme Court of India and Gujarat High Court repeatedly, after field visits and detailed examination, say that

there is a “comprehensive and systemic failure of the state government, its Home Department, Police and Bureaucracy to perform fundamental tasks, the crucial question arises now, with much greater rigour and when reams of evidence have been collected to substantiate and fortify these conclusions, *whether certain substantive and objective criteria exist for prosecuting responsible persons in office for these criminal lapses.* Seen in this overall context, this shows not just a dereliction of duty and criminal negligence but ass up to criminal acts of conspiracy and abetment. The reason for citing these critical observations of these bodies made in 2002, 2003, 2004 and 2012, Counsel forcefully argued, is to bring out a link and establish that when seen all together these failures amount to more than derelictions of duty and amount to criminal conspiracy and abetment to allow Gujarat to burn.

Significantly unlike the much touted “normalcy after 72 hours” mantra uttered by A-1 Modi and faithfully reproduced by not just co-accused, A-37 chief secretary Subha Rao, A- 25 then DGP Chakravarthi or then ACS (Home) A-28 Ashok Narayan and finally plainly accepted by the Special Investigation Team (SIT), the NHRC report of March – July 2002 and August 2002 resoundingly establish otherwise. In its Preliminary Comments at 20 (x) the NHRC states at “20.(x) As *indicated earlier in these Proceedings, the Commission*

*considers it would be naïve for it to subscribe to the view that the situation was brought under control within the first 72 hours. Violence continues in Gujarat as of the time of writing these Proceedings. There was a pervasive sense of insecurity prevailing in the State at the time of the team's visit to Gujarat. This was most acute among the victims of the successive tragedies, but it extended to all segments of society, including to two Judges of the High Court of Gujarat, one sitting and the other retired who were compelled to leave their own homes because of the vitiated atmosphere. There could be no clearer evidence of the failure to control the situation."*

190. The Applicant says and submits that in its report of August 16, 2002, the CEC is equally as dismissive of this cynical claim. It states at Para 31(iv) that " Everywhere there were complaints of culprits of the violence still moving around scot-free including some prominent political persons and those on bail. These persons threaten the displaced affected persons to withdraw cases against them, failing which they would not be allowed to return to their homes..." The team has cited many other such cases from almost all the 12 districts covered by them. [In Ahmedabad, the Commission itself observed that a large group of Muslim families could not move to their houses

because the culprits of the riots had blocked the accesses to their houses.]. Further it also states at Para 32 that whereas “...Before the Commission, the Chief Secretary and Director General of Police painted a similar picture of normalcy in Gujarat. But the Additional Director General of Police (Intelligence), Shri R.B. Sreekumar, whose views were supported by the new Commissioner of Police, Ahmedabad, Shri K.R. Kaushik, stated before the Commission that an undercurrent of tension and fear was prevailing beneath the apparent normalcy in the State. He further added that there was no interaction between the two communities even though moderates were trying their level best, as there were hawks in both the groups. He added that additional forces would be required to ensure that there were no communal clashes. And the State Government have on the Commission’s queries subsequently been avoiding giving a clear picture on the number and identity of persons complained against, similar details of persons included in the FIRs, similar details of persons who have been arrested, similar details of persons named in the FIRs who have been enlarged on bail, similar details of persons enlarged on bail as against whom appeals have been filed for cancellation of their bail bonds.”

The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing

towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

191. The Applicant says and submits that, both the NHRC and the CEC take strong note of the fact that in a cynical and disruptive form of governance those officers who were complicit in allowing violence to break out and spread, participative in the conspiracy to subvert justice by registering false or diluted FIRs were promoted and rewarded whereas those who did lawful and Constitutional work were roundly punished. At Para 31(vii), the CEC states that "A large number of IPS officers who did commendable work in preventing the spread of violence were soon replaced. A common complaint received was that these officers were punished for their impartiality."

The Applicant says and submits that, despite this overwhelming contemporaneous evidence, the SIT simply did try and arrive at an understanding of the ground level truth argued Counsel for the Complainant, the SIT did not bother to record statements of Justices

Verma or Justice Anand or the rest of the NHRC or even try and collect evidence from them.

The NHRC had first issued notice; suo moto to the state of Gujarat on March 1, 2002, then after a formal hearing on March 6, 2002 actually conducted a field visit to the state of Gujarat between March 19-22, 2002. Thereafter it had sought a detailed response from the state government which was given in mid-April 2002 by then chief secretary Subha Rao (A-37 in the complaint). This response of the state government was strongly and adversely commented upon by the NHRC in its hearings in May 2002. A letter addressed by retired high court judge Justice Divecha to the NHRC (attached) which exposed the complete targeted violence against members of the Muslim minority in Ahmedabad right from the evening of February 27, 2002 was also read out. Finally Divecha's home was torched and destroyed the next day as a complaint machinery watched. Justice Kadri a sitting judge of the High Court also had to flee and change homes for safety. **(Annexure III, File VI, Sr Nos D-88, SIT Papers)**. (to be annexed as Annexure "L Colly" to the affidavit annexed to this application.)

The Applicant says and submits that the NHRC had first recommended transfer of investigation of major cases to the CBI following which citizens of Gujarat and Mumbai

including Professor DN Pathak and Teesta Setalvad had approached the Supreme Court (May 2002) for transfer of investigation. The NHRC itself had sought the transfer of trials out of Gujarat. It was on this writ petition filed by citizens that the Supreme Court, in May 2008 finally appointed a SIT, it was pointed out.

The Learned Magistrate has completely ignored this overwhelming evidence of failure of the rule of law and the Constitutional machinery and erred significantly in not holding powerful accused guilty for it. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

192. **Allowing hate speech unchecked and unprosecuted was also part of the Conspiracy hatched by A-1.** The Applicant says and In furtherance of the pre-hatched conspiracy to ensure that a large body of armed and aggressive VHP-RSS-

BJP supporters take to the streets with blood in their minds to seek revenge for the tragic killings at Godhra, Acharya Giriraj Kishore of the VHP was given VIP entry into the city of Ahmedabad so that poisonous and inflammatory speeches could be delivered during the cremation. A-1 He issued congratulatory letters to those newspapers that had published manipulated reports not based on fact. ADGP Sreekumar had on 16.4.2002 itself recommended the prosecution of hate filled Pamphlets being widely distributed by the Viswa Hindu Parishad (VHP) all over Gujarat that bore their official address and details of publication. Other police officers including SP Bhavnagar Rahul Sharma had strongly recommended the prosecution of Hate Speech. A-1 himself in February, 2002 and right up to September 2002 himself indulged in hate speech. A transcript of the Hate Speech of A-1 made at Becharaji on 9.9.2002 was summoned by the National Commission of Minorities (NCM). ADGP-Int RB Sreekumar functioning legally had provided a transcript for which he was victimized; first transferred, denied promotion and also charge sheeted. Charkaravarti (A-25) had made an illegal and committed a subversive act by noting directing that a transcript should not be provided. This is clearly an illegal and subversive act. Substantive arguments on the deleterious impact of hate speech and hate writing at the time of heightened communal tension have been made in the context



of mainstream Gujarati newspapers, television and the VHP's published pamphlets. The National Human Rights Commission (NHRC) had clearly recommended prosecution of offenders. The power to prosecute lies with the Home Department under A-1. The Editor's Guild report also concurred with the NHRC recommendations

**(Paras 126-153 @ Pages 70-85 Volume I, Protest Petition; Paras 233-238 @ Pages 112-117, Volume I Protest Petition; Paras 588-590 @ Pages 261-262, Volume I, Protest Petition)**

(to be annexed as annexure "M Colly" and Annexure "N" Colly to the Affidavit annexed to this Application.)

193. The applicant says and submits that this crucial prima facie evidence was completely ignored by the Learned Magistrate doing a grave injustice to the cause of furtherance of the rule of law and Constitutional governance.

194. The applicant says and submits that, most significant of all, Ashok Narayan had in his statement before the SIT dated 13.12.2009 (attached) clearly stated that chief minister and accused 1 was non committal about action on hate speech.

**Ashok Narayan's statement to SIT dated 13.12.2009**

*Que (by Malhotra). Please see a letter dated 16-4-2002*

*addressed to the DGP with a copy to you regarding the two*

*pamphlets in circulations in large number in Gujarat for which action was proposed u/s 153-A & 153-B IPC after taking legal opinion from the Law Department. What action was taken on this communication?*

*Ans. The issues raised by ADG (Int.) in this letter were discussed with the DGP. However, I don't recollect any action taken thereon. However, it may be added here that several such pamphlets were brought to the notice of DGP, myself and Chief Secretary but in such cases the name of the printer/publisher had not been mentioned. Accordingly, we had impressed upon the police to trace out the culprits responsible for these pamphlets but unfortunately no material could be collected in this regard, with the result no action would be taken in this regard.*

**Narendra Modi's statement to SIT dated 27 & 28.03.2010**

*Q.41(Malhotra for SIT). Please see a copy of the DO letter dated 22.04.2002 addressed by Shri P. C. Pande, the then CP Ahmedabad City with a copy to DGP and Addl. DG (Intelligence) about the undesirable activities of Sang Parivar activists. Was this letter brought to your notice? If so, what was the action taken by you in the matter?*

*Ans. In this connection, it is stated that I do not remember now, whether this issue was brought to my notice or not. But, it has been my and my Government's approach right from the*

*first day that a culprit is a culprit irrespective of his caste, creed, religion or socio political background, as nobody is above law. “*

195. The applicant says and submits that the Accused Nos 25 DGP Chakravarthi was examined six times by SIT, **on 24.3.2010, 7.5.2010, 5.10.2010, 23.11.2010, 23.3.2011, 14.1.2012**, yet SIT did not feel it imp to examine him on the criticality of the vicious hate speech and bartering of hatred indulged in by the VHP and allowed by the state police and administration, despite consistent recommendations to the contrary from its own Head of Intelligence, ADGP Intelligence (April 2002-September 2002) RB Sreekumar. It is no wonder that the administration allowed this criminality to go unchecked given the Home Minister was Accused Nos 1 Narendra Modi argued counsel for Complainant Zakia Jafri. Detailed tables in the Protest petition show how the PCR (Police Control Room Messages clearly reveal that crowds of 3,000 plus RSS workers aggressive and violent had gathered between 3-4 a.m. at the Sola Civil hospital in an aggressive and vengeful mobilisation before the parading of the dead bodies was cynically allowed. Violence breaks out as the mobs attack the hospital, attack leaders visiting there while the police stands by and does not act. Police bandobast to control crowds is not ordered by the Police finds it advisable to escort Acharya

Giriraj Kishore here who makes an inflammatory speech and accompanies the procession.

196. The applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

197. The applicant says and submits that the hate ridden speech made by A-1 Narendra Modi at Becharaji, Mehsana, on 9.9.2002 to launch the Gaurav Yatra and his election campaign was adjudged by field officers of the State Intelligence Bureau to be aimed at causing deep rift and communal divides, correspondence regarding which was sent by former ADGP-Intelligence RB Sreekumar to the National Commission for Minorities (NCM) on 16.9.2002 for which he was first transferred and then targeted and victimized. Despite the fact that the NCM had, through a letter dated 10.9.2002, requested a transcript of the speech, ACS Home Ashok Narayan (A-28) in the Zakia Jafri Complaint) and then DGP

Chakravarthi (A-25) had instructed Sreekumar not to send the transcript to the statutory body. A handwritten noting of this illegal instruction signed by then DGP Chakravarthi is visible on this letter dated 13.9.2002 and yet the SIT made bold to give all accused a clean chit. Sreekumar, respecting the law and the Constitutional mandate had ignoring these illegal directives sent a copy of the transcript to the NCM on 16.9.2002 for which he was severely victimized. He was first transferred out, and then denied legitimate promotion (for telling the truth to the Nanavati Commission in August 2004) and finally charge sheeted. He emerged victorious before the Central Administrative Tribunal (CAT) in two separate judgements. (to be annexed as Annexure "M Colly", Annexure M-1" Colly and Annexure "N" Colly to the affidavit annexed to this application.)

198. The applicant says and submits that it is stark and shocking that the Learned Magistrate did not find this speech of malicious venom falling foul of Indian Criminal law.
199. The applicant says and submits that, the two final reports of the SIT, one to the Supreme Court (Malhotra, 12.5.2010 and the other before the Ld Magistrate, 8.2.2012) have serious serious contradictions in their assessment of the same hate speech spoken by A-1. The virulently anti-Islam and anti-

Muslim speech made by Modi that falls foul of Section 153a, 153b and 505 of the Indian penal Code, was found by one officer of the SIT (AK Malhotra to the Supreme Court, 12.5.2010) to be communal but yet, with no further investigation, the Final report of the SIT (Himanshu Shukla, Crime Branch Ahmedabad, 8.2.2012) gives Modi a clean chit for such a speech.

Excerpt of what this speech contains:-“.....*Then what is paining them? Since, we (means BJP) are here, we brought water in Sabarmati during the month of Shravan, when you are there, you can bring it in the month of Ramdan (the holy month of Muslims). When, we brought water in the month of Shravan, you feel bad. When we spend money for the development of Becharaji also, you feel bad. What brother, should we run relief camps? (referring to relief camps for riot affected Muslims). Should I start children producing centers there, i.e., relief camps? We want to achieve progress by pursuing the policy of family planning with determination. We are 5 and our 25!!! (Amepanch, Amara panch, referring to Muslim polygamy). On whose name such a development is pursued? Can't Gujarat implement family planning? Whose inhibitions are coming in our way? Which religious sect is coming*

*in the way?..."* are some of the divisive and inflammatory comments made by A-1 Modi in this speech (whole transcript attached). “

200. The Applicant says and submits that, If it is a communal speech, a hate speech meant to generate ill feeling and hatred in 2010 then it attracts penal provisions of the law for which A-1 Modi must be prosecuted; how can SIT suddenly in 2012 find him not guilty without any further investigation, especially when field level officers of the SIB have adjudged the speech to be criminal?

201. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

**202. HATE SPEECH IN PRINT MEDIA**

The Applicant says and submits that A-1 Narendra Modi. (Editor's Guild report) had congratulated many of those newspapers that had played the role of inflaming passions

through the publication of false and hate-driven material. **(A copy of the Editor's Guild Report was handed over to the Magistrate's Court and is likely to be annexed** to the affidavit with this application as Annexure "N Colly"). Several sections of the Gujarati print and television media had violated the law in 2002 publishing and telecasting completely fabricated or manipulated stories in a bid to inflame passions and provoke violence against the Minorities. This was an assessment made by then SP Bhavnagar who had recommended to K Chakravarthi (A-25) that the newspaper Sandesh should be prosecuted, DD Tuteja, CP Vadodara had also made this recommendation (A-48) as had ADGP-Int RB Sreekumar. K Chakravarthi, DGP Gujarat (A-25) failed by omission as did PC Pande, CP Ahmedabad (A-29). The decision to prosecute or allow, unchecked with impunity lay solely with the Home Department of Gujarat. Politically its head was A-1; Nityanandam, Home Secretary (A-34) and Ashok Narayan, ACS Home (A-28) are also culpable. **(to be annexed as annexure "N Colly, Editor's Guild Report with the affidavit with this application)**

203. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed



has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

204. The Applicant says and submits that two judgements of the Supreme Court, (1980 2 SCC 402) Baburao Patel vs State (Delhi Administration) and (2004) 4 SCC 684 State of Karnataka vs Praveen Togadia, lay down the parameters for judging what constitutes hate speech and how and when the administration needs to act. The Applicant craves leave to produce these as and when averred.

205. The Applicant says and submits that the hateful propaganda in various VHP Pamphlets attributed to the VHP, Paldi Ahmedabad (office bearers Chinnubhai Patel and Vankar) fell squarely within the Supreme Court's definition of hate speech under sections 153a, 153b, 505 of the Indian Penal Code. Yet A-1 Modi, chief minister and home minister of the state had reacted casually to serious recommendations to act that came from his own Intelligence Department (ADGP-Int RB Sreekumar's letter dated 16.4.2002 (**Annexure III, File III, D-27 of the SIT Records**)). The Applicant finds it shocking that

the Learned Magistrate did not find the contents of these pamphlets falling foul of the law.

206. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

207. **Doctoring/Tampering with the Record**

The Applicant says and submits that, a compilation of documents from the SIT Record submitted on 27.8.2013 along with a Note on Tampering and Destruction detailed several points. A complicit and unprofessional SIT had not even looked into this serious criminal lapse though this was clearly visible from their own papers. The Gujarat home department under A-1 Modi had destroyed Vehicle Log Book records, Police Control Room Records and Wireless records on 30.3.2008 just five days after the Supreme Court had appointed the SIT on 26.3.2008 **(Pages 70-77 of the Compilation that consists of documents from the SIT**

**Record; Annexure IV, File I Sr Nos 23)**; Ref: Paras 1030-1034 @ Pgs 466-469, Protest Petition, Volume II). This was submitted to the Court on 27.8.2013. (to be annexed as annexure "U Colly" to the affidavit annexed to this application.)

208. The applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

209. The Petitioner says and submits that, while indulging in this criminal act they had quoted an obsolete rule 262 of the Bombay Police Act when this had been replaced by the Gujarat Police Manual of 1975. The Inward register of the chief minister's office, **(Pages 37-67 of the Compilation that consists of documents from the SIT Record; Annexure IV, File X, Sr Nos 311)** the Minutes of the meeting of 28.2.2020 **(Pages 21-33 of the Compilation that consists of documents from the SIT Record; Annexure IV, File IX, Sr Nos 236)**, the daily Itinerary of the chief minister **(Pages 6-7**

**of the Compilation that consists of documents from the SIT Record; File IV, File IX, Sr Nos 249)** as also a letter of the Home department had been clearly tampered with. (This letter of 6.3.2002 was overwritten by hand to show it had been written on 28.2.2002). **(Pages 68-69 of the Compilation that consists of documents from the SIT Record; Annexure III, File XLI, Sr Nos 14, D-196, Vol I)**

210. The Applicant says and submits that besides this, over four dozen SIB Messages in the SIT papers were in plain white blank paper without official format, an aspect that the SIT had chosen to turn a blind eye to. Desai argued that the SIT ignoring such brazen lapses was illustrative of its compromised functioning. **(Tables @ Pages 79-90 of the Compilation)** (to be annexed as Annexure "U Colly to the Affidavit to this Application.)

211. The applicant says and submits that, even while the Supreme Court was taking cognizance of the petition by the Legal Rights groups and victims filed before the Supreme Court on 2.5.2002, the Gujarat Government had no qualms about destroying records related to the critical period. Original Police Control Room & Vehicle Log Books of Senior Officials and Public Servants, Wireless Intercepted Messaged, Confidential Reports (all of which would have been critical to assess the

*real time response of senior and ground level officials of the police and administration to the Orchestration of Violence among other critical documents were destroyed quoting the Government of Gujarat quotes Rule 262 @ Pages 198-199 of the Gujarat Police Manual, 1975 Volume III, which has no reference at all to any procedure related to destruction. According to the documents available and provided by the SIT one such batch (Ref: Annexure IV, File I, Sr Nos 23 & Annexure III, File XV, Sr Nos D-156 SIT Papers/Record was destroyed on 31.3.2008).*

Is it a coincidence that these records were destroyed even though the Supreme Court of India had been seized of the Matter of Transfer of Investigation in Nine Major Trials since May 2002 and the Zakia Jafri & Citizens for Justice & Peace (CJP) Investigation since on or before 3.3.2008 when Notice was Issued?

212. The Applicant says and submits that on 17. 1. 2007, according to letter by Joint C.P. sector II, G.K. Parmar given in the course of the hearing of the Gulberg trial, on an application made for further investigation by the victims and witnesses; he states that “as the final date of preserving the copies of the control room... January 2000 to December 2005 has been destroyed on 17.1.2007”. The SIT has not investigated how such destruction could have taken place when the Supreme

Court was seized of the matter from May 2002 onwards. Another letter also states that even the photographs taken of the Gulberg carnage site have been willfully destroyed. This has happened before the trial has even begun! The SIT has not interrogated this issue at all

**(Reference: Paras 1030-1034, Pgs 466-469 Vol. II of the Protest Petition). Copy of this Document from the SIT Record can be Seen at Pages 130-132, Annexure Volume I, Protest Petition)** (to be annexed as Annexure "U-Colly" to the Affidavit to this Application.)

213. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

214. **Missing Documents from the SIT record.** On 29.1.2010 **(Ref: D-176 (Annexure III, File XXXIV in SIT Papers))** there is a handwritten endorsement stating that the file has been received with the DGP's letter dated 29.1.2010. Another

endorsement dated 9.2.2010 (**Ref:D-127 Nos (Annexure III File XII in SIT Papers)**) states there are 1-388 pages in file. File actually contains only 1-342 pages that clearly suggest that 46 pages are missing. The endorsement mentions a SIT letter that is not in the record. This assumes importance in wake of IO AK Malhotra's statement before the Hon'ble Supreme Court January 2010 (before his report was submitted) saying that Gujarat Government was not cooperating and supplying all relevant documents). (Endorsement in File SBII/COM/100876/P+1/Special Team Home Department ) The Applicant says and submits that it is shocking that the Learned Magistrate has not found anything criminally culpable about this.

215. **Documents on Blank Pages** The Applicant says and submits that In the SIT record of Investigation Papers that can be seen at **Annexure IV, File XVIII & XIX** there are several Blank pages on which Fax messages have been sent in the Files of the State Intelligence Bureau (SIB) (**Ref: Protest Petition Annexures Volume I, Pages 292-304, Sr Nos 51:- Tables Listing How Many of the Documents in SIT Files are on an official format/letterhead how many on Plain paper Related to Blank Pages can be seen at Pages 79-90 in the Compilation 'Tampering With Record & Destruction of Documents'**). The SIT has not looked into this aspect at

all. Why are some faxes on official formatted letterheads and some on blank papers?

216. The Applicant says and submits that it is shocking that the Learned Magistrate has not seen anything shocking about this.

217. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

218. **Translation of Documents.** A large number of documents/ statements are in Gujarati. Admittedly they have not been translated. (*Affidavit of SIT before this Court*). A majority of the SIT members cannot read Gujarati. In order to decide the weight to be attributed to each of the statements/ document it was necessary that the SIT, as a collective applied its mind to these documents. In the absence of any translations it is not clear as to how the SIT has come to the conclusions it has arrived at. (*Ref: Page 28, Protest Petition, Volume I & Paras*



**944-945 @ Pgs 439-440, Protest Petition, Volume II.  
(Message at Annexure III, File XLI, D-196, Volume I, Serial  
Nos 14 has been clearly tampered with)**

219. The Applicant says and submits that the Learned Magistrate has committed grave error and injustice by failing to see through this This piece of evidence pointing towards strong suspicion of serious and serial offences being committed has been completely ignored by the SIT and have simply been ignored by the Magistrate's Court doing grave injustice to the matter at hand and that this should also be read as an additional ground for quashing the Order of the Learned Magistrate dated 26.12.2013.

220. The Applicant says and submits that a Comprehensive and Detailed Note on ***Failure of the SIT Investigation was submitted to the Learned Magistrate on 18.9.2013.*** This is likely to be annexed hereto in Annexure "F-Colly" to the affidavit annexed to this Application. There are detailed submissions under the following headings and the Applicant craves leave to adopt the entire grounds set out on the investigation under that note:

- (i) Deliberate Failure to Investigate Overall Conspiracy, Criminal Liability of Public Servants

and Command Responsibility- Purposefully SIT has dealt with Allegations in a Piecemeal Manner

- (ii) Failure to look into the Communal Build Up by RSS/VHP/Bajrang Dal prior to the Godhra Incident on 27.2.2002 and repeated Warnings being sent by the State Intelligence Bureau (SIB) to the Home Department headed by A-1
- (iii) Failure to look at A-1, Conspirator and Key Collaborators deliberate attempt to dilute the incendiary slogan shouting by kar sevaks at the first meeting at A-01 residence on 27.1.2002 at 10.30 a.m.
- (iv) Failure to Investigate Phone Calls between A-1 and A-21 just after 9 a.m. on 27.2.2002
- (v) Selective Statements Avoided to be Recorded by SIT.
- (vi) Concealing Bandh Announcement from state assembly;
- (vii) The SIT kept the Hon'ble Supreme Court and the Amicus Curiae in the Dark about documents that point to Conspiracy. This voluminous documentary evidence was concealed by both IO AK Malhotra and late on Himanshu Shukla.
- (viii) The Complainant has detailed aspects of the Investigation Deliberately Ignored by the SIT with

Specific Aspects that need to be looked at in Further Investigation @ **Paras 925 – 945 @ Pages 424-440, Volume II, Protest Petition.**

- (ix) The Applicant has further, in exhaustive detailed outlined the lacunae in the SIT Investigation through an 'Allegation by Allegation Rebuttal.' This can be read @ **Paras 950-1021 @ Pages 440-493, Volume II, Protest Petition**
- (x) A CHART outlining applicable Legal Sections Against All Accused named in the Criminal Complaint dated 8.6.2006 is available @ Pages 495-507, Volume II, Protest Petition along with an averment that new accused that emerge should also be arraigned.
- (xi) Deliberate lacunae by the Special Investigating Team in probing the illegal post mortems that were held in wide public view at the Godhra railway yard as part of the high-level Conspiracy masterminded by A-1 Narendra Modi with the full connivance of A-2 then health minister Ashok Bhatt, now deceased, A-5 Gordhan Zadaphiya and others, with the active participation of A-21 Jaideep Patel and other VHP men who were deliberately galvanized to use the fact and sight of the tragically burnt corpses to build up and spill venom

against innocent members of the Muslim minority. Worst of all, the SIT has not bothered to even look at the required legal procedures necessary to be observed in the wake of the Godhra tragedy. There are strict laws against allowing such hasty post-mortems to happen without proper procedures of identification and without family members being present; there is a strict prohibition against allowing photographs of corpses in a gory or mutilated condition from being taken, shot or telecast. By not even dealing with this grave offence, the SIT has shown its unprofessionalism and distinct bias.

- (xii) SIT has deliberately left un-investigated the whole question of the illegal and hasty post-mortems conducted in the open in the rail yard, with large and aggressive crowds of the VHP, RSS and BD present, despite the fact that these facts are made known to them in the statements of then DM Jayanti Ravi and others. SIT has not investigated how gory photographs were allowed to be taken, telecast and broadcast not just by newspapers like the *Sandesh* but also publications brought out by the VHP. SIT obviously did not consider investigating such serious facts as emerged in the

Investigation that too in such a sensitive case.

**(Paras 61-63 @ Pages 41-43, Protest Petition, Volume I & Details @ Paras 472-487 @ Pages 210-216 of the Protest Petition)**

- (xiii) The SIT has not dealt with this aspect that the post-mortems of the dead bodies was taking place in the presence of A-1 and was not stopped by him though it was an illegal act. The SIT also does not deal with the presence of a large crowd of VHP workers and the presence of Mr Jaideep Patel general secretary of VHP Gujarat besides the presence of A-2 Mr Ashok Bhatt and A-5 Mr Zadaphiya.
- (xiv) SIT Not Investigated the Absence of Application of Standard Operational Procedure, Recording of Minutes; Preventive Action etc
- (xv) PRIVILEGING THE Accused -SIT admits at Page 60 in its final report dated 8.2.2012 that Mrs Jayanti Ravi has stated that in the meeting held at the Collectorate, A-21 Mr Jaideep Patel, a VHP leader was also present. However, under Allegation No. IV, the SIT still goes on to assert that A-1 Mr. Modi had never met A-21, Mr. Jaideep Patel (SIT Report, 8.2.2012).

- (xvi) The SIT, that did not record Statements of Independent Witnesses like the NHRC (including former Chief Justices of India) and the Election Commission (including the CEC Lyngdoh, it did not record statements of independent witnesses like Major Zameeruddin Shah of the 54<sup>th</sup> Infantry Division in charge of the Gujarat operation. Neither did the SIT seek independent data from the Army choosing in its all out bid to shield the accused, to believe the chief collaborators of the criminal conspiracy.
- (xvii) No statements of any of the Fire Brigade officials have been recorded, nor any attempts made to unearth the Fire Brigade register and analyse this.
- (xviii) SIT has misled the Supreme Court by indicating and even explicitly stating that the Funeral processions of the Kar sevaks and others who had died at Godhra were 'peaceful'. This is belied by the PCR records that are part of the SIT Investigation. The PCR Messages reveal that in the early hours of 28.2.2002, over 3,000 members of the, Rashtriya Swayamsevak Sangh (RSS) had already gathered at the Civil Sola Hospital **(Page No. 5794, Annexure IV, File XIV of the documents) an this was a violent mobilisation**

**(Page 5796 of Annexure IV, File XIV of the SIT documents).** Again another message three minutes later at 7:17 hours **(Page 5797 of Annexure IV, File XIV of the SIT documents)** says that another mob of 500 was holding up the traffic. This message is received by Control and passed on to Sola 1. An hour later, at 8:10 hours, a message records that three SRP platoons were sent from Police Control to Sola Hospital for bandobast. **(Page 5826 of Annexure IV, File XIV of the SIT documents).** Thereafter, through the day wireless messages record that there are aggressive and tense crowds at the Hospital, en route and both locations of the cremations. All this is wilfully ignored by the SIT.

- (xix) The SIT has simply not examined the criminal offences of Hate Speech and Hate Writing, seriously. SIT's own evidence shows that Giriraj Kishore, Vice President of VHP arrived at the Ahmedabad airport and a message was given to provide police escort. The government headed by A-1 allowed Acharya Giriraj Kishore of VHP to come to the Sola Civil Hospital by providing him special escort knowing full well that it will further inflame the atmosphere and result in violence. A-1

allowed this to happen as it facilitated the Conspiracy which he had hatched. Acharya Giriraj Kishore in fact came to Sola Civil Hospital before 11 a.m. where he spoke to media persons and was present there for 10-15 minutes. **(Pg 248 Protest Petition, Vol I)**. In the statement he made the following provocative statement,

- (xx) Intelligence Reports Ignored:- **SIT failed to examine the following in connection with Four Intelligence Reports Submitted by RB Sreekumar while occupying Position of ADGP- Int between 9.4.2002 and 17-18.9.2002:**
- ✓ KPS Gill Advsiior sent by Central Government to Quell Continuing Violence (sent in May 2002)
  - ✓ Officers of the Central Election Commission (CEC) including chief Lyngdoh
  - ✓ The NHRC Itself with Former CJI and SC Judges.
  - ✓ E Radhakrishna DYIGP ( P & C) for ADGP- Int while Sreekumar on leave sent 20-8-2002 Report
  - ✓ MO Khimani with relation to PC Pande before and after the 27.2.2002 meet



(xxi) SIT Failed to Examine the Following Persons in Connection with the Illegal Instructions Contained in RB Sreekumar's Conscience Register Annexure to Third Affidavit Before the Nanavati Shah Mehta Commission dated 9.4.2005. This includes the Intimidation by GC Murmu, Dinesh Kapadia and Arvind Pandya, the Documents and Transcript of the Becharaji Speech and the Conscience Register of Sreekumar. **(Annexure III, File III, D-23 in SIT Papers)**

(xxii) **Allegations related to illegal Instructions can be broadly divided into**

- I. submission of report regarding alleged involvement of an opposition party in fomenting communal trouble in Ahmedabad City, without any basis,
- II. illegal direction to tap telephone of a senior Congress leader,
- III. not closely cover activities of the ruling party and its sister bodies,
- IV. consider even elimination of anyone who tries to disturb Ahmad Ratha Yatra etc.
- V. Suppression of State Intelligence Assessment and Reports about the

Communal Content of A-1 Modi's Speech  
and Becharaji, Mehsana on 9.9.2002

(xxiii) Persons who ought to have been examined in connection with Illegal Instructions vis a vis Becharaji speech of A-1 Modi and Other Instructions given to Sreekumar:

(a) Shri K.P.S. Gill, Advisor to CM – Entries dated 04.05.2002, 08.05.2002, 10.05.2002, and 11.07.2002

(b) Shri Maniram , ADGP ( L & O) – Entry dated 04.05.2002

(c) Shri K. Nityanandam, Home Secretary, - Entry dated 30.08.2002

(d) Shri Prahlad Patel, SP Intelligence - Entries dated 10.09.2002, 12.09.2002 and 13.09.2002)

(e) Shri Himanshu Bhatt, SP Intelligence, - Entry dated 13.09.2002

(f) Shri Bhava – Dy. SP State Intelligence, Gandhingar Region – Entry dated 30.08.2002

(g) Dr. Varesh Sinha, Secretary, (1977 IAS) Education, - Entry dated 22.04.2002

(h) Shri Paneervel, Secretary, (1978 IAS)- Entry dated 22.04.2002

- (i) Shri Maheshver Sanhu, Secretary, (1980 IAS) – Entry dated 22.04.2002
- (j) Shri R. K. Rao, Secretary, (1980 IAS) – Entry dated 22.04.2002
- (k) Shri M.K. Tandon, Joint CP, Ahmedabad – Entry dated 04.05.2002
- (xxxiv) SIT has deliberately ignored its own Documents related to Build Up of Violence and Communal Mobilisation. **(Paras 574-587 @ Pages 254-260, Volume I Protest Petition)**
- (xxxv) SIT Failure to Investigate the Build Up of Arms Gathering and Mobilisation prior to 27.2.2002
- SIB Messages
  - Operation Kalank Tehelka (27) Police and Administrative Complicity Deliberately Ignored by the SIT **(Paras 607-639 @Pages 268-276, Volume I, Protest Petition; Paras 607-639 @ Pages 268-277, Volume I, Protest Petition** with Specific Aspects that need to be looked at in Further Investigation;
- (xxxvi) Trivialising and Dismissing a) Evidence Provided by Rahul Sharma (Paras 748-792 @ Pages 331-352, Volume I Protest Petition

with Specific Aspects that need to be looked at in Further Investigation;

(xxxvii) Deliberately Ignoring the Explosive Evidence from State Intelligence and the Ahmedabad Police Control Room Records @ Paras 792-841 @ Pages 352-378 of Volume II, Protest Petition with Specific Aspects that need to be looked at in Further Investigation;

(xxxviii) Deliberately Ignoring the Chain of Command Responsibility connecting A-1 Modi, other Ministers, IAS Officers and Top Policemen through a Scrutiny & Analysis of the Mobile Phone Records which have been exhaustively detailed @ Paras 842-924 @ Pages 378-423, Volume II, Protest Petition with Specific Aspects that need to be looked at in Further Investigation.

(xxxix) **Treating A-1 Modi** with kid gloves. (Paras 155-167 @ Pages 86-89, Volume I, Protest Petition). The Statement of **A-1 Mr. Modi is recorded on 27/28.3.2010** He is not questioned rigorously on the following:-

*(a) The questionable decision to transfer of bodies of those who died in the train*

*fire in a motor cavalcade to Ahmedabad.*

*(b)SIT does not put any questions to A-1 about his immediate calls to A-21 Jaideep Patel soon after he learned of the Godhra incident. He is not asked or questioned about the illegality and irregularity of the state government and party in power supporting the Bandh called by the VHP on 28.2.2002 and 1.3.2002.*

*(c)No questions are put to him about the hasty decision to hold a post-mortem out in the open in the railway yard in full view and in the presence of an aggressive crowds of VHP workers; SIT does not pose any questions on the illegality and haste with which the bodies were disposed off in violation of laws and rules simply with a view to enable communal mobilisation and the parading of dead bodies in aggressive and violent funeral processions.*

*(d)No question is asked regarding the first information of the Godhra incident that*

*had clearly indicated provocative slogan shouting of the kar sevaks and why the state home department headed by him had manipulated the version thereafter blanking out any reference to provocation caused;*

*(e) SIT's questions on the build-up prior to 27.2.2002 are benign and not probing enough, especially given the indications and evidence of arms distribution etc. even before 27.2.2002; A-1 Mr. Modi was also Home Minister and was therefore bound to have seen all important messages and communications on build-up, provocative behaviour of kar sevaks, the VHP etc even before 27.2.2002. In fact, he was legally obliged to know and answer. But to his great convenience SIT simply does not pose these questions to him.*

*(f) DM and Collector Jayanti Ravi has clearly asserted that Jaideep Patel was present at the official meeting at the Collectorate. When SIT asks A-1 of*

*this, he simply states "I do not remember" and that it was a "collective decision to take the bodies to Ahmedabad." He is not queried further on the legitimacy he gives the strongman of the VHP, a rabidly communal organization.*

*(g) No rigorous and serious questions about the brutality and daylight killings and rapes at Ahmedabad; the non-responsiveness of highly placed officers, the non-responsiveness of the Fire Brigade; the utter and abject failure of the police department under his charge. SIT poses no questions on the serious allegation that he conspired to intimidate and terrorise the bureaucracy and police.*

*(h) No questions are put to him on the discriminatory mindset displayed by Mr. Modi in deliberately announcing less compensation for the victims of the post-Godhra reprisal killings and more to the Godhra train fire victims. No questions on the sharp criticism*

*that his government had drawn from the National Human Rights Commission (NHRC) and the Supreme Court of India.*

*(i) SIT puts no question to him on why until 2004 the scope of Inquiry for the Nanavati Commission was kept limited, excluding any exploration of the “role of the chief minister and cabinet.” It was only after a change of government that an additional term of reference was pre-emptively issued in response to change of government at the Centre.*

*(j) In a slip that suggests a guilty mind, and certainly a leak in the manner in which the SIT has been functioning with relation to this probe, A-1 Mr. Modi, when asked about the meeting of 27.2.2002 denies that he had issued unlawful instructions but also volunteers without being asked, “Sanjiv Bhatt was not there”. SIT does not draw any adverse inference from this.*

*(k) The contradictions on the use of mobile phones are left non- confronted by the*



*SIT, especially in view of the evidence of PA AP Patel's Phone being used to call A-21 Jaideep Patel*

*(l) A-1 Modi not questioned about the failure of his government and visible absence of any punitive action against IPS, IAS officers and other public servants for failing to perform their duty.*

*(m) A-1 not questioned about deliberate Victimisation of RB Sreekumar and Rahul Sharma. He is not questioned again after Sanjiv Bhatt's sensational disclosures nor after Amicus Curiae, Raju Ramachandran's Final report dated 25.7.2011*

*(n) During further investigation ordered by the Supreme Court, post-March 2011, SIT does not go back to A-1, Mr. Modi, to seek further clarifications!! The routine and non-probative nature of all the questions is revealing. No questions are put to A-1 on the vindictive targeting of all the*

*whistleblower officers and rewarding of those who functioned unlawfully – after all, responsibility stopped with him as head of the Home Department who decides all matters related to their confidential records, service records, transfers, pensions etc.*

*(o) Strangely, while A-1 Mr. Modi clearly reacts and denies his ‘action – reaction’ interview to the Times of India (1.3.2002), he claims memory loss at Sudhir Choudhary’s interview on Zee TV that was very questionable.*

*(p) There are no inconvenient questions on transfers of officers who did a good job and the fact that the Ahmedabad transfers especially that of A-29 (then Commissioner of Police PC Pande) was only transferred after KPS Gill was sent to Gujarat by the Mr. Vajpayee-led NDA government in May 2002 simply because the violence was deliberately not controlled by A-1 Mr. Modi and his government.*

(q) On 15.4.2002, A-29 (Mr. Pande) writes a revealing letter to A-28, (Mr. Ashok Narayan) and A-25 (then DGP, Mr. K Chakravarti), both co-accused in the present complaint, informing them of the criminal and provocative behaviour of a minister in A-1 Mr. Modi's cabinet: minister for food and civil supplies Mr. Bharat Barot. No question is put to A-1 Mr. Modi on this, neither are any questions asked about the consistent and widespread rowdy behaviour of the RSS, VHP, BJP, BD cadres obviously with his sanction.

(r) The explanation of the sickening speech made by A-1 Mr. Modi at Becharaji Mehsana on 9.9.2002 exposes the competence and bias of the SIT. Since April and right until August 2002, the State Intelligence department is pushing the state government to take lasting and corrective measures but A-1 Mr. Modi is adamant. SIT does not probe this satisfactorily nor the charge that he

*wished to order a spate of extra-judicial killings of sections of the minority post the reprisal violence of early 2002. Subsequent events have shown that such a sequence of events did unfold with a coterie of officers falling in line with the illegal instructions of A-1 Mr. Modi. Ironically some of them, including Mr. OP Mathur, are those the SIT uses to discredit key whistleblower and witness in the complaint, former DGP Gujarat Mr. RB Sreekumar.*

*(s) By June 2002, direct interference in the investigations of key 2002 carnage cases can be seen, the NHRC passes strictures as does the Chief Election Commission (CEC); powerful accused are being openly and brazenly saved but yet the SIT is protective of A-1 Mr. Modi during its much publicised questioning. A-25 (then DGP Mr. K Chakravarti) admits during his statements to the SIT that then ADGP, Mr. RB Sreekumar's transfer was directly because the State Intelligence*

*Bureau under him had written strong comments on the video speech delivered by A-1 Mr. Modi at Becharaji in 9.9.2002 and the fact that this news got leaked to the media. SIT however sees no reason to draw any conclusions from the motivated actions of the government and home department under A-1 Mr. Modi.*

*(t) The blinkered approach of SIT is all too evident in how it chooses to discredit all those whistleblowers who have given evidence directly implicating A-1 Mr. Modi in serious crimes.*

*(u) Faced with serious allegations regarding the Conspiracy hatched by A-1 Modi @ Godhra from the 161 statement of Shankar Menon, the SIT records a Further Statement of Ravi after this which is evasive lending strength to our arguments that this evidence, too, needs to be tested in trial. SIT also records statements of four other deputy collectors of Godhra but avoids mentioning in either of their*

*Investigation reports whether these were the only persons who were deputed as Deputy Collectors in that period.*

*(v) SIT has not questioned A-1 Modi on the Collusion evidences through Phone Call records analysis especially few calls received on his landlines office and residence (Para 106 @ Pages 61-62 of Protest Petition Volume I)*

*(w) A-1 Not questioned on support to Bandh*

*(x) SIT does not question A-1 on Direct Complicity of A-1 Modi in Tehelka Tapes[ This has been dealt with @ Paras 111-125@ Pages 66-70, Volume I, Protest Petition & Pages 120-126, Volume I, Protest Petition, Volume I*

**(xi) SIT's Compromised Investigation**

**Related to the Infamous 27.2.2002**

**Meeting**

a) How did he know about Bhatt's presence except for the obvious leak from the SIT? A-1 Modi should not have been privy to this confidential information

but in his overzealous bid to conceal his guilt he stated what revealed this lapse.

b) From the SIT's own investigation and a variety of statements of witnesses and accused, the timing of the controversial meeting that took place at the residence of A-1 after the latter had returned from Godhra could have lasted from 30 minutes to 2 hours. The timing and structure of the meeting can be decided only after detailed examination of evidence in trial. Reading from PC Pande's statement before the SIT given on 14.01.2012, it is clear that the meeting could even have gone on till 1 a.m. on 28.2.2002.

c) In the 161 statements of two drivers (Tarachand Yadav and Kishore Mali) of the State IB **(161 Statements @ Annexure II, File II, Sr Nos 123 & 126; Annexure II, Volume II, Serial Nos 127 of the SIT Papers/Record)** clearly state that an Official log Book recording Bhatt's movements on that day (27.2.2002) were available and submitted as per course to the IB, SIT's investigation papers makes available only a letter that states that no such record is available! The SIT has not made any observations on the obvious disappearance or destruction of this Log Book of Vehicle movements

of Sanjiv Bhatt that would have proved one way or another his movements and location. SIT has again failed miserably to investigate these disappearances, destructions and lapses.

d) Legally the chief minister's secretariat is bound under Standard Operating Procedure to maintain minutes of meetings: that a meeting was held on 27.2.2002 is not being disputed, the fact minutes are missing puts onus under section 106 of the Evidence Act on the accused. The SIT has been extremely lax about ignoring the absence of written records, minutes and the crimino-legal liability regarding the same.

- (i) It was also argued that evidence of a person who is dead, evidence that would have gone against the pecuniary interest of the witness if alive, or make him liable for criminal prosecution (as Haren Pandya's testimony undoubtedly would have done) is valid evidence under Section 32(3) of the Indian Evidence Act. A judgement was handed over to the Court.
- (ii) Sections 461 and 462 of the Gujarat Police Manual (handed over to the Court) outline the duties of the



State Intelligence Bureau; the Complainant Counsel has argued that such a meeting, if indeed it was a Law and Order meeting, should have the presence of an official of the IB. If Raigar was on leave, and the next in seniority OP Mathur was on leave, and Bhatt was deputing as DCP-Communal on 27.2.2002 as has been accepted and admitted by the SIT, he could well have been present at the meeting. The SIT final report is completely silent on this aspect. SIT completely ignores the fact that in the law and order meeting presence of intelligence officers was absolutely essential. Besides, Mr. Bhatt was, on the given day, in charge of Intelligence (Communal) and therefore it was natural that he was called for the meeting.

- (iii) No significance is attributed by SIT to the fact that Minutes of Meeting were not maintained though the burden under Section 106 of Evidence Act would be on those who were required to maintain them. Standard Operating Procedure demands that the chief minister's secretariat maintain such Minutes.
- (iv) Moreover, SIT has ignored the evidence given by Haren Pandya's father, Vithalbhai Pandya has made a statement corroborating what Mr. Haren

Pandya said but the father's statement is not even considered by SIT

**(xli) SIT Failed to Investigate the Conspiracy to Obstruct Lawful**

**Preventive Measures.** SIT Fails to Examine the SIB messages before 27.2.2002 and thereafter that show clear communal mobilisation by the RSS-VHP. The first message available in the SIT records (**Annexure III, File XLI, Sr Nos 15 SIT Papers/Records**) is a message dated 28.2.2002 of 2215 hours instructing round-up and arrests. This is referred to in the SIT report but SIT has deliberately and in a partisan manner not dealt with the criminal delay in preventive action and its impact as part of the pre-planned conspiracy. Moreover, this message has been sent after many of the massacres have been allowed and over 300 persons have been burned, raped and killed. Another message in the same file (**Annexure III, File XLI, Sr Nos 14 SIT Papers/Records**) has been clearly tampered with (this aspect has been ignored by the SIT and will be dealt with separately. Documents available in the SIT Record/Papers (handed over in a Compilation to

the Court on 22.8.2013 “ Official Statistics/Documents on Police Firing, Preventive Arrests, Curfew Orders etc”) clearly point to the following:-

- (iv) Only two Preventive Arrests in Ahmedabad on 27.2.2002 that two of persons belonging to the Minority Community; **(Annexure III, File I, D-2, Pages 254-255, SIT Record/Papers)**
- (v) A total of 193 serious criminal cases against women and children were registered between February- May 2002; that the intra-Parliamentary Committee of Women had recommended special steps that were not taken;
- (vi) Curfew Orders from different locations in Gujarat including Ahmedabad, Gandhinagar, Mehsana, Godhra town, Panchmahals, Dahod, Anand, Vadodara, Sabarkantha provided from the SIT record and included in this compilation show that Violence continued unabated until early May 2002 when KPS Gill was sent by the Central government.

(vii) Details of Army Deployment (except in Ahmedabad) show that Mehsana was not given any Army or Paramilitary assistance despite being the worst affected after Ahmedabad and Panchmahals; neither were Dahod, Sabarkantha nor Anand; Bhavnagar received deployment late; only Godhra town received the deployment not rural Panchmahals where violence was widespread and targeted;

Senior echelons of the political, police and administrative hierarchy who have been named as Accused are responsible. **(Paras 828-924 @ Pages 373-416, Volume II, Protest Petition)** SIT has left this completely uninvestigated

**(xlii)The SIT has treated the Subversion of Justice lightly. This included.**

(xliii) The SIT has Not Investigated How Hate Speech was Allowed **unchecked and unprosecuted was also part of the Conspiracy**

**hatched by A-1.**In furtherance of the pre-hatched conspiracy to ensure that a large body of armed and aggressive VHP-

RSS-BJP supporters take to the streets with blood in their minds to seek revenge for the tragic killings at Godhra, Acharya Giriraj Kishore of the VHP was given VIP entry into the city of Ahmedabad so that poisonous and inflammatory speeches could be delivered during the cremation. The Editor's Guild report also concurred with the NHRC recommendations. **(Paras 126-153 @ Pages 70-85 Volume I, Protest Petition; Paras 233-238 @ Pages 112-117, Volume I Protest Petition; Paras 588-590@ Pages 261-262, Volume I, Protest Petition)**

**(xlili) Doctoring/Tampering with the Record-** The SIT Deliberately Ignores the Doctoring and Tampering of Records by A-1 Modi's department the Home Department and documents related to him. **(Paras 1030-1034@ Pages 466-469, Volume II, protest Petition;** Even while the Supreme Court was taking cognizance of the petition by the Legal Rights groups and victims filed before the Supreme Court on 2.5.2002, the Gujarat Government had no qualms about destroying records related to the critical period. Original

Police Control Room & Vehicle Log Books of Senior Officials and Public Servants, Wireless Intercepted Messages, Confidential Reports (all of which would have been critical to assess the *real time response of senior and ground level officials of the police and administration to the Orchestration of Violence* among other critical documents were destroyed quoting the Government of Gujarat quotes Rule 262 @ Pages 198-199 of the Gujarat Police Manual, 1975 Volume III, which *has no reference at all to any procedure related to destruction*. According to the documents available and provided by the SIT one such batch (***Ref: Annexure IV, File I, Sr Nos 23 & Annexure III, File XV, Sr Nos D-156 SIT Papers/Record was destroyed on 31.3.2008***). A detailed **Compilation of Tampering and Destruction of Documents** has been submitted to the Magistrate's Court on **27.8.2013**. This Compilation is likely to be annexed hereto as annexure " U Colly " Documents Tampered with include:-

- (i) The Inward register of the chief minister's office, **(Pages 37-67 of the Compilation that consists of documents from the SIT Record; Annexure IV, File X, Sr Nos 311);**
- (ii) the Minutes of the meeting of 28.2.2020 **(Pages 21-33 of the Compilation that consists of documents from the SIT Record; Annexure IV, File IX, Sr Nos 236),**
- (iii) the daily Itinerary of the chief minister **(Pages 6-7 of the Compilation that consists of documents from the SIT Record; File IV, File IX, Sr Nos 249)** as also a letter of the Home department had been clearly tampered with. ---This letter of 6.3.2002 was overwritten by hand to show it had been written on 28.2.2002). **(Pages 68-69 of the Compilation that consists of documents from the SIT Record; Annexure III, File XLI, Sr Nos 14, D-196, Vol I)**

221. The applicant says and submits that on the detailed facts and grounds as narrated above in Paras 100 -124 of the present Special Criminal Revision Application that is seeking *inter alia* for Orders to quash the Order of the Magistrate dated

26.12.2013 and further pray for not just further investigation but transfer of investigation away from the SIT, it is clear that biased, partisan and unprofessional, non-serious conduct of the Special Investigation Team (SIT) has been established.

i) The Applicant says and submits that it was only after the Orders for further Investigation into the Applicant's Complaint were passed by the Hon'ble Supreme Court on 8.6.2006 that **A-29 PC Pande** a powerful collaborator of the regime submitted over 3,500 pages of Police Control Room records to the SIT between March 15 and April 21, 2011 and despite this being pointed out by the co-Applicants in SLP 1088/2008, Teesta Setalvad of the CJP, the SIT completely ignored this lapse and has not so much as referred to this criminally negligent behavior of this Accused. The issue at hand for the SIT would have been to determine a) why in the first instance despite several statements being recorded by the Investigating Officer (IO) AK Malhotra of PC Pande between May 2009 and March 2011, why did Pande conceal such records despite this being such a critical inquiry' b) why did the same accused PC Pande suddenly produce scanned copies of these documents only after March 15, 2011;; c) under what circumstances had A PC Pande preserved a copy of the said record with him when he was by now a retired officer? The Applicant submits



that the SIT in furtherance of its visible objective of completing a superficial investigation that would simply protect the accused has deliberately left all these issues uninvestigated.

j) The applicant says and submits that in furtherance of this sinister design, the SIT has throughout this investigation treated every ingredient of the grave and widespread offences as a stand alone allegation. Worse, it has argued that it had only been asked by the Supreme Court to investigate into the role played by Zadaphia, Gondia and Tandon and nothing more. Worse, it has also argued that only the Gulberg Society conspiracy was to be looked into and nothing else and finally, it has concluded that while Gondia and Tandon were guilty of dereliction of duty, even this grave lapse, in the SIT's opinion, only required departmental action and nothing more. The Applicant says and submits the utter disregard for the rule of law by powerful accused is also evident in the fact that, to date, not even departmental action has not been taken against them.

k) At this stage, the Applicant would like to detail how the arguments made by the SIT and unfortunately bought into wholly by Magistrate Ganatra militate against their own conclusions in the Reports of the Investigations into the Applicant's Complaint dated 8.6.2006 submitted first

to the Hon'ble Supreme Court (May 2010, November 2010, April 2011) and before the Magistrate's Court (February 2012).

222. To begin with, the applicant contests the conclusion arrived at by the Learned Magistrate when he holds that there was no direction of the Supreme Court concerning larger conspiracy. The applicant says and submits that this amounts to at one go, undermining the basis of the Protest Petition especially directed to be filed by the Complainant Petitioner if she was aggrieved by the Closure Report of the SIT as stated by the Hon'ble Supreme Court in its final Order dated 12.09.2011.

223. The Applicant humbly states that the Learned Magistrate ignores the fact that Supreme Court had directed investigation by SIT into Zakias complaint. The Final Report which was filed by SIT before the Magistrate called itself the Closure Report about the investigation and dealt with conspiracy (though of course rejecting the argument of conspiracy), that the Supreme Court had asked the SIT to investigate all aspects of Zakias Complaint. Second, the Applicant states the Magistrate's Court has erred substantively when it held in the impugned judgement that the Supreme Court had only asked SIT to investigate in respect of the Gulberg Society Case. The material collected by SIT

during the investigation in terms of the Supreme Court order dealt with all aspects of conspiracy not just on the issue of Gulberg Society. The Hon'ble Supreme Court in its final order disposing of the SLP Crl 1088/2008 observed in para 9 as follows: *“Accordingly, we direct the Chairman, SIT, to forward a final report, alongwith the **entire material** collected by the SIT, to the Court...”*. This is a complete misreading of the order of Supreme Court. If the Supreme Court had wanted to confine its order to Gulberg Society case it would have asked the SIT to present its findings before the Sessions Court which was handling the Gulberg Society case which is still pending. Besides, if this was actually the understanding of the Magistrate, he should have in his Judgement, limited himself to an examination of the allegations with relation to the Gulberg Society massacre.

224. The applicant says and submits that the Learned Magistrate has, in fact gone into all other allegations and given his findings.

225. The applicant says and submits that the legal submissions which were advanced by the applicant are likely to be put in the Compilation available as annexure to the affidavit as “annexure “F Colly.” However a brief Narration of the Same are being enclosed herein for the sake of Convenience.

**226. Proceedings, Pleadings and Submissions before the Learned Magistrate.**

The Applicant says and submits that after the filing of the Protest Petition in the 11<sup>th</sup> Court of the Metropolitan Magistrate on 15.4.2013, following the final Order of the Hon'ble Supreme Court in SLP 8989/2012 dated 7.2.2013 that granted the Complainant the complete set of Investigation Papers in accordance with the Final Order in Cri Revision Appeal 1765 (arising out of SLP 1088/2011 dated 12.9.2011 as also set aside the Orders of the Magistrate dated 21.7.2012 and November, 2012 whereby the right of the Complainant to file a Protest Petition in accordance with the law was restored, Final Oral Arguments took place between May-September 2013.

227. The Applicant says and submits that in May 2013 the special public prosecutor for the SIT completed his arguments and Oral Arguments for the Complainant began on June 24, 2013. In seventeen separate sessions between June 24- August 29, 2013 advocates for the Complainant completed detailed Submissions. Written Submissions in two Parts, A (Legal Submissions) with all the Judgements being relied upon and

Part B (Factual) listing the different significant parameters of the submissions laid down along with references from the SIT Investigation Record, the Protest Petition etc were handed over to the Court. On September 29, 2013, a Gujarati translation of the Written Submissions "A" and "B" were handed over to the Court along with Points related to the Failure of the SIT Investigation and Necessitates for any Investigation to be Fair.

228. The Applicant says and submits that in the course of these eighteen intensive sessions detailed documents and compilations accompanied by Notes and List of Dates on Various Topics/Subjects were also handed over to the Learned Magistrate. A comprehensive List of these is to be annexed at the end of the list of Annexure as "Annexure AA" to the affidavit to be filed in his Application.

**229. Errors in Law**

The Applicant says and submits that the Learned Magistrate has committed grave error in Law, seriously hampering the cause of public justice by failing to correctly interpret the orders of the Hon'ble Supreme Court dated 12.09.2011 in SLP 1088 (Crl Appeal No. 1765/2011) and 07.02.2013 in SLP 8989/2012 that clearly outlined the legal parameters for deciding the questions which fall for determination.

230. The Applicant says and submits that, in particular, the Learned Magistrate has completely misunderstood the ambit and scope of his role that were given in detail by the advocates for the Applicant, along with relevant judgements, pointing out the scope and jurisdiction of the proceedings, namely, that at that stage, only a prima facie assessment had to be made by the Learned Magistrate on whether or not offence/s was/were committed by the accused in order to take cognisance and issue process. The Petitioner says and submits that it had been pointed out to the Magistrate that for this exercise, the Learned Magistrate was neither bound by the 'label' given to the report on investigation (u/s 173, 173(8) CrPC) or the conclusions drawn by the SIT. The Learned Magistrate alone had and has the jurisdiction to decide whether material produced by the SIT and by the Applicant is sufficient for either taking cognisance against the accused or to direct further investigation u/s 156(3) for filing of a supplementary charge sheet u/s 173 (8) or proceed to take further statement by itself. While assessing the material, the Court of the Learned Magistrate had to keep in mind that it is examining the material before it only prima facie and not applying the parameters which are applicable when statements are recorded during trial. A reasonable suspicion is enough to

register a crime, not actual proof of its commission which has to be established during the trial.

231. The Applicant says and submits that in the body of the Complaint dated 8.6.2006 itself, the Protest Petition and detailed Oral and Written Submissions before the Learned Magistrate, the Complainant had been at pains to point out that the Hon'ble Supreme Court has been well aware of the larger conspiracy behind the 2002 carnage and the courts orders, one after the other, in different cases related to the 2002 carnage have reflected this. Various orders passed by the SC, including the path-breaking directions in the Best Bakery case, and other developments that ultimately led to the formation and reconstitution of the SIT on 26.3.2008. Notice was issued on the Zakia Jafri and Citizens for Justice & Peace (CJP), SLP 1088 on 3.3.2008, and the already existent SIT asked "to look into" the Complaint dated 8.6.2006 on 27.4.2009. The SC had intervened and acted whenever it felt that investigations had been derailed, Judges of the apex court had removed IPS officers Geetha Johri and Shivanand Jha from the probe team on 6.4.2010 and also asked Amicus Curiae to directly assess evidence collected by SIT in the critical case implicating Narendra Modi when the SIT investigations were found wanting. On 20.1.2011, the Amicus Curaie had submitted his Interim report to the Court after

which the SC had ordered further investigation on 15.3.2011; on 5.5.2011, the Amicus was asked to look into the evidence collected by SIT, independently of the SIT and submit a final report which he did on 25.7.2011. The Amicus was directed to even meet with police witnesses independently. In his final report the Amicus Curiae recommended the prosecution of A-1 Narendra Modi under sections 166 and 153a and 153b of the Indian Penal Code.

232. The Applicant further submits that advocates for her had been at pains to point out before the Learned Magistrate that though the SIT had made consistent and deliberately mischievous efforts to limit the Zakia Jafri complaint to the Gulberg Society case, the SC has understood and ruled that both the cases were completely and materially different. Zakia Jafri's complaint is definitely not confined to only the Gulberg Society massacre case, it involves investigating charges of a high level conspiracy to subvert and convert the tragedy at Godhra into an occasion for mass reprisal killings in 14 of Gujarat's districts, with the police and bureaucracy being neutralized. As pointed out time and again, by the advocates for the Applicant, the critical point of difference between the Gulberg society case and the Zakia Jafri complaint has been clarified in the final order of the Supreme Court on 12.9.2011 and finally in the final orders in the second SLP filed by Zakia Jafri (SLP CrI



8989/2012) passed on 7.2.2013. Any efforts to confuse the 8.6.2006 Complaint with the complaint lodged with the Meghaninagar police in the Gulberg case would be contrary to the apex courts order. The Applicant says and submits that the Learned Magistrate has substantively erred in buying into this misrepresentation by the SIT.

233. The Applicant says and submits that detailed arguments on the Power of the Magistrate to Take Cognisance have been made and are being reproduced here in revision since the very basis of the Impugned Order of the Magistrate is being challenged in Revision on fundamental errors in facts and law.

234. The Applicant says and submits that under the law the situation should be understood this:

235. **NOTE ON COGNIZANCE (U/S 190) AND ISSUING PROCESS (U/S 204)**

The Applicant says and submits that extensive arguments on the Scope and Powers of a Magistrate to take cognizance of offences that are serious and are an offence against society were made before the Learned Magistrate and he erred fundamentally in failing to appreciate these. The Applicant says and submits that 'Cognizance' means becoming aware of and 'to take notice of judicially'. The cognizance is taken of an

offence and not of an offender. At this stage the court has to be satisfied that material on record exists to take cognizance and not that it is sufficient for conviction. **(See Jagdish Ram, 2004 4 SCC, 432 Paras 10, 11)** The Applicant says and submits that after cognizance is taken, it is the duty of the Magistrate to ascertain as to who the offenders really are. Besides a score of other judgements, advocates for the Applicant also cited **Sheonandan Paswan Vs. State of Bihar & Ors. 1987 (1) SCC 288 at 321 Para 20 (5 judges)**: The Magistrate has to form an opinion that on the facts set out in the report whether prima-facie offence appears to have been committed. The Magistrate is final arbiter on the question whether offence is committed and whether cognizance should be taken. (The judgment in **H.S. Bains Vs State** was approved)

236. The Applicant says and submits that detailed submissions, Oral and Written on the meaning of the term 'Cognizance' in Law were also made before the Learned Magistrate.

#### **MEANING OF THE TERM "COGNIZANCE"**

Cognizance means becoming aware of and 'to take notice of judicially'. The cognizance is taken of an offence and not of an offender. At this stage the court has to be satisfied that material on record exists to take cognizance and not that it is sufficient for conviction. (See **Jagdish Ram, 2004 4 SCC, 432**

**Paras 10, 11)** After cognizance is taken, it is the duty of the Magistrate to ascertain as to who the offenders really are. Cognizance is taken when the Court proceeds to take evidence u/s 199/200 or directs enquiry under Section 202. But direction u/s 156(3) would not mean that the Court has taken cognizance.

**1. Raghubans Dubey vs State of Bihar AIR 1967 SC 1167 (Para 9)**

**2. Chief Enforcement Officer Vs. Videocon International Limited 2008 (2) SCC 492 (Paras 19 to 24)**

**3. Suman vs State of Rajasthan (2010) 1 SCC 250 (Para 20) followed Raghubans Dubey, scope of Section 319 CrPC.**

237. The Applicant says and submits that unfortunately the Magistrate failed to grasp these arguments in law and erred fundamentally in the Impugned Order. These Judgements have been supplied to the Learned Magistrate's Court. The Applicant craves leave to produce the same at the time of hearing of the Revision.

238 The Applicant says and submits that detailed submissions were also made on the meaning of 'all documents'.

**MEANING OF 'ALL DOCUMENTS'- looking at them for cognizance**

**Satyanarayan Musadi Vs State of Bihar 1980 (3) SCC 152**

**[Para 10&11]:** The Report under Section 173(2) includes opinion of the investigating officer, names of the accused, names of witnesses, nature of offence as well as all documents and statement of witnesses mentioned in 173(5). The Magistrate is under a duty to enquire whether all relevant documents under Section 173 have been furnished to the court. *The Court is entitled to look into the Report in prescribed form along with other documents accompanying it for taking cognizance of the offence.*

**Darshan Singh Ram Kishan vs State of Maharashtra 1971 (2) SCC 654**

239. The Applicant says and submits that arguments were also made on the Powers vested in the Courts under Article 32 & 226 to direct investigation by other agencies.

**POWERS UNDER ARTICLE 32 & 226 TO DIRECT INVESTIGATION BY OTHER AGENCY**

- **Mithabhai Pashabhai Patel vs State of Gujarat (2009) 6 SCC 322 @ 336-37 (Para 5,12):** Investigation by Higher Court under Article 226/32 of the Constitution.

- **Kishan Lal vs Dharmendra Bafna & Anr**  
**(2009) 7 SCC 685 (Para 15):** In exercise of powers under Article 32 or 226 the Court can direct any other agency to investigate or further investigation. (Mithabhai relied upon)

These Judgements have been supplied to the Learned Magistrate's Court. The Applicant craves leave to produce the same at the time of hearing of the Revision.

240. The Applicant says and submits that it was pointed out before the Learned Magistrate that he is not bound by what the police/investigating agency puts into its final report and the Powers of a Judicial Authority are Independent, Autonomous and Paramount.

**THE MAGISTRATE IS NOT BOUND BY WHAT THE POLICE PUTS IN THE INVESTIGATION REPORT COURSE OF ACTION OPEN TO MAGISTRATE AFTER A CHARGESHEET STATING THAT OFFENCE IF MADE OUT AGAINST ACCUSED IS SUBMITTED OR A FINAL REPORT STATING NO OFFENCE IS MADE OUT**

1. **Abhinandan Jha Vs Dinesh Mishra**, AIR 1968 SC 117 (Para 13 to 20)
2. **Tularam Vs. Kishore Singh** (1977) 4 SCC 459 (Para 7 to 13) (Para 15-conclusions): On a

complaint, the Magistrate ordered investigation under Section 156(3) CrPC. The Police filed a final report indicating no case is made out. Thereafter, the Magistrate recorded statements of the Complainant and issued process. The Supreme Court said that this procedure is within jurisdiction. In **para 8** the Court defined the meaning of taking cognizance i.e. “Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations.” (Abhinandan Jha relied upon)

**3. H.S. Bains vs State (1980) 4 SCC 631 (Para 3 onwards including Para 7):** In a case based on Police Investigation (through FIR), when a charge-sheet is filed under Section 173(2) CrPC, a Magistrate can do the following:

- i. He may accept the Police Report where police has concluded that offence under certain provision of IPC is made out.
- ii. The Magistrate may disagree with the Police Report and may take

cognizance of the Offence under different provisions of the IPC.

- iii. If the Police has concluded that no offence is made out and has submitted the police report to that effect, the Magistrate may disagree and take cognizance of the offences disclosed in the police report.
- iv. In the case the Magistrate finds that the case requires further investigation, he may direct further investigation under Section 156(3) CrPC.
- v. In the cases where the Magistrate had directed investigation under Section 156(3) CrPC on the basis of a private complaint, he may ignore the police report and proceed with recording of statement under Section 202 CrPC or may direct inquiry under Section 200 CrPC.
- vi. The Magistrate has no jurisdiction to direct the police to present a different charge-sheet.

(Cases referred to Abhinandan Jha Vs Dinesh Mishra, AIR 1968 SC 117 and Tularam Vs. Kishore Singh (1977) 4 SCC 459)

4. Bhagwant Singh Vs. Commissioner of Police 1985 (2) SCC 537 (Pg 541-543, Para 3 & 4): In a case where the Magistrate to whom report is forwarded under Section 173(2) decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.
5. India Carat P Ltd Vs State of Karnataka 1989 (2) SCC 132 (Para 9 to 17): followed Abhinandan Jha and H.S Bains.
6. Sheonandan Paswan Vs. State of Bihar & Ors. 1987 (1) SCC 288 at 321 Para 20 (5 judges): The Magistrate has to form an opinion that on the facts set out in the report whether prima-facie offence appears to have been committed. The Magistrate



is final arbiter on the question whether offence is committed and whether cognizance should be taken. (The judgment in H.S. Bains Vs State was approved)

7. **India Carat P Ltd Vs State of Karnataka 1989 (2)**

**SCC 132 (Para 15 @ 138):** Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the fact of the case. If he thinks fit, he can direct issue of process to the accused. (H.S Bains relied upon).

8. **State of Maharashtra Vs. S.V. Dongre & Ors.**

**1995 (1) SCC 42 (Para 6,7,8):** The Supreme Court held that the Magistrate is not bound by the label given to the report by the investigating officer. It is the jurisdiction of Magistrate and Magistrate alone could decide whether the material produced by the prosecution with the report was sufficient to take cognizance or not. The power of the Magistrate to take cognizance is not controlled by the investigating agency. After cognizance also police can investigate u/s 173(8) CrPC.

Para 8: It was said that the Magistrate should be 'satisfied' with the 'sufficiency' of the material placed by the Investigating agency.

9. **UPSC vs S. Papaiah & Ors (1997) 7 SCC 614**

**(Para 9,10 @ 618-619): Bhagwant Singh vs Commissioner of Police (1985) 2 SCC 537**

followed, namely, before accepting the closure report opportunity of hearing may be given to the Informant. The Court under Section 173(8) can always direct collection of further evidence.

10. **Jagdishram Vs. State of Rajasthan & Anr. 2004**

**(4) SCC 432 at 436 para 10:** It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of the Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not that there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined

only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. (Deputy Chief Controller of Imports & Exports Vs. Roshan Lal Agarwal (2003) 4 SCC 139).

11. **Minu Kumari vs State of Bihar (2006) 4 SCC 359**

**(Para 10-16):** The Court relied upon the judgment in Abhinandan Jha, India Carat Pvt Ltd as well as on Bhagwant Singh (Supra). Para 11,12 and 13 are important. In para 13 the Court has discussed the expressions Charge-sheet, Final Report, Summary report used in police manuals and that there is no such expression in Section 173.

12. **Gangadhar Janardhan Mathare vs State of**

**Maharashtra and Others (2004) 7 SCC 768 (Para**

**8-13): Abhinandan Jha, Bhagwant Singh**

**(supra)** followed. The paragraphs in this judgment

are same as that in Minu Kumari. Both cases are

decided by

Pasayat J.

13. **Nupur Talwar Vs. CBI 2012 (2) SCC 188: Para**

**15-19** on the question of taking cognizance. In

particular, Para 17, the Court stated that for taking cognizance and issuing process, the Magistrate has to only see: (i) whether prima facie there are reasons to issue process (ii) whether the ingredients of offence are there on record.

In Para 22, the judgment in India Carat Pvt Ltd (Para 16 has been referred to with approval)

These Judgements have been supplied to the Learned Magistrate's Court. The Applicant craves leave to produce the same at the time of hearing of the Revision.

241. The Applicant says and submits that it was also argued before the Learned Magistrate how, in law, a Protest Petition itself can be treated as a Complaint in certain special circumstances.

**PROTEST PETITION CAN BE TREATED AS A COMPLAINT**

**IN CERTAIN SPECIAL CIRCUMSTANCES**

(ii) **Abhinandan Jha vs Dinesh Mishra, AIR 1968**

**SC 117 (Para 21)**

(iii) **Kishan Lal vs Dharmendra Bafna (2009) 7 SCC**

**685 (Para 11)**

(iv) **Popular Muthiah vs state represented by**

**Inspector of Police 2006 7 SCC 296**

These Judgements have been supplied to the Learned Magistrate's Court. The Applicant craves leave to produce the same at the time of hearing of the Revision.

242. The Applicant says and submits that detailed Submissions were also made on how an investigation needs to pass the test of fairness in law. Any Investigation should not be perfunctory but fair in the sense laid down by the Hon'ble Supreme Court. The records of investigation should not show that efforts are being made to protect and shield the guilty even where they are police officers and are alleged to have committed a barbaric offence/crime.

Following parameters have been laid down on the pre-requisite for Fair Investigation

**1. Siddhartha Vashisht @ Manu Sharma v state (NCT of Delhi) 2010 6 SCC 1, (Paras 82, 83, 84, 85, 86, 87 & 90) Following**

**1. Kashmeri Dev v. Delhi Administration and Anrs, 1988 Supp SCC 482**

**3. Habeeb Mohammad v. State of Hyderabad 1954 SCR 475; AIR 1954 SC 51**

**4. Khatri v. State of Bihar A.I.R**

**5. Shamsul Kanwar v. State of UP, 1995 4 SCC, 430**

**Para**

These Judgements have been supplied to the Learned Magistrate's Court. The Applicant craves leave to produce the same at the time of hearing of the Revision.

243. The Applicant says and submits that detailed and substantive arguments were made by the Applicant before the Learned Magistrate on the Parameters and understanding of the Term Conspiracy as laid down in law and understood and interpreted by the Hon'ble Supreme Court.

**On Conspiracy (S. 120A and 120 B)**

Critical to the offences detailed in the Complaint dated 8.6.2006 and crucial to the scope and expanses of the serious crimes committed is the crime of Conspiracy. This has been detailed in the Protest petition.

An Investigating Agency is legally bound to investigate a larger conspiracy if it comes to their knowledge and a fair investigation is one that looks into every aspect of the allegations. Records of the investigation from State Intelligence messages, Police Control room records to the Analysis of Phone Call records reveals a clear-cut high level conspiracy. The powers of investigation under section 156 of the CrPC are wide and unfettered.

The Investigating Agency was bound to investigate whether ingredients of Conspiracy, are prima facie made out.

The definition of Criminal conspiracy in Section 120A IPC covers those acts which do not amount abetment under Section 107, it is unnecessary to invoke the provisions of 120A or 120B. the distinction between Section 107(2) and 120A is that while conspiracy requires commission of an act or illegal omission to bring the offence under Section 107, for Section 120 A an agreement to do an unlawful act alone is necessary; no overt act need to be proved.

The Following parameters have been laid down by the Hon'ble Supreme Court in deciding the question of 'Conspiracy' u/s 120-A /120-B IPC:

- Conspiracy is a substantive offence introduced by Criminal Law Amendment, 1913. Conspiracy to commit an offence itself is an offence.
- Conspiracy is hatched in secrecy; it is difficult to adduce direct evidence; prosecution can only rely on different acts of various parties to

infer what they have done pursuant to their common plan.

- Mostly circumstantial evidence.
- Actual meeting of two persons not necessary.
- Actual words of conspiracy not necessary to be proved.
- A tacit understanding between the conspirators is enough.
- If several offences are committed pursuant to the conspiracy, all conspirators irrespective of whether they actively participated in the commission of offence, will be liable.
- Very fact of conspiracy constitutes an offence, not necessary that anything was done in pursuance thereof.
- Sec 34- common intention and constructive liability for offence committed, different from conspiracy.
- For establishing Conspiracy-mere agreement is enough, it can be proved by necessary implications.
- From the acts and conduct of the parties, conspiracy can be inferred. One performing



one part of the act, the other performing other part of the act.

- Conspiracy can be proved by surrounding circumstances and the conduct of the accused both before and after the alleged commission of crime.

[ Vide: (i) Bimbadhar vs. State of Orissa

AIR 1956 SC 469 ( **Para 13 & 14**);

The Hon'ble Court held that offence of criminal conspiracy "consists in the very agreement between two or more persons to commit a criminal offence irrespective of the further consideration whether or not those offences have actually been committed. The very fact of the conspiracy constitutes the offence and it is immaterial whether anything has been done in pursuance of the unlawful agreement".

Further, the Court also held that it is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the court is in a position to find that two or more persons

were actually concerned in the criminal conspiracy.

- (ii) Leo Roy Frey vs The Supdtt. District Jail AIR 1958 SC 119 (**Para 4**);

The Hon'ble Supreme Court held that the offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences.

- (iii) Major E.G. Barsey vs State of Bombay AIR 1962 SC 1762 (**Para 31**);

Hon'ble Supreme Court held that the gist of the offence of conspiracy is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be has not be done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may

comprise the commission of a number of acts.

- (iv) Bhagwan Swaruplal Bishan Lal and ors Vs  
State of Maharashtra AIR 1965 SC 682

**(Para 8);**

Hon'ble Supreme Court held that the essence of conspiracy is that there should be agreement between persons to do one or other of the acts described in the Section 120-A. The said agreement may be proved by direct evidence or may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence : it can be established by direct evidence or by circumstantial evidence.

But Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators. The evidentiary value of the said act is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a

period after such intention was entertained by any one of them. In short, section 10 can be analysed as follows:

(i) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy.

(ii) If the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other.

(iii) Anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them.

(iv) It would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it, and

(v) It can only be used against the co-conspirator and not in his favour.

(v) Lennart Schussler & Anr vs The Director of enforcement and ors 1970 (1) SCC 152 (**Para 9 & Para 10**) ;

Held that the first of the offence defined in Section 120-A, Penal Code which is itself punishable as a substantive offence is the very agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means subject however to the proviso that where the agreement is not an agreement to commit an offence the agreement does not amount to a conspiracy unless it is followed up by an overt act done by one or more persons in pursuance of such agreement. There must be a meeting of minds in the doing of the illegal act of the doing of a legal act by illegal means, If in furtherance of the conspiracy certain persons are induced to do an unlawful act without the knowledge of the conspiracy of the plot they cannot be held to be conspirators, though they may be guilty of

an offence pertaining to the specific unlawful Act. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established. It is also clear that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement.

(vi) *Yash Pal Mitthal vs State of Punjab* 1977(4) SCC 540 (**Para 9**);

It was held that the very agreement, concert or league is the ingredient of the offence of criminal conspiracy under s. 120-A, introduced for the first time in 1913 in Chapter VA of the IPC. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are conspirators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there

may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal, several offences may be committed by some of the conspirators even unknown to the others. *The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy* even though there may be sometimes misfire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.

(vii) VC Shukla vs State 1988(3) SCC 665

**(Para 8) ;**

It was held that in order to prove a criminal conspiracy which is punishable under s. 120-

B of the Indian Penal Code, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

(viii) Keher Singh vs State 1988(3) SCC 609

**(Para 271 to 280) ;**

The following passage in *Russel on Crimes* was referred:

“The gist of the offence of conspiracy lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties,



agreement is essential. Mere knowledge, or even discussion, of plan is not, per se, enough.”

Also held at **pp. 733 (para 275)** that it is essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.

(ix) State of Tamil Nadu vs Nalini and ors

1999(5) SCC 253 (**Para 656 & 662**) ;

Held that the meeting of the minds of two or more persons for doing an illegal act or an act by illegal means is a sine qua non of the criminal conspiracy.

**At pp. 568 (para 662)**, held that in reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means.

This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if

some of them have not actively participated in the commission of those offences.

(x) Ferozuddin Bashiruddin vs State of Kerela  
2001 (7) SCC 569 (**Para 23, 24, 25, 28**) ;

The SC held that the one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission.

**Para 23.** Conspiracy criminalizes an agreement to commit a crime. In the face of modern organized crime, conspiracy law has witnessed expansion in many forms. Agreement to commit conspiracy has to be inferred from circumstantial evidence. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy.

**Para 24.** The determination of who are the parties can be done if a chain, where each party performs a role that aids succeeding

parties in accomplishing the criminal objectives of the conspiracy. Two elements as to mental state are necessary:

- i) Intent to agree
- j) Intent to promote the unlawful objective

**Para 25.** Criminal acts done in furtherance of the conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each act. Therefore, which of the conspirators committed the substantive offence would be less significant in determining the liability than the fact that crime was performed as a part of a larger division of labour which the accused had also contributed his efforts.

**Para 28.** Thus, conspirators are liable on agency theory for the statements of co-conspirators, just as they are for the overt acts and crimes committed by their confederates.

The judgment quotes **Coleridge, J. in R. v. Murphy, 7 173 ER 502**, which clearly defines how conspiracy can be proved:

“I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither the law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pushing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, “Had they this common design, and did they pursue it by these common means – the design being unlawful?”

(xi) Mohd. Khalid vs State of WB 2002 (7) SCC

334 **(Para 17-19)** ;

Held that the elements of criminal conspiracy to be as follows:

- (i) An object to be accomplished
- (ii) A plan or scheme embodying means to accomplish that object
- (iii) An agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by means embodied in the agreement, or by any effectual means, and
- (iv) In the jurisdiction where the statute required an overt act.

The essence of criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law

making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design.

For an offence under section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an illegal act; the agreement may be proved by necessary implication. The offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a

design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

The Court also expressed undoubtedly that in case of conspiracy there cannot be any direct evidence. The ingredients of the offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be



considered to decide about the complicity of the accused.

The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, this is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The *actus reus* in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.

Agreement need not be express, it may be proved by necessary implication. Such an agreement must show that two or more persons decided to do an unlawful act by unlawful means.

Direct evidence is rarely available to prove conspiracy namely an agreement to do an illegal act can be proved by circumstantial evidence.

To prove an agreement it is necessary to show meeting of minds, consensus to effect an unlawful purpose.

Overt act against a person who is a part of conspiracy is not necessary.

(xii) State vs Navjot Sandhu 2005 (11) SCC 600 **(Para 89).**]

Held that the Statement of Objects and Reasons to the Amendment Bill that introduced section 120-A and 120-B to the IPC and held that it was explicitly stated that the new provisions were designed to assimilate the provisions of the Penal Code to those of the English Law. This, section 120-A and 120-B made conspiracy a substantive offence and rendered the mere

agreement to commit an offence punishable. Even if an overt act does not take place pursuant to the illegal agreement, the offence of conspiracy would still be attracted.

(xiii) **State of Maharashtra & Ors. v. Som Nath Thapa & Ors.**, 1996 (4) SCC 659 at Pg 668 (Para 24).

Held that knowledge and intention are essential ingredients of a criminal conspiracy. The Court held that to establish a charge of conspiracy, knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the

conspirators had the knowledge of what the collaborator would put the goods or service to an unlawful use.

These Judgements have been supplied to the Learned Magistrate's Court. The Applicant craves leave to produce the same at the time of hearing of the Revision.

244. The Applicant however, submits that it in prima facie satisfaction of the offence of conspiracy that is enough at this stage. Larger conspiracy and breakdown of law and order had taken place is clear from the observations already made by the Hon'ble Supreme Court in

- i. Zahira Habibullah & Ors vs State of Gujarat 200 (4) SCC 158 Paras 64-69;
- ii. NHRC vs State of Gujarat 2009 (6) SCC 767. Further Investigation was directed as the investigating machinery had failed to carry out Fair Investigation.
- iii. For prima facie establishing Conspiracy, enough material is available. In Conspiracy direct evidence is usually not available; it is

inferred and proved by circumstantial evidence.

**245. On Abetment**

The Applicant further submits that for construing the offence of 'abetment' under section 107-120 under Chapter V of the IPC, the following ingredients, amongst others, are sufficient.

Bare agreement to commit an offence is covered by Section 120A. But for abetment there should be some act or illegal omission in pursuance of that conspiracy. Commission of actual crime is not necessary.

In abetment by illegal omission, it is to be shown that accused intentionally aided the commission of crime by his non-interference.

Omission invokes breach of legal obligation.

Non- interference when there is duty to interfere amounts to abetment.

A person abets by aiding, when by any act done either prior to, or at the time of the commission of an act, he intends

to facilitate, and does in fact facilitates, the commission thereof.

Rendering any kind assistance constitutes abetment.

Person himself may not act but he may instigate another to put in execution his criminal intentions.

Instigation includes- stimulating, suggesting by language or expression or hints or encouragement, advice to act.

Words amounting to permission may fall under instigation.

[ Vide (i) Jamuna Simnigh v/s State of Bihar AIR 1967 SC 553 Para 567;

(ii) Sri Ram VS State of UP, 1975 (3) SCC 495, Para 6;

(iii) Kartar Singh vs State of Punjab, 1994, (3) SCC, 569, Paras 102-109;

(iv) Ramesh Kumar vs State of Chhatisgarh, 2001 (9) SCC 618, Para 20;

(v) Chittrash kumar vs State 2009 (16) SCC, 605, Paras 11-20 & 26;

(vi) Pramath Nath VS Saroj Ranjan, AIR 1962 SC 876, Para 16 @ 886

(vii) Ranganayaki VS State through Inspector of Police 2004 (12) SCC 521, Para 11]

246. The Applicant says and submits that, for proving abetment, enough material exists. Prima facie the ingredients of abetment exist before the Hon'ble Court to take cognizance. The Applicant says and submits that the Learned Magistrate erred substantively in holding that a) he could not take cognizance; b) there was not enough prima facie material to take cognizance; c) that fair investigation had taken place when from a bare and detailed assessment it was clear that the SIT investigation was unprofessional, superficial and biased; d) that there was no prima facie material pointing towards Conspiracy; e) that there was no prima facie material pointing towards abetment; f) that the Protest Petition itself could not be treated as a Complaint as has been ruled in special circumstances. The Applicant craves leave to produce these judgements at the time of hearing and final disposal of the Petition.

247. **Brief Issues Related to the Complaint dated 8.6.2006:** The Applicant says and submits that when she, with the help of Citizens for Justice and Peace (CJP), an organization working for redressal and justice to the victims of mass crimes, sent a Complaint to the Director General of Police of Gujarat in 2006

calling upon him to register a case of conspiracy and in respect of various other offences against chief minister, Narendra Modi and various other state functionaries including cabinet ministers, top police officials, collectors, and individuals belonging to communal organizations, this Complaint running into more than 50 pages gave details about how the violence post the tragic Godhra incident was orchestrated both by acts of omission and commission, and that they were not at all spontaneous. The complaint laid out various substantive grounds, namely, the Gujarat home department directly under Accused-1 and top officials, ignoring intelligence messages of build of communal violence, the deliberate absence of effective preventive measures being taken since 20.2.2002 by especially after the morning of 27.2.2002 when the Godhra tragedy took place, and most sinister of all, laid bare knowledge of a high level meeting held by the chief minister on 27.2.2002 where he directed the police to allow Hindus to vent their feelings; further the Complaint detailed how the handover of the bodies of the Godhra tragedy to a nongovernmental person, the display and parading of bodies of Godhra train victims, the hate speeches made by several of the accused, the refusal to make preventive arrests, the delay in deploying the army and imposing curfew, the failure to take effective relief and rehabilitation measures, the punishment of good officers and



reward to bad officers together combined to form a sinister link of conspiracy hatched at the very top by the man at the helm. To be annexed with the affidavit with the application at annexure "B Colly" is a copy of the Complaint dated 8.6. 2006

248. The applicant says and submits that the Complaint made out case of cognizable offences against those named, but the response from the police was predictable and seeing no response Smt Jafri, along with the CJP filed a Petition in the High Court asking the Court to direct the Police to register a First Information Report (FIR) against the accused and to also transfer investigation to the CBI. The High Court rejected the Petition ruling that the Petitioner had the legal option of filing a private complaint before the Magistrate. The Petitioner says and submits that she was aware of this legal option even before the High Court ruling but opted to approach the High Court because, since her Complaint involved investigation into several highly placed officials and also because it involved an in—depth investigation into the conspiracy and it's fallout in 14-19 districts of the state of Gujarat, this went far beyond the purview of a mere Magistrate's jurisdiction and the scope of any Inquiry that he may order under law.

249. The Applicant says and submits that it was under these circumstances that the Petitioner along with CJP approached

the Supreme Court. Further, the Petitioners says and submits that it was because the Supreme Court was satisfied that there appeared to be *prima facie* substance in the Complaint that, instead of directing the Petitioners to go to the Magistrate (remanding the case to a Magistrate) it directed a high-powered body like the SIT which had already been constituted by the Hon'ble SC a year earlier (on 26.3.2008) to further investigate eight trials to also look into the Petitioner's Complaint dated 8.6.2006. The Petitioner says and submits that in effect this meant that the High Court verdict had been overruled by the Hon'ble SC and therefore the Petitioner says and submits at the outset that the Impugned Order dated 26.12.2013 errs significantly in this regard. Despite the peculiar yet substantive developments in this case, despite the legal background and the clarified issues laid out by the Hon'ble SC, the Learned Magistrate has erred substantively in this regard.

250. The applicant says and submits that despite the seriousness with which the Hon'ble Supreme Court (SC) viewed the matter, the appointment of a senior advocate as Amicus Curiae, the directions of further investigation into the matter to the SIT, the SIT ironically appointed by the SC appeared to be washing its hands off this critical investigation. Significantly, even with the limited facilities and time he had, the Amicus

Curiae, Raju. Ramchandran submitted two reports and in the Final Report dated 25.11.2011, he came to the following conclusions: (a) Whether in the meeting which took place on 27.2.2002 at night at the Chief Ministers office, the latter made a statement asking the police to allow Hindus to vent their feelings was something which could only be proved at a trial and was not ; (b) The speech given by the Chief Minister at Becharaji was clearly a hate speech in violation of Sections 153 A of the Indian Penal Code and (c) Mr. Tandon and Gondia who were found guilty of dereliction of duty by SIT should be prosecuted and the action should not be confined only to departmental proceedings. (to be annexed as Annexure " B Colly" to the affidavit with the application).

251. The applicant would like to emphasise that though the SIT made consistent efforts to limit the Zakia Jafri complaint to the Gulberg Society case, the SC has understood and ruled that both the cases were completely different. Zakia Jafri's complaint is definitely not confined to only the Gulberg Society massacre case, it involves investigating charges of a high level conspiracy to subvert and convert the tragedy at Godhra into an occasion for mass reprisal killings in 14-19 of Gujarat's districts, with the police and bureaucracy being neutralized. The critical point of difference between the Gulberg society case and the Zakia Jafri complaint has been clarified in the

final order of the Supreme Court on 12.9.2011 and finally in the final orders in the second SLP filed by Zakia Jafri (SLP CrI 8989/2012) passed on 7.2.2013. Any efforts to confuse the 8.6.2006 Complaint with the complaint lodged with the Meghaninagar police in the Gulberg case would be contrary to the apex courts order. A LOD (List of Dates) annexed with all relevant orders of the Hon'ble Supreme Court and other Courts were given to the Magistrate's Court detailing this history and are also being annexed here. In its final Order in SLP Nos 1088/2008 dated 12.9.2011, the Hon'ble Supreme Court had specifically directed that if the SIT, even after consideration of the Report(s) of the Amicus Curiae Raju Ramachandran were to file a closure report against any of the accused the Petitioner should be substantively heard and allowed to make her case against such a failure to take cognizance by the investigating agency. Also, the Petitioner humbly submits that since the wider Conspiracy alleged was in respect of the post 27.2.2002 carnage across several districts of Gujarat the case had to be pegged somewhere. The other option would have been to file separate cases in respect of each of the events across length and breadth of Gujarat. This would be a meaningless exercise and since the mass murders at Gulberg society including the massacre of Smt Jafri's husband, Shri Ahsan Jafri already being tried in the Gulberg Society case the Supreme Court directed the present case to

be pegged to the Gulberg Society pending case presently under trial in a Special Court of Sessions. The Applicant says and submits that this was misconstrued subsequently by the SIT and the Magistrate to mean that the Supreme Court had only directed the SIT to investigate whether or not the massacre at the Gulberg Society alone constituted a conspiracy. The Applicant says and submits that this was a deliberate and mischievous misreading of the Hon'ble Supreme Court's Order in both letter and spirit by the SIT. The Petitioner adds that this mischievous misconception from the first instance, misreading and contemptuous of the substantive rulings in SLP Nos 1088/20008 by the SIT has unfortunately been uncritically accepted and swallowed by the Learned Magistrate.

252. The Applicant humbly states that in the Protest petition itself, the Petitioner had already apprised the Learned Magistrate's court of the orders dated 12.09.2011 and 0702.2013 (Crl Appeal No. 1765/2011) by the Supreme Court and legal parameters for deciding the questions which fall for determination. A note (during the hearings on June 24, 25 & 26, 2013) was given by the petitioner, along with relevant judgements, pointing out the scope and jurisdiction of the proceedings, namely, that at this stage a prima facie assessment has to be made by the Court to find out whether

offence was committed by the accused in order to take cognisance and issue process. The Petitioners advocates had pointed out that for this exercise, the Court was neither bound by the 'label' given to the report on investigation (u/s 173, 173(8) CrPC) or the conclusions drawn by the SIT. That the Court, the Magistrate's Court, alone has jurisdiction under Indian criminal law, to decide whether material produced by the SIT and by the Petitioner is sufficient for either taking cognisance against the accused or to direct further investigation u/s 156(3) for filing a supplementary charge sheet u/s 173 (8) or proceed to take further statement by itself. While assessing the material, the Magistrate's Court had to keep in mind that it is examining the material before it only prima facie and not applying the parameters which are applicable when statements are recorded during trial. A reasonable suspicion is enough to register a crime, not actual proof of its commission which has to be established during the trial.

253. The Applicant humbly submits that the Protest Petition challenged the closure report essentially on two grounds: First, adequate, thorough and proper investigation had not been conducted by the SIT. Second, even the limited investigation as conducted by the SIT, and substantially unearthed by the Petitioner and her legal team from the Investigation

Papers/record, had managed to collate sufficient evidence against most of the accused including against Narendra Modi to put them on trial for conspiracy and abetment for offences including murder and rape and the use of inflammatory speech in violation of the Indian criminal law as also for the failure to perform their duties as Government/Public servants. At the outset, the Petitioner would like to state that two aspects need to be borne in mind at this stage of the legal proceedings. First, when the Magistrate is deciding on accepting or rejecting the closure report of an investigating agency, he is not concerned with conviction of the accused. His function is not to assess whether or not the evidence that exists against the accused is either irrefutable or evidence beyond reasonable doubt. That assessment, under procedural criminal law, is for the trial court to make. The limited function of the Magistrate is to assess whether there is sufficient basis to proceed against the accused. The question is not whether the accused will be convicted at the end of the trial but whether there is some evidence which requires to put him on trial to decide whether he should be convicted or not. The manner of assessment of evidence at the trial stage and at the acceptance of a closure report stage are materially different. The Petitioner humbly states that in analyzing and assessing the evidence the Magistrate has totally misdirected himself as will become clear after this. The Petition further submits that, as a response to

the Closure Report a Protest Petition can be filed by the victim as has been done in the present case. The Supreme Court has held that even if the closure report does not make out a case but the Protest Petition makes out a case, the Protest Petition itself can be treated as a complaint and the accused can be proceeded against. The closure report may ignore some documents, may discard a particular analysis, may not raise the relevant questions. But, if the Protest Petition makes out a case to proceed against any of the accused the Magistrate can still take cognizance against those accused and proceed against them. The Applicant states that Magistrate Ganatra however has committed grave errors in a peculiar and errant reading of the Supreme Court's final order dated 12.9.2011 and concluded that the Protest Petition as a complaint. The Applicant humbly states that the facile reasoning of the Magistrate for declining this specific argument being that Supreme Court has not asked him to do so has, apart from being a superficial reading of the Hon'ble Supreme Court's Order caused a grave and substantive miscarriage of public justice. The Petitioner says and submits that the final Order of the Hon'ble Supreme Court directed the Magistrate to act as per law, and treating a Protest Petition as a Complaint is also in accordance with the law.



254. The applicant humbly submits that through this substantively wrong and superficial reading of the law, Magistrate Ganatra, at one go, ignores all the substantive points made out in the Protest Petition and Oral and Written Submissions.

**255. Proceedings in Complaint dated 8.6.2006 after the Final Order of the Hon'ble SC dated 12.9.2011:**In this context, the Petitioner would like to humbly detail that on and after 12.9..2011, when the Hon'ble Supreme Court had directed that the Complaint of Zakia Jafri dated 8.6.2006 along with all the evidence collected by the SIT be placed before the Magistrate for further action and prosecution *and in the event* of the SIT stating that there was no evidence to prosecute chief Minister Narendra Modi and 59 others, notice should have been given to the complainant and thereafter all materials supplied to her to enable her to file a Protest Petition. (Paras 8 and 9 of the Supreme Court Order), the SIT displayed an unseemly and hostile attitude towards the Complainant. The SC Order makes a clear distinction between the Gulberg society Meghaninagar Sessions Case No 67/2002 and the Zakia Jafri Complaint dated 8.6.2006. On 29.9.2011 Petitioner Zakia Nasim Jafri s letter to Dr RK Raghavan, with reference to the Order of the Hon'ble Supreme Court dated September 12, 2011 (in SLP 1088/2008) requesting the extensive Investigation papers and

record as directed by the Hon'ble Supreme Court as also inquiring on the progress of the further investigation ordered under Section 173(8) (ii) of the CrPC. The Petitioners receive no reply. Then again on 16.11.2011 Zakia Nasim Jafri & Teesta Setalvad's (Co-Petitioners) letter to Dr RK Raghavan, Ref: SLP 1088/2008, again expressing concern about repeated press reports based on "SIT sources" saying they were going to file a 'Closure Report'

256. The applicant says and submits that after a five month period in which the SIT does no further investigation worth the name whatsoever except to the extent of recording evidence of co-accused to exonerate powerful political accused, it is submitted that on February 8 2012, after a five month delay, without issuing any notice to complainant Smt Zakia Jafri in violation of Section 173(2)(ii) of the Code of Criminal Procedure, the SIT filed a Report stating there is no evidence against any of the accused without giving the complainant any of the evidence collected or investigation papers. The applicant states that in filing such an incomplete report the SIT violated both the law and also committed contempt of the Hon'ble SC Order dated 12.9.2011. On the very next day, i.e. 9.2.2012, the Complainant challenged this as a contempt of the Supreme Court Order dtd 12.9.2011 (Paras 8 and 9). Finally after protracted hearings, included those by senior

counsel for the Complainant, Oral and Written Submissions on 15.3.2012, then Investigation papers/documents were granted through an order dated 10.4.2013. This over 23,000 page record was finally submitted by the SIT to the Complainant on 7.5.2012 and on 10.5.2012 began another fractious process with the Complainant having to point out details of the Missing and Illegible Record. It was found and pointed out by the Complainant on 10.5.2012, 28.5.2012 and 2.6.2013 that the SIT had displayed a partisan bias in not including Investigating papers submitted in the context of the very same complaint submitted before the Hon'ble Supreme Court between 2010 and 2011. A reading of both, AK Malhotra's report to the Supreme Court that clearly found enough evidence to urge further investigation under Section 173(8) and Himanshu Shukla's report dated 8.2.2012 there were serious contradictions and anomalies.

257 The applicant says and submits that, on 24. 7. 2012 the Magistrate ruled against the Petitioner Complainant accessing these critical documents. Between September and December 2012 the Complainant Smt Zakia Jafri approached the Hon'ble Supreme Court for a clarification of its own Order dated 12.9.2011 and specifically praying for the missing documents that included AK Malhotra's Interim report (2010), Chairman Raghavan's comments (2010). And over 300 pages of

previous statements of alleged accused denied by the SIT to the Complainant. The Hon'ble SC through several hearings between 3.12.2012 and 7.2.2013 (when it passed the final Order in SLP 8989/2012 granted the Complainant's substantive prayers ensuring she got and received AK Malhotra's Interim Report and 300-pages of previous statements of accused only withholding Chairman Raghavan's Comments to the Supreme Court.

**258. November 2012:** The applicant says and submits that in a blow to her legal and fundamental rights, the Learned Magistrate (during the pendency of SLP 8989/2012 before the Hon'ble Supreme Court) closed the right of the Complainant to file a Protest Petition through an Order dated 27.11.2012. The relevant Applications, affidavits Orders before and of the Magistrate Court Nos 11 are to be annexed with the affidavit hereto as Annexure "D" Colly. The Hon'ble Supreme Court in its clarificatory order dated 07.02.2013 restored the rights of the Petitioner Complainant and directed that she be granted the Investigation Record.

259. The applicant says and submits that through this process and after the Hon'ble Supreme Court finally restored the right of the complainant to file a protest petition as also granted her all the documents that she had sought, the contradictory and

questionable role of the SIT, aggressively brow-beating the Complainant and Magistrate in the lower courts while remaining utterly silent during the hearing of SLP 8989/2012 in the Supreme Court bear understanding and condemnation became clear and apparent.

260. The Hon'ble Supreme Court through its final order dated 7.2.2013, exactly one year after the SIT filed its Closure report in defiance of the Supreme Court Order that outlined the requirement of the investigating agency to give all documents collected in evidence and previous investigation reports. Arguably the one year delay in the progress of this case is entirely because of the SIT's reluctance to part with documents lawfully due to the Complainant to file her Protest Petition. The Complainant in a detailed Application points out this attitude and bias of the SIT through a detailed application made before Magistrate Ganatra dated 18.2.2013. This application is also to be annexed with the Affidavit with the application as Annexure "D" Copy. The applicant says and submits that it is clear from this detailed, but necessary narration that every malafide attempt was made at every stage, by the SIT, after the matter was remanded to a Magistrate's Court by the Hon'ble SC to thwart the course of justice, cause hardship to the Complainant and in any way that is possible to disrupt the smooth progress of this critical case.

The Petitioner further states that this painful and protracted process more than anything else displays the brazenly partisan attitude of the SIT that was not any more functioning as an independent body answerable to the Supreme Court of India but has in fact, delineated its function to a subsidiary of the Crime Branch, Ahmedabad of the Gujarat Police. The report dated 8.2.2012 is also signed not by RK Raghavan, Chairman, SIT by Himanshu Shukla, DCP Crime Branch Ahmedabad who was simply brought in to “assist” IO AK Malhotra of the SIT retired from the CBI. The specific mandate of the SIT was to maintain complete autonomy and distance from the Gujarat police, considering many of the Accused arraigned in Complaint dated 8.6.2012 are powerful officers of the same agency. Instead the SIT arrogated all its independence and integrity completely defeating the purpose behind the appointment of a SIT in the first instance.

261. The Applicant says and submits that it may not be out of place to mention that ever since the final Order of the Hon’ble SC on 12.9.2011, the Powerful accused and the party apparatus on the one hand and the SIT on the other displayed a hostile attitude towards the Complainant. In the case of the former, this included misrepresenting the legal progress of this serious and complicated case and falsely claiming that “the Supreme Court and given a clean chit to the Accused.” As far as SIT

was concerned all unlawful efforts were put in place to constrain her legal rights to file a substantive Protest Petition in violation of the law and in specific contempt and violation of the Order of the Hon'ble Supreme Court. In stark contrast to the written arguments submitted by the SIT, baseless and malafide statements were made by the Special public prosecutor Jambuar representing the SIT that were widely reported in the media. The Petitioner says and submits that through these vitiated legal proceedings, a partisan attitude of the SIT was displayed and worse the agency appointed by the Hon'ble Supreme Court appeared clearly to shrug off even the veneer of objectivity and brazenly align itself to the powerful accused arraigned in the Complaint dated 8.6. 2006. To be annexed with the Affidavit with the Application as "Annexure D Colly" are media reports of these Oral arguments. The Petitioner humbly submits that the reasons for drawing the attention of this Hon'ble Court to this brazen and partisan play is simply to illustrate to what extent and how low, the SIT appointed by an august body like the Hon'ble Supreme Court was prepared to go to conceal facts, misrepresent the case and even use its self assumed status to browbeat a lower Court. The Applicant says and submits that given the power enjoyed by the Powerful accused, a Victim Survivor and human rights defenders and legal rights groups assisting her are being held victim and ransom to this political bye-play.

262. The Applicant says and submits that right from the filing of the Complaint before the DGP, Gujarat on 8.6.2006 clear information about and pointers towards a well-orchestrated conspiracy have been made out, further articulated in the Protest Petition dated 8.6.2006 detailed above and also in the Protest Petition filed on 15.4.2013. The Petitioner humbly states however that the Learned Magistrate however completely overlooks this larger picture. For instance, he refuses to go into the culpability of some of the accused on the ground that trials for their individual participation are going on or concluded. This was missing the point. The conspiracy case was not about their individual roles in a given case but their role in the larger conspiracy which went beyond the individual cases. The Petitioner states that critical to the offences detailed in the Complaint dated 8.6.2006 and crucial to the scope and expanses of the serious crimes committed is the crime of Conspiracy which have been detailed in the Protest petition, an Investigating Agency is legally bound to investigate a larger conspiracy if it comes to their knowledge and a fair investigation is one that looks into every aspect of the allegations. Records of the investigation from State Intelligence messages, Police Control room records to the Analysis of Phone Call records reveals a clear-cut high level conspiracy. The powers of investigation under section 156 of the CrPC are wide and unfettered. The Petitioner further



emphasises that the Investigating Agency was bound to investigate whether ingredients of Conspiracy, are prima facie made out. The definition of Criminal conspiracy in Section 120A of the Indian Penal Code (IPC) covers those acts which do not amount abetment under Section 107, it is unnecessary to invoke the provisions of 120A or 120B. the distinction between Section 107(2) (Abetment) and 120A is that while conspiracy requires commission of an act or illegal omission to bring the offence under Section 107, for Section 120 A an agreement to do an unlawful act alone is necessary; no overt act need to be proved.

263. The Protest Petition filed on 15.4.2013 listed the Respondents in the Cause Title Smt Zakia Jafri v/s Narendra Modi and Others as Under

Respondents therein (Protest Petition Filed on 15.4.2013)

1. Shri Narendra D. Modi as in Complaint/ Deemed FIR dated 08.06.2006
2. Shri Ashok Bhatt in Complaint/Deemed FIR dated 08.06.2006 (NOW DECEASED)
3. Shri IK Jadeja as in Complaint/Deemed FIR dated 08.06.2006
4. Shri Prabhat Sinh Chauhan, as in Complaint/Deemed FIR dated 08.06.2006

5. Shri Gordhan Zadaphia as in Complaint/Deemed FIR dated 08.06.2006
6. Shri Ranjit Singh N. Chawda as in as in Complaint/Deemed FIR dated 08.06.2006
7. Shri Kaushik Kumar J. Patel as in as in Complaint/Deemed FIR dated 08.06.2006
8. Shri CD Patel as in FIR as in Complaint/Deemed FIR dated 08.06.2006.
9. Shri Niteenbhai R. Patel as in Complaint/Deemed FIR dated 08.06.2006
10. Shri Amitbhai A. Shah as in Complaint/Deemed FIR dated 08.06.2006
11. Shri Anil T. Patel as in Complaint/Deemed FIR dated 08.06.2006
12. Shri Narayan L Patel as in Complaint/Deemed FIR dated 08.06.2006
13. Shri Kalubhai Hirabhai Maliwad as in Complaint/Deemed FIR dated 08.06.2006
14. Shri Dilipbhai Manubhai Patel as in Complaint/Deemed FIR dated 08.06.2006
15. Shri Madhubhai B. Srivastava as in Complaint/Deemed FIR dated 08.06.2006
16. Dr. Maya Kodnani as in Complaint/Deemed FIR dated 08.06.2006

17. Shri Nalin Kantilal Bhatt as in Complaint/Deemed FIR dated 08.06.2006
18. Shri Rajendra Singh Rana as in Complaint/Deemed FIR dated 08.06.2006
19. Dr. K. J. Mehta as in Complaint/Deemed FIR dated 08.06.2006
20. Dr. Praveen Togadia as in Complaint/Deemed FIR dated 08.06.2006
21. Dr. Jaideep Patel as in Complaint/Deemed FIR dated 08.06.2006
22. Shri Babu Bajrangi Patel as in Complaint/Deemed FIR dated 08.06.2006
23. Shri Keshavram Kashiram Shastri, as in Complaint/Deemed FIR dated 08.06.2006, NOW DECEASED
24. Shri Balubhai Rajput as in Complaint/Deemed FIR dated 08.06.2006
25. Shri K. Chakravarthi as in Complaint/Deemed FIR dated 08.06.2006
26. Shri AK Bhargava the then DGP as in Complaint/Deemed FIR dated 08.06.2006
27. Shri G. Subha Rao as then Chief Secretary as in FIR dated 08.06.2006
28. Shri Ashok Narayan as in Complaint/Deemed FIR dated 08.06.2006

29. Shri P. C. Pande as in Complaint/Deemed FIR dated  
08.06.2006
30. Shri K. Srinivasan as in Complaint/Deemed FIR dated  
08.06.2006
31. Dr. P. K. Mishra as in Complaint/Deemed FIR dated  
08.06.2006
32. Shri Kuldeep Sharma as in Complaint/Deemed FIR  
dated 08.06.2006
33. Shri M. K. Tandon as in Complaint/Deemed FIR dated  
08.06.2006
34. Shri K. Nityananand as in Complaint/Deemed FIR dated  
08.06.2006
35. Shri Rakesh Asthana as in Complaint/Deemed FIR  
dated 08.06.2006
36. Shri A. K. Sharma as in Complaint/Deemed FIR dated  
08.06.2006
37. Shri G. C. Murmu as in Complaint/Deemed FIR dated  
08.06.2006
38. Shri Shivanand Jha as in Complaint/Deemed FIR dated  
08.06.2006
39. Shri D. H. Brahmhatt as in Complaint/Deemed FIR  
dated 08.06.2006
40. Shri Deepak Swaroop as in Complaint/Deemed FIR  
dated 08.06.2006

41. Shri Sudhir Sinha as in Complaint/Deemed FIR dated  
08.06.2006
42. Shri K. Kumarswamy as in Complaint/Deemed FIR  
dated 08.06.2006
43. Shri B.S. Jabaliya as in Complaint/Deemed FIR dated  
08.06.2006
44. Shri D. G. Vanzara as in Complaint/Deemed FIR dated  
08.06.2006
45. Shri Satish Verma (wrongly mentioned as Accused as  
Clarified in SIT Report, Malhotra submitted to Hon'ble  
Supreme Court @ Internal Page 12, dated 12.05.2010)
46. Shri Raju Bhargava as in Complaint/Deemed FIR dated  
08.06.2006
47. Ms. Anju Sharma as in Complaint/Deemed FIR dated  
08.06.2006
48. Shri D. D. Tuteja as in Complaint/Deemed FIR dated  
08.06.2006
49. Shri Bhagyesh Jha as in Complaint/Deemed FIR dated  
08.06.2006
50. Shri Niraj Solanki as in Complaint/Deemed FIR dated  
08.06.2006
51. Shri Amrutlal Patel as in Complaint/Deemed FIR dated  
08.06.2006
52. Shri Upendra Singh as in Complaint/Deemed FIR dated  
08.06.2006

53. Shri P. N. Patel as in Complaint/Deemed FIR dated  
08.06.2006
54. Shri V. M. Pargi as in Complaint/Deemed FIR dated  
08.06.2006
55. Shri K. G. Erda as in Complaint/Deemed FIR dated  
08.06.2006
56. Shri K. K. Mysorewala as in Complaint/Deemed FIR  
dated 08.06.2006
57. Shri M. T. Rana as in Complaint/Deemed FIR dated  
08.06.2006
58. Shri Tarun Barot as in Complaint/Deemed FIR dated  
08.06.2006
59. Shri Narendra Amin as in Complaint/Deemed FIR dated  
08.06.2006
60. Shri G. C. Raiger as in Complaint/Deemed FIR dated  
08.06.2006
61. Shri K. R. Kaushik as in Complaint/Deemed FIR dated  
08.06.2006
62. Shri Amitabh Pathak as in Complaint/Deemed FIR dated  
08.06.2006 **(NOW DECEASED)**
63. Shri Satish Verma (wrongly mentioned as Accused as  
Clarified in SIT Report, Malhotra submitted to Hon'ble  
Supreme Court @ Internal Page 12, dated 12.05.2010)

264. The Complaint dated 8.6.2006 sought to arraign the Accused above mentioned under the following sections of the Law:

Section 120 B Indian Penal Code (IPC), 114 r/w 302 IPC, Section 116, IPC, Section 119, IPC, Section 166 IPC, Section 167, IPC, Section 175, IPC, Section 176, IPC, 177 IPC Section 179, IPC, Section 182, IPC; 186 IPC; 187 IPC, Section 188, IPC, Section 191, IPC, Section 192, IPC, Section 193, IPC, Section 195A, IPC, Section 196, IPC, 199 IPC, Section 200, IPC, Section 201, IPC, 203 IPC, Section 204, IPC, 217/218, IPC, 295 IPC, 295 A. IPC, 298 IPC, 153 A (IPC), 506 IPC, 144 and 154 of the Code of Criminal procedure (CrPC), Indian Police Act – 1861, Section 3 of the Prevention of Damage to Public Property Act 1984, Circular captioned “Communal peace”, GPM Vol-III, Chapter II, Chapter III, Chapter IV, DGP K. V. Joseph’s booklet (Instruction to deal with Communal Riots - strategy of approach), 1997 32, All India Service (AIS) Conduct Rules. Communal Riot Scheme; Press Council Act, 1965, Prevention of Objectionable Matter Act, 1976, Sections 36, 129, 131.

Being aggrieved by the order dated 26.12.2013 passed by the Learned Metropolitan Magistrate; the Petitioner begs to approach this Hon’ble Court for the following grounds, amongst others, which are without prejudice to one another:

**- : G R O U N D S : -**

A. That the Learned Metropolitan Magistrate has failed to deal with the arguments raised by the Petitioner with regards to the Scope of his Jurisdiction in examining the Final Report submitted by the SIT, the documents on record and the Protest Petition filed by the Petitioner on 15.4.2013. He has failed to consider that while exercising jurisdiction to take cognizance and issue process, he was not bound by the conclusions drawn by the SIT in its final report. It was the Court's duty to apply its independent mind to find out whether *prima facie* material raising reasonable suspicion arises for the purpose of taking cognizance and issuing process. The Ld. MM was not supposed to look into the sufficiency of material for the purpose of conviction; he was supposed to only look at sufficiency of the material for *prima facie* satisfaction that an offence is made out against the accused. In support of the argument as to what was scope and jurisdiction of the Ld. MM at this stage, the Petitioner had referred to several Judgments including the following, of the Hon'ble Supreme Court:

**(i) Jagdish Ram 2004 (4) SCC 432**

**(ii) Sheonandan Paswan Vs. State of Bihar & Ors. 1987 (1)  
SCC 288 at 321 Para 20 (5 judges)**

**(iii) H.S. Bains Vs. State 1980 (4) SCC 631**

**(iv) Bhagwant Singh Vs. Commissioner of Police 1985 (2)  
SCC 537**



**(v) *India Carat (P) Ltd. Vs. State of Karnataka 1989 (2) SCC***

**132**

**(vi) *Abhinandan Jha Vs. Dinesh Mishra AIR 1968 SC 117***

**(vii) *Tukaram Vs. Kishore Singh 1977 (4) SCC 459***

**(viii) *Meenu Kumari Vs. State of Bihar 2006 (4) SCC 359***

**(ix) *State of Maharashtra Vs. S. V. Dongre & Ors. 1995 (1)***

**SCC 42**

**(x) *Nupur Talwar Vs. CBI 2012 (2) SCC 188: Para 15-19***

A. The Learned Metropolitan Magistrate though referred to some of the above said judgments but failed to appreciate the arguments advanced by the Petitioner. He has not mentioned, which he ought to have done at the outset, as to how he is/was appreciating the material on record. This fundamental error committed by the Learned MM has vitiated the entire judgment as either he has failed to exercise his jurisdiction or has exceeded his jurisdiction by considering material which was extraneous to the scope of limited inquiry. Therefore, the Learned Magistrate erred in accepting the Closure Report of SIT and rejecting the Protest Petition of the Petitioner.

B. That a bare reading of the impugned order of the Ld MM shows that after referring to the arguments of the Petitioner on any particular aspect, that too not fully and the manner the Petitioner had argued, the arguments of Counsel for the SIT have been

mentioned in detail and at the end the Ld MM has said that he agrees with the conclusions drawn by the SIT. The Petitioner submits that this is not only totally unsatisfactory way of deciding the important issues but also shows non-application of mind and non-exercise of jurisdiction within the parameters as mentioned above.

C. That the Learned Metropolitan Magistrate has taken the statements made by the SIT as if they were binding on him. He has not applied his independent mind to the conclusions drawn by the SIT, which has resulted in serious miscarriage of justice. The Ld. MM also failed to consider Petitioner's submission that there is sufficient material even in the SIT report to take cognizance of the offence and issue process to the accused.

D. That a very fundamental error committed by the Ld MM is the finding given by him on the question of further investigation under Section 156(3) and under Section 178(3) CrPC. It has been observed by the Ld MM that the Hon'ble Supreme Court passed an order to SIT "to look into" the complaint of the Petitioner and therefore, the complaint cannot be taken as FIR inspite of the fact that the Hon'ble Supreme Court had treated the Report of the SIT under Section 173(2) CrPC. In making these observations the Ld MM completely misread the proceedings as well as the orders dated 12.09.2011 and 07.02.2013 passed by the Hon'ble Supreme Court.

Not only that there was misreading and misinterpretation of the orders of the Hon'ble Supreme Court but the Ld. MM went to the extent of holding that in the facts of the present case no direction for further investigation can be passed as the Hon'ble Supreme Court has covered the report of SIT under Section 173(8) CrPC. The Ld. MM therefore, committed a serious error in not appreciating the jurisdiction he was exercising. On the basis of judgments, the Petitioner had submitted that the Ld. MM can do the following:

- a. He can take cognizance on the existing material, if the material prima facie discloses commission of an offence.(Section 190)
- b. He can before taking cognizance, direct further investigation under Section 156(3) CrPC;
- c. If he treats the protest petition as a complaint, he can inquire into the case himself (Section 199-200) or direct inquiry and investigation u/s 202 CrPC by any other person.

That the above findings of the Ld. MM therefore, clearly establish that he did not examine the SIT report and the material on record to find out whether on certain aspects further investigation is required. By this erroneous finding the LD MM abdicated his jurisdiction which has caused serious prejudice to the Petitioner.

E. That another gross error committed by the Ld MM is to hold that he had power to see Gulbarga Society case in the context of larger

conspiracies alleged by the Petitioner/Complainant and that whether other incidents which had occurred are a part of larger conspiracy or not cannot be considered in these proceedings. By this finding the Ld MM virtually nullified the complaint of larger conspiracy, which was considered by the Hon'ble Supreme Court and it was on this larger conspiracy that SIT was asked by the Hon'ble Supreme Court to conduct the investigation. By confining the scope of the complaint only to Gulbarga society case and not to the other incidents taken place in other parts of Gujarat, the LD MM has not only violated the orders passed by the Hon'ble Supreme Court but also caused serious prejudice resulting in miscarriage of justice.

F. That the Learned Metropolitan Magistrate has failed to consider the submissions made by the Petitioner, based on the observations which were made by the Hon'ble Supreme Court in its different proceedings/ Orders/ judgments that a larger conspiracy was hatched which resulted in the massive carnage in different locations and parts of the State of Gujarat with sinister precision and similarity. The fact that once offences of conspiracy and abetment to the heinous offence of murder, rape and arson had admittedly taken place, only limited Inquiry was required to find out as to who was behind this larger conspiracy and abetment of serious crimes. The Petitioner had argued in detail about the ingredients of the offences of conspiracy and abetment in order to *prima facie* establish that the Accused No. 1 was the Master Conspirator and the conspiracy

hatched under his leadership was carried out by others as a part of that conspiracy resulting in murders, arson, rapes etc. Undeniably, most of the Accused were in dominating positions and were in-charge of controlling the law and order situation and were responsible to prevent the commission of crimes. However, either they did not act, or acted contrary to their public duty/ legal duty and obligations as they were abettors and conspirators in the commission of crimes. The Learned Metropolitan Magistrate did not consider the act of conspiracy and abetment of Crimes from this larger perspective in order to *prima facie* take cognizance and proceed against the accused. The Learned Magistrate gravely erred in holding that no *prima facie* case was made out against any of the accused.

G. That the learned MM not only committed a serious error as mentioned above with regard to scope of larger conspiracy which was required to be considered by him but also did not correctly applied the principles laid down in the judgments relied upon by the Petitioner to establish the larger conspiracy. The finding given by the Ld MM that the judgments cited by the Petitioner are not applicable is on the face of it incorrect and untenable.

H. Because the Learned Metropolitan Magistrate was apprised of all the orders passed by the Hon'ble Supreme Court following which

the investigation into the Complaint of Petitioner (Zakia/ Jafri) was given to the SIT. The statements recorded by the SIT were statements under Section 161 of Cr.P.C. and the Reports submitted by the SIT were under Section 173(2) and 173(8) of the Cr.P.C. These fundamental facts were very clear from the various orders passed by the Hon'ble Supreme Court, in particular, the final Order dated 12.9..2011 and the Clarificatory Order dated 7.2.2013. The Learned Magistrate completely misread the orders of the Supreme Court passed in Criminal Appeal 1765/2011 (arising out of SLP No.1088/2088). The Judgment dated 26.12.2013 of the Learned Metropolitan Magistrate makes it abundantly clear that either he has failed to appreciate the directions of the Hon'ble Supreme Court or has acted contrary thereto, which has completely vitiated the observations and findings of the Ld. Metropolitan Magistrate. This can be illustrated by the findings of the Learned Metropolitan Magistrate, namely, that he was not required to look into the issue of larger conspiracy.

I. That the Learned Metropolitan Magistrate has failed to consider the following material that was put to establish *prima facie* the involvement of Accused No. 1 in serious crimes of conspiracy and abetment and which was sufficient to establish his involvement in the conspiracy and abetment of crimes of murder, arson and rape:

(I) Evidence on phone call contact between A-1 and Co-Conspirators as soon as news of Godhra Incident occurred;

(II) Failure to take preventive measures and instead support a Bandh, allow post mortems of gruesome burned bodies in the open and, in short, allow the streets of cities and villages to be taken over by rampaging mobs;

III) Illegal Instructions were issued to high level policemen and bureaucrats to not follow the Law and on the next day Cabinet Ministers were posted in control rooms to ensure that these illegal instructions were carried out;

IV) Destruction of Key records of the CMO and Home Department and tampering with others to obstruct the cause of Justice;

V) Allow rape, murder and arson to be the Weapon through which unlawful acts are allowed and subversion of justice follows;

That details of the abovementioned facts have been enumerated in the enclosures.

J. That the Learned Metropolitan Magistrate has either not referred to the above facts which were put together in order to *prima facie* establish conspiracy or has distorted the sequence by going to the extent of not treating the statement of Sureshbhai Pandya and Justice Sawant and Justice Suresh as statements under 161 Cr.P.C. It is shocking that if a statement is made under 161 Cr.P.C.

which *prima facie* points at conspiracy then how can such statement(s) be brushed aside by the Magistrate, by evaluating such statements as if he is conducting a Trial and on that basis passing a Judgment. Time and again, the Hon'ble Supreme Court has held that the Learned Metropolitan Magistrate is not supposed to evaluate the Section 161 Cr.P.C. statements as statements made during a criminal trial and if he does so he commits a jurisdictional error. In spite of the Petitioner citing Judgments on the said legal positions and explaining that the mistake that is being committed by SIT should not be repeated, the Learned Metropolitan Magistrate fell into the same trap and neither analysed nor discarded or appreciated the statements as if he was conducting a trial which was not within his jurisdiction.

K. That the Learned Magistrate erred in holding that neither Sanjiv Bhat nor Haren Pandya's presence at the meeting on 27.2.2002 could be believed. The Learned Magistrate erred in believing the versions of the other persons present at the meeting when they were themselves accused in the present case and could not be expected to tell the truth. The Learned Magistrate ought to have accepted the observation of the *Amicus Curie* that the matter needed to be tested in the trial. In fact the Learned Magistrate completely ignored the contradictions in the statements of various accused regarding who was present and what was spoken at the meeting. The Learned Magistrate also erred in not relying on the



statement of Sanjiv Bhat's driver. In fact he ought to have drawn adverse inference on the basis of the missing log book of the car. The Learned Magistrate also completely ignored the statement of Mr. Haren Pandya's father recorded under Sec. 161 Cr.P.C. He also failed to appreciate the true significance of the statement made by Mr. Haren Pandya before the Concerned Citizens Tribunal before retired judges of the High Court and the Supreme Court. The Learned Magistrate also failed to appreciate the statements given to the SIT in this connection by two retired judges: one of the Supreme Court and another of the High Court. The Learned Magistrate failed to draw obvious conclusions as to the reasons behind why, at such a crucial law and order meeting after the tragedy of the kind that had taken place at Godhra, no minutes were maintained of the Proceedings as is Standard Operational Procedure (under the Gujarat Police Manual) and accepted practice. It is also shocking that the statements of Sanjiv Bhatt could have been discarded at this stage.

L. That the Learned Magistrate ought to have held that at least three witnesses i.e. Sanjiv Bhatt, R.B. Sreekumar and Rahul Sharma, all serving officers had all testified (given evidence/statements) so as to bring out a case of conspiracy and involvement of the accused in various offences. The Learned Magistrate ought to have realized that the veracity of these witnesses could only have been tested

during a criminal trial and there was no justification to disbelieve them at this stage.

M. That the Learned Metropolitan Magistrate has committed a serious error of not looking into the *prima facie* material for taking cognizance and issuing notice not only vis-a-vis Narendra Modi (A-1), which is mentioned above, but also with regard to the other accused against whom also *prima facie* material was available for taking cognizance and issuing process. The facts concerning Narendra Modi- A-1 have been outlined above but as far as other Accused are concerned the entire material has been put in the annexure which will be referred to at time of arguments.

N. That a fundamentally wrong approach and a failure in exercising Jurisdiction by the Learned Metropolitan Magistrate becomes clear from the finding of the Learned Metropolitan Magistrate that he cannot look into larger conspiracy. The Learned MM ought to have seen that the Hon'ble Supreme Court had made it clear in its Order dated 12.9.2011 that it was for the Learned Metropolitan Magistrate to decide/adjudicate further, on the question of taking Cognizance in accordance with well established principles of law and moreover the Hon'ble Supreme Court had made it clear that none of the observations of the Hon'ble Supreme Court will come in the way of deciding the said question. It was therefore, left solely upon Learned

Metropolitan Magistrate to take a decision by applying legal provisions and exercising his Jurisdiction independently to consider whether *prima facie* any case is made out for taking cognizance. By making the above and other observations the Learned Metropolitan Magistrate has virtually abdicated his duty and thus failed in exercising the jurisdiction vested in him.

O. That the Petitioner had argued that the SIT had failed in discharging its duty of conducting a free and fair Investigation in as much as, wherever further Investigation was required, it has left that area uninvestigated by observing that sufficient evidence has not come on record. Again the law as settled in this regard is that the duty of the Investigating Agency as well as the duty of the Court is to find out the truth regarding commission of an offence and for that purpose the Court can direct further Investigation under 156(3) of Cr.P.C. and 173(8) Cr.P.C. As far as the Investigating agency is concerned, it is always open to it to file supplementary charge sheets at any stage. The Petitioner had therefore submitted that further Investigation was required as the SIT had not acted impartially and for that purpose an independent investigating agency be entrusted the job of conducting further investigation and filing a supplementary charge-sheet. The Learned Metropolitan Magistrate though was apprised at length and in detail of this gross carnage which was a part of the larger conspiracy, he ought not to have allowed the offenders to go scot free by observing that sufficient

material is not available on record to take cognizance and issue process. The seriousness of the offences which took place in different parts of Gujarat is unparalleled and it was grossest against society somewhat akin to genocide and, therefore, it was the duty of the Learned Metropolitan Magistrate that even if there s lacunae purposely left by SIT, to direct further investigation so that the truth behind the larger conspiracy could be established. The Learned Metropolitan Magistrate has completely failed in discharging his duty and establishing faith of the common man in the Criminal Justice System of the Country.

That the Ld MM has gone even beyond the findings of the SIT by observing that the office bearers of Political Organisations have performed moral and formal duties. The Learned MM has also disagreed with Amicus Curiae by holding that his opinion is not supported by other witnesses. That the Ld MM has committed a grave error in holding that the SIT has performed its tasks of investigation within its jurisdiction and that on consideration of overall material, the court has decided not to issue process against any person. The Id MM has also committed a serious error in holding that the facts given by Sanjiv Bhat are not supported in any way, and that the conclusion of the SIT regarding his presence in the meeting dated 27.02.2002 is not established. The Ld MM has also given a finding which is not within his scope or jurisdiction that A-1 Narendra Modi being the CM had not disregarded his duty and

that the inclusion of name of Narendra Modi in a charge/complaint of Conspiracy and Abetment is not proper.

That the finding of the Ld MM that the observations made by the High Court in WP No. 221/2007 still endure/exist inspite of the Orders/ Judgments passed in SLP No.1088/2008 (C.A (Crl) No. 1765/2011)

having being passed to overrule the order of the Hon'ble Gujarat High Court is erroneous.

P. That the Learned MM has committed gross legal and factual errors resulting in gross miscarriage of justice. That the Ld Magistrate has also committed jurisdictional errors in not exercising the jurisdiction which it ought to have and or has exceed the Jurisdiction and has considered material which was extraneous to the scope of legal Inquiry. The Learned MM has failed in not exercising its powers in directing further Investigation in the interests of Justice and upholding the values and principles of the Criminal Justice System in bringing powerful accused to book in the facts of the present case and, therefore, committed a serious error which affects the administration of the Criminal Justice System. Thus, not only should this Hon'ble Court exercise it's revisional powers under sec. 397 r/w 401 of Cr.P.C. but also exercise inherent powers under Section 482 of Cr.P.C. to meet the ends of Justice.

Q. That Learned Magistrate erred in coming to the conclusion that the Gujarat High Court's order dated 2.11.2007 passed in SCA No.421/2007 had not been set aside and further erred in relying upon the observations made therein.

R. That the Learned Magistrates approach was totally wrong. He was only required to see whether there was sufficient *prima facie* material to proceed against the accused and put them on trial. Instead he examined the evidence to decide whether the accused were likely to be convicted, a stage far beyond what is required to take cognisance and issue process.

S. The Learned Magistrate erred in disregarding various conclusions reached by the Amicus Curiae in his Interim and Final Reports.

T. That the Learned Magistrate erred in holding that further investigation directed by the Supreme Court was only in respect of the Gulberg Case. This was a purposeful confusion created by the SIT, which was clarified in the Order dated 7.2.2013. In any case, the complaint by the Petitioner constituted independent offences for investigation and were so treated by the Hon'ble Supreme Court.

U. The Learned Magistrate failed to appreciate the clearcut directions of the Hon'ble Supreme Court in SLP (Cr.) 8989/2012

wherein the Hon'ble Supreme Court had ruled that the statements with signatures that are a part of the investigation papers of the SIT should be treated as Sec. 161Cr.P.C. statements following the Orders of further investigation under Section 173 of the Code of Criminal Procedure;

V. The Learned Magistrate erred in holding that the Protest Petition itself could not be treated as a complaint.

W. The Learned Magistrate completely ignored or failed to apply judicial mind to the fact that there was overwhelming evidence collected by the SIT itself to send the accused to trial.

X. The Learned Magistrate failed to understand the principles of command responsibility as prescribed under the Indian law and also failed to apply the correct principles under the provisions of the Indian Penal Code concerning the law on conspiracy, aiding and abetment and hate speech.

Y. The Learned Magistrate further came to a completely wrong conclusion concerning the notion of Genocide and its application to the present case.

Z. The Learned Magistrate failed to draw obvious conclusions from the fact that Minutes of all official meetings related to this sensitive

critical period are missing from the records and failed to appreciate that this was possibly part of the overall sinister conspiracy. That in this connection the Standard Operational Procedure (SOP) requires such Minutes to be maintained and the burden under Section 106 of Evidence Act would be on those who were required to maintain them. Standard Operating Procedure demands that the Chief Minister's secretariat maintain such Minutes.

AA. That Moreover the Gujarat Police Manual, Rule 461 & 462 clearly Outlines that an Officer from the Intelligence Department must be present at any Law and Order Meeting and therefore the Matter should have been tested in Trial.

BB. The Learned Magistrate failed to appreciate the import and significance of the destruction of crucial records including Minutes, Log Book of Drivers of Police Officials, Police Control Room Records, Police Exchange Records, State Intelligence Records, Home Department Records especially when records show that part of this destruction happened four days after the Hon'ble Supreme Court appointed the SIT (26.3.2008) i.e. on 31.3.2008 and that powerful accused headed the Department were responsible for maintaining these records. How could the Gujarat Government, in a matter that was *sub judice* before the Hon'ble Supreme Court, brazenly destroy such crucial records?



CC. The Learned Magistrate failed to appreciate the Obvious Tampering of Minutes of Cabinet Meetings, the Inward and Outward Fax register of the chief ministre's office (CMO) as is evident from the Investigation record.

DD. The Learned Magistrate failed to appreciate that some of the powerful accused who had concealed copies of the PCR (Police Control Room) records when the matter was first being inquired into, but hastily produced them when the Hon'ble Supreme Court directed further investigation on 15.3.2011 had committed gross offences in law.

EE. The Learned Magistrate failed to appreciate the true significance of the NHRC Reports, Election Commission Report, the Report of the Editors Guild as well as the report of the Minority Commission.

FF. The Learned Magistrate also erred in accepting the version of the SIT concerning relief and rehabilitation measures taken by the Government during and after the riots. It was clear from the conduct of the State officials that there was a deliberate attempt to undermine relief and rehabilitation measures and to further victimize members of a particular community as a continuation of the conspiracy.

GG. That the Learned Magistrate ought not to have discarded the statements of Mr. Sreekumar. The Learned Magistrate further erred in discarding the Diary (Confidential Register) maintained by Mr. Sreekumar as also the intelligence reports submitted by him from time to time. The Learned Magistrate also erred in holding that the tape recorded conversations did not bring out the pressure sought to be brought upon Mr. Sreekumar not to tell the truth before a Commission of Inquiry. The Learned Judge was totally wrong in casting aspersions on Mr. Sreekumar. In fact the Learned Magistrate ought to have held that Mr. Sreekumar's testimony by itself was adequate to reject the closure report. The Learned Judge completely failed to appreciate the true significance of the diary maintained by Mr. Sreekumar which clearly go to show aiding and abetting, conspiracy and hate speech by the powerful accused.

HH. The Learned Magistrate failed to appreciate that there was a well planned conspiracy hatched much before 27<sup>th</sup> February, 2002 for carrying out the offences which occurred post the tragic Godhra train burning.

II. The Learned Judge failed to appreciate that the State Intelligence Bureau (SIB) messages which were sent out clearly indicated this conspiracy including the mass mobilization which was taking place in different parts of Gujarat even before the Godhra Incident on

27.2.2002, on that day and thereafter right until May 2002 when K.P.S. Gill was sent by the Central Government to help quell continuing violence.

JJ. That the Learned Judge failed to appreciate the true significance of the telephone records which were brought before it. The records clearly spelt out that the Accused No.1 was in direct touch with perpetrators who are also co-accused and its true significance could only be brought out during the trial. Especially in this Connection the telephonic links between CMO Officials and rabble rousers of the VHP, sending them to Godhra misrepresenting the information sent by the DM Jayanti Ravi wherein she said that it was provocative sloganeering by Kar Sevaks travelling on the train that had led to the altercation at Godhra station, and concealing this information from the State Assembly.

KK. That the Magistrate ignored the significance of the residential (five) and office (two) phone lines of A-1 Modi that showed very few phone calls on the two days when the State was burning and the fact that the SIT had not probed this issue at all.

LL. That the Learned Magistrate ought to have held that the Accused No.1 was guilty of various hate speeches including on 27.2.2002 at Godhra, on 9.9.2002 at Becharaji, Mehsana and at other places.

Instead he finds nothing offensive about a speech that had been condemned by the National Minorities Commission.

MM. That the Learned Magistrate also fundamentally erred in holding powerful accused arraigned in the Complaint dated 8.6.2006 *prima facie* responsible for the non-prosecution of published materials that were inflammatory and derogatory despite strong and persistent commendations of the Gujarat State Intelligence (SIB);

NN. That the Learned Magistrate erred fundamentally in appreciating that this disregard by the political and administrative wing along with select senior police officials to wilfully ignore warnings/assessments etc being put out by the SIB was a special ingredient of the Conspiracy that was hatched and implemented.

OO. The Learned Magistrate erred in holding that the army had been summoned and deployed in time especially when the SIT had refused to collect independent evidence in this regard and letters from the Governor and the Union Home Ministry were expressing serious concern over disparity in figures between the State Intelligence and Home department under Chief Minister Narendra Modi (A-1).

PP. That the Learned Judge failed to appreciate that the SIT had failed to take statements from the army officers and other senior

functionaries sent in by the Centre or Heads of Statutory Bodies to come to a clearer picture.

QQ. That the Learned Magistrate ought to have held that the delay in calling and deploying the army was part of conspiracy and aiding and abetting the conspiracy.

RR. That the Learned Magistrate wrongly came to the conclusion that the decision of taking dead bodies to Ahmedabad was justified.

SS. That the Learned Magistrate further erred in holding that the bodies were not handed over to Mr. Jaydeep Patel at Godhra when an official letter establishes to the contrary.

TT. That the Learned Magistrate failed to appreciate that Accused No.1 was primarily responsible for both these decisions and these decisions were part of large scale conspiracy to generate the atmosphere for a carnage.

UU. The Learned Magistrate failed to appreciate the atmosphere at Sola Hospital when the bodies were brought there as also failed to appreciate the significance and the violence which occurred due to the funeral processions and the Learned Magistrate erred fundamentally in overlooking substantive evidence from the SIT Investigation (Police Control Room Records) that showed violent

crowds of the RSS gathering at the hospital at 3 a.m. on 28.2.2002, attacking hospital staff, carrying out rabble rousing processions that attacked Minority property and homes and even allowing communal speeches from Acharya Giriraj Kishore who was given police escort to reach the Sola Civil Hospital.

VV. The Learned Magistrate wrongly came to the conclusion that the placing of two Ministers in the Police Control Room was not a sinister act and part of the conspiracy hatched and implemented.

WW. That the Learned Magistrate also failed to apply his mind to the fact and details of the guilty officers who were rewarded and the good and efficient officers who were punished and continue to be punished till now clearly indicates the fact of conspiracy.

XX. That the Learned Magistrate ought to have come to a conclusion that there was *prima facie* evidence that the good officers were victimized for having controlled the riots while the inefficient were rewarded for aiding and abetting the violence and towards the conspiracy to commit offences.

YY. The Learned Magistrate failed to appreciate that there were no preventive detentions made on 27.2.2002 and no measures taken to prevent or restrict the Bandh call and that this conduct is in

consonance with the larger conspiracy to allow violence to be perpetrated against the Muslims.

ZZ. The Learned Magistrate also failed to appreciate the significance of delayed imposition of curfew in various parts of Gujarat (including Ahmedabad city itself) which again was in furtherance of the conspiracy.

AAA. The Learned Magistrate erred in completely ignoring the vital extra judicial confessions contained in Tehelka's Operation Kalank, who's entire tapes had been verified by the CBI (NHRC Order March 2008) and which ought to have been treated as strong corroborative evidence against several accused.

BBB. The Learned Magistrate did not appreciate the submission that in order to arrive at the *prima facie* conclusion of conspiracy the entire chain of events needed to be appreciated as a whole.

CCC. The Learned Judge ought to have held that the SIT had not conducted a proper, professional and non-partisan investigation as was required of it.

DDD. A large number of documents and witnesses and documents were not summoned or examined by it and the documents and statements which were examined by it were analysed wrongly with a

completely jaundiced view. Besides the SIT even concealed vital documents from the eyes and ears of the Hon'ble Supreme Court.

EEE. The Learned Magistrate completely failed to appreciate the casual and cavalier tone and tenor of the SIT's Investigation which exposed its bias, especially the further investigation after 12.9.2011, an approach that affected it at various levels: probity, thoroughness, summoning of documents (all original documents are in Gujarati questioning how 'independent' officers could have accessed them; its gingerly treatment of powerful accused especially A-1; SIT's failure to examine thoroughly phone records and personal movements of A-1 and other accused; in toto reducing the Investigation to somewhat of a farce.

FFF. The Learned Magistrate failed to appreciate that the hostile conduct of the SIT towards the Petitioner Complainant arose/arises out of the fact that following the final disposal of the SLP 1088/2008 on 12.9.2011 the SIT itself left its entire job that ought to have been independent and non-partisan to the Crime Branch Ahmedabad (of the Gujarat police) a department that is politically controlled by the Home Department under Accused No. 1 but also in which several co-accused (as many as 30 are Police Officers with as many as 28 being IPS officers; 8 are also powerful officers from the IAS) past and present are in a position of control and influence.



GGG. The Petitioner submits that these grounds are in addition to the grounds already set out in the Protest Petition as also in the Written Submissions filed before the Magistrate and those should be treated as reproduced here in extenso. (para No.102-224 above)

265. The applicant has not filed any other petition either before this Hon'ble Court or before the Hon'ble Supreme Court of India or before any other Court on the same subject matter of this petition. The petitioner has no other equally efficacious remedy but to approach this Hon'ble Court by way of this petition.

266. The applicant craves leave of this Hon'ble Court to add, amend, alter, delete or rescind any of the foregoing grounds as and when it becomes necessary.

267. On the aforesaid grounds and those that may be urged at the time of hearing, the applicant prays that :-

(a) YOUR LORDSHIPS be pleased to quash and setting aside the order dated 26.12.2013 passed by the Learned Metropolitan Magistrate, Ahmedabad in the Closure Report dated 8.2.2012 filed by SIT in the

interest of justice; and the Protest Petition of Smt. Zakia Ahsan Jafri filed in Compliance with the Order of the Supreme Court dated 12.9.2011 in SLP (Criminal) - No. 1088/2008

b) YOUR LORDSHIPS be pleased to reject the Closure Report dated 8.2.2012 filed by SIT and direct that cognizance be taken against the persons listed in the Complaint of the petitioner dated 8.6.2006 annexed at **Exhibit C Colly** to this Petition in respect of the offences listed out therein and against any other person against whom an offence is made out in respect of the events detailed in the said Complaint;

c) YOUR LORDSHIPS be pleased to order further investigation with respect of the offences set out in the Complaint dated 8.6.2006 as also in respect of the issues, events and individuals more particularly set out in this Revision Application and the Protest Petition dated 15.4.2013, by an independent authority and that the accused not named in the Complaint but against whom investigation reveals evidence be arraigned as accused in the present case.

d) For an Order/s as may deem fit and proper in the interest of justice;

e) Pass such other order or orders as it may deem fit and proper in the facts and circumstances of the present case;

f) AND FOR THIS ACT OF KINDNESS AND JUSTICE THE PETITIONER AS IN DUTY BOUND SHALL FOREVER PRAY.

Place : Ahmedabad

(M.M. TIRMIZI)

Date: /3/2014 Advocate for the petitioner

### **AFFIDAVIT**

I, Zakia wd/o Ahsan Jafri Age: 75 years, Adult, Resident of 25, Alvi Row House, Behind Aziz Mohammed Community Hall, Gorat, Surat-395009 Surat , the applicant herein, do hereby solemnly affirm and state on oath as under:

1. I am the applicant in the memo of the petition and am conversant with the facts and circumstances of the case and am competent to depose that what is stated herein above is

true to the best of my knowledge information and belief and I believe the same to be true and correct.

2. I have gone through a memo of petition and I solemnly affirm and state what is stated in para nos. 1 to **263** are true to the best of my knowledge and information and para no. **264** are submissions of law and para no. **265-266** is true to the best of my personal knowledge and para no. 267 is a prayer clause which is based upon the legal advice of my advocates.
3. I state that the Annexures that are produced with the accompanying petition are true copies of the original documents.

Solemnly affirmed at Ahmedabad on this        day of  
March 2014.

DEPONENT

Explained and interpreted

to the Deponent by me

Advocate

Identified by me.