

# **Zakia Jafri Protest Petition**

## **Concluding Arguments on Legal & Factual Aspects**

### **Part A**

The Petitioner in the Protest petition has already apprised this 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 this Hon'ble Court to find out whether offence was committed by the accused in order to take cognisance and issue process. For this exercise, this Hon'ble Court is neither bound by the 'label' given to the report on investigation (u/s 173, 173(8) CrPC) or the conclusions drawn by the SIT. This Hon'ble Court alone has jurisdiction 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 supplementary charge sheet u/s 173 (8) or proceed to take further statement by itself. While assessing the material, this Hon'ble Court has 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.

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.
- 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);
- (i) Leo Roy Frey vs The Supdtt. District Jail AIR 1958 SC 119 (Para 4);
- (ii) Major E.G. Barsey vs State of Bombay AIR 1962 SC 1762 (Para 31);
- (iii) Bhagwan Swaruplal Bishan Lal and ors Vs State of Maharashtra AIR 1965 SC 682 (Para 8);
- (iv) Lennart Schussler & Anr vs The Director of enforcement and ors 1970 (1) SCC 152 (Para 9 & Para 10) ;
- (v) Yash Pal Mitthal vs State of Punjab 1977(4) SCC 540 (Para 9);
- (vi) VC Shukla vs State 1988(3) SCC 665 (Para 8) ;
- (vii) Keher Singh vs State 1988(3) SCC 609 (Para 271 to 280) ;
- (viii) State of Tamil Nadu vs Nalini and ors 1999(5) SCC 253 (Para 656 & 662) ;
- (ix) Ferozuddin Bashiruddin vs State of Kerela 2001 (7) SCC 569 (Para 23, 24, 25, 28) ;
- (x) Mohd. Khalid vs State of WB 2002 (7) SCC 334 (Para 17-19) ;
- (xi) State vs Navjot Sandhu 2005 (11) SCC 600 (Para 89).]

The petitioner 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.

The Petitioner 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 Simngh 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 throiugh Inspector of Police 2004  
(12) SCC 521, Para 11]

For proving abetment, enough material exists. Prima facie the ingredients of abetment exist before the Hon'ble Court to take cognisance.

The Petitioner has already given notes on both 'Conspiracy' and 'Abetment' along with copies of the cases cited.

In view of the above legal position and relying upon the deailed notes on legal and factual aspects submitted in the course of the hearings from June 24 – August 27, 2013, including the Protest Petition and in SIT Reports, the Petitioner craves leave to refer to the material which prima facie establishes the commission of crime of conspiracy and abetment besides other independent offences under the IPC and other statutory enactments.