REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. ...../2022

(arising out of SLP(Crl.) No. ...../2022

@ Diary No. 34207/2018)

ZAKIA AHSAN JAFRI .... APPELLANT

versus

STATE OF GUJARAT & ANR. .... RESPONDENTS

J U D G M E N T

1. There is a delay of 216 days in filing of this special leave petition against the judgment and order dated 5.10.2017 passed by the High Court of Gujarat at Ahmedabad[1] in Criminal Revision Application No. 205/2014. Even though the explanation offered in the application for condonation of delay is blissfully vague and bereft of any material facts and particulars, keeping in mind the

[1] for short, "the High Court"

subject matter involved, we deemed it appropriate to ignore/condone the delay and proceeded to hear the matter on merits.

2. We must note that the respondents had faintly objected to the hearing of this matter on merits owing to unexplained delay in filing of the petition. However, they have a serious objection to the joining of Ms. Teesta Setalvad (as petitioner No. 2). Firstly, because, the protest petition on which impugned order had been passed and assailed in this appeal, was filed only by the appellant[2] – Zakia Ahsan Jafri, wife of deceased – Mr. Ehsan Jafri and on the earlier occasion (proceedings before the High Court), it has been ruled that she had no *locus standi* to join the cause of appellant, which opinion has become final as it has not been reversed by this Court in SLP(Crl.) No. 1088/2008. Secondly, the antecedents of Ms. Teesta Setalvad need to be reckoned and also because she has been vindictively persecuting this *lis* for her ulterior design by exploiting the emotions and sentiments of appellant – Zakia Ahsan Jafri, the real victim of the circumstances. On the other hand, according to Ms. Teesta Setalvad, she is a bonafide crusader of human rights

[2] hereinafter, "appellant" means Zakia Ahsan Jafri only

issues and has been following this case closely being fully convinced about the cause in quest of justice. However, as aforementioned, we have leaned in favour of examining the merits of the challenge to the impugned order(s) at the instance of appellant - Zakia Ahsan Jafri. For, because of the subject matter, this Court in the past had to invoke its role of *parens patriae* in issuing *sui generis* directions including in constituting a Special Investigation Team[3] to investigate into the matter and to present appropriate report before the Metropolitan Magistrate taking cognizance of Crime Report (CR) No. 67/2002 dealing with the Gulberg Society, Meghaninagar case. Thus, we do not wish to dilate on the issue of *locus* of Ms. Teesta Setalvad and keep that preliminary objection open to be decided in an appropriate case.

3. In that light, we have granted leave to appeal and decided to examine the matter on merits at the instance of the appellant – Zakia Ahsan Jafri.

[3] for short, "SIT"

PREFACE

4. Shorn of unnecessary factual matrix, this matter essentially emanates from the *sui generis* directions given by this Court on 27.4.2009[4] in SLP(Crl.) No. 1088/2008, whilst considering challenge to the decision of the High Court dated 2.11.2007, rejecting the prayer of the appellant – Zakia Ahsan Jafri for issuing direction to the concerned authority to register an FIR on the basis of complaint presented by her on 8.6.2006 to the Director General of Police, Gujarat. However, this Court vide stated order (dated 27.4.2009[5]), directed the SIT appointed by it in terms of the order dated 26.3.2008[6], to "look into" the complaint dated 8.6.2006 and take steps as required by law and to give its report to this Court within three months. Consequent to such direction, the SIT submitted its successive reports on the basis of investigation done by it including by taking into account the observations of the *Amicus Curiae* appointed by this Court. Treating the further report submitted by the SIT as analogous to report under Section 173(8) of the Code of

[4] 2009 SCC Online SC 6 - Jakia Naseem Ahesan & Anr. vs. State of Gujarat & Ors.
[5] supra at footnote No. 4
[6] (2009) 6 SCC 342 – National Human Rights Commission vs. State of Gujarat & Ors.

Criminal Procedure[7], this Court permitted the SIT to place it before the Magistrate taking cognizance of CR No. 67/2002 concerning trial in Gulberg Society case with further direction to the Magistrate to then proceed in accordance with law, including to give opportunity to the appellant in the event of final report submitted by the SIT was to recommend closure of her complaint. Appellant – Zakia Ahsan Jafri, after being served with the final report dated 8.2.2012 alongwith relevant materials adverted to therein, then filed protest petition on 15.4.2013. This protest petition came to be rejected by the Metropolitan Magistrate vide order dated 26.12.2013 and instead, the final report of the SIT came to be accepted. This decision was carried before the High Court by way of Criminal Revision Application No. 205/2014. The revision application came to be disposed of on 5.10.2017, against which the present appeal arises for our consideration.

[7] for short, "the Code"

FACTS

5. (a) Briefly stated, the abhorrent Godhra incident occurred in the morning of 27.2.2002, wherein Kar-sevaks travelling in Sabarmati Express train, returning from Ayodhya, were allegedly attacked and coaches of the train were set on fire at Godhra Railway Station at around 7.45 a.m., as a result of which, 58 persons were charred to death and 59th victim succumbed to the burn injuries on 3.4.2002. As aftermath of that incident, there was unrest and violence all across the State of Gujarat. In that process – a violent mob attacked the inhabitants of Gulberg Society, Meghaninagar, killing 69 persons at the stated location including the husband of appellant – Zakia Ahsan Jafri, who had unsuccessfully attempted to dissuade the mob. In connection with this incident, a crime was registered at "Meghaninagar Police Station" being CR No. 67/2002. Multiple chargesheets were filed against the concerned accused and the case was committed to Sessions.

(b) Since there was widespread violence bordering on failure of the State machinery to prevent and control the same including to arrest all the perpetrators of the crime and undertake fair investigation, the

National Human Rights Commission[8] filed a writ petition before this Court being W.P.(Crl.) No. 109/2003. In that writ petition, the Court appointed Mr. Harish Salve, learned senior counsel as *Amicus Curiae* vide order dated 9.10.2003[9].

(c) This Court vide order dated 21.11.2003[10], stayed the trial of 9 (nine) major criminal cases mentioned in the order, including the one arising from CR No. 67/2002 concerning the Gulberg Society.

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[8] for short, "the NHRC"

[9] "ORDER

W.P.(Crl.) No. 109/2003

An affidavit has been filed by the Chief Secretary to the Government of Gujarat on 7th October, 2003. The said affidavit discloses that the State has moved to the High Court for amending the criminal appeal filed against the judgment passed by the Sessions Court acquitting the accused and the Court has permitted the appeal to be amended. In the aforesaid view of the matter, we feel that in this case an Amicus Curiae is required to be appointed. We request Shri Harish N. Salve, Sr. Advocate to appear in this case as Amicus Curiae which he has accepted. Mr. Bhargava V. Desai, Advocate-on-Record is also appointed as Amicus Curiae to assist Mr. Harish N. Salve, Sr. Adv.

List this matter as also TP(Crl.) Nos. 194-202/2003, WP(Crl.) No. D17953/2003, SLP(Crl.) No. 3770/2003, SLP(C) No. 7951/2002 and WP (Crl.) Nos. 11-15/2003 on 17th October, 2003. Counter affidavit filed today in Court on behalf of Respondents Nos. 2 to 22 in SLP(C) No. 3770/2003 be taken on record.

Let a complete set of paperbooks be given to the learned Amicus Curiae within 48 hours by the State of Gujarat.

....."

[10] "ORDER

TP(Crl) 194-202/203.

Issue notice.

Notice has been accepted by Ms.H.Wahi, learned counsel appearing for respondent no.1 State of Gujarat. She prays for and is allowed two weeks' time to file counter affidavit. Notice to the remaining respondents shall be served through the State of Gujarat within a period of two weeks.

Until further orders, the trial in the following cases shall remain stayed: -

1.ARISING OUT OF FIR NO.09/2002 DATED 27.2.2002 OF POLICE STATION GODHRA:

(i) Criminal Case Nos.1-6/2003 titled State v. Mohmad Rafudan Ansari & Ors. pending in the Court of Special Judge, POTA, Ahmedabad;

(ii)Crime No.09/2002 titled State v. Junia Farooq Hassan & Ors. pending in the Juvenile Court, Godhra;

2. Criminal Case No.275/2002 arising out of FIR No.46/2002 dated 28.2.2002 of Police Station Bijaypur, titled State v. Patel Rameshbhai Kanjibhai & Ors. pending in the Court of Sessions Judge, Mehsana, Gujarat;

3. ARISING OUT OF FIR NO.67/2002 DATED 28.2.2002 OF POLICE STATION MEGHANINAGAR:

(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 Case No.524/2002 titled State v. Vishal Badrilal Nayee & Ors. pending in the Juvenile Court No.IV, Ahmedabad;

4.ARISING OUT OF FIR NO.100/2002 DATED 28.2.2002 OF POLICE STATION NARODA, AHMEDABAD:

(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.

Learned counsel for the petitioner in TP(Crl) Nos.194-202/2003 prays for and is permitted to amend the petitions for including the Sessions trial arising out of CR No.23/2002 and CR No.27/ 2002 (ODE Massacre). However, further trial in those cases shall remain stayed. List on 19th December, 2003.

SLP(Cr) 4409/2003.

Issue notice.

Ms.H. Wahi, learned counsel accepts notice. She prays for and is allowed two weeks' time to file reply.

In the meantime, further trial in Sessions Case No.180/2002 shall remain stayed. List along with WP(Crl) No.109/2003 etc.

….."

(emphasis supplied)

(d) In the subsequent order passed in the group of petitions on 17.8.2004, this Court directed that in cases where 'A' Summary Report(s) had been filed (around 2000 cases) should be further investigated by the concerned Range Inspector Generals of Police in the State of Gujarat, who should ascertain the correctness or otherwise of such reports. In this appeal, we are not concerned with those cases.

(e) As noted earlier, this matter emanates from the complaint filed by appellant – Zakia Ahsan Jafri on 8.6.2006 addressed to the Director General of Police, Gujarat and other high officials including Mr. D.A. Vaghela, P.I., Sector 21 Police Station, opposite Old Sachivalaya, Gandhinagar, the Chief Secretary, State of Gujarat, Sachivalaya, Gandhinagar and the Home Secretary, State of Gujarat, Sachivalaya, Gandhinagar. We shall advert to the contents of this complaint in detail a little later.

(f) Broadly stated, in this complaint, appellant – Zakia Ahsan Jafri mentioned names of 63 persons, who according to her, were also involved in larger conspiracy and abetment of the crime resulting in carnage between February, 2002 and May, 2002, that shook the

State of Gujarat. This allegation was against the then Chief Minister and Ministers of the State, as well as high police officials and bureaucrats and others for having committed offence under Section 302 read with Section 120B, Section 193 read with Section 114 and Sections 185, 153A, 186 and 187 of the Indian Penal Code[11] and Section 6 of the Commission of Inquiry Act, 1952[12] and also under various provisions of the Gujarat Police Act, 1951[13] and the Human Rights Act, 1991[14].

(g) Appellant – Zakia Ahsan Jafri alongwith Ms. Teesta Setalvad being the Secretary of Citizens for Justice and Peace forum, then filed an application before the High Court on 1.3.2007 bearing Special Criminal Application No. 421/2007 under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code. During the pendency of the said petition before the High Court, the Tehelka Tape surfaced, which according to the appellant, unravelled the role of the concerned persons being involved in the build-up to the commission of crime including conspiring and abetting the

[11] for short, "IPC"
[12] for short, "the 1952 Act"
[13] for short, "the 1951 Act"
[14] for short, "the 1991 Act"

State-wide violence. Be that as it may, the stated writ petition filed before the High Court was finally dismissed on 2.11.2007, in which the Court passed the following order: -

> "43. For the reasons stated above, present petition is dismissed. As the petitioners had not adopted the procedure of to file the complaint under section 190 r.w. section 200 of the Criminal Procedure Code, **the petitioner No.1 is relegated to file appropriate private complaint to invoke the provisions of section 190 r.w. section 200 of the Criminal Procedure Code by filing the private complaint and the same shall be considered in accordance with law and on merits after following due procedure under Criminal Procedure Code.** It is, however, made clear that this Court has not expressed any opinion on the merits of the case in favour of either parties. Rule discharged."
>
> (emphasis supplied)

Notably, the High Court did not issue any direction for registration of FIR in respect of the complaint presented by appellant – Zakia Ahsan Jafri, dated 8.6.2006.

(h) Being aggrieved by this decision, the appellant alongwith Ms. Teesta Setalvad filed SLP(Crl.) No. 1088/2008, hearing whereof was tagged alongwith writ petition filed by the NHRC being W.P.(Crl.) No.

109/2003. Vide order dated 3.3.2008[15], Mr. Prashant Bhushan, learned counsel was appointed as *Amicus Curiae* in SLP(Crl.) No. 1088/2008 to espouse the cause of the appellant herein.

(i) When both these matters were listed on 26.3.2008[16], this Court passed the following order: -

> "Order
>
> After having heard learned counsel for the parties, we feel that considering the sensitive nature of the cases involved, appointment of a Special Investigation Team (in short 'SIT') is warranted. Communal harmony is the hallmark of a democracy. No religion teaches hatred. If in the name of religion, people are killed, that is essentially a slur and blot on the society governed by rule of law. The Constitution of India, in its preamble refers to secularism. Religious fanatics really do not belong to any religion. They are no better than terrorists who kill innocent people for no rhyme or reason in a society which as noted above is governed by rule of law.
>
> These are cases where there is an element of communal disharmony, which is not to be countenanced. The State of Gujarat has stated that it has no objection if further investigation is done so that peoples' faith on the transparency of action taken by the State is fortified.

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[15] "ORDER

The High Court's order does not render the petitioners remedyless. 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.

Mr. 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."

[16] supra at footnote No. 6

Mr. Mukul Rohtagi, learned senior counsel appearing for the State stated that the State's approach is fair and it is not interested in shielding any culprit or a guilty person, but on the other hand, would like all those who are guilty, to be punished. This statement of Mr. Rohtagi is not accepted by some of the learned counsel appearing for the alleged victims. We need not go into that aspect, in view of the fact that there is an agreement that there is need for a Special Investigation Team.

We, therefore, direct that an appropriate notification shall be issued by the State Government regarding the creation of SIT, the constitution of which shall be as follows.:-

1. **Shri R.K. Raghavan, retd. Director of the CBI.**
2. **Shri C.B. Satpathy, retd. DG, Director, Uttar Pradesh, Police College, Moradabad**
3. **Ms. Geeta Johri**
4. **Shri Shivanand Jha**
5. **Shri Ashish Bhatia**

The notification by the State be issued as early as practicable, preferably within ten days.

Officers at Sl Nos. 3 to 5 are IG rank officers. Shri Raghavan will be the chairman of the committee and Ms. Geeta Johri shall be the convener. The committee shall in its first meeting work out the modalities to be adopted for the purpose of enquiry/investigation. **If any person wants to make statement before the SIT for giving his or her version of the alleged incidents, the SIT shall record it. Those who want to give their version shall in writing intimate the convenor of the committee so that the SIT can call him or her for the purpose of recording his/her statement. It is needless to say that the SIT shall not confine the investigation by recording statement of those who come forward to give his or her version and shall be free to make such inquiries/investigation as felt necessary by it**. The State Government shall provide necessary infrastructure and provide resources for effective working of the SIT. **The report of the SIT shall be furnished to this Court in a sealed cover after completion of the inquiry/investigation for which three months time is granted. After the report is submitted, the further action required to be taken shall be dealt with by this Court**. The SIT shall conduct inquiries/investigations including further investigation in the following cases:-

I. GODHRA
FIR NO.09/2002 DATED 27.2.2002:

i) CR NOS.1-6/2002 titled Mohd Rafudan Ansari & Ors.

ii) CR NOS.09/2002 titled State Vs. Junia Farooq Hassaan & Ors. pending in Juvenile court

II. SARDARURA, MEHSANA
CR Nos. 275/2002 arising out of FIR No.46/2002 dated 28.2.2002 of police station Bijapur, Mehsana

III.GULBERG SOCIETY, MEGHANINAGAR AHMEDABAD CR Nos.67/2002 at Meghaninagar Police Station

i) Sessions Case No.152/2002 titled State V/s. Kailash Lalchand Dhobhi & Ors.

ii) Criminal Case No.1720/2002 titled State V/s. Shankarji Hakaji Mali pending Metro Magistrate court, Ahmedabad

iii) Criminal Case No.296/2003 titled State V. Sandeep pending in the Metropolitan Magistrate court, Ahmedabad

iv) Criminal Case No.524/2002 titled State V. Vishal Badrilal Nayee & Ors. pending in the Junenile court, Ahmedabad

IV. NARODA PATIYA
Arising out of FIR No.100/2002 dated 28.2.2002 of PS Naroda, Ahmedabad

i) CR No.982/2002 titled State v. Naresh Chahra pending in MM Court, Ahmedabad

ii) CR No.1662/2002 titled State V. Padmendra Singh & Ors.

V. ODE ANAND DISTRICT
Cr.Nos.23/2002 and 27/2002 (Ode Massacre). Leave was granted to petitioners, CJP, to amend petition to include these Session Trials. Trials were stayed.

VI. NARODA GAON
Inadvertently left out. CJP filed a TP(Crl.) No.233/2004 and trial was stayed on 23.8.2004.

VII. W.P.No.284/2003 TP(Crl.) No.43/2004 Imran Dawood Vs. Union of India.

So far as SLP(Crl.) No.4409/2003 and Writ Petition(Crl.) 216/2003 are concerned, though it is pointed out by learned counsel by the State of Gujarat that the trial is at concluding stage, in view of the orders passed in the other cases, we feel it would be appropriate if the inquiry/investigation including further investigation is done, in this case also. The relevant case No.is FIR 60/02 commonly known as 'Deepda Darwaza'. So far as Writ Petition(Crl.)No.284/03 and T.P.(Crl.)43/2004 are concerned, the case is commonly known as 'British Nationals Case' and relates to Himmat Nagar, Prantij P.S district Sabarkantta and relates to FIR 1/26/2002.

We make it clear that SIT shall be free to work out the modalities and the norms required to be followed for the purpose of inquiry/investigation including further investigation. Needless to say the sole object of the Criminal Justice System is to ensure that a person who is guilty of an offence is punished.

Mr. K.T.S. Tulsi, learned senior counsel had submitted that in some cases the alleged victims themselves say that wrong persons have been included by the police officials as accused and the real culprits are sheltered. **He, therefore, suggested that trial should go on, notwithstanding the inquiry/investigation including further investigation as directed by us. We find that the course would not be appropriate because if the trial continues and fresh evidence/materials surface, it would require almost a de novo trial which would be not desirable**.

These matters shall be listed for further directions in the last week of August, 2008.

The pleadings in all these matters be completed within a period of three months."

(emphasis supplied)

(j) In furtherance of the above order, the SIT published a public notice on 28.4.2008 inviting the public wanting to share information and record their statement(s) before the SIT, as notified. After the publication of notice, the SIT started recording statements of concerned persons willing to depose before it including others as directed by this Court.

(k) In due course, the special leave petition filed by the appellant being SLP(Crl.) No. 1088/2008 came up for hearing on 27.4.2009[17], when this Court passed the following order: -

> "ORDER
>
> Having heard learned counsel for the parties we direct that complaint dated 8/6/2006 which the petitioners 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."
>
> (emphasis supplied)

[17] supra at footnote No. 4

Be it noted that when this order was passed, it must be assumed, that this Court was aware of the fact that the FIR had already been registered in connection with Gulberg Society case being CR No. 67/2002 and the same was committed to sessions for trial of the named accused. Further, the special leave petition filed by the appellant to challenge the order of the High Court refusing to issue direction for registration of FIR on the basis of complaint of appellant – Zakia Ahsan Jafri, dated 8.6.2006, was still pending before it.

(l) Nevertheless, vide judgment dated 1.5.2009[18], this Court vacated the stay of the trials and directed the prosecution of cases in Special Courts; and SIT appointed by it to submit progress report. The relevant extract of the said judgment reads thus: -

> "**4.** Several important aspects need to be noted in these cases. **Firstly, due to the efforts of SIT, persons who were not earlier arrayed as accused have now been arrayed as accused. From the details indicated above it appears that in most of the cases a large number of persons have been additionally made accused. Besides this, a large number of witnesses were also examined in each case. This goes to show the apparent thoroughness with which SIT has worked. Therefore, SIT shall continue to function until the completion of trial in all the cases and if any further inquiry/investigation is to be done the same can be done as provided in law, more particularly, under**

[18] (2009) 6 SCC 767 - National Human Rights Commission vs. State of Gujarat & Ors. (paras 4, 37 to 40)

Section 173(8) of the Code of Criminal Procedure, 1973 (in short "the Code").

xxx xxx xxx

37. Since the protection of a witness is of paramount importance it is imperative that if and when any witness seeks protection so that he or she can depose freely in court, the same has to be provided. **It is therefore directed that if a person who is examined as a witness needs protection to ensure his or her safety to depose freely in a court he or she shall make an application to SIT and SIT shall pass necessary orders in the matter and shall take into account all the relevant aspects and direct such police official/officials as it considers proper to provide the protection to the person concerned. It shall be the duty of the State to abide by the direction of SIT in this regard**. It is essential that in riot cases and cases involving communal factors the trials should be held expeditiously. Therefore, we request the Hon'ble Chief Justice of Gujarat High Court to designate court(s) in each district where the trial of the cases concerned are to be held. The Designated Courts shall take up the cases in question.

38. Taking into account the number of witnesses and the accused persons and the volumes of evidence, it is open to the High Court to designate more than one court in a particular district. Needless to say that these cases shall be taken up by the Designated Court on a day-to-day basis and efforts shall be made to complete the trial with utmost expedition. **SIT shall furnish periodic reports if there is any further inquiry/investigation.** The State of Gujarat shall also file a status report regarding the constitution of the courts in terms of the directions to be given by the Hon'ble Chief Justice of the High Court within three months. The matter shall be listed further as and when directed by this Court.

39. ..... The matter was then heard from time to time and an order was then made on 26-3-2008 directing the establishment of SIT, and for a further investigation into these matters. The matters under investigation were those arising out of

(*a*) Crime No. 9 of 2002
(*b*) Crime No. 100 of 2002
(*c*) Crime No. 23 of 2002

(*d*) Crime No. 98 of 2002

(*e*) Crime No. 46 of 2002

(*f*) Crime No. 67 of 2002

(*g*) Crime No. 60 of 2002

(*h*) Crime No. 26 of 2002

(*i*) Crime No. 27 of 2002

The reports of SIT, in respect of each of these cases have now been received.

40. We have considered the submissions made by Mr Harish N. Salve, learned amicus curiae, Mr Mukul Rohatgi, learned counsel for the State, Ms Indira Jaising and other learned counsel. **The following directions are given presently**:

***(i)* Supplementary charge-sheets shall be filed in each of these cases as SIT has found further material and/or has identified other accused against whom charges are now to be brought**.

(ii) The conduct of the trials has to be resumed on a day-to-day basis keeping in view the fact that the incidents are of January 2002 and the trials already stand delayed by seven years. The need for early completion of sensitive cases more particularly in cases involving communal disturbances cannot be overstated.

***(iii)* SIT has suggested** that the six "Fast Track Courts" be designated by the High Court to conduct trial, on a day-to-day basis, in the five districts as follows:

(*i*) Ahmedabad (Naroda Patia, Naroda Gam)

(*ii*) Ahmedabad (Gulbarg)

(*iii*) Mehsana (for two cases)

(*iv*) Saabarkantha opened (British Nationale case)

(*v*) Anand

(*vi*) Godhra train case (at Sabarmati Jail, Ahmedabad)

(iv) It is imperative, considering the nature and sensitivity of these nominated cases, and the history of the entire litigation, that senior judicial officers be appointed so that these trials can be concluded as soon as possible and in the most satisfactory manner. **In order to ensure that all concerned have the highest degree of confidence in the system being put in place, it would be advisable if the Chief Justice of the High Court of Gujarat selects the**

judicial officers to be so nominated. The State of Gujarat has, in its suggestions, stated that it has no objection to constitution of such "Fast Track Courts", and has also suggested that this may be left to Hon'ble the Chief Justice of the High Court.

(v) Experienced lawyers familiar with the conduct of criminal trials are to be appointed as Public Prosecutors. **In the facts and circumstances of the present case, such Public Prosecutors shall be appointed in consultation with the Chairman of SIT**. The suggestions of the State Government indicate acceptance of this proposal. **It shall be open to the Chairman of SIT to seek change of any Public Prosecutor so appointed if any deficiency in performance is noticed. If it appears that a trial is not proceeding as it should, and the Chairman of SIT is satisfied that the situation calls for a change of the Public Prosecutor or the appointment of an Additional Public Prosecutor, to either assist or lead the existing Public Prosecutor, he may make a request to this effect to the Advocate General of the State, who shall take appropriate action in light of the recommendation by SIT**.

(vi) **If necessary and so considered appropriate SIT may nominate officers of SIT to assist the Public Prosecutor in the course of the trial**. Such officer shall act as the communication link between SIT and the Public Prosecutor, to ensure that all the help and necessary assistance is made available to such Public Prosecutor.

(vii) **The Chairman of SIT shall keep track of the progress of the trials in order to ensure that they are proceeding smoothly and shall submit quarterly reports to this Court in regard to the smooth and satisfactory progress of the trials**.

(viii) **The stay on the conduct of the trials are vacated in order to enable the trials to continue**. In a number of cases bail had been granted by the High Court/Sessions Court principally on the ground that the trials had been stayed. **Wherever considered necessary, SIT can request the Public Prosecutor to seek cancellation of the bails already granted**.

(ix-i) For ensuring of a sense of confidence in the mind of the victims and their relatives, and to ensure that

witnesses depose freely and fearlessly before the court, in case of witnesses following steps shall be taken:

(*a*) Ensuring safe passage for the witnesses to and from the court precincts.

(*b*) Providing security to the witnesses in their place of residence wherever considered necessary, and

(*c*) Relocation of witnesses to another State wherever such a step is necessary.

(ix-ii) As far as the first and the second is concerned, **SIT shall be the nodal agency to decide as to which witnesses require protection and the kind of witness protection that is to be made available to such witness**.

(ix-iii) In the case of the first and the second kind of witness protection, **the Chairman, SIT could, in appropriate cases, decide which witnesses require security of the paramilitary forces** and upon his request same shall be made available by providing necessary security facilities.

(ix-iv) In the third kind of a situation, **where the Chairman, SIT is satisfied that the witness requires to be relocated outside the State of Gujarat, it would be for the Union of India to make appropriate arrangements for the relocation of such witness**. The Chairman, SIT shall send an appropriate request for this purpose to the Home Secretary, Union of India, who would take such steps as are necessary to relocate the witnesses.

(ix-v) All the aforesaid directions are to be considered by SIT by looking into the threat perception, if any.

(x) **SIT would continue to function and carry out any investigations that are yet to be completed, or any further investigation that may arise in the course of the trials. SIT would also discharge such functions as have been cast upon them by the present order**.

(xi) If there are any matters on which directions are considered necessary (including by way of change of Public Prosecutors or witness protection), **the Chairman of SIT may (either directly or through the amicus curiae) move this Court for appropriate directions**.

> ***(xii)*** It was apprehension of some learned counsel that unruly situations may be created in court to terrorise witnesses. It needs no indication that the court shall have to deal with such situations sternly and pass necessary orders. **SIT shall also look into this area**.
>
> ***(xiii)*** **Periodic three monthly reports shall be submitted by SIT to this Court in sealed covers**.
>
> **41.** List after four months."
>
> (emphasis supplied)

It is thus noticed that this Court permitted trial of concerned (nine) cases including the Gulberg Society case being CR No. 67/2002 to proceed. This judgment is also indicative of the high trust reposed by this Court in the SIT including about directing the State authorities to abide by the instructions given by the SIT.

(m) As directed by this Court vide order dated 27.4.2009[19], the SIT examined the complaint and also recorded statements of the concerned persons. Mr. A.K. Malhotra, former DIG, CBI and a member of the SIT recorded statements of total 187 witnesses and Mr. Himanshu Shukla, DCP, Crime Branch and I.O., SIT examined 145 witnesses, in connection with the complaint of appellant – Zakia Ahsan Jafri, dated 8.6.2006. A total of approximately 275 persons were questioned by them in compliance with the direction given by

[19] supra at footnote Nos. 4 and 17

this Court. Two new members came to be inducted in the SIT on 15.5.2009. When the investigation into the stated complaint was ongoing, the SIT submitted last supplementary chargesheet in the Gulberg Society case being CR No. 67/2002, on 12.8.2009, which fact was placed on record before this Court.

(n) SLP(Crl.) No. 1088/2008 then came up for hearing on 19.1.2010 alongwith other cases. The Court was duly informed that the SIT had submitted an interim report and asked for five months' further time to complete the investigation in respect of complaint of appellant – Zakia Ahsan Jafri, dated 8.6.2006. This Court granted time till 30.4.2010. The order dated 19.1.2010, reads thus: -

"ORDER

> 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 30th April, 2010.
>
> The report shall be kept in the sealed covers.
> ....."

(o) On 6.5.2010, Gulberg Society case being CR No. 67/2002 was put on hold because of the resignation of the Special Public Prosecutor appearing in that case. This Court took notice of I.A. No. 19816/2009 and passed the following order on 6.5.2010: -

> "ORDER
>
> Crl.M.P. No. 19816/2009:
>
> Having perused the comments submitted by the learned Amicus Curiae on the allegations in the application (I.A. No. 19816 of 2009), and discussed the matter with him and the Chairman SIT at some length, we feel that it would be appropriate and expedient to direct Mr. A.K. Malhotra, D.I.G. (Retd) C.B.I. to examine all police records in the possession of the SIT and submit a report about the veracity of the explanation given by the SIT on each of the points raised in the said application. The report shall be submitted within eight weeks.
>
> **We further direct that though it seems unlikely that the trials would conclude shortly, but if in any one of the cases the trial is concluded before the next date, the concerned Trial Court(s) shall not pronounce the final judgment till further orders by this Court**.
>
> List the application along with other listed applications for directions on 6th August, 2010.
>
> A report has been submitted by the Chairman SIT, on the letter of Shri Nigam R. Shukla, the Special Public Prosecutor, in Naroda Police Station case (CR.No.98 of

> 2002). **We request the learned Amicus Curia to assist the Chairman, SIT in finding out suitable replacements for S/Shri R.K. Shah and N.R. Nigam, Special Public Prosecutors.** As soon as the names are finalised by the Chairman SIT and communicated to the State Government, appropriate orders in that behalf shall be issued by the authorities concerned and in both the cases, which were being handled by them, shall resume subject to the orders, if any, by the Gujarat High Court in transfer petition arising from C.R. No. 67 of 2001.
>
> The progress report in Writ Petition (Crl.) No. 109 of 2003 filed by the SIT is taken on record.
>
> The same be kept in the sealed covers."
>
> (emphasis supplied)

In other words, this Court once again passed an interim order in respect of trial in Gulberg Society case being CR No. 67/2002, directing the trial Court to proceed but not to pronounce the final verdict. On 12.5.2010, the SIT submitted a report prepared by Mr. A.K. Malhotra asking for time for further investigation to enquire into the role of Mr. Gordhan Zadafia, the then Minister of State (Home), Mr. M.K. Tandon, the then Joint Commissioner of Police, Sector-II, Ahmedabad City and P.B. Gondia, the then DCP, Zone-IV, Ahmedabad City.

(p) This Court, on 26.10.2010, permitted Mr. Prashant Bhushan, learned *Amicus Curiae* to withdraw from the case and instead nominated Mr. Rohinton Fali Nariman, learned senior counsel (as he

then was) in his place, to assist the Court. In addition, the Court directed handing over of the reports of Mr. A.K. Malhotra to the *Amicus Curiae*, after taking it on record. This Court also lifted the stay on the pronouncement of the judgment except in Gulberg Society case being CR No. 67/2002. Relevant portion of the said order dated 26.10.2010, reads thus: -

"O R D E R

SLP(Crl.) No. 1088/2008

At the outset, Mr. 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 Mr. Rohinton Fali Nariman as an Amicus Curiae to assist the Court in this case.

Mr. 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 Mr. Nariman.

Report dated 20th October, 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.

Let the final report be filed before the next date. List on 2nd December, 2010, at 3.00 p.m. for consideration of the reports.

Crl.M.P. No. 22117 and 22115 of 2010 in SLP(Crl.) No. 1088/2008

In view of the fact that Mr. Prashant Bhushan has been discharged from the case as Amicus Curiae, both these applications are rendered infructuous and are disposed of accordingly.

Crl.M.P. No. 19816 of 2009 In WP(Crl.) Nos. 37-52/2002

In view of the subsequent developments, no further orders are called for in this application and the same is dismissed accordingly.

Crl.M.P. Nos. 22161-22162 of 2010 In WP(Crl.) Nos. 37- 52 of 2002

Adjourned sine die.

Crl.M.P. No. 22325/2010 In WP(Crl.) NOs. 37-52 of 2002

At this stage, no orders are called for in the application. The application stands disposed of accordingly.

Crl.M.P.NOs. 22326-22327/2010 in WP(Crl.) No. 109/2003

In the light of the report of Mr. A.K. Malhotra dated 13th August, 2010 and the submissions of learned Amicus Curiae, we lift the restraint order passed on 6th May, 2010, in all the cases, except in Cr. No. 67 of 2002 (Meghani Nagar Gulbery Society case), in which case the trial may proceed but the final judgment shall not be pronounced. The trial Courts are now free to pronounce the final judgments.

The applications are disposed of accordingly.

WP(Crl.) No. 109/2003.

A report dated 20th October, 2010 has been filed by the Chairman, SIT, indicating the progress in trials in all the cases. The Chairman has stated that the trials are being closely monitored by him and other members of his team. According to the report, the trials in all the cases, on the whole, are proceeding quite satisfactorily.

Let a copy of the report be supplied to the learned Amicus Curiae.

The report will be taken up for consideration on 2nd December, 2010, at 3.00 p.m.

We direct that in future the office shall list only those applications in which specific orders for listing are made. All the disposed of applications shall be detached from the record and shall not be shown in the cause list. The office shall also prepare a complete list of all the pending applications and place before the Court for appropriate orders on the next date.

The aforestated two reports filed by the SIT shall be kept in the sealed covers.

SLP(Crl.) No. 7046/2010

In the first instance, issue notice to respondent No.1. Ms. Hemantika Wahi waives service of notice on behalf of the said respondent and seeks time to file reply affidavit. Let the needful be done within two weeks with advance copy to the learned counsel for the petitioners and to learned Amicus Curiae. Rejoinder affidavit, if necessary, shall be filed by the next date. Copies of the petition shall also be supplied to Mr. Harish N

> Salve, the learned Amicus Curiae and the Chairman, SIT for their comments.
>
> List on 2nd December, 2010 at 3.00 p.m."
>
> (emphasis supplied)

(q) The further report filed in this case had mentioned that most of the allegations were not borne out from the statements and materials collated during investigation. However, it was recommended that further investigation under Section 173(8) of the Code in respect of Mr. Gordhan Zadafia, Mr. M.K. Tandon and Mr. P.B. Gondia, may be necessary. Notably, the further investigation was conducted by Mr. Himanshu Shukla, DCP, Crime Branch and I.O., SIT and report was submitted by him to this Court on 17.11.2010.

(r) As noticed earlier, on one hand, the trial concerning Gulberg Society case being CR No. 67/2002 involving the gruesome killing of the husband of the appellant and others by a violent mob was allowed to proceed by this Court even when the SIT was enquiring into the complaint of appellant – Zakia Ahsan Jafri, dated 8.6.2006; and in that process, the deposition of Mr. Ashish Khaitan, senior journalist (who had conducted the Tehelka Sting Operation) was

recorded by the trial Court on 2.8.2010, of Mr. Rahul Sharma on 15.9.2010 and of appellant – Zakia Ahsan Jafri on 22.10.2010.

(s) Further investigation report came to be submitted before this Court by Mr. Himanshu Shukla on 17.11.2010. On 23.11.2010[20], Mr. Rohinton Fali Nariman, learned *Amicus Curiae* requested the Court to allow him to withdraw from the case. That request was acceded to by the Court and in his place, Mr. Raju Ramchandran was appointed as *Amicus Curiae* to be assisted by Mr. Gaurav Agrawal, learned counsel. The Court also directed handing over to both the newly appointed *Amicus Curiae*, the reports of SIT. The *Amicus Curiae* in turn examined the SIT reports concerning complaint of appellant, dated 8.6.2006, and placed their observations on record in the form of a note made over to the SIT. This Court then vide order dated 20.1.2011, directed thus: -

> "ORDER
>
> W.P.(CRL.)NO. 109/2003
>
> Mr. Harish N. Salve, the learned amicus curiae, has placed before us a note, pointing out that the Presiding

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20 "ORDER

Since Mr. Rohinton Fali Nariman, Senior Advocate has expressed his inability to assist the Court in this case, we request Mr. Raju Ramachandran, Senior Advocate and Mr. Gaurav Agarwal, Advocate, to assist the Court in this case as Amicus Curiae. All the papers received back from Mr. Prashant Bhushan, learned counsel, in sealed cover shall be forwarded to Mr. Gaurav Agarwal."

Judge conducting trial in Naroda Police Station I.CR No.100/2002, has since been transferred by the High Court in routine transfers of the Judicial Officers in the State. Learned amicus suggests that since the trial in the said case is at an advanced stage, the Officer may not be shifted.

We feel that it will be proper and expedient if this request is made by the Chairman, Special Investigation Team (SIT) before the Chief Justice of Gujarat High Court on the administrative side. We are confident that having regard to the fact situation, the learned Chief Justice will pass appropriate orders on the request of the Chairman, SIT.

A Progress Report, dated 18th January, 2011, regarding nine under trial cases has been filed by the Chairman, SIT. It appears from the said report that except for two Naroda cases, trial in other cases is nearing completion.

In the said report, it is also pointed out that Presiding officer looking after the trial of Gulberg Society case (Shri B.U. Joshi) and Naroda Patiya case (Ms. Jyotsnaben Yagnik) have been transferred out of Ahmedabad on 30th December, 2010. The report is taken on record and shall be kept in a sealed cover.

Special Leave Petition (Criminal) No. 7046 of 2010

Ms. Kamini Jaiswal, learned counsel appearing for the petitioners prays that orders on the petition may be deferred for some time as she has not yet received complete instructions in the matter.

Call on 3rd March, 2011 at 3.00 p.m.

W.P.(CRL.) NO. 37-52/2002

An additional affidavit has been filed by Ms. Teesta Setalvad, one of the petitioners, explaining the circumstances under which copies of two letters addressed by her to Shri R.K. Raghavan, Chairman, SIT, were endorsed to the Office of High Commissioner for Human Rights (OHCHR), at Geneva. Ms. Kamini Jaiswal states on instructions from Ms. Teesta Setalvad, who is present in Court, that in future no

such letters shall be sent to the said organization. In light of the statement, we close the issue at that.

SLP (CRL.)...CRLMP.NO.1127/2011

Delay condoned.

No ground is made out for grant of permission to file the Special Leave Petition. The Special Leave Petition is dismissed accordingly.

SLP (CRL)....CRLMP. NO.1519/2011

Delay condoned.
Issue notice returnable on 3rd March, 2011.

SLP(CRL) NO. 1088 OF 2008

A note has been submitted by Mr. Raju Ramachandran, 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.

List the matter on 3rd March, 2011 at 3.00 p.m."

(emphasis supplied)

It is noticed from this order that certain issues were raised in connection with two letters addressed by Ms. Teesta Setalvad to Dr. R.K. Raghavan, Chairman, SIT, which were also endorsed to the Office of High Commissioner for Human Rights Council (OHCHR), Geneva. Ms. Teesta Setalvad was called upon to explain the same. In response to which she had to give assurance to this Court that in future she will not repeat the act of forwarding letters written by her to SIT to the said organisation (OHCHR) and on such assurance, the issue stood closed.

(t) The matters were then listed on 15.3.2011, when Mr. Raju Ramchandran, learned *Amicus Curiae* submitted a note, which had already been supplied to the Chairman, SIT. The Court directed the Chairman, SIT to look into the observations made by the *Amicus Curiae* against each of the findings made by the SIT. The order reads thus: -

> "ORDER
>
> SLP(Crl.) No. 1088/2008
>
> 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 25th April, 2011**.
>
> List the case on 27th April, 2011 at 3.00 p.m.
>
> The note submitted by the learned amicus curiae shall be kept in a sealed cover.
>
> ....."
>
> (emphasis supplied)

(u) What is significant to notice is order dated 5.5.2011 passed by this Court. The same reads thus: -

> "ORDER
>
> SLP(Crl.) No. 1088/2018
>
> Pursuant to our order dated 15th March, 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 Mr. Raju Ramachandran, the learned Amicus Curiae.

The learned Amicus Curiae shall examine the report, analyse 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.

List on 28th July, 2011 at 3.00 p.m.

CRL.M.P. Nos. 21849/2009 and 21850/2009 in SLP(CRL.) No. 1088/2008

At the request of learned counsel for the applicants, adjourned to 28th July, 2011 at 3.00 p.m. for preliminary hearing.

SLP(CRL.) NO. 1032/2011

Learned counsel for the respondents submit that they do not propose to file any counter affidavit to the petition.

List the matter for final disposal on 28th July, 2011 at 3.00 p.m.

All the reports shall be kept in a sealed cover."

(emphasis supplied)

In terms of this order, Mr. Raju Ramchandran, learned *Amicus Curiae* was granted liberty to examine the SIT report, analyse the same and give his own independent assessment of the statement of witnesses recorded by the SIT and submit his comments thereon.

For doing that, he was also permitted to interact with any of the witnesses, who had been examined by the SIT including the police officials, as he may deem fit. In this two-month period, the *Amicus Curiae* had interacted with all concerned, as he desired including with Ms. Teesta Setalvad. This direction was in the nature of permitting the *Amicus Curiae* to do appraisal of the actions of the investigator (SIT) appointed by this Court. This was an extra effort not only expected from the *Amicus Curiae*, but also for reassuring the Court that each allegation in the complaint dated 8.6.2006 is dealt with appropriately in the report submitted by the SIT. The learned *Amicus Curiae*, after analysing the entire material including the reports, then submitted his report on 25.7.2011.

(v) After the report was submitted by *Amicus Curiae* on 25.7.2011, the SIT submitted its further report after investigation including to deal with the observations of the *Amicus Curiae* on every aspect noted in his report. This further report of the SIT was placed before this Court on 12.9.2011. This Court being satisfied with the fact that investigation had been completed by the SIT under its supervision, following the decision in ***Bhagwant Singh vs.***

Commissioner of Police & Anr.[21], as well as, ***Vineet Narain & Ors. vs. Union of India & Anr.***[22], ***Union of India & Ors. vs. Sushil Kumar Modi & Ors.***[23], ***M.C. Mehta (Taj Corridor Scam) vs. Union of India & Ors.***[24] and ***Narmada Bai vs. State of Gujarat & Ors.***[25], proceeded to pass the following order on 12.9.2011[26]: -

> "…..
>
> **8.** The learned amicus curiae has now submitted his final report dated 25-7-2011. 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.
>
> **9.** 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 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)* v. *Union of India*, (2007) 1 SCC 110, **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 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.
>
> **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**

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[21] (1985) 2 SCC 537 (paras 4 and 5)
[22] (1996) 2 SCC 199
[23] (1998) 8 SCC 661
[24] (2007) 1 SCC 110
[25] (2011) 5 SCC 79
[26] (2011) 12 SCC 302 – Jakia Naseem Ahesan & Anr. vs. State of Gujarat & Ors.

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.

11. However, at this juncture, we deem it necessary to emphasise that **if for any stated reason 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 8-6-2006**, 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* v. *Commr. of Police*, (1985) 2 SCC 537. For the sake 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.

12. 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* v. *Sushil Kumar Modi*, (1998) 8 SCC 661, wherein, relying on the decision in *Vineet Narain* v. *Union of India,* (1996) 2 SCC 199, a Bench of three learned Judges had observed thus (*Sushil Kumar Modi case*, (1998) 8 SCC 661:

> "*6.* ... 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 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. In *M.C. Mehta* v. *Union of India*, (2008) 1 SCC 407, a question arose as to whether after the submission of the final report by CBI in the Court of Special Judge, pursuant to this Court's directions, this Court should examine the legality and validity of CBI's action in seeking a sanction under Section 197 of the Code for the prosecution of some of the persons named in the final report. Dismissing the application moved by the learned amicus curiae seeking directions in this behalf, a three-Judge Bench, of which one of us (D.K. Jain, J.) was a member, observed thus:

> "*9.* … The jurisdiction of the court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with his judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise takes away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it is the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If he errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. There may be a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on this Court to step in."

> **14.** Recently, similar views have been echoed by this Court in *Narmada Bai* v. *State of Gujarat*, (2011) 5 SCC 79. In that case, dealing with the question of further monitoring in a case upon submission of a report by CBI to this Court, on the conclusion of the investigation, referring to the earlier decisions in *Vineet Narain,* (1996) 2 SCC 199, *Sushil Kumar Modi,* (1998) 8 SCC 661 and *M.C. Mehta (Taj Corridor Scam),* (2007) 1 SCC 110, speaking for the Bench, one of us, (P. Sathasivam, J.) has observed as under: (*Narmada Bai case,* (2011) 5 SCC 79:
>
> > "*70*. The above decisions make it clear that though this Court is competent to entrust the investigation to any independent agency, once the investigating agency complete their function of investigating into the offences, it is 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. Thus, generally, this Court may not require further monitoring of the case/investigation. However, we make it clear that if any of the parties including CBI require any further direction, they are free to approach this Court by way of an application."
>
> **15.** Deferentially concurring with the dictum of this Court in the aforenoted decisions, we are of the opinion that in the instant case we have reached a stage where the process of monitoring of the case must come to an end. It would neither be desirable nor advisable to retain further seisin over this case. We dispose of this appeal accordingly.
>
> ....."
>
> (emphasis supplied)

(w) As per the direction given by this Court, the SIT presented its final report on 8.2.2012 before the concerned Metropolitan Magistrate, who had taken cognizance of Gulberg Society case being CR No. 67/2002.

(x) It appears that the appellant corresponded with the SIT, as well as, the Magistrate for supplying certain documents. The Magistrate vide order dated 10.4.2012, directed supply of partial documents and on 16.5.2012, he rejected the request for granting rest of the documents including enquiry report, further investigation report and statements enclosed therewith.

(y) This led to filing of SLP(Crl.) No. 8989/2012. This petition was finally allowed on 7.2.2013 being converted into Criminal Appeal No. 273/2013. The order reads thus: -

> "ORDER
>
> Heard all the parties concerned including Mr. Raju Ramachandran, learned Amicus Curiae.
>
> Leave granted.
>
> The complainant is the appellant. She filed an application before the Metropolitan Magistrate claiming supply of all the documents filed along with the closure report dated 07.10.2012 by the SIT.
>
> Before considering the claim of the appellant, it is relevant to refer to the earlier order of this Court dated 12th September, 2011 made in Criminal Appeal No. 1765 of 2011. After going into various aspects, this Court issued the following directions to the SIT:
>
> > "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 Curies 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 8-6-2006, 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 (1) statements of the witnesses, (2) related documents and (3) investigation report strictly in accordance with law as enunciated by this Court in *Bhagwant Singh* v. *Commr. of Police & Anr.* [(1985) 2 SCC 537. For the sake 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."

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 May 12, 2010 in two volumes, excluding the Chairman's comments forwarded to this Court. The appellant is also entitled to have copies of reports dated November 17, 2010 and April 24, 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 June 8, 2006 filed by the appellant and shall not be used for any other purpose or in connection with any other case. We also clarify that the present order is confined to the facts and circumstances of the complaint dated 8th 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."
>
> (emphasis supplied)

This order, besides issuing directions, as prayed regarding furnishing of documents, also clarified the position that the statements recorded by the SIT pursuant to the investigation undertaken after 27.4.2009 in respect of the allegations in complaint dated 8.6.2006, be treated as statements of witnesses under Section

161 of the Code, which, however, cannot be used for any other purpose including the trial of Gulberg Society case being CR No. 67/2002.

(z) Only after getting all the material accompanying the report, appellant – Zakia Ahsan Jafri proceeded to file a protest petition on 15.4.2013 before the Metropolitan Magistrate. The Magistrate, after considering the protest petition and the final report of the SIT dated 8.2.2012, by a speaking order dated 26.12.2013, rejected the protest petition filed by appellant and accepted the final (closure) report filed by the SIT and passed consequential order.

(aa) Against this decision, appellant carried the matter before the High Court by way of the stated criminal revision application, which came to be disposed of vide impugned judgment and order dated 5.10.2017, with liberty to appellant to agitate the issue of further investigation upon availability of new material/information. Against the said decision, the present appeal from special leave has been filed.

(bb) To complete the narration of relevant facts, we may also advert to the order passed by this court on 13.4.2017 in W.P.(Crl.) No.

109/2003, commending the efforts of the SIT as well, while relieving the Chairman of the SIT from his responsibility. The said order reads thus: -

"O R D E R

1. While placing on record our appreciation for the services rendered to this Court by the learned Amicus Curiae, we are immensely satisfied with the manner in which the proceedings had been conducted in all the trials, resulting in the conclusion of all but one trial.

2. Learned Amicus Curiae has made a request on behalf of Shri R.K. Raghavan, the Chairman of the Special Investigation Team (SIT), seeking to withdraw from the SIT hereinafter, on account of his ill health. We appreciate the request made, and release him from his responsibility as the Chairman of the SIT.
3. A similar request has been made for the release of Shri K. Venkatesham. The instant request is based on the fact, that Shri K. Venkatesham has since been appointed as Commissioner of Police, Nagpur, and therefore, his onerous responsibility leaves him limited time to deal with other issues. For the reasons brought to our notice, we hereby 1 relieve Shri K. Venkatesham from the duties vested in him as a member of the SIT.

4. In the above view of the matter, we would request the remaining member of the SIT, namely, Shri A.K. Malhotra, to continue to discharge the responsibility hereto before entrusted to the SIT, himself. Shri A.K. Malhotra shall furnish quarterly reports to this Court.

5. Post for hearing in the last week of July, 2017."

SUBMISSIONS OF THE APPELLANT

6. (a) The thrust of the argument was broadly two pronged. The first being the SIT has jumped to the conclusion that no offence is made out against the persons named in the complaint/protest petition despite material and statements collated by it during investigation indicating to the contrary. Additionally, the failure of the SIT to investigate into crucial allegations/material referred to in the protest petition.

(b) The second is about the failure of the Metropolitan Magistrate in exercising the powers vested in him including to take cognizance of the offence and in not directing further investigation by the SIT in respect of certain matters. Even the High Court has committed the same fatal error. Reliance is placed on ***Vishnu Kumar Tiwari vs. State of Uttar Pradesh & Anr.***[27], to buttress these points. As held in ***Abhinandan Jha & Ors. vs. Dinesh Mishra***[28], there is no obligation on the Magistrate to accept the final report. It is open to the Magistrate to take cognizance if he is so satisfied by invoking

[27] (2019) 8 SCC 27 (paras 7, 17, 27, 28, 32, 33 and 42)
[28] AIR 1968 SC 117 = 1967 (3) SCR 668 (at page 678) (para 15 and 21)

powers under Section 190(1)(c) of the Code including to direct further investigation.

(c) The appellant in the protest petition had articulated broad grounds on which final SIT report was being opposed. The same read thus: -

> "31. The Petitioner submits that the Closure Report needs to be rejected and the Protest Petition allowed on the following grounds, which are in addition to the reasons and grounds set out elsewhere in this Petition:
>
> a) The Documents and annexures as submitted by the SIT along with the closure report make out a clear case for taking cognizance against all the accused;
>
> b) Without prejudice to the above, the SIT while investigating, has not examined all the necessary witnesses or called for all the necessary documents as set out in the Petition. In view of this the Investigation is defective and incomplete. Further investigation therefore needs to be ordered to arrive at the whole truth;
>
> c) Without prejudice to the above, the SIT's analysis of the statements of witnesses and other documents is hopelessly biased, inaccurate, and suffers from total non application of mind.
>
> d) SIT has taken great pains to disbelieve and discredit any witnesses who have spoken against the Accused No.1 or for that matter against any accused. Besides, the witnesses who were favouring Accused were not confroned with relevant documents and statements.
>
> e) SIT was required to ascertain whether there is any substance to proceed against the accused persons and once it comes to the conclusion that such substance exists it should have proceeded to file a Charge Sheet. Such substance exists against all the accused. There

are witnesses and documents to cast reasonable doubt against the conduct of all the accused and pointing towards their culpability. For instance, the statements of senior officers like RB Sreekumar, Rahul Sharma, Sanjiv Bhatt as well as the Tehelka tapes (validated by the Sessions Court) are enough to file a charge sheet/ take cognizance. Instead of doing this, the SIT has acted like a super court dissecting every bit of evidence, turning and twisting it, ignoring relevant material and accepting uncorroborated irrelevant material to somehow whitewash this entire exercise. Worse the SIT has deliberately and manifestly ignored the huge voluminous evidence that is available on record. SIT has acted beyond its jurisdiction as an Investigating Agency. In fact this Hon'ble Court ought to disregard the SIT Report altogether and look at the gathered evidence independently to arrive at the conclusion that cognizance ought to be taken.

f) Apart from anything it needs to be verified whether the Closure Report is based on a collective application of mind by SIT as a whole or not. Large number of documents/ statements are in Gujarati. Admittedly they have not been translated. 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.

g) The Petitioner submits that against each of the accused there is sufficient material to take cognizance of offences of conspiracy and abetment, subversion of public justice, destruction and suppression of evidence, of rioting, theft, robbery, murder, attempt to commit murder, etc. Besides, against many of the accused Charge Sheets should have also been filed for hate speech.

h) SIT should have considered that once a public servant is held to be negligent in performing his duties, and if any criminal offence has taken place, he ought to be automatically charged with abetment. This is so because the definition of abetment includes acts as well as omissions. SIT has come to the conclusion that

Accused Nos - 33 then Joint Commissioner of Police MK Tandon and then DCP Zone IV PB Gandia, were negligent in their duties: Having arrived at this conclusion, SIT had no option but to charge them with the criminal offence of abetment at least as the negligence did result in offences being committed or not being prevented.

i) SIT should have held that the statements and the documents which have been gathered make out a clear case of conspiracy against all including Accused No. 1.

j) The Petitioner submits that as has been held by various courts a conspiracy is usually hatched in secrecy and very rarely there is direct evidence of this. The offence can only be proved largely from inference drawn from acts or illegal omissions committed by the conspirators. Even at the time of trial, there need not be proof of express agreement. The agreement can be proved by necessary implication. Besides, it is not necessary that all the conspirators participate in all the offences resulting from the conspiracy though they would be liable for each one of them.

k) In the present case direct evidence exists in terms of Sanjiv Bhatt 's testimony about at least one part of the conspiracy being hatched at the meeting held on 27.2.2002. Once this evidence is available it is for the trial court to decide what weight to attribute to it. It is not for the Investigating Agency to dissect this evidence with a view to discredit the same.

l) In any event, without prejudice to whether Mr. Modi made the statement attributed to him in the meeting on 27.2.2002 the fact that the meeting took place is not disputed. One has to therefore to look at the subsequent and prior events to decide as to what could have transpired at this meeting. It is obvious that as the event reflect a conspiracy was hatched at this meeting to allow the people to vent their anger (justified or otherwise, instigated or otherwise, organized or otherwise) and not to intervene when offences are committed. In addition the forces were encouraged to abet this ire and to assist the people in venting it and at times to participate in it. Anyone who tried to maintain

law and order was penalized. The conspiracy was very clear and played out over the next few days.

m) The Petitioner further submits that the offences of conspiracy and abetment along with the responsibilities of public servants have, independently or together introduced the concept of command responsibility under our criminal law. Therefore any public servant shall be criminally responsible for crimes committed by forces or officers under his or her effective authority and control, as a result of his failure to exercise control (preventive or punitive) over these crimes. This would include the Chief Minister/ Home Minister, other Ministers, police and bureaucratic top brass. This is more so since in the present case they knew or owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes. It is further because the said public servants failed to take all necessary and reasonable steps to prevent or repress their commission or to submit the matter to the competent authority for investigation or prosecution.

n) The Chief Minister/ Home Minister was directly in charge of law and order in the State. Under his aegis crimes were committed. No steps were taken to curb these crimes. Just to give an example, preventive arrests were essential once the Bandh call was made. These are required for prevent commission of offence. No such arrests were made making the Home Minister downwards all responsible for crimes having been committed for failure to carry out preventive arrests. Besides, if instructions were given to make preventive arrests and they were not carried out then failure to take steps against the officers for not having done preventive arrests itself will amount to failure to discharge duties as a public servant and abetment.

o) SIT has misdirected itself in looking at the allegations and events in a piecemeal manner rather that a holistic manner. What was needed to be done was to look at events prior to 27.2.2002, on 27.2.2002 and subsequent to 27.2.2002 to see if a common thread emerges. If this was done an obvious and apparent link between all these events and conduct of the accused comes out which would be sufficient to charge them

with conspiracy and abetment, apart from other offences.

p) We further submit that offences under S.153 A and B have been made out against accused who were charged with the same in our complaint and the SIT ought to have filed Charge Sheets in respect of the same."

(d) Besides the aforesaid points, in the course of arguments and in the written submissions, it has been urged as follows: -

(1) It is urged that Article 21 of the Constitution not only guarantees protection of law to all, but it also includes corresponding obligation on the State to fairly investigate the criminal cases and prosecute the persons involved in commission of such crime as per the law. The provisions in the form of the Code is the procedure established by law within the meaning of Article 21. In the present case, the SIT failed to investigate into crucial matters in the spirit of mandate of Section 156 of the Code and it is also failure of the Magistrate in exercise of powers to the fullest extent predicated in Section 173 read with Section 190, in particular, sub-Section (1)(b) of the Code. Even the High Court fell foul of the same error while dealing with the revision application of the appellant.

(2) The complaint dated 8.6.2006 was only a piece of information. The stand taken by the SIT that allegations beyond complaint cannot be looked at, is legally untenable. If such a plea is countenanced, it would result in equating with, or limit the enquiry as in the case of scrutiny of a plaint in a civil suit, wherein the plaintiff is bound by the averments/contents of the complaint. The order passed by this Court directing the SIT to "look into" the complaint, in no way constricted the jurisdiction of the Magistrate to direct scrutiny of allegations, which come to the fore, consequent to filing of protest petition.

(3) The fact that appellant – Zakia Ahsan Jafri was relegated by this Court to file protest petition if the situation so warranted, was not to curtail the powers of the Magistrate including to direct further investigation. In fact, the order of this Court indicates that it was open to the Magistrate to exercise all powers vested in him for dealing with the issues that may arise upon presentation of final SIT report and protest petition by appellant – Zakia Ahsan Jafri.

(4) It is significant to note that the complaint dated 8.6.2006 referred to matters not limited to events unfolding in and around the Gulberg Society crime, but also about the series of activities and actions pointing towards the instructions being issued from the highest authority bordering on conspiracy and abetment. The order of this Court dated 7.2.2013 reinforces the stand taken by the appellant that the Magistrate had ample power to issue directions to SIT for further investigation into the relevant matters including referred to in the protest petition. Reliance was placed on ***Abhinandan Jha***[29] and ***Popular Muthiah vs. State represented by Inspector of Police***[30].

(5) It is urged that it was the duty of the Magistrate to issue process and only after recording the evidence of the concerned witnesses, a conclusion could be reached about the truthfulness of the version and the piece of evidence in support

[29] supra at footnote No. 28
[30] (2006) 7 SCC 296 (paras 21 and 54)

of the accusation. Reliance was placed on ***State of Gujarat vs. Afroz Mohammed Hasanfatta***[31].

(6) According to the appellant, following issues have not been dealt with by the Magistrate and the Gujarat High Court:

(i) Provocative behaviour was followed up by mass mobilisations and hate speech on 27.2.2002 as part of the wider conspiracy. As early as 12:30 p.m. on 27.2.2002, a State Intelligence Bureau[32] officer communicated to the headquarters that there were reports that some dead bodies of Godhra victims would be brought to Kalupur Station in Ahmedabad and incidents will occur in Ahmedabad city and preventive action had to be taken. Home Department at Gandhinagar received more than eight messages intimating about the Godhra incident, the VHP call for a bandh and about violence taking place in Valsad and other places.

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[31] (2019) 20 SCC 539 (paras 16, 17, 22 and 39)
[32] for short, "SIB"

(ii) Detailed documentary evidence from the SIT investigation papers pieced together meticulously in the protest petition reveals that SIB Messages had noted systematic and violent mobilisations all over the State on 27.2.2002 within minutes of the Godhra tragedy. Despite these warnings, neither the Home Department nor the law-and-order machinery made preventive arrests or protected innocent lives. Kar Sevaks with saffron scarves continued shouting anti-Muslim slogans after incident; more VHP workers gathered at spot and even after curfew had been declared at 10 a.m. Even after deployment of SRP and Railway police reinforcements, attempts to burn Muslim shops was taking place at Godhra. Since the investigation of the Godhra incident was by the Railway Police, it was their responsibility to deal with dead bodies.

(iii) By about 1.00 p.m. in the afternoon violent and murderous attacks at Vadodara and Anand had taken

place and by the evening the same had spread far and wide across the state.

(iv) VHP Press Release carried exaggerated accounts of the Godhra incident. By the evening and late night of 27.2.2002, SIB messages from Godhra to Bhavnagar, Mehsana to Viramgam (far flung districts of Gujarat) recorded aggressive mobilization and provocative speeches being made exhorting the mob/citizens to attack Muslims.

(v) An analysis of phone call records officially procured by former IPS officer – Mr. Rahul Sharma and presented to the Nanavati-Shah Commission, had been made and evidence of elected representatives talking to some of the offenders/accused etc. was presented to the SIT. The following aspects were not substantively investigated. For example:

(1) The mobile phone records show that Mr. Bhatt, named in the Zakia Jafri Complaint dated 8.6.2006, was in touch with doctors from

outside the Godhra city, after which post mortems of the Godhra victims were carried out in the open in the Railway Yard.

(2) The mobile phone records also had illustrative details of the phone call records of then Additional Commissioner of Police - Mr. Shivanand Jha. That has not been investigated.

(3) Similarly, the mobile phone call records of Mr. Dinesh Togadia etc. of the VHP and other functionaries, had been mentioned but remained uninvestigated.

(4) The mobile phone call records dated 27.2.2002 of Dr. Praveen Togadia, International General Secretary, VHP, similarly remained to be investigated.

(5) Ahmedabad city recorded 14 Incidents of targeted Violence even as the VHP and its members continued making incendiary and inflammatory speeches.

(6) The Gujarat Police Manual and Booklet to Prevent Communal Violence (specific to Gujarat) lay down meticulous SOPs (Standard Operating Procedures) - that were not

followed at all in the wake of the Gujarat tragedy.

(7) Despite the SIT papers containing documentary evidence of such more instances of attacks and aggression including hate speech, the SIT concealed these in its final report and deliberately avoided recording of any conclusion therein.

(e) The SIT has clearly failed to take into account the material appended to the complaint dated 8.6.2006, such as report titled "Crimes and Humanity" published in 2002 by the Concerned Citizens Tribunal[33], headed by former Judges of this Court and affidavits filed by the officials of the State before the Nanavati-Shah Commission. The narrative discernible from this material has not been examined by the SIT in its proper perspective despite suggestive of strong case for investigation into a systemic and widespread conspiracy of subversion and inaction by law enforcement, bureaucracy and elected representatives entailing in systemic outbreak and spread of targeted violence across the State.

[33] for short, "CCT"

Even the NHRC had to step in to force the State to take corrective measures and ensure justice to the riot victim survivors.

(f) It was urged that the SIT was expected to follow the procedure prescribed by law while dealing with the materials/statements collated during investigation and more particularly, relied upon by the appellant. As a matter of fact, the SIT failed to investigate into the crucial aspects referred to in the protest petition. It is submitted that the rationale for protest petition has been expounded in ***Abhinandan Jha***[34] and ***Bhagwant Singh vs. Commissioner of Police & Anr***.[35] It is not only open to the informant to file protest petition, but also to any injured person on all aspects concerning the complicity of concerned persons in the commission of alleged crime. That is what was perceived by this Court while disposing of the special leave petition filed by the appellant in the earlier round, vide judgment and order dated 12.9.2011[36]. The real intent and purpose of the direction issued by this Court in the earlier round has been

[34] supra at footnote No. 28
[35] supra at footnote No. 21
[36] supra at footnote No. 26

whittled down by the SIT, as well as, by the Courts in not examining all aspects raised by the appellant by way of protest petition.

(g) In support of this grievance, emphasis is placed on the nature of enquiry done by the SIT in respect of Tehelka Sting Operation, and in not examining the crucial witnesses. The contents of sting operation were clearly indicative of the genesis of communal violence, which transformed lava erupting from a volcano, destroying the fertile ground. The SIT had glossed over crucial materials, such as statement of Dhawal Jayantilal Patel, the then VHP District Convener, Sabarkantha and Anil Patel, VHP Vibhag Pramukh, Sabarkantha on the specious plea of the efficacy of the extra judicial confession of another person. Reliance is placed on the decision of this Court in ***H.N. Rishbund & Anr. vs. State of Delhi***[37] and ***Gura Singh vs. State of Rajasthan***[38].

(h) The Courts (Magistrate/High Court) have failed to deal with the allegations pertaining to sting operation indicative of build-up before the incident and support of the high authority. Allegations against

[37] AIR 1955 SC 196 = 1955 1 SCR 1150 (at pages 1155-1157)
[38] (2001) 2 SCC 205 (para 6)

Mr. Anil Patel were not investigated nor was he arrested, despite the extra judicial confession on record to indicate his complicity. No question has been put to him regarding Tehelka Tape and its contents. Similarly, the Magistrate has erred by going into the veracity/truthfulness or otherwise of the material on record. That could be done only at the stage of trial. The limited role of the Magistrate at this stage is to *prima facie* examine the material on record to find out the case of reasonable suspicion to take cognizance of the crime against the named offenders, as held in ***S.K. Sinha, Chief Enforcement Officer vs. Videocon International Ltd. & Ors.***[39].

(i) It is further urged that in the interests of justice, as the detailed protest petition alongwith exhaustive documentary evidence was presented, the Magistrate ought to have taken it as a complaint and directed further investigation in respect of issues raised therein. In the protest petition, the complainant has dealt with whole series of events and supporting documents and not a single or stray document from the investigation record, and relying on the totality

[39] (2008) 2 SCC 492 (para 22)

of the circumstances, the allegation regarding larger criminal conspiracy has been set forth. It is her case that the incident of violence across the State of Gujarat after Godhra incident on 27.2.2002, was encouraged and condoned and overtly supported by the State Government owing to their actions and omissions on the part of the State constituting criminal conspiracy. The actors in the said criminal conspiracy were broadly in four groups. To wit, political establishment, bureaucrats, police officers and private organisations and individuals.

(j) It has been further asserted that the Magistrate and the High Court have failed to deal with the following aspects in the context of issues raised in the protest petition: -

(i) The first component is about conspiracy in regard to the prelude and build-up before the Godhra incident on 27.2.2002. It has been mentioned in the protest petition that the establishment allowed generation of deepened feeling of hatred towards a particular community, as can be discerned from the SIB record/messages from at least 12.2.2002 onwards and also transcript of the Tehelka Sting Operation.

(ii) The second is about the inaction of the named offender/political/police/bureaucrat functionaries after being intimated about Godhra incident, hate speeches and mob mobilizations across the State on 27.2.2002.

(iii) The third is about the inaction/non-response of all the authorities including police, fire brigade, other functionaries, by not promptly deploying Army, imposing curfew and taking preventive measures and making prompt arrests of the culprits after outbreak of mass violence across the State post 27.2.2002.

(k) The ingredients of the conspiracy had been outlined in the complaint dated 8.6.2006 and restated with further details and evidence in the protest petition in the shape of the actual official messages indicative of systemic build-up of communal tension before 27.2.2002. The transcript of Tehelka Sting Operation reinforces the facts stated in the said messages. Notably, the tapes of the sting operation have been authenticated by the CBI consequent to direction given by the NHRC and in fact, used by SIT in the cases investigated by them pursuant to the direction of this

Court. These crucial aspects are suggestive of larger criminal conspiracy. However, the same had been conveniently glossed over by the SIT.

(l) To buttress the usefulness of Tehelka Sting Operation, the appellant is relying on the transcripts of Mr. Anil Patel, VHP Vibhag Pramukh, Sabarkantha, Mr. Deepak Shah, member of BJP, Vadodara Unit, Mr. Haresh Bhatt, VHP and Bajrang Dal member, Mr. Rajendra Vyas, President, VHP, Ahmedabad City, Mr. Ramesh Dave, Kalupur Zila Mantri, VHP and Babu Bajrangi, a Bajrang Dal activist to urge that these were in the nature of extra judicial confessions and the persons should have been proceeded for appropriate offence in the context of their utterances and disclosures. These transcripts were so revealing that no person with ordinary prudence would disagree with the stand of the appellant that the same are replete with strong suspicion, warranting penal action. The Magistrate, however, disregarded this sting operation by relying on the dictum of this Court in ***Piara Singh & Ors. vs. State of Punjab***[40]. Whereas the issue regarding admissibility of extra

[40] (1977) 4 SCC 452

judicial confession is a triable issue and cannot be answered at this stage.

(m) As a matter of fact, Mr. Ashish Khaitan, the author/maker of the sting operation, had been examined as prosecution witness by the SIT including in Gulberg Society case being CR No. 67/2002. Even for this reason, it was not open to the SIT or the Courts to disregard the said material at this stage. By disregarding such tangible and clinching material, the SIT had attempted to protect the named offenders.

(n) It is further urged that the SIT has not even chosen to appeal against acquittals in Gulberg Society case being CR No. 67/2002 for reasons best known to them. In substance, there was clear evidence regarding conspiracy and corroborated by sting operation and the affidavit of Mr. R.B. Sreekumar, an IPS officer [the then Additional Director General of Police (Intelligence)], which have been conveniently discarded by the SIT and by the Courts.

(o) The requisition of the NHRC order by the SIT (directing CBI to authenticate Tehelka Sting Operation and the CBI's detailed report on the same), was followed by a submission of the entire complete

authenticated transcripts of the Tehelka Sting Operation by the appellant to the SIT investigating her original complaint (dated 8.6.2006) vide letter dated 24.3.2010. In that communication, the appellant also mentioned in detail, various aspects of the matter that need to be thoroughly investigated by the SIT, given the evidence in these extrajudicial confessions of a wider conspiracy and abetment to widespread targeted crimes. The detailed letter by the appellant to the SIT indicating the issues that need to be investigated, is a testimony of the fact that the investigating agency is being urged since 2010 to investigate the Sting Operation thoroughly. The complete transcripts, total 490 pages, had been provided to the SIT by the appellant.

(p) In the detailed authentication document of the CBI, the CBI officer authenticates the Sting Operation after forensic voice-tests were performed on those on whom the Sting Operation was conducted. In the said Authentication Report, the CBI officer says:

> "13. On the basis of the above said enquiry, following conclusions can be drawn:

i. The recordings in the 'Sting Operation' are found to be authentic as per Forensic Science Laboratory Report.

ii. Most of the concerned persons appearing in the Sting Operation have admitted that they were contacted and that they have talked on the subject of Gujarat Riots, which has been recorded during the sting operations.

14. The original statements and the laboratory report are enclosed herewith. The P.E. is being closed.

15. Special Investigation Team (SIT), formed by Hon'ble Supreme Court to further investigate certain Gujarat riot cases, vide their letter dtd.03.02.2009 and reminder dtd. 28.04.2009 have asked for equipment and recordings collected by the CBI. This is for information of NHRC and comments/ instructions, if any.

16. This is for the information of NHRC and necessary action at their end please against High Court order."

(q) Meanwhile, the SIT appointed by this Hon'ble Court, whose mandate of investigation was extended, to also investigate the wider conspiracy into the violence that rocked the State of Gujarat in 2002,

recorded the statement of Mr. Ashish Khaitan on 27.8.2009, the reporter who carried out the Sting Operation.

(r) In a parallel development that further gives authenticity and legitimacy to the Sting Operation, Mr. Ashish Khaitan deposed as prosecution witness (PW-322) in the Naroda Patiya case on 19.12.2011. On 29.8.2012, in its judgement convicting 31 persons of the widespread massacre at Naroda Patiya, the Special Sessions Judge made strong observations accepting the Sting Operation as corroborative evidence. On the basis of this validation, two persons were convicted in this case.

(s) Notably, the SIT appointed by this Hon'ble Court who investigated the Zakia Jafri complaint dated 8.6.2006 was/is also the prosecuting agency in the trials transferred to the SIT for further investigation including the Naroda Patiya and Naroda Gaam trial. It is, therefore, inexplicable and clear evidence of the compromised nature of the SIT investigation despite being the agency entrusted with a sensitive task by this Court, who failed to thoroughly investigate the leads and implications laid out in the

conversations/extra-judicial confessions revealed in Tehelka Sting Operation.

(t) It has been urged that relevant facts noticeable from the transcript of the Sting Operation regarding manufacture of arms and bombs, bringing in the same from neighbouring States and other aspects of wider conspiracy elucidated therein, have been completely ignored by the SIT and also by the Courts. The transcripts also reveal the involvement of senior officers of the Court, Advocates and public prosecutors, whose names are mentioned in the SIB messages in the build-up and communal mobilizations and reportedly involved in the intimidation and browbeating of senior serving officer (Mr. R.B. Sreekumar) prior to his deposition before the Nanavati-Shah Commission. It was, therefore, essential that the Magistrate should have directed further investigation into these aspects.

(u) The original complaint submitted by appellant - Zakia Ahsan Jafri relies on slew of 23,000 pages of official record and non-official documents and records indicative of inaction/failure of public

servants and elected representatives bordering on carefully woven conspiracy.

(v) There was message indicating stockpiling of arms and also mob-gathering with impunity from the early morning of 28.2.2002 when the dead bodies were brought to Sola Civil Hospital, Ahmedabad and breaking out of violence. However, no police force was deputed. Aftermath violence, there was no response from the fire brigade despite 45 distress calls being made by hapless citizens, who were attacked by armed mob intending to kill and burn them. No arrests were made of the aggressors, much less preventive arrests.

(w) The loss of life in such mass violence was mainly of persons belonging to minority community. The unruly mob was emboldened because of the Bandh call supported by the State. The women and children were also not spared during such violence and the police remained a silent spectator.

(x) After the outbreak of violence post-Godhra, SIB report(s) submitted by Mr. R.B. Sreekumar dated 24.2.2002, 15.6.2002, 20.8.2002 and 28.8.2002 to the Home Department were deliberately

ignored. These reports had suggested strong corrective measures for restoration of normalcy.

(y) Even the report submitted by Mr. E. Radhakrishnan, an IPS officer (the then Deputy IG) to the Director General of Police, as late as August, 2002, recommending remedial measures, was not acted upon despite the spread of communal violence reported from 993 villages and 151 towns covering 284 police stations (out of 464 police stations) spread over to 154 Assembly constituencies out of 182 Assembly constituencies.

(z) The statements made by Mr. Maniram, ADGP (Law and Order), Mr. P.C. Pande, the then Commissioner of Police, Ahmedabad, Mr. K. Chakravarthi, Director General of Police, Gujarat and Mr. Ashok Narayan, Additional Chief Secretary (Home), reveal the deliberate inaction and failure of the high officials and elected representatives. To aggravate the situation, there was intentional delay in deployment of Army and declaring curfew at the earliest opportunity.

(aa) The SIT has also not enquired into the matters highlighted in the report of NHRC nor made any attempt to record any statement of officials or the Chairperson of the Commission. The NHRC report

refers to several aspects including experience of a sitting Judge of the High Court owing to the violent mob entering his premises. The Statement of the Judge had not been recorded by the SIT.

(bb) The Courts have also failed to deal with the material regarding provocative behaviour followed by mass mobilizations and hate speeches post 27.2.2002 as part of the wider conspiracy. The SIB officer had communicated to the headquarters as early as 12:30 pm, on that day itself, that there were reports that some dead bodies of Godhra victims would be brought to Kalupur Railway Station, Ahmedabad, which may result in causing communal disturbance all across. Despite such warning, neither the Home Department nor the law-and-order machinery took preventive measures to protect the innocent lives and more so, even after growing violence and murderous attacks at Vadodara and Anand happening by the evening and spreading across the State. On the other hand, no action had been taken against VHP office bearers for issuing press release exaggerating the accounts of Godhra incident.

(cc) It was urged that the final (closure) report was erroneously tendered by the SIT before the Metropolitan Magistrate and not in

the sessions trial concerning Gulberg Society case being CR No. 67/2002.

(dd) The SIT also failed to thoroughly investigate the messages of the SIB, which formed part of the affidavit of Mr. R.B. Sreekumar, and was made available to the SIT. The contents of these messages support the allegation of build-up of a conspiracy even prior to 27.2.2002, in respect of which no corrective steps had been taken by the administration and persons in authority.

(ee) There was enough material with the SIT regarding the factum of hasty post-mortems carried out on the dead bodies in open Railway yard under the directions from the highest authority, so as to ignite emotions giving fillip/impetus to build up and cause communal disturbances and widespread violence. Not only that, the charred bodies of dead persons were caused to be paraded and allowed to be taken by private person (VHP office bearer) in open vehicles from Godhra to Ahmedabad without observing essential protocols for the same purpose. Relying on Rule 223 in the Gujarat Police Manual, it was urged that despite the prohibition, the photographs of mutilated bodies were taken and no enquiry in that

regard has been made. None of the statements recorded by the SIT explain as to why such photographs were allowed.

(ff) There is contradiction in two different reports submitted by the SIT before this Court and support the allegation of preparation for organising widespread violence after Godhra event.

(gg) The authorities produced the relevant contemporaneous official record after lapse of almost nine years, although it was very much available with the Government even earlier when it was required to produce before the concerned forum. That was not done on the specious plea of non-availability of such a record.

(hh) No investigation has been done regarding the factum of intentional delay in imposing curfew and to bring in Army including for its immediate deployment by providing logistical assistance to control the overwhelming situation across the State of Gujarat, in particular, immediately after the carnage in the morning of 27.2.2002 at Godhra.

(ii) The SIT has not properly dealt with the role of Mr. M.K. Tandon and his acts of commissions and omissions warranting penal action.

(jj) There was enough material to suggest that the police administration was under complete control of political heavyweights and Ministers under instructions from the top (Chief Minister). That was evident from the presence of the Ministers in the police Control Room and issuing directions to the local police.

(kk) According to the appellant, the facts emerging from the materials referred to in the protest petition are so telling that no other inference except that the named persons had committed offence, can be drawn, particularly regarding larger conspiracy. In that, no preventive measures were taken either before the episode of Godhra on 27.2.2002, or even thereafter, despite the seriousness and sensitivity of the situation. No preventive arrests were made and if at all done in two cases, it was against the persons belonging to minority community. Further, when the violence erupted across the State, no effort to douse the emotions of the violent mob was seen to be taken by the persons in authority, both by political dispensation and bureaucracy and police. The persons indulging in the gruesome activity were not arrested, much less stopped from doing so. Furthermore, when it came to investigation, 'A' Summary

Report(s) came to be filed in most of the cases, which was a clear reflection on the failure of police administration, investigating such horrendous crime. Intriguingly, the persons who were arrested by the local police, were released on bail or interim bail obviously because of the (intentional) lackadaisical approach of the public prosecutor(s). Not only that, the investigating machinery opted to accept the version of the offender as a gospel truth and doubted the statements of the victims of crime. The malice not only pervaded in the local police, but also in the manner of investigation by the Court appointed SIT. No investigation whatsoever has been done regarding pre-Godhra incident conspiracy, carrying funeral procession on the basis of instructions to officials and handing over dead bodies for that purpose to private persons (Hasmukh Patel, Secretary of the Eastern Wing of VHP, Ahmedabad and Jaideep Patel, Gujarat Secretary of VHP, Naroda Gao/Gaam, Ahmedabad) including issuing instructions from the top (Chief Minister) to all the officials to give free hand to the mob. Even post Godhra incident, conspiracy before the unfolding of the violence across the State on 28.2.2002 has not been taken note of nor any FIR registered in that behalf, much less

any investigation done by local police or for that matter, Court appointed SIT.

(ll) The SIT, as well as, the Courts have dealt with statements of the concerned persons recorded by the SIT as gospel truth and have arrived at conclusion on that basis. This, amongst others, is a manifest error committed in dealing with the issues on hand. The Magistrate while dealing with the protest petition and the final report ought to have applied the scale of strong suspicion emanating from the materials collected by the SIT. And that was enough to proceed against the perpetrators. From the undisputed document(s), even a layman would be able to decipher that a case of strong suspicion about the involvement of the named persons in the commission of offence has been clearly made out. Reliance is placed on ***State of Bihar vs. Ramesh Singh***[41] and ***State (Delhi Admn.) vs. I.K. Nangia & Anr.***[42] to urge that if suspicion can be deduced from the record, that would be enough for Magistrate to take cognizance. It is further urged that even if it is not a case of strong suspicion, the Magistrate was obliged to direct the SIT to do further investigation

[41] (1977) 4 SCC 39
[42] (1980) 1 SCC 258 (para 6)

on relevant aspects/allegations including in respect of matters outside the complaint, but specifically noted in the protest petition. It was the bounden duty of the Magistrate to so direct, and also primary responsibility of the SIT to investigate every piece of information which had come to the fore by way of complaint or the protest petition.

(mm) It is submitted that the larger conspiracy material was not investigated in Gulberg Society case being CR No. 67/2002 and for that reason, it was essential to investigate every aspect regarding larger conspiracy.

(nn) It is submitted that the stand taken by the SIT on the basis of material collated during investigation, in no way indicated that mass violence had triggered till 1.00 p.m. on 28.2.2002. This stand is in conflict with the fact of sending requisition to call for Army at about 2.30 p.m. on 28.2.2002. This is a clear reflection on the approach of the SIT to obfuscate the enquiry.

(oo) The approach of the SIT to record the statements of persons named as offenders and to accept explanation given by them to form its opinion thereby exculpate those persons is *ex-facie* fallacious.

For, the explanation offered by the offenders would be a matter of their defence in the trial. The material indicating their complicity cannot be disregarded and veracity thereof could be tested only during the trial. Notably, not even a single statement of victim has been recorded by the SIT.

(pp) As a matter of fact, neither the local police nor the SIT has undertaken the task as is exposited by the expression "investigation", as defined in Section 2(h) of the Code. The expression "investigation" also means finding out footprint of the statement/allegation, which is to undertake the meaningful investigation in respect of every singular aspect. The SIT has not maintained the purity in investigation and failed to investigate crucial aspects warranting further investigation.

(qq) The officers, who collaborated in the conspiracy, were eventually rehabilitated to high positions and those who did not do so, were persecuted by the concerned administration.

(rr) There was glaring evidence regarding the fact that even fire brigade facility was consciously denied to the persons belonging to the minority community. The frantic phone calls made by them were

not even attended to, despite the emergent situation faced by them. The SIT made no effort to enquire into this factual allegation and did not call for explanation of concerned officials of fire brigade.

(ss) There was no adequate police *bandobast* laid in anticipation nor stern measures taken when the actual violence took place on 28.2.2002 across the State. This was not a mere case of laxity or failure of the police administration, but a concerted effort under instructions from the top, when in fact, their public duty was to protect the life and property of everyone. The situation was aggravated because of the State support to the bandh call given by the agitators. The SIT made no attempt to investigate these allegations forthcoming from the record before it. There was material to indicate that the official record had been destroyed under suspicious circumstances.

(tt) Reliance has been placed on ***Firozuddin Basheeruddin & Ors. vs. State of Kerala***[43], ***Nirmal Singh Kahlon vs. State of Punjab & Ors.***[44], ***R. Venkatkrishnan vs. Central Bureau of***

[43] (2001) 7 SCC 596 (paras 20, 23 and 25)
[44] (2009) 1 SCC 441 (paras 67 and 68)

Investigation[45] and ***State (NCT Delhi) vs. Shiv Charan Bansal & Ors.***[46].

(uu) The SIT has not enquired into the false propaganda for inciting violence and the publication in that behalf, despite the SIT having received said documents.

(vv) Reliance is placed on ***State of Karnataka & Anr. vs. Dr. Praveen Bhai Thogadia***[47] and ***Amish Devgan vs. Union of India & Ors.***[48] to contend that incitement to violence is punishable offence.

(ww) The SIT has not enquired into the evidence regarding hate speech. Regarding hate materials, the material on record was glaring. That included false reporting by regional media outlets like Sandesh on 28.2.2002, claiming 10-15 Hindu women being dragged away from the Railway compartment (at Godhra) by fanatic mob. The Gujarat police had denied any such incident having been taken place. However, no action has been taken against the publisher or

[45] (2009) 11 SCC 737
[46] (2020) 2 SCC 290
[47] (2004) 4 SCC 684 (paras 7 and 8)
[48] (2021) 1 SCC 1 (paras 20, 37, 75, 87, 88, 103 and 107)

the reporter. The same newspaper had reported on 1.3.2002 on the front page with prominent heading that dead bodies of the kidnapped young women from Sabarmati Express have been recovered with their breasts chopped off and that Gujarat is aflame because of Muslim fundamentalists. These canards have been tolerated by the concerned administration unabated, thereby fuelling the emotions and hatred between the two communities. This was despite the reporting by the SIB headed by Mr. R.B. Sreekumar recommending prosecution for provocative lines by the VHP in publication and anonymous pamphlets. Even the then ACS (Home) – Mr. Ashok Narayan had admitted in his statement to the SIT that this matter had been brought to the notice of the State Government, but no action was ever taken. Similarly, the then Commissioner of Police, Vadodara – Mr. D.D. Tuteja had recommended action against Sandesh newspaper in 2002, so also, Mr. Rahul Sharma, an IPS officer and the then (in 2002) S.P., Bhavnagar sought permission to register a criminal case against Sandesh newspaper. Even the SIB through Mr. P.B. Upadhyaya, the then DCP (Intelligence) had sought sanction for prosecution of Sandesh newspaper, as recommended by Mr. Rahul Sharma. There is also material to indicate that CCT had

highlighted the pretentious writing and propaganda disseminated by VHP and also widely reported in "The Express" on 24th March, allegedly circulated by the Bajrang Dal President – Hastimal, who is said to have been arrested. The theme of such publication was: "Don't purchase anything from Muslim shops, don't travel in their vehicles or visit their garages; don't watch films which feature Muslim stars. In this way, we can break their financial backbone". According to the appellant, the SIT has chosen to turn a complete blind eye to this official documentary material and other material on record, despite the fact that publication of such material constitutes offence in law, warranting investigation and appropriate action. This coupled with the sting operation, clearly establishes the existence of a larger conspiracy.

(xx) The Courts have failed to analyse the opinion of the SIT founded on the undisputed material indicative of prelude and build-up before 27.2.2002 in the form of hate speeches and mobilisation all over Gujarat on 27.2.2002, the inaction of political/police/bureaucrat functionaries despite the serious episode of Godhra in the morning of 27.2.2002 and also their

inaction after outbreak of violence on 28.2.2002, not taking preventive measures, deploying the adequate police force, no prompt arrests, no curfew declared and delay in calling the Army. The conspiracy was at different levels and at different timelines having causal connection with the violence across the State on and from 28.2.2002, in particular.

(yy) According to the appellant, hate speeches all across were part and parcel of incitement to targeted violence and a systemic conspiracy. The authorities allowed hate speeches unchecked and unprosecuted to promote hatred amongst the two communities. Moreover, in furtherance of a pre-hatched conspiracy, large body of armed and aggressive groups of people took to the street for taking revenge owing to tragic killings at Godhra. The hate speeches were in the form of statements of prominent political leaders before and after 27.2.2002, regional (vernacular) media/press published in Gujarat and pamphlets with incendiary content by right wing organisations across the State. No preventive action nor any arrest or prosecution was deliberately effected, despite such concerted effort. The Courts have not adverted to this grievance of the

appellant at all. The SIT investigated issue of hate speech as an independent head concerning the speeches of the former Chief Minister of Gujarat and has glossed over plethora of hate writings and speeches of prominent personalities, especially those belonging to the VHP. The SIT has failed to reckon the issues noted in the protest petition concerning hate speeches/writings and more particularly, the failure of the State Government to take prompt action in that regard.

(zz) It is urged that the SIT has not named any person referred to in the complaint dated 8.6.2006 and the protest petition except Babu Bajrangi, who has been prosecuted in Naroda Patia (Ahmedabad City) carnage case. None of the other persons have been named in any of the hate speech cases investigated by the SIT. The SIT could not have accepted the version of the persons disregarding overwhelming material indicative of their complicity. In such a case, it would be a triable issue.

(aaa) The appellant in fact relies on SIT record in support of the prayer for further investigation, at least in respect of the following matters: -

(i) Failure of administration, touching upon collaboration and conspiracy.

(ii) The State administration indulged in destroying the critical record.

(iii) Handing over bodies to Hasmukh Patel and Jaideep Patel.

(iv) Post-mortems carried out in open at Railway yard.

(v) Parading of bodies/Funeral procession and mob attacks.

(vi) Delayed imposition of curfew and calling Army.

(vii) Bandh call officially supported.

(viii) Partisan public prosecutor.

(ix) NHRC case and related cases related to Gujarat Carnage, 2002.

(x) Subversion of the Criminal Justice System that included

(a) Manipulation of Investigation from the start: doctoring of FIRs, ensuring powerful offenders were not named, the narrative was manipulated and twisted to show the victim minority community as aggressor and perpetrator;

(b) ensuring easy bail for those among the perpetrators who were arrested; and

(c) appointing Public Prosecutors who had a dual identity i.e., those who were pro-active members of organisations like the Vishwa Hindu Parishad, Bajrang Dal and Rashtriya Swayamsevak Sangh (RSS).

(bbb) The SIT, for reasons best known to it, followed irregular procedure of taking initials of the persons whose statements were being recorded despite a bar under Section 162 of the Code. The SIT made no attempt to seize the mobile and obtain call records of the relevant party. Moreover, no public notice was issued by the SIT after the complaint dated 8.6.2006 was made over to it by this Court in terms of order dated 27.4.2009[49]. If such public notice was to be issued, as was done after taking over investigation of nine cases pursuant to order dated 26.3.2008[50], many of the family members of the victims or the victims themselves would have come forward and handed over more material to the SIT concerning the allegation of larger conspiracy.

[49] supra at footnote Nos. 4 and 17
[50] supra at footnote Nos. 6 and 16

(ccc) The SIT chose to rely on the extracts in the report of the State appointed Commission (Nanavati-Shah Commission), despite the clear legal mandate that the same cannot be used as evidence in civil and criminal action, as expounded in ***Shri Ram Krishna Dalmia vs. Shri Justice S.R. Tendolkar & Ors.***[51] and ***Kehar Singh & Ors. vs. State (Delhi Administration)***[52]. At the same time, relying on the decision of the Full Bench of the High Court of Judicature at Madras in ***Abdul Sathar vs. The Principal Secretary to Government***[53], it is urged that the State Government is expected to act upon the recommendations made by the NHRC unless for non-acceptance it provides reasons. The NHRC in its report in the present case, made certain recommendations. Further, there was tangible material in the form of report of the Committee on Empowerment of Women[54], report of constitutional authority, such as the Election Commission of India confirming the allegations made in the protest petition, which have not been investigated at all.

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[51] 1959 SCR 279 (para 9)
[52] (1988) 3 SCC 609 (paras 36 to 41)
[53] W.P. No. 41791/2006 (with connected cases) decided on 5.2.2021
[54] Ninth Report of the Committee on Empowerment of Women (2002-2003) concerning violence against women during riots (July-August 2002)

(ddd) Reliance is placed on ***Zahira Habibulla H. Sheikh & Anr. vs. State of Gujarat & Ors.***[55], ***Zahira Habibulla Sheikh (5) & Anr. vs. State of Gujarat & Ors.***[56] and ***Dayal Singh & Ors. vs. State of Uttaranchal***[57].

(eee) Further, the SIT has not enquired into the evidence in the form of statement of Mr. Dileep Trivedi, Public Prosecutor regarding instructions issued for providing Advocate to accused belonging to a particular community, indicative of the bias in favour of that community and being party to the conspiracy.

(fff) The Standard Operating Procedure given in the Gujarat Police Manual, such as Rules 45, 46 and 53 therein, has not been followed in its letter and spirit.

(ggg) The statement of Mrs. Jayanti S. Ravi, District Magistrate, Godhra is not consistent with the official record, which was certainly a matter creating suspicion about the correctness of the statement so made.

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[55] (2004) 4 SCC 158 (paras 2, 5, 7, 10, 18, 30, 31, 33, 35, 36, 39, 40, 52, 60, 61, 68, 71 and 75)
[56] (2006) 3 SCC 374 (paras 4, 5 and 9)
[57] (2012) 8 SCC 263 (paras 1, 21, 22, 25 to 28, 32 and 47.5)

(hhh) The SIT had failed to seize the mobile phone of Mr. Hasmukh Patel and Mr. Jaideep Patel, which could have unravelled the truth about their involvement. Mr. Jaideep Patel is the same person who had made revelation to the Press on the same day i.e., 27.2.2002.

(iii) The telephonic call records produced by Mr. Rahul Sharma have also not been investigated. The statement of Rahul Sharma dated 2.7.2009 to SIT was clinching to establish the plea regarding call records, which SIT discarded on the specious ground that the same was produced for the first time in 2008. The Additional Commissioner of Police, Crime Branch, Ahmedabad – A.K. Surolia, has also stated in his statement before the SIT that it was he who had instructed ACP, Crime Branch – S.S. Chudasama to extract the relevant call details from the relevant cellular service providers – M/s. AT&T and M/s. Cellforce. This has not been investigated by the SIT. The call records given to Mr. P.C. Pande, the then Commissioner of Police, Ahmedabad have also not been analysed. The call records would show that Mr. Haresh Bhatt was in constant touch with the doctors from outside the Godhra city, after which post

mortems of the Godhra victims were carried out in open in the Railway yard. The call records also indicated that Mr. Shivanand Jha, the then Additional Commissioner of Police, Sector 1, Ahmedabad City was part of the larger conspiracy, which is clear from his 68 phone calls made on 27.2.2002 either owned by politicians or officials (unofficially) and 192 calls on 28.2.2002 including to then Power Minister, State of Gujarat – Mr. Kaushik Jamnadas Patel (an MLA elected from his area) and another elected representative – Dr. Maya Kodnani, who has been named as accused in another case and convicted by the trial Court. The call records also pertain to Mr. Dinesh Togadia and Dr. Praveen Togadia, officer bearers of VHP. All these call records have remained uninvestigated.

(jjj) No explanation is forthcoming from the SIT as to why call record was not procured between 2008 and 2010. This is significant as the SIT was directed to "look into" the complaint dated 8.6.2006 vide order dated 27.4.2009[58] and the SIT had submitted its final report to this Court in September, 2011.

[58] supra at footnote Nos. 4 and 17

(kkk) The SIT had made no effort to enquire into the fact that following the Godhra incident the massacre followed in Deepda Darwaza, which case was also assigned to SIT by this Court. Even that incident was a part of larger conspiracy, which has remained to be dealt with in the concerned trial in right perspective.

(lll) The SIT could have also taken notice of Private Citizens Commission headed by former Supreme Court Judges regarding human rights violation and the contents of the said report indicative of high officials of the State being party to conspiracy in commission of crime.

(mmm) It is urged that need to direct further investigation can be substantiated on the basis of undisputed facts emerging from the materials/statements collated by the SIT.

(nnn) In cases of allegation regarding larger conspiracy, there could be no direct evidence. That is a matter to be investigated and inferred on the basis of the material pointing out towards such circumstances. Reliance is placed on ***Nazir Khan & Ors. vs. State***

of Delhi[59]. There is no investigation whatsoever regarding existence of conspiracy despite the same being revealed from Tehelka Tape itself. Reliance is also placed on ***Firozuddin Basheeruddin***[60] and ***Nirmal Singh Kahlon***[61] to contend that even the second FIR is permissible if the evidence regarding conspiracy surfaces after registration of the first FIR. Further, acceptance of final report submitted by the investigating officer is no impediment for enquiring into fresh material brought to the notice of the investigating officer or the Court, if warrants taking cognizance.

(ooo) The SIT has not offered any remark regarding the statement of Mr. Bharat Bhatt, Special Public Prosecutor and Mr. Deepak Shah, who were questioned by the SIT for reasons best known to it.

(ppp) It is urged that appellant – Zakia Ahsan Jafri had appeared as prosecution witness (PW-337) in Gulberg Society case being CR No. 67/2002 and not as a complainant. Whereas, in the present action, appellant – Zakia Ahsan Jafri was prosecuting the matter as complainant.

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[59] (2003) 8 SCC 461 (paras 16 to 22)
[60] supra at footnote No. 43
[61] supra at Footnote No. 44

(qqq) The appellant has also explained as to how the error has been committed in mentioning the name of Mr. Rahul Sharma and Satish Verma as offender Nos. 45 and 63 respectively, though they were cited as witnesses in support of the allegations made in the complaint and protest petition. That was also explained to the SIT at the earliest opportunity.

(rrr) It is urged that undue reference was made about the adverse observations recorded against Ms. Teesta Setalvad by the Court. That was wholly inappropriate. For, the stated adverse remarks came to be expunged by this Court in ***Testa Setalvad & Anr. vs. State of Gujarat & Ors.***[62]. Reliance was placed on some proceedings for similar purpose against Mr. R.B. Sreekumar. Those proceedings are still pending and will be of no avail to SIT. One of the reasons weighed with the SIT to discard the statement of Mr. R.B. Sreekumar was, therefore, untenable on the face of it because the correspondence pertains to period much before Mr. R.B. Sreekumar had raised issues regarding violation of his service conditions with the department.

[62] (2004) 10 SCC 88 (paras 4 and 7)

(sss) The SIT had filed material alongwith final report consisting of (i) documentary evidence (officially received), (ii) documentary evidence otherwise collected by the SIT, (iii) video-audio recordings of a sting operation authenticated at the instance of the NHRC by the CBI and relied upon by the SIT in various prosecutions, (iv) extra judicial confessions evidenced by the sting operation and (v) witness statements in respect of individuals in relation to the events that took place prior to February 27, 2002 until order of this Court dated 12.9.2011[63]. The Magistrate was obliged to examine the voluminous documentary and other evidence to ascertain whether some matters raise strong suspicion of offences having been committed, being sufficient reason to issue direction to the SIT to further investigate the same, even if it was not a case of taking cognizance straightaway. Reliance is placed on ***Afroz Mohammed Hasanfatta***[64] and ***S.K. Sinha***[65].

(ttt) The appellant was relying on undisputed documents available in the SIT record, which alone were sufficient to issue summons for

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[63] supra at footnote No. 26
[64] supra at footnote No. 31
[65] supra at footnote No. 39

alleged offences, as it clearly indicated the complicity of the persons named in the complaint/protest petition and in any case, raised strong suspicion about the commission of such offence. The reports of Mr. R.B. Sreekumar to the Government between April and August, 2022, constitute official documentary evidence, which the SIT has disregarded. That being the substantive evidence, was required to be reckoned by the SIT.

(uuu) The Courts cannot adopt the approach of forgive and forget, but it is the solemn duty of this Court to ensure that all guilty are brought to book and prosecuted in accordance with law. He would submit that: -

> "The Republic is like a shop… that ship has to be made steady. It is your task to keep the Republic steady. It would be steady only if majesty of law prevails. This is a case where the majesty of law has been deeply injured… Despite actionable evidence the court has chosen not to look at it and misread the order of SC. In this case violence has been perpetrated through design which is reflected in the documents… I leave it then to your lordship to decide."

(vvv) It is submitted that it would be a different matter if the Court feels that the material on record did not raise any suspicion.

(www) In the backdrop of the stand taken before us in respect of allegation Nos. (i) and (iv) articulated in the final report dated

8.2.2012, at the time of conclusion of the hearing, we requested the learned senior counsel for the appellant to submit written statement in that regard, which he submitted after the case was adjourned for pronouncement of verdict, in the following words: -

> "**STATEMENT OF THE PETITIONER QUA LARGER CONSPIRACY**
>
> The Petitioner has made her submissions based on undisputed evidence in the form of Tehelka tapes and official communications of public functionaries. The Petitioner has not sought to allege any wrongdoing, criminal or otherwise, with reference to facts that are disputed. The Petitioner contends that a larger conspiracy involving individuals whose undisputed extra-judicial confessions are on tape, read along with inactions of officials demonstrated by undisputed documents, should have been investigated by the SIT, which could have established a larger conspiracy. The submission is that the SIT did not investigate the larger conspiracy, but limited itself to matters in dispute relating to a meeting of February 27, 2002. Qua that meeting, the SIT has come to a certain conclusion which is part of the closure report. **Since the Petitioner has not made any submissions on disputed facts, the Petitioner did not contend before this Hon'ble Court that a larger conspiracy emanated from the meeting of February 27, 2002**. In fact, during the course of submissions, no reference was made by the Petitioner to this meeting at all. **The undisputed evidence on record points to a larger conspiracy which appears to have involved bureaucrats, politicians, public prosecutors, VHP, RSS, Bajrang Dal and members of the State political establishment. It is this conspiracy that is not investigated by the SIT**. The extent of the conspiracy, the identity and number of individuals involved, the preparatory acts committed and the time, place and manner in which the meeting of minds for purposes of such conspiracy took place can only fully emerge on investigation and is not something that the Petitioner can be called upon to provide answers to."
>
> (emphasis supplied)

SUBMISSIONS OF THE RESPONDENT – SIT

7. (a) The thrust of the argument of the respondent-SIT, is that, after directions given by this Court vide order dated 27.4.2009[66] to "look into" the written complaint of appellant, it immediately moved into action and did everything that it could do to investigate every singular allegation noted in the complaint. The SIT could cull out thirty broad allegations in the complaint made over to it for investigation. In addition to those thirty allegations, the SIT also investigated into two additional allegations including the comments/observations of the *Amicus Curiae* in reference to the final report presented to this Court, and recorded its opinion in that regard in the final report submitted to the Magistrate. The SIT left no stone unturned and thoroughly investigated all aspects of the matter[67], as also, exhaustively analysed every piece of information/material collected by it during the investigation by

[66] supra at footnote Nos. 4 and 17

[67] including by recording statements of 66 witnesses during preliminary enquiry between 19 June, 2009 – 18 December, 2009, 120 witnesses during preliminary enquiry between 12 January, 2010 – 23 December, 2010, 76 witnesses during further investigation between 14th August, 2010 – 10th November, 2010 and 145 witnesses during further investigation 23rd November, 2010 till 13th January, 2012

recording statements of 375 persons and questioning 275 persons in terms of the direction given by this Court.

(b) The final report besides dealing with each of these 32 (thirty-two) allegations exhaustively, has also separately dealt with the case against each of the 63 persons named as offenders in the complaint dated 8.6.2006. As aforesaid, the final report submitted to the Magistrate also reproduces the observations of the *Amicus Curiae* and deals with every aspect thereof to form its opinion that no offence is made out, much less having been committed by the offenders named in the complaint. It is urged that the investigating agency is entitled to form its opinion dependent on the legally admissible evidence/material collated during investigation. Further, the SIT had to investigate within the remit given to it by this Court. In that, vide order dated 27.4.2009[68], this Court directed the SIT appointed by it to only "look into" the complaint dated 8.6.2006 of appellant – Zakia Ahsan Jafri. No direction was given to the SIT to register it as FIR. Notably, this Court consciously adopted such a course - despite the main prayer of appellant – Zakia Ahsan Jafri

[68] supra at footnote Nos. 4 and 17

to register her complaint as FIR and to get the same investigated through an independent agency. Not only that, upon submission of the final report by the SIT, the appeal filed by the appellant [SLP(Crl.) No. 1088/2008] was disposed of and the SIT was directed to submit appropriate report before the Magistrate taking cognizance in the Gulberg Society case being CR No. 67/2002. This is despite the fact that the trial of the said case had progressed before the Sessions Court after filing of the last supplementary chargesheet on 12.8.2009. The trial of the said case, thus, continued under the directions of this Court including dated 6.5.2010. In that sense, this Court adopted a *sui generis* procedure which was not in strict consonance with the procedure predicated under the Code. Resultantly, the SIT was bound to strictly follow the directions of this Court in every aspect without exception. And that, the SIT had fairly discharged its role to the satisfaction of this Court, as noticed from the orders dated 1.5.2009[69], 12.9.2011[70] and as recently as, 13.4.2017.

[69] supra at footnote No. 18
[70] supra at footnote No. 26

(c) In the writ petition filed before the High Court, relief claimed was not for assigning investigation of complaint dated 8.6.2006 to the SIT (appointed by this Court in connection with nine major cases which included Gulberg Society case being CR No. 67/2002), but to an independent investigation agency. That prayer, obviously, stood rejected by the High Court and even by this Court consequent to direction issued on 27.4.2009[71] in the special leave petition filed by the appellant, directing the SIT to only have a look at the complaint.

(d) It is urged that this Court even vide order dated 12.9.2011[72], did not direct registration of the complaint dated 8.6.2006 as FIR. It only called upon the SIT to take necessary follow-up steps. The complaint dated 8.6.2006, in one sense, was regarded by the SIT as further information in relation to the Gulberg Society case being CR No. 67/2002, investigation and trial whereof was allowed to proceed by this Court at the same time. The last supplementary chargesheet in that case came to be filed as back as on 12.8.2009.

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[71] supra at footnote Nos. 4 and 17
[72] supra at footnote No. 26

(e) The remit of the SIT, in terms of the directions issued by this Court from time to time was only to examine whether the material referred to in the complaint discloses commission of any offence of larger conspiracy at the highest level and involvement of any person other than the accused persons named in CR No. 67/2002 concerning Gulberg Society. That being the remit of the SIT, it could not have investigated into any other aspect without an express direction of this Court. This is also for the reason that the allegation of conspiracy at the local level had already been investigated into in all other cases registered at the relevant time, around 2000 in number, including the nine major cases assigned to the Supreme Court appointed SIT. The allegations which are made in the complaint are based essentially on the record/affidavits of the officials of the State, filed before the Nanavati-Shah Commission.

(f) Additionally, the direction given by this Court on 12.9.2011[73] in the special leave petition filed by the appellant, would not only bind the SIT and the Magistrate dealing with the final report, but also the appellant herein. No liberty was sought or had been given

[73] supra at footnote No. 26

by this Court to the appellant to make fresh allegations beyond the allegations noted in the complaint dated 8.6.2006 and already investigated by the SIT in terms of order dated 12.8.2009. As a matter of fact, appellant – Zakia Ahsan Jafri being the complainant could have availed of the remedy under Section 190 of the Code by presenting a complaint before the competent Magistrate, as observed by the High Court vide order dated 2.11.2007. She did not avail of that remedy. Instead, the appellant approached this Court by way of SLP(Crl.) No. 1088/2008 and submitted to and acquiesced of the directions issued by this Court from time to time.

(g) Significantly, in proceedings before this Court, Ms. Teesta Setalvad had assisted the *Amicus Curiae* appointed by this Court and presumably also for articulating the observations in the note submitted by him to this Court and to which the SIT had duly responded and dealt with in the final report presented before the Metropolitan Magistrate, in terms of this Court's order dated 12.9.2011[74]. Even the Magistrate was bound by the remit applicable to the SIT in view of the *sui generis* procedure adopted by this Court

[74] supra at footnote No. 26

in treating the report of the SIT as further report under Section 173(8) of the Code (in the Gulberg Society case being CR No. 67/2002) to be presented before the Magistrate alongwith the statements recorded by the SIT, treating them as statements under Section 161 of the code in terms of order dated 7.2.2013.

(h) It is urged that the appellant has repeatedly changed the goalpost with a view to create confusion. Amongst others, the manner in which her complaint dated 8.6.2006 ought to proceed, despite the crystal-clear order of this Court. Further, for the first time, it is now urged that the same (complaint dated 8.6.2006) ought to be treated as a private complaint and proceeded with by the Magistrate under Section 190 of the Code.

(i) It is urged that the argument of the appellant to treat the protest petition as a private complaint, is one of desperation and in any case, untenable in light of the express direction given by this Court to the SIT to submit its report to the Magistrate taking cognizance of CR No. 67/2002 being the Gulberg Society case - as further report under Section 173(8) of the Code. If the report was to disclose commission of such offence of larger conspiracy or

abetment, as the case may be, the Court could have proceeded against the concerned persons and tried in sessions trial arising from CR No. 67/2002 by framing requisite charge(s) in that regard. Therefore, the complaint could neither be registered as FIR nor could be treated as a private complaint in the wake of *sui generis* direction given by this Court vide order dated 12.9.2011[75] in the special leave petition preferred by the appellant. Reliance has been placed on ***Vishnu Kumar Tiwari***[76]

(j) It is urged that when the SIT called upon appellant – Zakia Ahsan Jafri to give her statement in connection with the complaint, she declined to do so and it has been so recorded in the opening part of the final report as well. She wanted the SIT to treat her complaint as FIR and register the same. Accepting this request would have been contrary to the spirit of the direction given by this Court (vide order dated 27.4.2009[77]) to SIT, to only look into the complaint and to take further steps in that regard. Until the special leave petition filed by appellant – Zakia Ahsan Jafri was disposed by this Court on

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[75] supra at footnote No. 26
[76] supra at footnote No. 27 (paras 7, 17, 27, 32, 33 and 42)
[77] supra at footnote Nos. 4 and 17

12.9.2011[78], no request was made to this Court to clarify the position or for issuing directions to register her complaint as FIR/complaint.

(k) Although in the rejoinder argument, the learned counsel for the appellant had stated that he had never argued for treating the complaint/protest petition of appellant – Zakia Ahsan Jafri as complaint under Section 190 of the Code, it is noticed that a clear stand has been taken in paragraph 5 of the written note being Convenience Compilation (Volume I) filed by the appellant in this regard. Further, in the protest petition, fresh allegations have been made, which in any case cannot be linked to the allegation of larger conspiracy required to be investigated by the SIT in terms of successive orders passed by this Court. The attempt of the complainant was obviously to make wild and preposterous allegations and keep the pot boiling in the name of taking action against new offenders referred to in the protest petition while not pursuing allegation Nos. (i) and (iv) which had been thoroughly investigated by the SIT and found to be devoid of substance. A

[78] supra at footnote No. 26

deceptive stand is taken that the appellant would like to pursue the matter only on the basis of undisputed material/documents - having realised that the basis on which allegation Nos. (i) and (iv) came to be made, was a figment of imagination of the persons attributing certain utterances to the then Chief Minister to make it sensational news. Significantly, SIT was entrusted with investigation of other crimes, which it completed to the satisfaction of this Court. In those cases, not even a tittle of remark has been made by the trial Court to trace it to the allegation of larger conspiracy. However, the appellant has highlighted unconnected matters (Deepda Darwaza case and Sardarpura case), in the guise of protest petition filed in Gulberg Society case.

(l) Whereas, it had been understood by all concerned that the SIT was expected to investigate into the allegation regarding "larger conspiracy" to cause and precipitate mass violence across the State and not the criminal conspiracy at the local level resulting in violence at Gulberg Society, in respect of which CR No. 67/2002 had already been registered. In that, as regards the conspiracy to commit offence mentioned in CR No. 67/2002, that had already been investigated

and chargesheet filed, including supplementary chargesheets from time to time. It is not in dispute that even the trial Court, which dealt with the said crime, had formulated the very first point for its determination on the basis of charges framed against the accused named in the said trial being CR No. 67/2002 - regarding pre-planned conspiracy to form an unlawful assembly and thereafter perpetrate the carnage at Gulberg Society on 28.2.2002, which resulted in death of 69 persons and attempts to murder, causing grave and serious injuries to residents of Gulberg Society and also causing damage and destruction of vehicles and property thereat.

(m) Similarly, the allegation regarding events of mass violence spread across the State being State-sponsored crime had been made even in Bilkis Bano case and Best Bakery case and other cases including eight other cases investigated by the SIT. Those allegations have been dealt with in the concerned cases. In other words, the complaint dated 8.6.2006 submitted by appellant – Zakia Ahsan Jafri was to be looked into by the SIT in respect of allegation regarding larger conspiracy at the highest level alone and not the conspiracy at the local (lower) level.

(n) The appellant is now heavily relying on the following: -

(i) Tehelka tapes which surfaced in 2007;

(ii) The CDRs;

(iii) The SIB messages;

(iv) The call for Gujarat Bandh;

(v) The "hate material";

(vi) The handing over of dead bodies;

(vii) Post mortem at the Railway station in open yard;

(viii) Presence of Ministers in the Control Room and DGP office;

(ix) Response of the fire brigade;

(x) PCR messages by Mr. Pande;

(xi) Delay in curfew;

(xii) Delay in requisition of Army; and

(xiii) Partisan/prosecutors.

However, each of these issues were considered at great length by this Court between 2008 and 2011 whilst monitoring the investigation done by the SIT and culminating in final report. The findings of the SIT had also to pass through the strict scrutiny of the *Amicus Curiae* assisting this Court, who was authorised to even interact with the witnesses examined/questioned by the SIT. It would be, therefore, travesty of justice and doubting the wisdom of this Court which had

supervised/monitored the investigation completed by the SIT on all aspects and being satisfied permitted the SIT to present the final report before the Magistrate. The entirety of the material was presented before this Court by the SIT from time to time. The final report in question presented before the Magistrate, therefore, forecloses the enquiry concerning the allegations in complaint dated 8.6.2006.

(o) According to the SIT, considering its remit, the Magistrate was also required to examine the final report on that basis and to satisfy about the plausibility of the conclusions drawn by the SIT on the materials collected by it. The Magistrate entered upon such exercise and applied his mind to the totality of the circumstances including by taking note of the issues raised in the protest petition and accepted the final report being convinced that no case was made out for issuance of process against the named offenders or any other person.

(p) As regards larger conspiracy, the allegation is mainly founded on the affidavits/materials filed by the officials and others before the Nanavati-Shah Commission appointed by the State of Gujarat under

the 1952 Act. The Commission, however, has dealt with every aspect of the affidavit(s) filed by the concerned officials before it including the material which also forms part of the complaint submitted by appellant – Zakia Ahsan Jafri. The opinion of the Commission in that regard is no different than the conclusions reached by the SIT. Notably, the Commission submitted its report after the SIT had already filed its final report before the Magistrate.

(q) Indeed, the opinion of the SIT must conform to the material dealt with by it in its report. In the present case, the final report of the SIT is exhaustive and deals with every singular aspect necessary to answer the allegations made in the complaint - which is on the basis of analysis by the SIT by reckoning the material collected during the investigation. The analysis of the entire material by the SIT is not only allegation-wise, but named offender-wise including witness-wise and objection/noting (wise) of the *Amicus Curiae* in response to the previous further report of the SIT submitted before this Court.

(r) The SIT has thoroughly analysed the allegations against each offender in the subject final report on the basis of material collected

by it, as can be discerned from pages 363-364, 367, 370-385, 388-392 and 395-397. Only after such thorough analysis, the SIT had opined that no offence has been made out nor the stated offender can be said to be involved in the commission of offence of larger conspiracy.

(s) The complaint highlights the pattern of continual concerted lackadaisical approach of high officials of the State Government, who were allegedly acting under dictation from the highest authority of the elected political dispensation. The theory of larger conspiracy is put forth mainly on the basis of alleged utterances of the then Chief Minister in the meeting held soon after the ghastly incident of train burning in Godhra on 27.2.2002 and the subsequent official meeting on 28.2.2002 including before the Press. The case made out in the complaint dated 8.6.2006 is that the high officials followed the directions given by the then Chief Minister and issued instructions to their subordinates to justify pre-orchestrated mass carnage that enjoyed the political sanction of the constitutionally elected Government in Gujarat. Hence, it was nothing short of State sponsored violence against a particular community.

(t) The remit of the SIT was, therefore, to investigate the allegations in the complaint, which it had done meticulously, as can be discerned from the final report submitted by it running into about 231 closely typed pages (in the paper book of this Court, mentioned as pages 1 to 270 on the cover page of the report filed), analysing every piece of material/evidence collated by it allegation-wise, offender-wise, as well as the observations of the *Amicus Curiae* on the final report presented by the SIT before this Court. The final report is the compendium of the previous reports submitted before this Court and the clarification of the SIT in respect of observations of *Amicus Curiae*, point-wise. The permission given by this Court in terms of order dated 12.9.2011[79] is a seal of approval of this Court about its satisfaction regarding the completion of fair investigation done by the SIT in respect of allegations contained in complaint dated 8.6.2006. If there was even a little doubt, this Court, as in the past, would have certainly directed the SIT to do further investigation in respect of left out matters. As noted earlier, Ms. Teesta Setalvad had interacted with the *Amicus Curiae* before he had

[79] supra at footnote No. 26

submitted his observations by way of a note to this Court and made over to the SIT. As all concerned had acted upon and accepted the *sui generis* procedure followed by this Court in dealing with the complaint dated 8.6.2006 including regarding its investigation and directing presentation of an appropriate report before the Magistrate taking cognizance of CR No. 67/2002 concerning the Gulberg Society in terms of order dated 12.9.2011[80], neither the SIT nor the Magistrate could travel beyond the said remit. For the same reason, it would not be open to the complainant/informant/appellant to make fresh allegations, much less not connected with the larger conspiracy at the highest level, already investigated by the SIT under the supervision of this Court.

(u) In any case, the emphasis placed by the appellant on matters referred to in the protest petition are in respect of unconnected events and not having direct or causal bearing on the allegation of larger conspiracy, particularly involving the political dispensation, as well as, the high officials, bureaucrats and police functionaries allegedly acting under the dictation of the then Chief Minister.

[80] supra at footnote No. 26

Notably, no submission has been advanced on the meeting held on 27.2.2002 under the chairmanship of the then Chief Minister or about the testimony of Mr. Sanjiv Bhatt, IPS, the then Superintendent of Police (Security), who falsely claims to have attended the official meeting.

(v) As regards allegations regarding Ministers found sitting in the Police Control Room and giving instructions to the officials, the SIT has thoroughly examined the said allegation and after due enquiry, was of the opinion that the Ministers even though visited the Control Room, were to ascertain the developments and not for giving instructions, as is the routine practice. No material has come on record to indicate that the Ministers had given specific direction one way or the other to the subordinate officials, which may be regarded as a case of larger conspiracy. Absent such evidence, mere fact that the Ministers had visited the Police Control Room would not take the matter any further, much less to charge the offenders named in the complaint with any offence.

(w) As regards the allegation that the State did not stop the State wide Bandh call, it does not follow that the officials and elected

Government had entered into larger conspiracy culminating with the events unfolded on 27.2.2002 onwards. In the first place, the materials collated during investigation does not corroborate this fact. In any case, the inaction or for that matter, tacit support of the elected Government of the State to the State wide Bandh, by itself absent any other incriminating circumstance/material, cannot be the basis to initiate prosecution against the high officials of the State on the charge of criminal conspiracy and for violence happening across the State.

(x) As regards the allegation regarding late deployment of Army, the same was found to be devoid of substance by the SIT. The material collected during investigation revealed that the then Chief Minister, on the basis of inputs and sensing serious problem across the State, had telephonically interacted with the then Home Minister of the Government of India at 1.00 p.m. for deployment of Army and a formal written request was sent on fax to the Union Ministry at 2.30 p.m. on 28.2.2002. The arrival of army took some time due to unavoidable situation and after providing logistical assistance, the Army was deployed immediately on the following day. These

measures taken by the State Government, in fact, are indicative of prompt steps taken to avoid any further untoward situation and destroys the theory of larger conspiracy by the State at the highest level or State supported violence.

(y) It was urged by the respondents that material on record taken into account by the SIT has been noted even by the Nanavati-Shah Commission and the trial Court in Gulberg Society case being CR No. 67/2002, indicative of the measures taken by the State in anticipation of the riots, but the civil administration was overrun across the State. Further, apprehending the fallout aftermath the Godhra train burning episode and the general unrest all around, Army was requisitioned on 28.2.2002 itself even before the violence had actually taken serious proportion across the State. The Army arrived on the same midnight, as they were posted at the borders due to security reasons aftermath the attack on the Parliament on 13.12.2001 (which had happened only two months earlier). After arrival and providing logistical support at the local level, the Army was deployed in sensitive areas across the State. The contemporaneous record would, therefore, indicate that the theory

of larger conspiracy propounded in the complaint is falsified being imaginative.

(z) As regards the partisan investigation in the concerned criminal cases, the same was also of no avail, as there was no evidence forthcoming to connect it with the allegation of larger conspiracy.

(aa) The SIT had examined everyone involved including the then Chief Minister until the last Minister and found that there was no material to connect them with the allegation of larger conspiracy.

(bb) It is submitted that allegation concerning the conduct of grassroot level officers had nothing to do with the allegations regarding larger conspiracy at the highest level.

(cc) Even allegations based on the affidavit of Mr. R.B. Sreekumar had nothing to do with the allegations of larger conspiracy and in particular, the directions issued from the highest authority – the then Chief Minister. Furnishing of alleged misleading reports by the State Home Department to the central Election Commission for conduct of early elections, also has no connection with the theory of larger conspiracy being the cause of eruption of violence across the

State. It is pointed out that appellant – Zakia Ahsan Jafri, in her evidence recorded on 22.10.2010, accepted that Mr. R.B. Sreekumar was at the relevant time, working with an NGO and Ms. Teesta Setalvad was associated with that organisation. Interestingly, she was none else, but the convener of the Private Citizens Commission headed by former Supreme Court Judges and was in a position to influence appellant – Zakia Ahsan Jafri. It is submitted that Ms. Teesta Setalvad, for reasons best known to her and out of vengeance, was interested in continuing with her tirade and persecution on the basis of unsubstantiated allegations in the complaint in the name of quest for justice with real purpose to keep the pot boiling and sensationalise and politicize the crime. The version of Mr. R.B. Sreekumar in the later affidavits commenting about the functioning of the administration, must be viewed in the context of his denial of career opportunities.

(dd) Indisputably, Mr. R.B. Sreekumar, former IPS officer was posted as Additional Director General of Police, Armed Unit, Gujarat, at the time of riots, who had filed nine affidavits before the Nanavati-Shah Commission. He did not derive any of its contents from

personal knowledge/information, which he might have received as occupant of the stated office. Further, he did not make any allegation against the State Government in his initial two affidavits filed before the Commission, but started making allegations from third affidavit dated 9.4.2005, presumably because he was deprived of service benefits having been superseded by his junior – Mr. K.R. Kaushik. Later, he got involved as an accused in the FIR filed by CBI in ISRO spying case, which had been registered under directions of this Court in ***S. Nambi Narayanan vs. Siby Mathews & Ors.***[81] and again between the same parties[82].

(ee) Appellant – Zakia Ahsan Jafri in her cross-examination in Gulberg Society case being CR No. 67/2002 as PW-337 had conceded that she knew Ms. Teesta Setalvad for some time and also about having met Mr. R.B. Sreekumar after the incident. She has stated that Mr. R.B. Sreekumar had come to Gulberg Society on 28.2.2002 and upon completion of four years she had met him. She had also stated that Mr. R.B. Sreekumar was presently working with Ms. Teesta Setalvad. She had also admitted in her cross-

[81] (2018) 10 SCC 804
[82] 2021 SCC Online SC 760

examination that she had given statement on 22.8.2003 before the Nanavati-Shah Commission and after giving that statement, she had no occasion to read copy of that statement. This was suggestive of the fact that she was tutored by Ms. Teesta Setalvad, but she never disclosed about that, which fact she had to admit in the cross-examination. She had also admitted in her cross-examination that Mr. R.B. Sreekumar was disappointed with the Government. At the same time, she was unable to recall about the enquiry made by the SIT in connection with the affidavit filed by her before the Commission. And that, she had throughout followed the instructions of Ms. Teesta Setalvad. In the final supplementary report filed by the SIT in Gulberg Society case being CR No. 67/2002, it has been clearly noted that nineteen witnesses insisted to take on record their prepared signed statement(s), which according to them, were prepared by Ms. Teesta Setalvad and Advocate – Mr. M.M. Tirmizi and did not show willingness to give their own statement. The statements so presented were stereotyped copies/computerised prepared statements given to them by Ms. Teesta Setalvad and Advocate – Mr. M.M. Tirmizi and they had merely signed such prepared statements.

(ff) The final report extensively discusses the allegations culled out from separate affidavits filed by Mr. R.B. Sreekumar before the Nanavati-Shah Commission after recording the statements of concerned persons and collecting relevant documents - as can be discerned from pages 264-266, 271-283, 285-287, 297-298, 302-312, 326 and 329.

(gg) The other allegations founded on the version of Mr. Rahul Sharma were also enquired into and the SIT examined the relevant call records to conclude that the same were baseless. The allegations were broadly regarding laxity and failure in maintaining law and order during the relevant time.

(hh) The SIT recorded statements of all the relevant persons who were stung in the Tehelka Sting Operation. The call details of Babu Bajrangi, who was one amongst them, clearly establishes that he was in Ahmedabad from morning 11:15 hrs. on 27.2.2002 and, therefore, he could not have been in Godhra at the time of Godhra train incident. Similarly, the call details of Haresh Bhatt were analysed, which revealed that he was present in Ahmedabad till 9:30 hrs. on 27.2.2002. His location was again shown in Ahmedabad

directly at 18:40:21 hrs., which supports his claim that he had gone to his village during the interregnum period, when connectivity was not there. Again on 28.2.2002, his location remained at tower of mobile service provider in Paldi in Ahmedabad till 12:00:04 hrs. on that day. This supported his claim that he had visited his village for a week. In any case, Haresh Bhatt had not been named in the FIR register pertaining to riot cases in Gujarat or in the complaint filed by appellant – Zakia Ahsan Jafri.

(ii) As regards the argument founded on Tehelka Sting Operation about build-up of arms and ammunition in Gujarat even before Godhra train incident, the contents of the transcript are not corroborated from the material available with the SIT. The trial Court in Sessions Case No. 152/2002 arising from Meghaninagar PS FIR No. 67/2002 (Gulberg Society case) regarding use of firearms in the incident, had observed in paragraph 722 that there is no evidence or recovery of the bullet fired from private weapon by any member of the mob. The only case is that the material recovered from the scene of offence were empty cartridge shells and bullet casings, ballistically established to have been fired from the licensed

weapon to be of the ownership of late Mr. Ehsan Jafri. In other words, there is no corroborative material forthcoming regarding commission of any offence by the offenders named in the complaint, much less of larger conspiracy.

(jj) The Tehelka Sting Operation in a way relates to the allegation regarding criminal conspiracy at the local level. The contents thereof have nothing to do with the allegation of larger conspiracy enquired into by the SIT as directed by this Court. The local level conspiracy had been investigated in the respective cases including the nine cases investigated by the SIT under supervision of this Court. In the concerned cases, all persons involved including the persons recorded in the sting operation have been proceeded against in the concerned case. As had been pointed out, SIT nevertheless recorded statements of 13 persons out of 18 involved in the operation 'Kalank' by Tehelka. The statements of those persons in law could be used against the maker of the statement as extra judicial confession, but not against others and more so without corroborative piece of evidence. The SIT had not only recorded the statement of Babu Bajrangi, but also Prakash S. Rathod (a worker at a Petrol pump)

and Haresh Bhatt. Their presence at the place referred to by them stood falsified by the call detail records. Their version has been analysed by the SIT and found to be unuseful in the context of the allegation of larger conspiracy being enquired by it under directions of this Court. Until the disposal of the matter by this Court on 12.9.2011[83], the issues now raised were never pointed out even by the *Amicus Curiae*.

(kk) The learned counsel would also urge that incorrect statement was made on behalf of the appellant that the SIT had not recorded statement of any victim. This submission is falsified from the record of the SIT, which includes the statements of concerned victims (minority community), list whereof has been mentioned in paragraph 35 of the Final Note Part-III with heading "Clarification as to Conspiracy in the Gulberg Case".

(ll) Similarly, incorrect allegation was made against the SIT about the records produced by Mr. P.C. Pande. Those records were produced by Mr. Pande on his own and not as per directions given by this Court. Further, the record was a scanned copy of the PCR

[83] supra at footnote No. 26

messages done by him and in his custody. Whereas, the original records which were allegedly scanned by him, were destroyed in the year in 2008 itself as per rules in Gujarat Police Manual. As such, the SIT cannot be blamed for non-recovery of the original PCR message record.

(mm) It was also faintly suggested that the SIT had failed to record further statements or re-examine the witnesses. It is urged that those persons who came to give their statements to SIT, their statements were recorded by the SIT without exception. If any witness wanted to give further statement, could have done so on his own if he desired to share further information. But no such request was received by the SIT. If the SIT wanted to re-examine any witness, it could have done so unhesitatingly. In substance, the allegation about the inaction of the SIT or partisan attitude during the investigation is, to say the least, preposterous.

(nn) It is urged that the SIB messages being exchanged between the concerned officials itself is indicative of the fact that the State Government and the police were proactive in dealing with the crisis that was evolving post-Godhra episode. Additionally, on 28.2.2002

itself, the State called for Army assistance by sending a formal request in that behalf and on arrival of Army after giving logistical assistance, it was deployed all across the sensitive areas in the State. This also is indicative of the fact that proactive measures were being taken by the State, but that was overrun by the expanse of spontaneous mass violence. The SIT had noted that the SIB being responsible to collect intelligence regarding law-and-order situation in the State, was at the relevant time headed by Mr. G.C. Raiger, the then Additional Director General of Police-Intelligence. The authorities who were supervising the functions of this department have been named as being part of pre-planned larger conspiracy. However, on analysing the messages, it is noticed that the intelligence agencies of the State were collecting the relevant intelligence and disseminating the same to the concerned authorities. Thus understood, the allegation of pre-planned larger conspiracy and involvement of named high officials remained unsubstantiated and not even warranting any suspicion about their involvement.

(oo) It is urged that left to the appellant, she had gone to the extent of suggesting that the two train bogies were put on fire as a part of pre-planned conspiracy hatched by the highest authority. This is only figment of imagination, preposterous and in disregard of the hard facts discernible from the material collected by the SIT including in the investigation concerning Godhra incident clearly spelling out the manner in which that incident had occurred. The trial of that case has established the involvement of accused who had been convicted for being responsible for the said incident and appeal therefrom is pending in this Court.

(pp) It is urged that assuming that it is a case of intelligence failure and in a given situation, inaction of the concerned authority responsible to take corrective measures, such failure cannot take the colour of being involved in criminal conspiracy as such. For being involved in the crime of criminal conspiracy, there ought to be positive material indicative of deliberate act of commission and omission and meeting of minds of the concerned persons, which was completely absent and not forthcoming during the investigation conducted by the SIT to enquire into the allegations of larger

criminal conspiracy. The SIT had investigated into the role of every person named as offender in the complaint under consideration and analysed the same in the final report offender-wise as well.

(qq) The SIT had recorded statements of various officials of SIB, such as Mr. P.B. Upadhyay, the then DCI (Communal), Mr. O.P. Mathur, the then IGP (Admn. & Security), SIB, Mr. G.C. Raiger, the then Additional DG (Intelligenc), as also of Mr. Ashok Narayan, ACS (Home), which have been taken into account for forming opinion, as noted in the final report. Despite the efforts put in by the officials, there are situations which are unpredictable being sporadic, sudden, spontaneous and dynamic in nature. Even with best of anticipation and arrangements in place, it would get overwhelmed by the proportion of violence all across the State. In such eventuality, it would be a case of collapse of State administration, but cannot pass the muster of concerned officials being part of larger conspiracy. The officials are expected to respond to the evolving situation while adhering to the norms, but may end up in a situation which can go beyond their control at various places across the State owing to mass violence.

(rr) The SIT had also closely examined the allegation of conspiracy in making kerosene bombs and came to the conclusion that there was no evidence worthy of proceeding against the named offenders, much less on the allegation of larger conspiracy for want of evidence regarding meeting of minds in particular.

(ss) In reference to the argument that the trials against the named accused were being compromised by the public prosecutor (Mr. Arvind Pandya), has also been rebutted by the SIT on the argument that the public prosecutor to whom reference has been made by the appellant, was not appointed by the State in any single criminal case investigated by the SIT, but had appeared before the Nanavati-Shah Commission. Further, he had resigned in 2008 before the SIT took over the investigation of the complaint dated 8.6.2006. He could not have, in any way, influenced the trial in any of the specified cases. Out of nine cases, trial in eight cases had been completed under the gaze of SIT and in none of the cases, any adverse opinion has been recorded by the concerned Court in that regard. Thus, the plea in support of the allegation of larger conspiracy is tenuous.

(tt) As regards allegation No. (xv), it is submitted that public prosecutor appointed by the State Government before the Nanavati-Shah Commission had not been named in the complaint, but now during the arguments, his role in compromising the trials was being highlighted. This cannot be countenanced.

(uu) Significantly, the contents of the complaint dated 8.6.2006, besides relying on the materials/affidavits filed before the Nanavati-Shah Commission, also note that there are some matters which could not have been considered by Nanavati-Shah Commission and reference is made to such matters. Even that aspect has been duly investigated and the opinion formed by the SIT was that the same are unconnected with the allegations of larger conspiracy.

(vv) Noticeably, the final report dated 8.2.2012 was presented by the SIT before the Metropolitan Magistrate pursuant to the direction given by this Court on 12.9.2011[84] even before the Nanavati-Shah Commission had submitted its report, which was tabled in the Assembly on 18.2.2012. Furthermore, the allegation regarding larger conspiracy of State-sponsored violence noted in the

[84] supra at footnote No. 26

complaint, was required to be investigated only in the last case investigated by the SIT i.e., Gulberg Society case being CR No. 67/2002. Not even a remote reference was made to such allegation in the other eight cases investigated by the SIT. Similarly, no allegation about unfair investigation done has been made against the SIT in any of those cases including before this Court, except in the present case.

(ww) It is urged that since the appellant has now chosen not to pursue allegation Nos. (i) and (iv), the entire basis of the complaint dated 8.6.2006 has become irrelevant and redundant. For, stated allegations were essentially about the larger conspiracy involving highest political authority/bureaucracy and actions or inactions of the high officials unfolding under dictation of the then Chief Minister. The remaining allegations would then be unconnected with the larger conspiracy and, therefore, need not be taken forward against the then Chief Minister and high officials of the State Government. In any case, every allegation has been duly enquired into and investigated by the SIT before forming its opinion that no

case had been made out against the offenders named in the stated complaint.

(xx) The appellant, however, has now changed the goalpost by placing emphasis on transcripts of Tehelka Tape on the argument that genuineness of the tape had not been doubted; and, therefore, to contend that the contents of the tape inspire confidence to proceed against the persons named in the complaint. On the other hand, even though the Tehelka tape did not form part of the complaint dated 8.6.2006, which was filed almost four years after the events of February, 2002 as the Tehelka tape surfaced only on 27.10.2007, yet the SIT enquired into the same in the context of the persons named in the complaint as offenders. For, in law, it could be used as extra judicial confession only against the maker of the statement and not against other persons though referred to in such a statement[85]. In that light, the Tehelka tapes, heavily relied upon by the appellant, were of no avail. Notably, the tapes have been relied in three other cases investigated by the SIT and also in Gulberg Society case being CR No. 67/2002, but the trial Court has adversely

[85] ***R.K. Anand vs. Registrar, Delhi High Court*, (2009) 8 SCC 106** and ***Rajat Prasad vs. Central Bureau of Investigation*, (2014) 6 SCC 495**

commented upon the said tape, which decision is now subject matter of appeal before the High Court and this Court in those cases.

(yy) Further, even if the material in Tehelka sting operation being a genuine work is to be accepted, it does not follow that the contents of such tape would have probative value. Upon investigation, if it was to be found that the tape and the contents have probative value, only then it could be used, that too against the maker of the statement alone and not against any other person.

(zz) It was pointed out that Mr. Ashish Khaitan was examined as PW-313 in trial of Gulberg Society case being CR No. 67/2002 and his version has been duly dealt with in the said judgment by the Trial Court, for not accepting the contents thereof.

(aaa) It is urged that the complainant has been continuously introducing new arguments/allegations at different stages of the proceedings. That has been depicted in the chart given in paragraph 45 of the Final Note Part-III of respondent No. 2, which reads thus: -

"Sl. No.	**Stage of Protest Petition filed before Ld. Magistrate**	**Stage of arguments before Ld. Magistrate**	**Stage of revision application/submissions before Hon'ble High Court of Gujarat**	**Stage of submissions before Hon'ble Supreme Court**
1.	Allegation of "Criminal Negligence of the Ahmedabad Fire Brigade under PC Mr. Pande":	Accused No. 1 was brought into Gujarat politics to vehemently push the aggressive supremacist Hindutva ideology. He came into Gujrat politics with a pre-determined mindset of aggressive Hindutva and anti-Muslim prejudice/bias.	Issues related to the constitution of the team and the porosity with power accused in the Gujarat government.	Read from memoir of Lt. Gen. Zameeruddin Shah, who led the army operation in Gujarat during the riots. His statements were never recorded by SIT. The book stated that the soldiers were stranded at the airfield when the riots started.
2.	Allegation of post-mortem of the dead bodies at Godhra Railway Station	A-1 on the afternoon of 27.2.2002 instead of going directly to Airport, deliberately took a detour and passed through Meghaninagar and Naroda areas.	Petitioner witnessed police officers in the barracks on leave while Ahmedabad burned.	SIT "collaborated with accused persons and rewarded handsomely". Role of SIT should be investigated.
3.	Tehelka Sting Operation	A-1 also addressed another meeting of political workers at Godhra on 27.2.2002 where he assured aggressive RSS-VHP cadres that the police would not interfere in their thirst for revenge	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 behaviour of the Judge was questionable.	Mobile Phones of the accused persons were not seized by SIT.
4.	Suspicion on the cause and	While returning to Gandhinagar	Between May-July 2004, the Hon'ble Supreme	FIRs were registered on the

	manner of fire in coach S-6 of Sabarmati Express on 27.02.2002	again, they (A-1 plus others) took a diversion towards Naroda and Meghaninagar which were out of the way. A-1 visited these areas in order to give effect to the Conspiracy	Court ordered protection by the Central Paramilitary to 570 witness survivors and human rights defender Teesta Setalvad following direct threats from powerful accused.	complaints of police officials/personnel, and version of victims were not recorded as FIRs.
5.	New accused persons proposed in the Protest Petition covering almost all the administration of Government of Gujarat at the time of riots and their successors	The Motor Cavalcade carrying 54 dead bodies covered distance of 153 kms from Godhra to Sola Civil Hospital in six hours. It can be inferred that the cavalcade was stopping on the way and instigating violence.	Preventing the imposition of curfew.	Argument of the petitioner at previous stages was that the larger conspiracy was hatched by named accused persons, and manifested mainly through meeting in the evening of 27.02.2002. Differing from this argument it is argued at this stage that materials available on the record prima facie showed that there was a conspiracy but who all were involved in this would be known only if there is an investigation on all the aspects.
6.	The Amicus Curiae, Mr. Raju Ramachandran has recommended the prosecution of A-1 Mr. Modi under Sections 166 and 153A and 153B of the IPC.	SIT did not investigate that whether Army was given adequate powers under section 129/130 of CrPC.	Making a pretence of verbally calling in the Army on the late evening of 28.2.2002 but not actually allowing its deployment	
7.	Destruction of records/wireless	The SIT did not bother to record	SIT kept the Hon'ble Supreme Court and the	

	logs/vehicle log books by Government of Gujarat	statements of Justices Verma or Justice Anand or the rest of the NHRC or even try and collect evidence from them	Amicus Curiae in the Dark about documents (PCR messages) that point to conspiracy.	
8.	Sandesh Newspaper as Collaborator in the Conspiracy	A letter addressed by retired Justice Divecha to the NHRC which exposed the complete targeted violence against members of the Muslim minority in Ahmedabad.		
9.	Deepda Darwaza Conspiracy			
10.	SIB messages on • 'Prelude and Build up to the violence • Provocative behaviour of Kar Sevaks • Preparation of violence after Godhra"			

(bbb) Insofar as fresh allegation regarding criminal negligence of fire brigade in Ahmedabad under Mr. P.C. Pande, it obviously overlooks the fact that fire brigade comes within the Ahmedabad Municipal Corporation and not State police. Mr. P.C. Pande was Commissioner of Police of Ahmedabad city and had nothing to do with the functioning of fire brigade. In the complaint, a vague allegation is

made that the fire brigade/help did not reach on time when needed. However, that was owing to in many of the disturbed areas, roads were blocked by putting obstacles.

(ccc) Similarly, the allegation regarding post mortem of dead bodies at Godhra Railway station being part of larger conspiracy, is founded on conjectures and surmises. The Godhra incident was fully investigated and tried in which no such case was put forth. That matter had travelled to the High Court as well and now it is pending in this Court. The issues regarding necessity to do post mortem of the dead bodies in the Railway yard and the manner of doing it, has been examined in those proceedings. In the name of protest petition, the appellant intends to enlarge the scope of enquiry including into fresh matters such as the manner in which the fire occurred in the two coaches of Sabarmati Express on 27.2.2002, which aspect has been thoroughly investigated in that case. The appellant had gone to the extent of levelling insinuation by attributing fire ignited by the persons inside the train themselves or by other persons from the same community as part of larger conspiracy to spread hatred and violence across the State. That too, with the involvement of the

political dispensation at the highest-level being part of larger criminal conspiracy. The attempt of the appellant is to bring in all other cases (Sardarpura case, Deepda Darwaza case, Ode case, Naroda Patiya case, Naroda Gaam case, Best Bakery case, Bilkis Bano case etc.), which have already been thoroughly investigated and tried by the concerned Court including in respect of charge of criminal conspiracy at the concerned level in the given case. That cannot be countenanced.

(ddd) It is urged that the appellant is also ill-advised to heavily rely upon certain information in a book written by former Major General, who never came to give his statement before the SIT, despite the public notice issued on 28.4.2008 after the SIT was appointed by this Court to investigate nine major cases. The book was written only in 2018. The veracity of the contents thereof would only be in the realm of guess work.

(eee) It is urged that the SIT has done everything to the best of its ability and as a team, investigated all the nine major cases assigned to it by the Court. Despite the commendation by this Court about the humongous task undertaken by the SIT, the appellant had the

impudence to make submission bordering on questioning the integrity of the SIT appointed by this Court; and though the work was completed by it under the strict vigil of this Court including the *Amicus Curiae* who had taken assistance of all the stakeholders and also Ms. Teesta Setalvad. The *Amicus Curiae*, in one sense, was discharging the role of investigating into the work of Supreme Court appointed investigators (the SIT) – investigating the investigators. The SIT, after taking over investigation of nine major cases assigned to it by this Court, filed supplementary chargesheets in all those cases and also pursued the cases until the stage of trial, and is still reporting about the progress of those cases to this Court periodically.

(fff) As regards the investigation of complaint dated 8.6.2006, it has been done by more than one investigating officer during relevant periods at different point of time as per the exigency and direction of this Court, but the finding and observations of the SIT in every report have been consistent. Significantly, the members of the SIT have been continuing to function under the directions of this Court even after their superannuation from service, only because this Court had been satisfied about their performance. At one stage, similar

attempt was made by the appellant, as a result of which the Court had to stay the trial of Gulberg Society case being CR No. 67/2002, which was eventually lifted on 1.5.2009[86] for the reasons noted in the said order. In fact, this Court had taken note of the misadventure of Ms. Teesta Setalvad in forwarding her letters written to Chairperson of the Supreme Court appointed SIT to the OHCHR, Geneva and that upon her undertaking that she will not do so in future, the matter stood closed. It is urged that insinuations have been made against the Supreme Court appointed SIT and, in the process, the wisdom of this Court has been questioned in accepting the work of SIT as fair and complete investigation of the allegations in the stated complaint.

(ggg) It is a matter of record that this Court reposed complete trust in the SIT not only by entrusting responsibility of investigation of the stated crime, but also to ensure that the trial of all those cases proceeded in a fair manner and not compromised, by giving authority to SIT to recommend names of able and apolitical lawyer to be appointed as public prosecutor(s), including providing

[86] supra at footnote No. 18

protection to witnesses when required. With the untiring efforts of the Supreme Court appointed SIT, trials of eight other cases ended in substantial number of convictions including imposition of capital punishment. Such being the track record of the SIT, which has been closely monitored by this Court from time to time to its satisfaction and commended upon on more than one occasion, yet the appellant has gone to the extent of questioning the integrity of the SIT, despite the fairness in the investigation. Such a plea cannot be countenanced and is in the nature of questioning the authority and wisdom of this Court in expressing satisfaction about the performance of the SIT and commending expressly on more than one occasion *inter alia,* in its orders dated 1.5.2009[87] and 13.4.2017.

(hhh) Notably, the stated complaint was submitted by appellant – Zakia Ahsan Jafri and as no follow-up steps were taken by the concerned authorities, a writ petition was filed by her for issuing direction to the competent authority to register the same as FIR to be investigated by an independent agency (not the Supreme Court appointed SIT). Ms. Teesta Setalvad joined as petitioner No. 2 for

[87] supra at footnote No. 18

the first time in these proceedings before the High Court. The High Court vide judgment dated 2.11.2007 in Criminal Application No. 421/2007, opined that Ms. Teesta Setalvad had no locus to maintain such application and decided the writ petition at the instance of appellant – Zakia Ahsan Jafri, by permitting her to file appropriate private complaint before the Magistrate under Section 190 of the Code. That opinion of the High Court has not been reversed by this Court while disposing of SLP(Crl.) No. 1088/2008 on 12.9.2011[88].

(iii) As noted earlier, even though the appellant had been pursuing SLP(Crl.) No. 1088/2008 before this Court for direction to the competent authority to register the complaint as FIR, this Court permitted the trial of CR No. 67/2002 concerning Gulberg Society to proceed, in which appellant – Zakia Ahsan Jafri was examined as PW-337 on 22.10.2010. Even before the trial Court, she did not raise any matter in her evidence regarding larger conspiracy referred to in her complaint dated 8.6.2006. The material on record would clearly suggest that she is being driven by Ms. Teesta Setalvad to pursue and so to say, precipitate her complaint. The complaint,

[88] supra at footnote No. 26

however, is vague and bereft of allegations of criminality. At best, the allegations founded on the material/affidavits filed before the Nanavati-Shah Commission, were indicative of dereliction of duty of concerned officials/authorities. The complaint is based essentially on the statements of Mr. R.B. Sreekumar, Mr. Rahul Sharma and Mr. Sanjiv Bhatt, which may support the allegations of inaction or dereliction of duty by the concerned high officials. The claims made by these three persons, however, have been contradicted by the concerned persons on the basis of contemporaneous record. The complainant – Zakia Ahsan Jafri yet wants to proceed including on the basis of statements of these three officials against the version of the entire establishment, which is backed by contemporaneous record.

(iii) Mr. R.B. Sreekumar had referred to Register, which was his personal diary and not official record, as investigated and found by the SIT. Being his personal diary, it could not be used against the offenders named in the complaint and in any case, the contents thereof being in the nature of entries made in the usual course of official business by the concerned department expected to act in

tandem with concerned official agencies. The contents of the diary, in the opinion of the SIT, were of no avail. He had filed affidavit before the Nanavati-Shah Commission in the year 2009 for the first time. In the earlier affidavits, no reference was made to the said diary/register. Moreover, Mr. R.B. Sreekumar was posted in Law & Order Division only in April, 2002 after the ghastly events had already unfolded in February and March, 2002. Thus, he had no personal knowledge about any instructions, much less allegedly given to the high officials or by high officials to their subordinates at the relevant point of time as being in the nature of criminal conspiracy.

(kkk) Similar is the case of Mr. Rahul Sharma, another star witness of the complainant (appellant). He had referred to the call records in question for the first time only in 2008. Before that, he had filed more than one affidavit before the Nanavati-Shah Commission making no reference to the said call records. Further, in the subsequent affidavit, the stand taken by him is completely different. It is the case of the SIT that after lapse of one year, no details regarding call records are preserved by the service provider.

To the same end, seizure of mobile phone after lapse of seven years would have had served no purpose. Further, the authentication of the call details/records supplied by Mr. Rahul Sharma and the call details/records available with the SIT were duly considered before forming opinion by the SIT. Mr. Rahul Sharma claims to have been authorised to assist the supervisory officer in investigation of the post-Godhra riot case, which were being investigated by Crime Branch – Ahmedabad city, by the then Commissioner of Police, Ahmedabad City. He was neither investigating officer nor direct supervisory officer in the Naroda Police Station CR No. I 193/2002. He claims to have obtained compact disc containing call details in connection with stated case of Naroda Police Station from two different cell phone service providers (M/s. Cellforce and M/s. AT&T) containing call details of all subscribers in Ahmedabad city and Godhra as case property of the offences under investigation. However, he failed to hand over the said case property to the investigating/supervisory officer of the case, nor got it entered into the register of case property (Muddamal) and also not informed the Court of jurisdiction about the seizure of aforesaid case property. Whereas, he produced the compact disc for the first time only on

31.5.2008, for reasons best known to him. The compact disc produced by Mr. Rahul Sharma before the Nanavati-Shah Commission was then obtained by Mr. Amresh N. Patel, Jan-Sangharsh Manch from the Commission of inquiry, as also, by the investigating officer. It was not possible for the SIT to obtain certificate under Section 65B of the Indian Evidence Act, 1872 as the original compact discs were never produced by Mr. Rahul Sharma. Notably, the data from the compact discs were admittedly copied by Mr. Rahul Sharma in his personal computer and in the changed format i.e., ZIPPED format. In other words, Mr. Rahul Sharma had failed to ensure the integrity of the data and never produced the original compacts discs of the two mobile service providers. Despite that, the SIT attempted to authenticate the available data by sending it to Forensic Science Laboratory, Ahmedabad for examination, comparison and checking the contents available therein. The laboratory has opined that MD5 Hash value of the files in all the three compact discs were found to be same, but the call data records in the CPU of personal computer of Mr. Rahul Sharma indicated that the files containing call data records or fragments of the files could not be found on the computer storage

media. The SIT also recorded statements of various witnesses under Section 161 of the Code for tracing the original compact discs and authenticating the available data (late Mr. Ashok Bhatt, Mr. P.C. Pande, Dr. Anil T. Patel), but the original compact discs could not be traced. The final report has analysed the statements of the said persons and the opinion of the SIT in detail. It was noticed that the call details of the Gandhinagar tower where most of the functionaries of the Government of Gujarat were placed, was not available with the SIT, as the same had not been requisitioned/obtained by Mr. Rahul Sharma during investigation of the riot cases. The SIT has thoroughly investigated even this aspect and all related material and having found that the said material appears to be doctored and fabricated and not in consonance with the official records. It thus noted its conclusion that the same was of no avail to proceed against the named offenders for offence of larger conspiracy in connection with C.R. No. 67/2002 concerning Gulberg Society or otherwise.

(111) It is urged that the appellant is heavily relying on the statements of Mr. Rahul Sharma, despite the fact that in the complaint dated 8.6.2006, he was named as offender No. 45 and

accusations against him were specifically mentioned against his name in the body of the complaint while also showing him as witness No. 5 in the same complaint. However, the copy of complaint filed before this Court reveals that the relevant paragraph making accusations against Mr. Rahul Sharma has been deleted alongwith his name as offender No. 45 in the complaint. This is a serious matter.

(mmm) The case of Mr. Sanjiv Bhatt is still worse. He has been convicted for murder (*as mentioned in paragraph 7 under the head "Short Pointers" in the Convenience Compilation filed on behalf of respondent No. 2*); and for planting narcotics in the room of a lawyer in some other State. He had claimed that he was present in the meeting convened on 27.2.2002. But all officers who were present in the meeting, have denied his claim.

(nnn) Relying on the observations made in the decision in ***Sanjiv Rajendra Bhatt vs. Union of India & Ors.***[89], it was urged that the same were indicative of the character and conduct of Mr. Sanjiv Bhatt, who falsely claimed to have remained present during

[89] (2016) 1 SCC 1 (paras 49 to 55)

the meeting of high officials on 27.2.2002, where the then Chief Minister had allegedly made certain objectionable utterances.

(ooo) The appellant wants this Court to disregard the version of all other high officials and to proceed against the named offenders only on the basis of version of three persons proclaiming themselves as being wedded to truth. As a matter of fact, it is urged that all the three persons on whose statements emphasis has been placed, have been adversely commented upon not only by the Nanavati-Shah Commission, but also by the SIT in its final report including the damning observations by this Court against Mr. Sanjiv Bhatt.

(ppp) Moreover, the appellant has repeatedly argued that the SIT did not record statement of Mr. Anil Patel, which fact is contrary to the record. At the same time, the appellant placed reliance on the statements of Mr. Anil Patel, who has not been named as offender in the complaint dated 8.6.2006. In fact, there are three persons having common name. The first is – Mr. Anil Tribhovandas Patel, the then Minister, Gujarat; second being Mr. Anil Shankerbhai Patel, a VHP worker; and the third – Dr. Anil Patel, a general practitioner at Ahmedabad City.

(qqq) As stated earlier, the repeated grievance made on behalf of the appellant that crucial witness – Mr. Anil Patel was not even examined by the SIT, is incorrect submission. In that, there are three persons with same name and the person who has been stung by operation Tehelka is Mr. Anil Shankerbhai Patel, a VHP worker, whose statement was duly recorded by the SIT including the other two persons with the same name, namely, Dr. Anil Patel and Mr. Anil Tribhovandas Patel, the then Minister, Gujarat. The SIT had also recorded statements of 13 other persons out of total 18 involved in sting operation, which were found to be relevant for the purpose of enquiry into the allegations under consideration.

(rrr) As regards the allegation regarding dead bodies having been paraded, the same has been fully enquired into and the SIT was of the opinion that no such event of parading had occurred at any place. However, a novel argument is being pursued by the appellant before this Court. For, the allegation in the complaint was of having handed over dead bodies to private persons, namely, Hasmukh Patel and Jaideep Patel. During the investigation, it has come to the fore that the letter written by the Tehsildar, handing over bodies,

mentioned the name of Jaideep Patel, but that was not because of the instructions given by any superior authority. Further, the local Tehsildar has been proceeded departmentally for this folly. The contemporaneous record including the statements of concerned persons, however, reveal that the dead bodies were carried in closed vehicles under police escort, alongwith whom Mr. Jaideep Patel had merely travelled. The process of handing over of the dead bodies to the officials of the hospital at Ahmedabad was in fact done by the officials/police accompanying the dead bodies and not by Mr. Jaideep Patel. After taking charge of the dead bodies, the officials of hospitals handed over the same, after due identification, to their relatives and the bodies which could not be identified despite effort of DNA test matching, were cremated by the local officials at Ahmedabad. There is not even a tittle of material to indicate that the bodies were taken in open vehicles or so to say, paraded from Godhra to Ahmedabad or anywhere else by any group of private persons before cremation. The decision to take bodies to Ahmedabad was a conscious and unanimous decision of the concerned authorities at the local level and not on instructions or directions given by the then Chief Minister, as alleged. It was so

decided as majority of the dead persons were from Ahmedabad and nearby places. In that, out of 58 dead bodies, 4 bodies belonging to Dahod, Vadodara, Panchmahal and Anand districts were handed over to their legal representatives after identification at Godhra itself. The remaining 54 bodies were sent under police escort to Ahmedabad, as most of the victims were resident of Ahmedabad and nearby areas. Out of 54 bodies, 35 could be identified and handed over to their relatives on 28.2.2002. Remaining 19 bodies were cremated by the officials on 1.3.2002, out of which 12 could be later on identified by DNA test and 7 remained unidentified. Hence, it is seen that it became convenient for the relatives of the deceased persons to collect the dead bodies from Ahmedabad. It was also decided to take the dead bodies during night time under police protection to avoid any untoward situation. Such being the material on record, the argument regarding the bodies being paraded, much less as a part of larger conspiracy at the highest level, is preposterous.

(sss) To begin with, the appellant had argued that dead bodies were purposely paraded all over, but later improved upon that grievance

by showing that parading of bodies was done after hospital handed over bodies, duly identified, to the respective relative until the same was taken for cremation.

(ttt) Significantly, the complaint dated 8.6.2006 neither makes mention about hate speeches being outcome of larger conspiracy nor it is alleged that so-called parading of dead bodies was resorted to as part of larger conspiracy.

(uuu) Much had been argued by the appellant about no investigation by the SIT in respect of hate speeches. It is submitted by the learned counsel for the SIT that thousands of cases were reopened by this Court, wherein 'A' Summary Report(s) came to be filed and in some of those cases, charges regarding hate speeches have been enquired into.

(vvv) It is urged that the allegations regarding build-up or laxity or about the post-mortem done in open in Railway yard, failure to provide for adequate *bandobast* or arranging fire brigade on time, are not supported by any credible material, much less to raise a strong suspicion to proceed against the named offenders being involved in larger conspiracy. Appellant had the gumption to

contend, suggestive of the fact that the train was set on fire at Godhra by the passengers themselves or by persons belonging to their own community who were engaged in doing preparatory (build-up) arrangements.

(www) The attempt of the appellant was to present rambling facts to create confusion, leaving out core issues that needed to be focussed to cull out the material on the basis of which an objective and decisive opinion could be formed that the offence of larger conspiracy at the highest level had been committed and the named offenders have committed the same. That is completely absent and for which reason, the appellant has chosen to make such pretentious presentation before this Court including not to argue on allegation Nos. (i) and (iv) concerning larger conspiracy involving the then Chief Minister and other high officials of the State Government. Instead, the appellant has now adopted a stratagem only to focus on the other allegations in the complaint and further allegations mentioned in the protest petition on the specious argument that those allegations can be made good on the basis of undisputed documents and record. This is a subterfuge created by the appellant

for achieving the ill-intended design of keeping the charge or allegation of larger conspiracy as noted in allegation nos. (i) and (iv) open, by adopting circuitous route little realising that the other allegations are all unconnected and have no causal bearing with the allegations of larger conspiracy by the then Chief Minister and other high officials named as offenders in the complaint.

(xxx) The appellant had the audacity to assert in the protest petition that it is open to her to keep on adding new materials and allegations which the Court is bound to examine to do complete justice, so that she would succeed in her design to keep the pot boiling and politicising the crime. This indeed was being done at the instance of the group of persons in the name of so-called public-spirited persons like Ms. Teesta Setalvad. The protest petition is not a genuine protest petition by any standard.

(yyy) Indisputably, large number of criminal cases came to be registered after the mass violence across the State. It is stated that around 2000 cases came to be registered concerning the mass violence out of which nine major cases were assigned to the SIT by this Court vide order passed in writ petition filed by NHRC. In none

of the cases including nine cases, any evidence of alleged larger conspiracy came to the fore either during the investigation or during the trial of those cases. It is only in the complaint under consideration that allegation of larger conspiracy at the highest level of Government has been made, which remained unsubstantiated, leave alone creating suspicion against the offenders named in the complaint. If this conjured plea was to be encouraged, it may give rise to uncertainty and possibility of reopening hundreds of cases, already concluded and may be pending in appeals before the High Court or this Court.

(zzz) The attempt of the appellant is to continue with unfounded allegations against the then Chief Minister/politicians/high officials/bureaucrats without raising those allegations during the investigation of CR No. 67/2002 concerning Gulberg Society at the earliest opportunity after publication of notice by the SIT inviting public to give their statement, if they were so interested and had any specific information about such crime. No one came forward including Mr. R.B. Sreekumar, Mr. Rahul Sharma and Mr. Sanjiv Bhatt, who now claim to be the protagonist of truth to depose those

facts before the SIT. As a matter of fact, appellant – Zakia Ahsan Jafri, who has been examined as witness in Gulberg Society case being CR No. 67/2002 as PW-337 was not an eye-witness as such, but was only present in the house when the events unfolded. She had admitted of having given statement on affidavit to the Nanavati-Shah Commission, as well as before the Court under instructions of Ms. Teesta Setalvad and Mr. R.B. Sreekumar. Such being the case coupled with the limited remit given to the SIT by this Court, the question of directing further investigation of any other matter besides the allegations in the complaint and at this distance of time, would be travesty of justice, abuse of process and ought not to be countenanced.

(aaaa) The whole attempt of the appellant appears to be to persuade this Court to direct the SIT to reinvestigate the crime of criminal conspiracy, which has already been tried by the Court of competent jurisdiction, in which the accused named therein have already been acquitted. Any such attempt would be infringement of their right guaranteed under Section 300 of the Code and Article 22 of the Constitution. If the appellant was so keen, she should have

availed of the opportunity in the form of liberty granted by the High Court on 2.11.2007 by filing private complaint rather than pursuing allegations of larger conspiracy or any crime other than enquired and tried in connection with Gulberg Society case being CR No. 67/2002. Having failed to do so and being party to the orders passed by this Court from time to time on the special leave petition(s) filed by them against the order of the High Court, it is not open to argue in the teeth of such directions. It is now too late for them to contend that the complaint dated 8.6.2006 be proceeded as a private complaint or be registered as FIR, much less to permit her to raise fresh allegations in 2013 by way of protest petition.

(bbbb) It is the submission of the SIT that it had done much more than "looking into" the complaint *albeit* under the supervision of this Court by examining and questioning several persons and presenting periodical reports to this Court including the final report before the Metropolitan Magistrate unlike in any other normal criminal case.

(cccc) At the end of the investigation done by the SIT, it has been noticed that the allegation regarding larger conspiracy mentioned in the complaint dated 8.6.2006 was based on material which was

either found to be fabricated or unuseful, leave alone raising any ray of suspicion to proceed against the named offenders.

(dddd) Involvement of Babu Bajrangi unravelled from Tehelka Tape transcript, does not have any impact on the allegation regarding larger conspiracy, which alone needs to be dealt with in these proceedings. As a matter of fact, Babu Bajrangi had been named as accused in Gulberg Society case being CR No. 67/2002 and the evidence against him has been dealt with appropriately in that case, resulting in his conviction. His version in the tape, at best would be in the nature of extra judicial confession to be used against him and not against any other person.

(eeee) Allegation of larger conspiracy at the highest level can be proceeded further only if there is substantive evidence to establish the same or could be so inferred on the basis of such substantive evidence. The substantive evidence of Mr. Sanjiv Bhatt, who allegedly claimed to be present in the meeting of 27.2.2002, stands rebutted and falsified by all the other persons who were actually and physically present in the stated meeting, who in one voice mentioned that he was not present in the meeting.

(ffff) As a matter of fact, the SIT in the final report submitted allegation-wise and offender-wise, concluded that no offence has been made out, as alleged against any of the named offenders.

(gggg) The SIT had also considered the findings and recommendations of NHRC while analysing the entire material collated by it during investigation. The same has been extensively discussed in the final report from pages 312-320. Needless to underscore that the findings and recommendations of the NHRC by itself cannot be the basis to fasten criminal liability on the erring officials/administrators. For that, hard evidence indicating the acts of commission or omission constituting some offence is available either in the form of oral or documentary evidence. There must be substantive piece of material which will pass the muster of admissible evidence before the Court of law to fasten criminal liability. This is reinforced from the purport of Section 15 of the Protection of Human Rights Act, 1993 or Section 6 of the 1952 Act, as well.

(hhhh) Similarly, some opinion formed or observation made in the enquiry report of any private forum/commission also cannot

have any bearing on the criminal action to be instituted or pursued against any erring official/administrator. Notably, in the present case, the complainant has verily relied upon the affidavits of officials filed before the Nanavati-Shah Commission referring to revelation of relevant fact by certain persons who themselves had no personal knowledge and their claim regarding presence in the official meeting is falsified on the basis of overwhelming evidence to the contrary. Merely because one person claims about the existence of a particular fact, does not give rise to a triable issue unless that version is corroborated by contemporaneous evidence/material and more so when there is substantive evidence to indicate falsity of his claim. The private Commission founded its observations on the basis of disclosure made by some unidentified Minister. When in fact the overwhelming evidence indicated that no cabinet minister was present in the review meeting, which was attended only by high officials presided over by the Chief Minister. Similarly, the presence of Mr. Sanjiv Bhatt stands falsified by the consistent statements given by high officials who were present in the meeting. All this has been thoroughly analysed by the SIT and recorded in the final report. In light of such overwhelming material, it was not even a case of

slightest of suspicion against the highest functionary of the State for having made any utterances attributed to him by these persons. Those utterances being the fulcrum of the allegation regarding State sponsored violence, all other incidental allegations and more particularly, unconnected with the theory of larger conspiracy by the highest office, must fall to the ground being unsubstantiated. To buttress this argument, reliance has been placed on contents of final report from pages 245-260.

(iiii) It is argued that the police report or chargesheet ought to contain crystalised case about the involvement of named offenders having committed the offence under consideration and mere perception of suspicion is of no avail. That is the mandate underlying Section 169 read with 173(2)(i)(d) of the Code. Such case cannot be made out on the basis of personal diary entries as observed in ***Central Bureau of Investigation vs. V.C. Shukla & Ors.***[90].

(jjjj) In other words, even if the material collated during the investigation discloses suspicion, that may not be sufficient for the

[90] (1998) 3 SCC 410 (***Jain Havala Case***)

investigating officer to opine that the offence has been made out, much less have been committed by the offender/accused warranting his prosecution in that regard. It is a different matter that the Magistrate for issuing process, taking cognizance or framing charge against such person, can do so merely on the basis of strong suspicion. The scale of satisfaction to be reached by the investigating officer for being convinced that an offence has been committed and the concerned person is involved in the commission of that offence, is qualitatively different than mere case of suspicion. For that, the investigating officer must be certain, at least *prima facie* (in his mind), that the material/statement on which he proposes to rely to prosecute any person would pass the muster of legally admissible evidence during the trial. Indeed, such a view is a tentative view to be taken by the investigating officer before presenting the chargesheet for prosecuting named person for having committed (cognizable) offence in question on the basis of entirety of the material in his possession. In other words, the job of an investigating agency does not and cannot end in merely establishing a *prima facie* case of strong suspicion. Whereas, he is obliged to unearth the entire truth and not merely leave the job at the stage of

strong suspicion. In doing so, the investigating officer does not merely rely upon the version of the complainant but is obliged to examine the matter from all angles including to test the authenticity of the possibilities emerging therefrom and then forming his opinion as to what he would believe to be the true course of events. It must, therefore, follow that the investigating agency does not act as mere post office, but is obliged in law to examine the veracity, quality, believability of any material that is unearthed during the investigation and then to form opinion (in its mind) on the totality of the circumstances as discernible from the entirety of the materials on hand and record that in the form of police report under Section 173 of the Code to be presented before the Magistrate. The investigating agency, by the nature of its duties, is required to adopt one version of the events that it would believe to have occurred whilst submitting report under Section 173 of the Code. In presenting a report to send the accused for trial of being involved in commission of offence merely on the basis of suspicious circumstances, therefore, would be a case of abdication of statutory duty of the investigating agency and may not also serve the cause of justice.

(kkkk) It is submitted that there is hardly any argument presented and brought home by the appellant regarding shortcomings in the material adverted to in the final report or about the improper understanding of the SIT in that regard. Given the material and its analysis in the final report, the conclusion reached by the SIT is unassailable, namely, that no case had been made out to proceed against the persons named in the complaint as offenders for offence of larger conspiracy or for that matter, any other crime.

(llll) In substance, it is urged that no fault can be found with the satisfaction recorded by the SIT in the final report that no case for proceeding against the named offender has been made out, much less of having indulged in larger criminal conspiracy. Even the Magistrate had applied its mind to the totality of the material produced by the SIT alongwith the final report including the issues raised in the protest petition whilst rejecting the same and accepting the final report of the SIT. To buttress the argument that the investigation is the exclusive prerogative of the SIT including to form opinion one way or the other on the basis of the material collated by it during investigation and it does not affect the powers of the

Magistrate to direct further investigation, reliance is placed on the decisions of this Court in ***State of Bihar & Anr. vs. JAC Saldanha & Ors.***[91], ***M.C. Abraham & Anr. vs. State of Maharashtra & Ors.***[92] and ***Shariff Ahmed & Ors. vs. State (NCT of Delhi)***[93].

SUBMISSIONS OF THE RESPONDENT – STATE OF GUJARAT

8. (a) The learned Solicitor General of India appearing for the State of Gujarat broadly adopted the arguments advanced on behalf of the SIT. In addition, he contended that the allegation regarding larger conspiracy is being pursued by Ms. Teesta Setalvad only out of vengeance, so as to defame the entire State of Gujarat. The entire case in the complaint was mainly resting upon the official records and affidavits of officials of the State of Gujarat filed before Nanavati-Shah Commission, to take forward allegation of State sponsored crime and of targeting the minorities in the State. Appellant – Zakia Ahsan Jafri was used as a tool to further the said design, who in turn fell prey to the influence exerted by Ms. Teesta Setalvad and

[91] (1980) 1 SCC 554
[92] (2003) 2 SCC 649
[93] (2009) 14 SCC 184

lent her name as complainant in the complaint dated 8.6.2006 being the widow of deceased – Mr. Ehsan Jafri, Member of Parliament. There is material in the final report suggestive of Ms. Teesta Setalvad having conjured facts and evidence including fabrication of documents by persons who were to be prospective witnesses of the complainant. It is not only a case of fabrication of documents, but also of influencing and tutoring the witnesses and making them depose on pre-typed affidavit, as has been noted in the judgment of the High Court dated 11.7.2011 in Criminal Miscellaneous Application No. 1692/2011[94]. That fact came to the fore in the admission given by appellant – Zakia Ahsan Jafri during her cross-examination in the Gulberg Society case being CR No. 67/2002. As a matter of fact, the learned Solicitor General would submit that the SIT should have taken steps to prosecute Ms. Teesta Setalvad for damning the elected representatives, bureaucracy and police administration of the whole State of Gujarat for ulterior purposes. Even in the case of husband of Ms. Teesta Setalvad, the High Court had strongly deprecated his conduct.

[94] B.H. Somani, Registrar vs. State of Gujarat & Anr.

(b) The learned Solicitor General took us through the judgment of the High Court, dated 12.2.2015 dealing with applications for grant of anticipatory bail filed by Teesta Atul Setalvad and her husband – Firozkhan Sayeedkhan Pathan in connection with CR No. 1/2014 for offences punishable under Sections 420, 406, 468, 120-B of the IPC and Section 72 A of the Information Technology Act, 2000, pointing out observations therein as to how the donation money collected by them in the name of Sabrang Trust on the representation that the same would be spent on poor and needy persons affected by the mass violence, has been misused and misappropriated for their personal pleasure and comfort. The High Court rejected that application having found that custodial interrogation of the applicants would be necessary. Relying on adverse observations, it is urged that the present proceedings were not genuine proceedings and the appellant has been set up, who is unaware about the real position. Reliance was also placed on the decision of this Court in ***Testa Setalvad***[95], dealing with the powers of police officer to seize certain property in the course of investigation

[95] supra at Footnote No. 62

and the observations made by this Court against Ms. Testa (Teesta) Setalvad and her husband for rejecting the said appeal challenging the authority of the police officer to effect seizure.

(c) In substance, it is argued on behalf of the State of Gujarat that the complaint dated 8.6.2006 had to be proceeded with only because of the indulgence shown by this Court on 27.4.2009[96] by issuing direction to the SIT to "look into" it and do the needful, whereafter subsequent steps have been taken by the SIT, strictly under the supervision of this Court including close monitoring by the *Amicus Curiae* appointed by this Court. It is, therefore, not open to the appellant to question the wisdom of this Court in accepting the investigation made by the SIT as completed; and also directing the SIT to present its report before the Magistrate taking cognizance in Gulberg Society case being CR No. 67/2002 by reckoning the report as one under Section 173 of the Code. This Court not only selected the major nine cases, which were required to be investigated under Court monitoring by the SIT appointed by this Court, but also selecting the SIT members who enjoyed high reputation and wide

[96] supra at footnote Nos. 4 and 17

experience behind them in reaching the high position. Besides, this Court empowered the SIT to not only fairly investigate, but to ensure that the trial in connection with those cases is not compromised in any manner, for which it could recommend the names of advocates as public prosecutors and submit periodical report to this Court. This Court also ensured fair trial by requesting the Chief Justice of the concerned High Court to personally identify Judges to preside as Special Court for conducting the trial of those selected cases. Such is the gamut of directions and *sui generis* procedure adopted by this Court in relation to the complaint dated 8.6.2006, whilst allowing the trial in Gulberg Society case being CR No. 67/2002 to proceed parallelly. Indubitably, the investigation could be done by the SIT only as per the remit given to it and on the same logic even the Courts ought to deal with the matter on the same scale.

(d) He invited our attention to Nanavati-Shah Commission report and the conclusion recorded therein including about the prompt measures taken by the State Government, immediately after the incident in question and thereafter to restore normalcy. The State Government had to deal with a situation which was unparalleled and

the entire State administration was overrun by such unprecedented mass violence.

(e) In the end, he submits that even though the issues raised by the appellant are unfounded and unsubstantiated, the matter is being pursued with full vigour at the behest of Ms. Teesta Setalvad, whose sole intention is to keep the matter alive as rightly contended by the learned counsel for the SIT. The learned Solicitor General argues that there is no need to have a relook at the opinion of the SIT or case for further investigation as propounded by the appellant. Even in his submission, neither the opinion formed by the SIT after thorough investigation and proper analysis of the entire material collated by it during investigation, is flawed nor the final order of the Magistrate to accept the final report submitted by the SIT and in rejecting the protest petition or that of the High Court in that regard, requires further scrutiny at the hands of this Court under Article 136 of the Constitution of India. He has, therefore, prayed for dismissal of this appeal.

9. We have heard Mr. Kapil Sibal, learned senior counsel for the appellant, Mr. Mukul Rohatgi, learned senior counsel for the SIT and Mr. Tushar Mehta, learned Solicitor General for the State of Gujarat.

CONSIDERATION

10. It is cardinal that upon receipt of the complaint such as dated 8.6.2006, the concerned police officer, if has reason to suspect the commission of an offence referred to therein, ought to proceed with the investigation consequent to registration of FIR under Section 154, since it discloses commission of a cognizable offence. As that did not happen, the appellant had to approach the High Court for issuing direction to register the stated complaint as FIR. Had the FIR been registered by the station officer on his own, he would have been obliged to proceed further as expounded in ***H.N. Rishbund***[97]. In this decision, the Court, *inter alia*, noted thus: -

> "….. When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non-cognizable offence, he shall not investigate it without the order of a competent Magistrate. Thus it may be seen that

[97] supra at Footnote No. 37

according to the scheme of the Code, investigation is a normal preliminary to an accused being put up for trial for a cognizable offence (except when the Magistrate takes cognizance otherwise than on a police report in which case he has the power under Section 202 of the Code to order investigation if he thinks fit). Therefore, it is clear that when the Legislature made the offences in the Act cognizable, prior investigation by the appropriate police officer was contemplated as the normal preliminary to the trial in respect of such offences under the Act. In order to ascertain the scope of and the reason for requiring such investigation to be conducted by an officer of high rank (except when otherwise permitted by a Magistrate), it is useful to consider what "investigation" under the Code comprises. Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. **Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer**". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for use in the manner provided in this behalf in Section 162. Under Section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under Section 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day.

Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned. It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. **If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under Section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under Section 173 of the Code in the prescribed form furnishing various details**. Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, **(2) Ascertainment of the facts and circumstances of the case**, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (*a*) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (*b*) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and **(5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173**. The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. **It is also clear that the final step in the investigation, viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station**.

> There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551."
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> (emphasis supplied)"

11. This Court in ***Dayal Singh***[98] noted that the investigating officer is obliged to act as per the Police Manual and known canons of practice while being diligent, truthful and fair in his/her approach and investigation. It has been noted in the reported decision that an investigating officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation[99]. Concededly, upon completion of investigation, the investigating officer is obliged to submit report setting out prescribed details, to the Magistrate empowered to take cognizance of the offence referred to therein, without unnecessary delay. The report so presented is the conclusion reached by the investigating officer on the basis of materials collected during investigation. The duty of the investigating officer is to collate every relevant information/material during the investigation, which he must believe to be the actual course of events and the true facts

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[98] supra at Footnote No. 57

[99] Also see ***JAC Saldanha & Ors***. (supra at Footnote No. 91), ***M.C. Abraham*** (supra at Footnote No. 92) and ***Shariff Ahmed*** (supra at Footnote No. 93)

unraveling the commission of the alleged crime and the person involved in committing the same. He is expected to examine the materials from all angles. In the event, there is sufficient evidence or reasonable ground that an offence appears to have been committed and the person committing such offence has been identified, the investigating officer is obliged to record his opinion in that regard, as required by Section 173(2)(i)(d) of the Code. In other words, if the investigating officer intends to send the accused for trial, he is obliged to form a firm opinion not only about the commission of offence, but also about the involvement of such person in the commission of crime.

12. Such opinion is the culmination of the analysis of the materials collected during the investigation - that there is "strong suspicion" against the accused, which eventually will lead the concerned Court to think that there is a ground for "presuming" that the accused "has" committed the alleged offence; and not a case of mere suspicion. For being a case of strong suspicion, there must exist sufficient materials to corroborate the facts and circumstances of the case; and be of such weight that it would facilitate the Court concerned to take cognizance of the crime and eventually lead it to

think (form opinion) that there is ground "for presuming that the accused has committed an offence", as alleged – so as to frame a charge against him in terms of Section 228(1) or 246(1) of the Code, as the case may be. For taking cognizance of the crime or to frame charges against the accused, the Court must analyze the report filed by the investigating officer and all the materials appended thereto and then form an independent *prima facie* opinion as to whether there is ground for "presuming" that the accused "has" committed an offence, as alleged. (It is not, "may" have or "likely" to have committed an offence, but a ground for presuming that he has committed an offence). The Magistrate in the process may have to give due weightage to the opinion of the investigating officer. If such is to be the eventual outcome of the final report presented by the investigating officer, then there is nothing wrong if he applies the same standard to form an opinion about the materials collected during the investigation and articulate it in the report submitted under Section 173 of the Code. It may be useful to refer to the

decisions adverted to in ***Afroz Mohd. Hasanfata***[100] including in the case of ***Ramesh Singh***[101] and ***I.K. Nangia***[102].

13. After cogitating over the rival submissions, the foremost issue that needs to be answered is about the remit of the SIT to investigate the matter further and correspondingly that of the Magistrate, in the peculiar facts of the present case. It is noticed that appellant had filed a complaint dated 8.6.2006 by which time the FIR in respect of the incident unfolded on 28.2.2002 in Gulberg Society including involving the dastardly attack on the husband of the appellant and others was already registered and proceeded further by the local police as per the provisions of the Code. Contemporaneously, in the proceedings filed before this Court including by the NHRC, the grievance regarding improper investigation in respect of several cases registered across the State of Gujarat in reference to the mass violence during the relevant period including four crimes in respect of Gulberg Society episode were being examined. During the same time, appellant was pursuing her complaint dated 8.6.2006 addressed to the Director General of Police, Gujarat. As no response

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[100] supra at Footnote No. 31
[101] supra at Footnote No. 41
[102] supra at Footnote No. 42

was received, the appellant was advised to file application before the High Court for issuing direction to the Gujarat police to register the said complaint as FIR. That petition was finally dismissed by the High Court on 2.11.2007, whereby appellant was relegated to file appropriate private complaint and invoke Section 190 read with Section 200 of the Code. This decision was assailed by filing SLP(C) No. 1088/2008, which indisputably was heard (allowed to be heard by the appellant without any demur) along with the petitions pending before this Court including the petition filed by the NHRC.

14. The common order passed by this Court on 26.3.2008[103] leaves no manner of doubt that the four crimes registered in respect of Gulberg Society were to be investigated further by the SIT constituted by this Court in terms of the same order. In respect of the complaint submitted by appellant dated 8.6.2006, a specific order came to be passed by this Court on 27.4.2009[104], thereby directing the SIT to look into the matter and take steps as required by law and submit report to this Court within three months. Finally, the SLP filed by the appellant and Ms. Teesta Setalvad was disposed

[103] supra at Footnote Nos. 6 and 16
[104] supra at Footnote Nos. 4 and 17

of on 12.9.2011[105] until which date, the SIT continued with the investigation/enquiry into the stated complaint and submitted appropriate report(s) to this Court. We must assume, and there could be no other import or assumption, that this Court was all throughout conscious of the fact that the four crimes registered pertaining to the Gulberg Society including the gruesome killing of husband of appellant and others, were already being investigated by the SIT and proceeded for trial consequent to filing of the chargesheet/supplementary chargesheet by the SIT. Concededly, this Court by an express order, had permitted those trials to continue further. In those trials, the allegations of criminal conspiracy and the commission of crime pursuant to such criminal conspiracy had already been put in issue. In that sense, the limited aspect of the contents of the complaint dated 8.6.2006, which remained to be dealt with was about the allegations of larger criminal conspiracy at the highest level resulting into mass violence across the State during the relevant period.

[105] supra at Footnote No. 26

15. In other words, the steps taken by the SIT during the pendency of proceedings before this Court and even after the disposal of the SLP filed by the appellant on 12.9.2011[106], were under the clear directions and aegis of this Court. The tenor of directions issued by this Court are ascribable to the plenary powers exercised under Article 142 of the Constitution. In that, this Court consciously allowed the (four) crimes registered concerning Gulberg Society unfolded on 28.2.2002 to proceed for trial, including the charge of criminal conspiracy for commission of such offence; and at the same time, showed indulgence to the appellant by directing the SIT to look into the complaint dated 8.6.2006 – obviously, in respect of matters which were not overlapping with the trial(s) pertaining to Gulberg Society case(s) and other cases investigated by the SIT.

16. Notably, this Court consciously directed, vide order dated 7.2.2013[107], to treat the statements recorded by the SIT in connection with the investigation/enquiry concerning the complaint of appellant as made under Section 161 of the Code; and to form part of the report submitted by the SIT to the Court concerned,

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[106] supra at Footnote No. 26
[107] see para 5(y) above

which had taken cognizance of Crime Report No. 67/2002 concerning Gulberg Society, in terms of order dated 12.9.2011[108], treating it as a police report under Section 173(2) of the Code. This presupposes that the further investigation by the SIT was on the assumption that the complaint dated 8.6.2006 may contain new information/material other than already enquired into in connection with Crime Report No. 67/2002 – as permissible under Section 173(8) of the Code. No more and no less.

17. All the aforestated circumstances and the judicial orders passed by this Court from time to time on the petition filed by the appellant would go to show that this Court had implicitly rejected her prayer to register the stated complaint as an independent FIR or for that matter, as an independent private complaint for being proceeded further. The successive orders passed by this Court and directions issued to SIT were only to look into the aspects that were not part of the cases investigated by the SIT including the (four) criminal cases concerning Gulberg Society - as the same were already registered and proceeded for trial, in particular, criminal

[108] supra at Footnote No. 26

conspiracy hatched in the commission of those crimes. Inasmuch as, all other aspects already formed part of enquiry and chargesheet/trial of those cases. Not only that, even the other eight cases assigned to SIT by this Court covered similar matters including allegations of criminal conspiracy. To put it differently, what remained to be looked into was only about the "allegations of larger conspiracy at the highest level" which resulted into causing mass violence across the State during the relevant period.

18. It is well settled that conspiracy can be hatched at different levels. Thus, the conspiracy hatched at the middle or lower level in the concerned cases filed across the State, including the Gulberg Society incident unfolded on 28.2.2002 involving the gruesome killing of Mr. Ehsan Jafri (husband of the appellant) and others, covering nine sets of cases assigned to the SIT by this Court already covered the expanse of criminal conspiracy concerning those cases. It was urged by the SIT that the trial Court in Gulberg trial had disregarded the case of conspiracy even amongst the accused sent for trial in that case and had opined that there was no pre-planned intention to commit violence at the Gulberg Society. If so, it is unfathomable that any larger conspiracy had been hatched at the

higher level, as alleged. In any case, the remit of the SIT in terms of directions given by this Court in relation to the complaint filed by appellant dated 8.6.2006 ought to be limited to the allegations of the larger criminal conspiracy at the highest level, which allegedly resulted in mass violence across the State during the relevant period. In that backdrop, we may have to analyze the case on hand.

19. Be it noted that after this Court, vide order dated 27.4.2009[109], directed the SIT to look into the complaint of appellant dated 8.6.2006, the SIT moved into action and culled out the summary of allegations exposited in the stated complaint. The SIT identified broadly thirty allegations in the complaint which read thus: -

> "8. The following is the summary of allegations narrated in the complaint dated 08.06.2006 and the major evidence in brief in support of the charges about commission of offences u/s 302 r/w 120-B IPC, Sections 193 r/w 114, 186 & 153-A, 186, 187 IPC, Section 6 of Commission of Inquiry Act, The Gujarat Police Act and the Protection of Human Rights Act, 1991:
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> (i) Instruction 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 R.B. Sreekumar.
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> (ii) CM's decision to bring dead bodies of those killed in Godhra train fire in Ahmedabad and parade them in Ahmedabad City

[109] supra at Footnote Nos. 4 and 17

as testified by Shri Ashok Narayan in his cross-examination before the Nanavati Commission.

(iii) Numerous illegal instructions given verbally (by CM) to officials as detailed in 3rd affidavit dated 09.04.2005 by R.B. Sreekumar to the Nanavati Commission.

(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 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 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 of the constitutionally elected Government Top level meetings were held between the Chief Minister, some of his Cabinet colleagues 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.

(v) Cabinet Ministers I.K. Jadeja and Ashok Bhatt were positioned in the DGP office and Ahmedabad City Police Control Room respectively by CM. DGP Chakravarti was critical of the Minister I.K. Jadeja remaining in his chamber, as testified by R.B. Sreekumar in his fourth affidavit.

(vi) Officers from field executive posts were transferred (by the CM), in the thick of riots in 2002 despite DGP's objection so as to facilitate placement of those who were willing to subvert the system for political and electoral benefits as narrated in para 67 of the complaint dated 08.06.2006, wherein instances of punishment, ill treatment etc. are listed in respect of the following officers: (1) Shri Rahul Sharma, IPS, (2) Shri Vivek Shrivastava, IPS, (3) Shri Himanshu Bhatt, IPS, (4) Shri M.D. Antani, IPS, (5) Shri R.B. Sreekumar, IPS and (6) Shri Satishchandra Verma, IPS.

(vii) Senior officials were rewarded with undue benefits, even while their conduct was under the scrutiny of Nanavati

Commission, as narrated in Para 68 of the complaint dated 08.06.2006, wherein "Rewards" for collaborating with the illegal plans of CM/BJP during 2002 riots and afterwards are listed in respect of the following officers: (1) Shri G. Subba Rao, IAS, the then Chief Secretary, (2) Shri Ashok Narayan, IAS, the then ACS (Home), (3) Dr. P. K. Mishra, IAS, the then PS to CM, (4) Shri A. K. Bhargava, IPS, (5) Shri P. C. Pandey, IPS (6) Shri Kuldeep Sharma, IPS, (7) Shri M. K. Tandon, IPS, (8) Shri Deepak Swaroop, IPS, (9) Shri K. Nityanandam, IPS, (9) Shri Rakesh Asthana, IPS; (10) Shri A.K. Sharma, IPS, (11) Shri Shivanand Jha, IPS, (12) Shri S. K. Sinha, IPS, (13) Shri D. G. Vanzara, IPS.

(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.

(ix) Indictment by the Hon'ble Supreme Court about injustice done to minority community and riot victims in the investigation of riot cases in respect of (1) Bilkis Bano case and (2) Best Bakery case, as narrated in paras 13 and 14 of the complaint dated 08.06.2006.

(x) Partisan investigations were conducted betraying prejudice against riot victims, as indicated by Rahul Sharma, then SP, Bhavnagar District during his cross-examination before the Nanavati Commission, as noted in Para 18 of the complaint dated 08.06.2006.

(xi) CM Shri Narendra Modi did not visit the riot affected areas in the initial days, though he visited Godhra Railway Station on 27.02.2002 itself.

(xii) A press statement was made by Shri Narendra Modi that the reaction against the Muslim community was the operation of Newton’s law of action.

(xiii) No direction was given by Shri Narendra Modi to Hindu organizations against the observance of Bandh on 28.02.2002. Bandhs had been declared illegal by Kerala High Court.

(xiv) There was undue delay in requisition and deployment of army, though anti-minority violence had broken out on

27.02.2002 afternoon itself in cities of Vadodara, Ahmedabad etc.

(xv) Pro-VHP advocates were appointed as Public Prosecutors in riot cases as noted in Para 4 under the caption 'Present Situation' in the complaint dated 08.06.2006, wherein appointments of advocates Shri Chetan Shah (as District Government Pleader), Shri V.P. Atre (as Special PP in the Gulberg case), Shri Raghuvir Pandya (as Special PP in the Best Bakery case), Shri Dilip Trivedi (as Special PP in the Sardarpura case), Shri Rajendra Darji (as Special PP in the Dipda Darwaja case), Shri Piyush Gandhi (PP in Panchmahal District), have been questioned.

(xvi) Officers at grass-root level were not transferred as per State Intelligence Bureau's recommendation till the arrival of Shri K.P.S Gill as Advisor to CM, as indicated by Sreekumar in his second affidavit dated 06.10.2004 to the Nanavati Commission.

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

(xviii) State Home Department gave misleading reports about normalcy in the State to Central Election commission for ensuring early Assembly Elections. The assessment of the Home Department was adjudged as false by the Election Commission in its order dated 16-08-2002. As per the Register for recording verbal instructions from higher formations kept by ADGP (Shri R.B. Sreekumar), as noted in his third Affidavit, he was directed by the Home Department officials to give favourable reports about law and order for facilitating holding of early elections.

(xix) The State Home Secretary Shri G.C. Murmu was presumably detailed for tutoring, cajoling and even intimidating officials deposing before the Nanavati Commission so that they do not tell the truth and harm the interests of CM and ruling party, as narrated in third Affidavit of Shri R.B. Sreekumar.

(xx) Shri G.C. Murmu's exercise was for ensuring that officials will not file affidavits relating to the second terms of reference to the Nanavati Commission about the role of CM and other Ministers in the riots as narrated in Para 52 of the complaint dated 08.06.2006 wherein gross dereliction of duty has been alleged in not filing Affidavits relating to second terms of reference to the Commission on the part of 16 specifically named officials including top ranking IAS/IPS officers.

(xxi) No action was initiated against senior police officers by the Home Department for their grave dereliction of duty in supervision of investigation of serious offences as noted in fourth Affidavit (Para 94) of Shri R.B. Sreekumar.

(xxii) No departmental action was taken against Shri Jadeja, the then Superintendent of Police, Dahod District for his misconduct despite recommendation by CBI who investigated the Bilkis Bano case as per the direction of Hon'ble Supreme Court.

(xxiii) The CD regarding telephone calls by BJP leaders and police officers during riots was not probed into by the Investigating Officers of the Naroda Patia and Gulberg Society cases. The CD was produced by Rahul Sharma, SP, CBI before the Nanavati Commission.

(xxiv) Conducive situation was not created for rehabilitation of riot victims, though a contrary claim is made by the State Administration in its report to NHRC. Instead, the riot victims were pressurized for compromising with the perpetrators of violence, as a condition precedent for their safe return as rehabilitation.

(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 Shri Tuteja, the then Commissioner of Police, Baroda. 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.

(xxvi) No minutes of the meetings held by 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.

(xxvii) No action was taken against officers like K. Chakravarthi, then DGP, P.C. Pandey, then Commissioner of Police, Ahmedabad City, Ashok Narayan, then Additional Chief Secretary and a large number of senior functionaries in Government who filed incomplete, inaccurate, vague and inadequate affidavits to the Nanavati Commission, as narrated in Paras 54, 55, 56 of the complaint dated 08.06.2006.

(xxviii) Slack review of post riot cases as ordered by the Hon'ble Supreme Court in 2004. This was achieved by entrusting this work to those senior officers who are willing to act according to political interests of BJP and CM, as narrated in Para 84 of the complaint dated 08.06.2006.

(xxix) Nepotism practiced in postings, transfers; promotions etc., as narrated in para 85 of the complaint for facilitating the on-going subversion of the criminal justice system.

(xxx) The fact that victims of riots and police firings were predominantly of the Muslim community, will establish that rioters, the administration, cohorts of the ruling party (BJP) were moving in collaboration for achieving the satanic objectives of CM. Statistics in this regard are given in the second Affidavit dated 06.10.2004 (Para 3/Appendix V) of Sreekumar to the Nanavati Commission."

In addition, SIT took note of the following two allegations: -

"ALLEGATION NO. XXXI:

That a secret meeting was held late in the evening of 27-02-2002 in Lunawada village of Sabarkantha District and that a telephone call was made between 3 pm & 6 pm from the house of one Dr. Yogesh Ramanlal Pandya from Godhra to Dr. Anil Patel (a member of Gujarat Doctor's Cell of BJP) intimating him about the meeting. Further, another call was also made to Dr. Chandrakant Pandya (from Kalol), Chairman, Police Housing Corporation. Shri Ashok Bhatt, state Health Minister, who was then sitting in the Godhra Collectorate was also intimated about the meeting. Shri Prabhatsinh Chauhan, the then Transport Minister, who hails from Panchmahal was reportedly also called to attend and one Shri A.P. Pandya was also present in the meeting. It is further alleged that the phone calls were made to invite 50 top people of BJP/RSS/BD/VHP and the plan was to assemble at someone's house in Lunawada (Sabarkantha District). It is also alleged that 50 top people met at this undisclosed destination and detailed plans were made on the use of kerosene, patrol for arson and other methods of killing, but the State IB did not or could not track such meeting and preparations for the gruesome violence that was to follow.

ALLEGATION NO. XXXII:

A meeting was held by Shri Kalubhai Hirabhai Maliwad at village Borwai near Pandawada on 28-02-2002. This meeting earlier scheduled to be held at the house of one Shri Shankar Master but due to large crowd, it was held at Baliyadev Mandir. It is alleged that around 5000-6000 activists of Bajrang Dal including Shri Kalubhai Maliwad, Somabhai Rumalbhai of Kaliakuvawala, Jignesh Pandya, Prakashbhai of Borwai village, Amrutbhai Manilal Panchal, Anil Modi, Sarpanch, Sanjay Ishwarbhai Panchal, Vijay Damor, Khema Kalu and Damor Somabhai besides others were present in the meeting held to plan the attacks on the minorities in the surrounding areas. Smt. Teesta Setalvad has stated that this information was given to her by her sources namely Shri Mehboob Rasul Chauhan of Lunawada and Shri Nasirbhai Kalubhai Sheikh of Pandarwada."

20. The SIT then analyzed the materials collated during the investigation allegation-wise, offender-wise, witness-wise and in

reference to the observations of the learned *Amicus Curiae* – Mr. Raju Ramachandran, to record its opinion in the final report (consisting of closely printed/typed 270 pages in its Volume-I, filed as Annexure P-17 at pages 236-467 of the Convenience Compilation of respondent No. 2 – SIT) submitted to the concerned Court. The SIT summed up as follows: -

> "…..
>
> To sum up, Shri A.K. Malhotra, Member, SIT has conducted an inquiry into the complaint made by Smt. Jakia Nasim as per the orders of the Hon'ble Supreme Court of India passed on 27.04.2009. In compliance to the said order a report was submitted by the SIT to the Hon'ble Supreme Court of India on 13.05.2010, in which further investigation u/s 173(8) Cr.PC was suggested to be conducted in respect of Shri Gordhan Zadafia, Shri M.K. Tandon, Jt. CP and Shri P.B. Gondia, DCP, Zone-IV, Ahmedabad City. Further investigation in the matter was conducted by the undersigned (Shri Himanshu Shukla, DCP; Crime Branch, Ahmedabad City) under the supervision of Shri Y.C. Modi, Addl. DG & Member, SIT and a report in the matter was submitted to the Hon'ble Supreme Court on 17.11.2010. Both the aforesaid reports were given to Shri Raju Ramchandran, Sr. Advocate, who had been appointed as Amicus Curiae in the matter by the Hon'ble Supreme Court of lndia. The Amicus Curiae submitted his Interim Report in the matter to the Hon'ble Supreme Court of India on 20.01.2011, vide which he suggested further investigation in respect of some of the issues.
>
> In compliance to the order passed by the Hon'ble Supreme Court of India on 15.03.2011, to conduct further investigation into the matter u/s 173 (8) Cr. PC, Shri Himanshu Shukla, DCP, Crime Branch carried out further investigation under the overall supervision of Chairman, SIT Shri R.K. Raghavan, Shri Y.C. Modi; Addl. DG & Member, SIT and Shri A.K. Malhotra, Member, SIT and another report was submitted to the Hon'ble Supreme Court of India on 25.04.2011. The Hon'ble Supreme Court of India handed over the said report to the Ld. Amicus Curiae for his examination and independent opinion.
>
> **The Ld. Amicus Curiae accordingly examined the SIT reports and also interacted with some of the witnesses including the police officers and submitted his report to the Hon'ble**

Supreme Court of India on 25.07.2011. The Hon'ble Supreme Court of India after careful consideration of the matter passed an order on 12.09.2011, directed the Chairman, SIT to forward a Final Report along with the entire material collected by the SIT to the Court which had taken cognisance of FIR of I CRNo. 67/2002 of Meghaninagar P.S., as required u/s 173(2) Cr.PC of the Court.

It may be mentioned here that the Ld. Amicus Curiae has agreed with the various recommendations made by the SIT on the different issues inquired into/investigated by the SIT. However, the Ld. Amicus Curiae is of the view that at this prima facie stage offences u/s 153A(1)(a)&(b), 153B(1)(c), 166 and 505(2) IPC are made out against Shri Narendra Modi regarding the statement made by him in the meeting on 27.02.2002. In this connection, as discussed, above SIT is of the view that the offences under the aforesaid sections of law are not made out against Shri Narendra Modi.

In the light of the aforesaid facts, a closure report is being submitted for favour of perusal and orders.

(Himanshu Shukla)
DCP &I0, SIT
Gandhinagar"
(emphasis supplied)

Be it noted that even the learned *Amicus Curiae* had broadly agreed with the recommendations made by the SIT in the final report, but had opined that at *prima facie* stage offences under Sections 153A(1)(a) & (b), 153B(1)(c), 166 and 505(2) of the IPC have been made out against the then Chief Minister.

21. This final report dated 8.2.2012 was taken exception to by the appellant by filing protest petition before the Magistrate on 15.4.2013 raising diverse grounds including adverted to in paragraph 6(c) above.

22. In dealing with the protest petition, the Magistrate in the facts of the present case, could have and was obliged to examine the challenge only in the context of the scope for investigation of allegations referred to in the complaint dated 8.6.2006 including the other materials collected during the investigation by the SIT concerning the larger criminal conspiracy at the highest level, resulting into mass violence across the State. This is reinforced from the observation made by this Court in order dated 7.2.2013[110], wherein it has been clearly mentioned that the statements recorded in the enquiry undertaken by the SIT pursuant to the directions of this Court shall only be used in the proceedings relating to the complaint dated 8.6.2006 and shall not be used for any other purpose or in connection with any other case. This clarification also applied to the criminal case being Crime report No. 67/2002 pertaining to the incident in Gulberg Society, trial whereof was at an advanced stage (and soon disposed of on 26.12.2013).

23. As regards that trial, all information regarding the charge of criminal conspiracy was collated during the investigation by SIT in

[110] see para 5(y) above

terms of order dated 26.3.2008[111] including from persons who wanted to make statement before the SIT for giving versions of the alleged crimes being investigated and to be tried in terms of the said order. It has been further clarified in the order dated 7.2.2013[112] by this Court that the present order is confined to the facts and circumstances of the complaint dated 8.6.2006 and shall not be treated as a precedent, "in any other case". These observations are clear pointer to the *sui generis* approach of this Court in the present case being fully aware that no FIR had been registered at the instance of appellant on the basis of the complaint dated 8.6.2006; nor the trial in connection with CR No. 67/2002 concerning Gulberg Society had been stayed pending investigation into the stated complaint. Indisputably, the directions and clarifications given by this Court from time to time in the present case have not been put in issue nor any grievance had been set forth from any quarter at any stage. Resultantly, the ordinary course to be adopted by the Magistrate under the Code in other cases cannot be invoked in the present case. In that sense, the enquiry by the Magistrate should

[111] supra at Footnote Nos. 6 and 16
[112] see para 5(y) above

also have confined itself to the limited aspect of allegations regarding larger criminal conspiracy at the highest level, referred to in the complaint dated 8.6.2006, resulting in causing of mass violence across the State.

24. Coming back to the allegations regarding larger conspiracy at the highest level, it is founded on the alleged utterances made by the then Chief Minister in an official meeting while addressing the DGP, the then Chief Secretary and other senior officials of the State to allow to vent to the Hindu anger on the minority in the wake of Godhra incident. This is in reference to the meeting held on 27.2.2002 evening in Gandhinagar, as testified in the affidavit of Mr. R.B. Sreekumar. To the same end, the report by a private panel of former Judges of this Court titled "Concerned Citizens Tribunal" has been relied. This report refers to the testimony of late Mr. Haren Pandya, former Minister given before the former Judges of this Court. Additionally, the testimony of Mr. Sanjiv Bhatt, who claims to have attended the meeting convened by the then Chief Minister on 27.2.2002 has been relied.

25. This is the core basis on which the complaint of the appellant proceeds to allege larger criminal conspiracy at the highest level. These allegations have been duly enquired into by the SIT. The SIT considered the relevant materials while examining allegations (i) and (iv), inter alia, in its report[113], to conclude that the claim of concerned persons is false and figment of imagination. For that, the SIT had recorded statements of all those officials who were present in the said meeting. They stated in one voice that Mr. Sanjiv Bhatt was not present in the review meeting convened under the Chairmanship of the then Chief Minister. The SIT had also collected relevant documentary evidence to establish the falsity of the claim of Mr. Sanjiv Bhatt of being present in that meeting.

26. It is, thus, not a case of one version against the other, but of false claim set up by Mr. Sanjiv Bhatt of being personally present in the stated meeting. Therefore, the SIT after thorough investigation has recorded its opinion that neither Mr. Sanjiv Bhatt nor Mr. Haren Pandya was present in the stated meeting. Similarly, even Mr. R.B. Sreekumar had no personal knowledge as he did not attend the said

[113] pages 245 to 260 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

meeting. Besides, Mr. R.B. Sreekumar was a disgruntled officer. The relevant extract of the said final report[114] reads thus:-

> ".....On his return, he called for a Law & Order meeting at his residence at about 2300 hrs, which was **attended by Smt. Swarna Kanta Varma, Acting Chief Secretary, Shri Ashok Narayan, ACS (Home), Shri K. Chakravarthi, DGP, Shri P.C. Pande, CP, Ahmedabad City, Shri K. Nityanandam, Secretary, Home Department, Dr. P.K. Mishra, Principal Secretary to CM, Shri Anil Mukim, Secretary to CM and Shri Prakash S. Shah, the then Addl. Secretary (L & O) were in the said meeting**. However, Shri G.C. Raiger, Addl. DG (Int.) was not present in the said meeting. **Shri Sanjiv Bhatt, the then Deputy Commissioner of Intelligence (Security) has claimed to have attended the said meeting at the instance of DGP. No Cabinet Minister was present in the said meeting. Shri Gordhan Zadafia, MOS (Home) also did not attend the meeting, as he had stayed back at Godhra. Shri Sanjiv Bhatt, the then Deputy Commissioner of Intelligence (Security) has claimed after more than seven years, to have attended the said meeting at the instance of the then DGP**....."
>
> (emphasis supplied)

The SIT recorded the statements of the concerned officials [Ms. Swarnakanta Verma, the then Chief Secretary, Mr. Ashok Narayan, the then ACS (Home), Mr. P.K. Mishra, the then Principal Secretary to Chief Minister, Mr. Chakravarthi, the then DGP, Mr. P.C. Pande, the then Commissioner of Police, Ahmedabad City, Mr. Anil Mukim, the then Additional PS to Chief Minister, Mr. K. Nityanandam, the then Secretary (Home), Mr. Prakash S. Shah, the then Additional

[114] pages 246-247 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

Secretary (Law and Order), Mr. R.B. Sreekumar, the then Additional DGP] and after analyzing the same, opined that all the officials who were present in the stated meeting had said in one voice that Mr. Sanjiv Bhatt, the then DCI (Security) was not present in that meeting.

27. The SIT then analyzed the claim of Mr. Sanjiv Bhatt that he was present in the meeting by referring to official records including the call records of his mobile phone No. 9825049398 to conclude that he had set up a false plea of being present in the stated meeting. The SIT has adverted to the materials collected during investigation clearly reflecting on the conduct of Mr. Sanjiv Bhatt including his false claim of being present in the stated meeting. The final report has analyzed these aspects in detail[115].

28. The final report then proceeds to advert to the interview given by Mr. R.B. Sreekumar to a news channel on 22.4.2011 and the details of the call records of Mr. Sanjiv Bhatt for the relevant period and noted thus[116]: -

> "…..**Shri R. B. Sreekumar formerly ADGP Intelligence, in his interview to the Star Hindi News**

[115] pages 249-254 of original copy of the final report forming part of Convenience Compilation of respondent No. 2
[116] pages 254-255 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

Channel at 12.35 hrs on 22.04.2011 has stated that Shri Sanjiv Bhatt, DCI (Security) had never informed him about having attended a meeting at CM's residence on 27.02.2002. **He has further stated that at that time of filing an affidavit before Nanavati Shah Inquiry Commission, he had asked all the officers of State IB to provide him with the relevant information and documents in respect of Godhra riots but Shri Sanjiv Bhatt did not give him any information about the said meeting.** According to Shri Sreekumar, Shri Sanjiv Bhatt was handling security portfolio and communal portfolio was being looked after by another officer. Shri Sreekumar has also stated in the interview that it was a normal procedure that if a junior officer had attended a meeting on behalf of senior, he was required to submit a report to his superior and that Shri G.C. Raiger, the then ADGP (Int.) should be asked about it. **As already stated above, Shri Raiger has denied having received any information/report from Shri Sanjiv Bhatt in this regard**.

The call detail records of the Govt. mobile phone no. 9825049398 allotted to Shri Sanjiv Bhatt show that on 27-02-2002, Shri Sanjiv Bhatt remained at Ahmedabad till about 1120 hrs and returned to Ahmedabad at 1925 hrs. He attended to various calls till 2040 hrs and thereafter, there is no record of any calls made or received by him. Further, on 28-02-2002, he remained at Ahmedabad till 1057 hrs and then returned to Ahmedabad 2056 hrs. The claim of Shri Sanjiv Bhatt that he had attended a meeting at CM's residence on 28-02-2002, at 1030 hrs is therefore proved to be false and incorrect. CM's residence is at Gandhinagar, more than 25 KMs from Ahmedabad, and normally takes 30 to 45 minutes to reach there. His further claim that he had seen Late Ashok Bhatt and Shri I.K. Jadeja, the then Ministers in the DGPs office at about 1100 hrs on 28-02-2002, is also belied from the call detail records in as much as the location of the mobile phone of Shri Sanjiv Bhatt was at Prerna Tower, Vastrapur-1, Ahmedabad, which happened to be at a distance of 1.5 Kms. approximately from his residence and Shri Bhatt could not have reached Police Bhavan, Gandhingar before 1130 hrs by any stretch of imagination. Further, both Shri K. Chakravarthi, the then DGP and Shri G.C. Raiger, the then Addl. DG (Int.) do not recollect having attended any meeting at CM's residence at about 1030 hrs on 28-02-2002.

Shri Ashok Narayan, the then ACS (Home) has stated that a meeting was held by the Chief Minister in the morning of 28-02-2002, which was attended by acting Chief Secretary, DGP Addl. DG (Int.) and the matter relating to the calling of Army was also discussed, but no decision was taken and it was decided to watch the situation. He has categorically denied that Late Ashok Bhatt and Shri I.K. Jadeja, Ministers had attended the said meeting. **The claim of Shri Sanjiv Bhatt that he had attended the said meeting at 1030 hrs at CM's residence is proved to be false from the location of his mobile phone, which was at Prerna Tower, Vastrapur-I, Ahmedabad City at 10:57:43 hrs. Moreover, his contention that the aforesaid two Ministers were present in the said meeting is proved to be false from the statement of Shri Ashok Narayan, the then ACS (Home), categorically stated that they were not present in the said meeting**. **His subsequent conduct of getting his statement corroborated by way of introduction of two police personnel would also go to show that he is trying to introduce himself into the meeting**. As regards the alleged utterance made by the Chief Minister in the meeting called on 27-02-2002 night at his residence, it may be mentioned here that Shri R.B. Sreekumar, the then Addl. DG (Int.) had claimed that Shri K. Chakravarthi, the then DGP had informed him on 28-02-2002 that the Chief Minister had allegedly said in the meeting that ''KOMI HULLADO MA TAME POLICE BARABARI KAROCHO. TAME BE HINDU NE PAKDO TO TAME BE MUSALMANO NE PAN PAKDO CHO. HA VE ME NAHI CHALE. HINDUONO GUSSO UTTARWA DO." (In communal riots police takes action against Hindus and Muslims on one to one basis. This will not do now-allow Hindus to give vent to their anger). **Shri Chakravarthi has denied that he held any such talks with Shri R.B. Sreekumar. Even otherwise, the version of Shri R.B. Sreekumar becomes hearsay and inadmissible in view of denial of Shri K. Chakravarti**……"

(emphasis supplied)

29. Again, at pages 255-257[117], the SIT has analyzed the materials collected during investigation indicative of the falsity of claim set up by Mr. Sanjiv Bhatt and noted thus: -

> "….. However, on the other hand Shri Sanjiv Bhatt, who insists that he was in the said meeting, has stated "that the Chief Minister had said that for too long the Gujarat Police had been following the principle of balancing the actions against the Hindus and Muslims while dealing with the communal riots in Gujarat. This time the situation warranted that the Muslims be taught with the communal riots in Gujarat. This time the situation warranted that the Muslims be taught a lesson to ensure that such incidents do not recur ever again. The Chief Minister Shri Narendra Modi expressed the view that the emotions were running very high amongst the Hindus and it was imperative that they be allowed to vent out their anger." Assuming for the time being that the Chief Minister did make some utterances, there is a material difference between the two versions in as much as Shri Sanjiv Bhatt has tried to improve his version by way of addition that this time the situation warranted, that the Muslims be taught a lesson to ensure that such incidents do not recur every again. **Since the version of Shri R.B. Sreekumar is on hearsay basis and the testimony of Shri Sanjiv Bhat does not have any corroboration, no reliance can be placed on either of them**.
>
> **Shri Sanjiv Bhatt has not been able to give any satisfactory explanation that when he was in possession of plethora of information and was an eyewitnesses to some of the important events, then why did he not file an affidavit before Nanavati Commission and also did not appear as witness in response to the Govt. circular before any legal authority. He does not explain as to why he did not respond to a public notice issued by SIT on 11-04-2008. His silence for a period of more than nine years without any proper explanation appears to be callous and gives an impression that he is trying to manipulate the things to his personal advantage to settle his service matters**.
>
> During the course of further investigation a complaint was received from Shri Dharmesh P. Shukla, an accused in CR

[117] pages 255-257 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

No.67/2002 of Meghaninagar P.S. (Gulberg Society case), who is facing trial, in which he contended that there was no justification to record the statement of Shri Sanjiv Bhatt on account of the following reasons:-

i. Shri Sanjiv Bhatt, IPS is known to be a police officer with a dubious character facing several criminal cases of serious nature and wherever he wants a favour from the Govt. he creates a situation whereby the Govt. is compelled to help him.

ii. Shri Sanjiv Bhatt, who had not even whispered about any such meeting in the past contemporaneously, surprisingly came out with a new theory that he was a part of the meeting.

iii. That a sudden taking up a position by Shri Sanjiv Bhatt after nine years of silence and his insistence to record his statement only after an offence is registered, is at the behest of some vested interest.

iv. It is a matter known to almost everyone in Gujarat that Shri Sanjiv Bhat is known to be an officer pressuring everyone to get illegal favour.

Since the allegations leveled by the complaint were serious, a communication was sent to the Govt. to make available the details of all complaints/pending inquiries/prosecutions /departmental proceedings etc. against Shri Sanjiv Bhat. **A detailed reply has been received from the Govt. of Gujarat, which shows that Shri Sanjiv Bhatt has faced a number of departmental inquiries and he was granted three promotions of Junior Administrative Grade, Selection Grade and DIG Grade on one day i.e. 21-09-2007, after dropping of three departmental inquiries pending against him vide orders dated 06-08-2005, 03-09-2005 & 24-07-2006. Shri Sanjiv Bhat, who is eligible for the IGP grade has not been promoted because of the departmental inquiries and criminal cases pending against him. A chargesheet served upon him on 29-12-2010, for irregularities in police recruitment under his Chairmanship as SP, Banaskantha is still pending.**

While handling a law and order situation during his posting as ASP Jamnagar in the year 1990, Shri Sanjiv Bhatt committed atrocities on peaceful and innocent villagers belonging to a particular community at a place called Jam Jodhpur. In the beatings by police one person

was killed. The victims included a pregnant woman, two assistant engineers of irrigation department and one circle officer of Revenue Department. Shri Bhatt applied provisions of draconian law TADA against the innocent persons and arrested 140 individuals under this Act. Due to public pressure, the Government got an inquiry conducted by a retired Judicial Officer into the incident and Shri Bhatt was found guilty of (a) misuse of TADA (b) police atrocities and (c) unnecessary imposition of curfew for 70 hrs leading to hardship and harassment to the people.

The Criminal case of death of a person due to police atrocities in the incident was investigated by State CID (Crime) against Shri Sanjiv Bhatt and others. After completion of investigation, the IO sought prosecution sanction from the Government u/s 197 Cr.PC, which was declined and therefore, a closure report was filed in the competent court. **However, the Court rejected the closure report on 20-12-1995 and took the cognizance. The State Government filed a Criminal Revision Application in the Sessions Court, which was rejected.**

The case u/s 302, 323, 506(1), 114 of IPC has now been committed to Sessions Court, Jamnagar and is presently with the Fast Track Court Khambhalia for framing of charges against Shri Sanjiv Bhatt and others.

Significantly, Gujarat High Court awarded a compensation of Rs.1,50,000/- to the victim who had died due to police atrocities in the above case.

Another criminal complaint was filed against Shri Sanjiv Bhatt, while he was posted at SP, Banaskantha District in 1996 by Shri Sumersingh Rajpurohit, an Advocate practicing at Pali, Rajasthan and a criminal case was registered against Shri Sanjiv Bhatt & others vide FIR No.403/96 dtd. 18-11-1996 u/s 120B, 195, 196, 342, 347, 357, 365, 388, 458, 482 IPC and Sec. 58(1) & 58(2) of NDPS Act. On completion of the investigation, the chargesheet was filed against Shri Sanjiv Bhatt & others u/s 114, 120B, 323, 342, 348, 357, 365, 368, 388, 452, 201 & 482 IPC and Sec. 9, 17, 18, 29, 58(1) & 58(2) r/w Sec. 37 of NDPS Act in the court of Spl. Judge, NDPS Act, Jodhpur, Rajasthan. The allegations in brief are that the complainant Advocate was occupying a property as a tenant in Pali (Rajasthan), which was owned by a lady, who happened to be a sister of Shri R.R. Jain,

a sitting Judge of Gujarat High Court. **As per the said criminal complaint Shri Sanjiv Bhatt and his subordinate police officers allegedly planted 1 1/2 kg of Narcotic drug in one room in a hotel at Palanpur, Gujarat, which was shown as occupied by the said complainant, though he was a Pali (Rajasthan) at that time. The said Advocate was abducted at midnight on the instructions of Shri Sanjiv Bhatt by his subordinate police officers of Gujarat police, who went from Palanpur, Gujarat to Pali (Rajasthan) to abduct him. The said Advocate was brought to Palanpur, Gujarat and pressurized by Shri Sanjiv Bhatt and his subordinate police officers to vacate the said property by showing him arrested under NDPS offence. The said Advocate, while in the custody of Gujarat Police and due to police torture, vacated the property and physical possession of the property was handed over to the sister of Shri R.R. Jain, Judge of Gujarat High Court**. Shri Sanjiv Bhatt and his subordinate police officers, thereafter released Shri Sumersingh Rajpurohit on 08-05-1996, by filing a report u/s 169 Cr.PC, in which it was mentioned that Shri Sumersingh could not be identified in the Test Identification Parade. Quashing Petitions were filed in this matter by the accused persons in Rajasthan and Gujarat High Court, but the same had been dismissed. The matter is now pending before the Hon'ble Supreme Court of India.

Significantly, Gujarat Vigilance Commission recommended twice on 15-07-2002 and 19-10-2006 that Shri Sanjiv Bhatt should be placed under suspension for his professional misconducts, but the Govt. of Gujarat did not do so.

In the meantime, on the complaint of Shri Sidheshwar Puri, Secretary, Bar Association, Pali (Rajasthan), National Human Rights Commission taking a very serious view of this false case under NDPS Act vide its order dated 15-09-2010 asked Govt. of Gujarat to pay a sum of Rs. one lakh as monetary relief to Shri Sumersingh, Advocate, Pali.

In view of the aforesaid position, it can be inferred that Shri Sanjiv Bhatt is facing a lot of problems in service matters and has got an axe to grind against the Govt. of Gujarat and, therefore, his evidence is ill motivated and cannot be relied upon……"

(emphasis supplied)

Additionally, it may be apposite to reckon the adverse comments noted by this Court[118] against Mr. Sanjiv Rajendra Bhatt about his general conduct while deciding writ petition filed by him for transfer of investigation of a major crime registered against him at Ahmedabad in 2011 being I-CR No. 149/2011.

30. While dealing with the testimony of late Mr. Haren Pandya before the Concerned Citizens Tribunal and of Mr. R.B. Sreekumar, the SIT opined thus[119]: -

> "….. As regards the deposition of Late Haren Pandya before the Concerned Citizens Tribunal, further investigation has 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 Minister attended the same. **Late Haren Pandya was not even a Cabinet Minister at that time and was holding the portfolio of Minister of State for Revenue. 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 alleged testimony of Late Haren Pandya before the Tribunal cannot inspire confidence**.
>
> As regards the entries made by Shri R.B. Sreekumar at page 21 on 12-06-2002, in a register unauthorisedly maintained by him that the call details of the mobile phone of Late Haren Pandya were handed over to Shri P.K. Mishra, the then Principal Secretary to CM through Shri O.P. Mathur in his office, the same appears to be doubtful as Shri Mathur has denied to have handed over any such call details to Dr. P.K. Mishra in his office and that Principal Secretary to CM never visited the office of the State IB, as stated in the said entry made in the register. Moreover, Shri S.M. Pathak, the then Dy.

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[118] supra at Footnote No. 89 – Sanjiv Rajendra Bhatt vs. Union of India & Ors. (2016) 1 SCC 1 (paras 49 to 55)

[119] pages 259-260 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

SP, State IB has confirmed to have conducted secret inquiry about one of the Ministers who had met a Forum of which Justice Krishna Iyer, retired Judge of Supreme Court and some others were the member, who had come to Ahmedabad to enquire into the riots in the State. **Shri Pathak has also confirmed to have conducted secret inquiries, which revealed that Late Haren Pandya had met and deposed before them and that this fact was reported to Shri R.B. Sreekumar orally. However, Shri Pathak has stated that he does not recollect, as to whether he was asked to collect the mobile phone details of Late Haren Pandya or not, which again creates a doubt about the entry made by Shri R.B. Sreekumar in his register. Shri P.K. Mishra, the then Principal Secretary to CM has stated that he does not recollect, as to whether he asked Shri R.B. Sreekumar to collect the mobile call records of Late Haren Pandya and that, no phone call details were made available to him by either Shri Sreekumar or Shri O.P. Mathur. The said call details are not available now. 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 surprising 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 supersession in promotion in February, 2005. In view of the fact that the register maintained by Shri R.B. Sreekumar cannot be considered to be an authenticated document, therefore, the entries made by him in his said register cannot be considered to be reliable.**

Further investigation revealed that Govt. mobile no. 9825039852 was allotted to Late Haren Pandya. **The call detail records of the said mobile phone for 27-02-2002 have been sorted out and the same show that Late Haren Pandya remained at Ahmedabad City till 10:46:55 on 27-02-2002**. His location at Ahmedabad City again comes at 16:24:24 hrs. and thereafter he remained at Ahmedabad City till 22:52:07 hrs on 27-02-2002 and **therefore, this would conclusively establish that Late Haren Pandya did not attend the law & order review meeting that took place at CM's residence at Gandhinagar on 27-02-2002 at about 2300 hrs**.

In view of the aforesaid position, it appears that Late Haren Pandya had misled the Hon'ble Members of Concerned Citizen Forum namely Mr. Justice (Retd.) P.B. Sawant and Mr. Justice (Retd.) Hosbet Suresh that he was present in the meeting called by the Chief Minister at his residence on the night of 27-02-2002 with a view to increase his credibility. It has been established beyond doubt that Late Haren Pandya could not have been present in the said meeting and that the so called evidence given by him was only on hearsay basis. Since the statement made by Late Haren Pandya is based on hearsay basis, it deserves to be discarded as it is not admissible under any provisions of law.

Shri Narendra Modi has denied during SIT examination having stated in the said meeting that in communal riots police takes action against Hindus and Muslims on one to one basis and this will not do now, but allow Hindus to give vent to their anger. On the contrary, he claimed to have given categorical and clear cut instructions to maintain peace and communal harmony at any cost. He has further stated during examination by SIT that a similar appeal had earlier been made to the people at Godhra through media.

It has, therefore, been established that a meeting did take place at CM's residence at about 2230 hrs. on 27-02-2002, which was attended to by Smt. Swarna Kanta Verma, the then Chief Secretary (Shri G. Subha Rao, the then Acting Chief Secretary had gone abroad on 22-02-2002), 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 Secretary, Home Department, Dr. P. K. Mishra, the then Principal Secretary to CM, Shri Anil Mukim, the then Secretary to CM and Shri Prakash Shah, Addl. Secretary (L&O). It has further been established that Shri G.C. 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 alleged 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 or any other source. The very fact that he broke his silence after period of nine years makes his deposition suspicious and motivated and therefore, cannot be relied upon. 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 situation 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. Moreover, the call records of the mobile phone of Shri Pandya show that he was at Ahmedabad till 22:52:07 hrs on 27.02.2002, and therefore, he could not have participated in the said meeting at CM's residence at Gandhinagar. No minutes of the 27-02-2002 meeting were prepared.

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 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……"

(emphasis supplied)

Thus, the SIT could not have reckoned the version of Mr. Haren Pandya, who was not present in the meeting when the alleged utterances came to be made by the then Chief Minister. Such a claim made by Mr. Haren Pandya is found to be false.

31. As in the case of allegations (i) and (iv), the SIT then proceeded to exhaustively deal with the materials collected during the investigation allegation-wise including the two allegations [Nos. (xxxi) and (xxxii)] culled out by the SIT. The final report has then dealt with the materials offender-wise[120]. While dealing with the allegations against the then Chief Minister concerning the illegal instructions given during the meeting on 27.2.2002 it has been found thus[121]: -

> "…..
>
> **Illegal Instructions at the 27.02.2002 meeting:**
>
> As regards the meeting held on the night of 27.02.2002, in which allegedly illegal instructions were given by Chief Minister to the administrative and police officials. It has come to light that an emergency law & order review meeting to take stock of the situation was called by Chief Minister at his residence at about 2230 hrs. after his visit to Godhra. **It has come in evidence that the meeting lasted for half an hour or so and was attended by Smt. 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 Secretary, Home Department, Dr. P.K. Mishra, the then Principal Secretary to CM, Shri Prakash Shah, the then Addl. Secretary, Law & Order and Shri Anil Mukim, Secretary to CM one of the Cabinet Ministers of Shri G.C. Raiger, the then Addl. DG (Int.) was present. Since the presence of Shri Sanjiv Bhatt the then DCI (Security) in the meeting on 27.02.2002, is not established, his statement cannot be relied upon. Shri**

[120] pages 337-397 of original copy of the final report forming part of Convenience Compilation of respondent No. 2
[121] pages 338-339 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

Narendra Modi has also denied the presence of Shri Sanjiv Bhatt in the said high level meeting. His presence has been denied by others who were definitely present. Shri R.B. Sreekumar has claimed that Shri K. Chakravarthi had spoken to him on 28.02.2002, about the said meeting and had claimed that CM uttered these words. However, Shri Chakravarthi, the then DGP, has categorically denied any such conversation with Shri R.B. Sreekumar and as such, it becomes hearsay evidence, which cannot be considered as evidence for any action. Shri R.B.Sreekumar, in his representation dated 03.08.2009, had mentioned the names of a different officer, who according to him, had attended this meeting significantly, name of Shri Sanjiv Bhatt had not been indicated by him. This goes to support that Shri Sanjiv Bhatt was not present in the meeting. **As regards the deposition of Late Haren Pandya, formerly MoS, Revenue before the Concerned Citizens Tribunal, in which he had claimed to have attended the meeting called by Chief Minister on the night of 27.02.2002, all the participants have denied the presence of any of the Cabinet Ministers/MoS at the said meeting. Late Haren Pandya was only a Minister of State for Revenue at that time. Shri Narendra Modi has stated that it was essentially a Law & Order situation review meeting and none of his cabinet colleagues attended it**. Besides this, there is documentary evidence in the form of call detail records of Late Haren Pandya, which conclusively prove that he was present at Ahmedabad till 22:52:07 hrs. on 27.02.2002 and as such he could not have been present in the meeting convened by chief Minister round 2230 hrs. or so. **In view of this the testimony of late Haren Pandya before the Tribunal becomes highly unreliable**. Also relevant here is the strained relationship between him and Shri Narendra Modi, a fact revealed by late Pandya's father late Vithhalbhai Pandya.

Shri Sanjiv Bhatt, the then DCI (Security), has claimed to have attended the meeting, which is not established. Further, None of the senior administrative or police officers has stated that the CM uttered the following words: "<u>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.</u>" Shri Sanjiv Bhatt, the then DCI (Security), had initially claimed off the record during his examination. On 25/26-11-2009, that the CM had uttered these words at the said meeting. This fact was duly incorporated by Shri A. K. Malhotra, Member, SIT in his

Inquiry Report dated 12.05.2010 submitted to the Hon'ble Supreme Court of India. **However, during his further examination in CR No. 67/02 of Meghaninagar P. S. on 21 & 22-03-2011, he improved his version and added that "This time the situation warranted that the Muslims be taught a lesson to ensure that such incidents do not recur ever again". It was for the first time after a period of seven years and nine months that Shri Sanjiv Bhatt claimed to have attended the crucial meeting convened by the Chief Minister on 27.02.2002**. Shri Sanjiv Bhatt has explained that the then DGP Shri K. Chakravarthi had instructed him to attend the meeting with IB's assessment of the situation. **Shri K. Chakravarthi categorically denied to have given any such instructions and has further stated that Shri Sanjiv Bhatt was not present at the said meeting. Seven other officers who attended the meeting have also categorically stated that Shri Sanjiv Bhatt was not present in the said meeting**. However, Smt. Swarnakanta Varma stated that she was unable to recollect whether Shri Sanjiv Bhatt was present or not. Besides that Shri Sanjiv Bhatt has pleaded ignorance about the fact as to whether Chief Ministers alleged instructions were passed on by the senior offices to the subordinates and also as to whether the same were complied with or not. **Shri Sanjiv Bhatt is a tainted witness and there fore, cannot be relied upon keeping in view his back ground in the police department as he was involved in criminal cases of serious nature and departmental inquiries are also in against him. It may be added here that even before this meeting, when Chief Minister visited Godhra on 27.02.2002 evening, he addressed the media at the Collectorate and asserted that the culprits would not be spared and the victims would be paid of Rs.2 lakh each. The CM also appealed to the public through media to maintain peace. Further more, on 28.02.2002, that is within less than 12 hours of the alleged meeting that took place on the night of 27.02.2002, the CM has stated on the floor of the Assembly, where the Opposition was also present, that "the State Govt. has taken this heinous, inhuman and organized violent act very seriously and is committed to give exemplary punishment to the culprits so that such incident never recur anywhere. The Chief Minister repeated almost the similar facts in his press conference held on 28.02.2002 afternoon at Circuit House, Annexe, Ahmedabad. It would not be out of place to mention here that in his appeal made to the public through Door-darshan on 28.02.2002, chief Minister reiterated**

> **that Gujarat will never tolerate any such incident and that guilty will be punished for their heinous crime. He also said that the culprits would be awarded such exemplary punishment so that no one would dare to involve himself in such an incident. This would go to show that at-least on five occasions, which are fully documented during 27.02.2002 & 28.02.2002 Chief Minister addressed Media, Assembly and General Public and every where the genesis and intention was one and the same, i.e. to punish the culprits responsible for the Godhra incident in an exemplary manner, so that such incidents, did not recur ever again. In the light of aforesaid discussion, the interpretations made on alleged illegal instructions given by the Chief Minister by Shri R.B. Sreekumar and Shri Sanjiv Bhatt, appear to be without any basis**. Further, even if such allegations are believed for the sake of argument, mere statement of alleged words in the four walls of a room does not constitute any offence……"
>
> (emphasis supplied)

Again, while dealing with the allegations levelled by Mr. R.B. Sreekumar regarding illegal verbal instructions issued by the then Chief Minister, the analysis of the SIT read thus[122]: -

> "…..
> **Illegal Verbal Instructions:**
>
> As regards the allegation leveled by Sreekumar, that numerous illegal verbal instructions were given by CM and that he had maintained a register in this regard, Shri O.P. Mathur, the then IGP (Admn.), has stated that the register was totally blank on 18.04.2002, when he had certified the number of pages in the same and that Shri Sreekumar had not disclosed the purpose of maintaining such a register. **According to Shri Mathur, the register did not contain the "secret" stamp and also did not have any title as well as the circular stamp of the office of the Addl. DG, CID (Int.). According to Shri Mathur, Shri Sreekumar had recorded the first entry as on 16.04.2002, the second and third entries on 17.04.2002, and the fourth entry on**

[122] pages 341-342 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

> **18.04.2002, which goes to show that Shri Sreekumar had not only antedated these entries, but also affixed the stamps subsequently.** Shri Q.P. Mathur has challenged another entry recorded by Shri Sreekumar that call details of the mobile phone of Late Haren Pandya were handed over to Shri P.K. Mishra, the then secretary to CM through him and denied to have handed over any such call details to Dr. P.K. Mishra in his office. **During enquiries, other senior officers, namely, Shri P.K. Mishra, Shri G. Subba Rao, the then Chief Secretary, Shri Ashok Narayan, the then ACS (Home) and Shri K. Chkriavarthi the then DGP have challenged the contents of the said register on the ground that the same had been unauthorisedly maintained by Shri Sreekumar, which he was not officially required to maintain. Moreover, neither had he taken the permission of the Home Department to maintain such a register nor the Same was put up by him to any of the senior officers for perusal. It is, therefore reasonable to say that Shri Sreekumar made the entries afterwards at his own sweet will with some ulterior motive. According to them, this register saw light of the day for the first time, when Shri Sreekumar was denied promotion. Shri Narendra Modi, chief Minister disclaimed knowledge about such a personal diary/register maintained by Shri Sreekumar and stated that he came to know about it from the media reports after a long time. According to Shri Modi this diary was not a Govt. record and as such he did not want to comment upon the authenticity or otherwise of the same. All the aforesaid facts and the conduct create serious doubts about the genuineness of the entries made by Shri Sreekumar in the said register and, therefore it cannot be relied upon**. The allegation that illegal verbal instructions were issued by Shri Narendra Modi is therefore, not established……"
>
> (emphasis supplied)

The SIT, after analyzing the entire materials, noticed that the allegations in the complaint filed by the appellant, dated 8.6.2006 are mostly based on the contents of the nine affidavits filed by Mr. R.B. Sreekumar before the Nanavati-Shah Commission. Those

contents were not on the basis of his personal knowledge/information. He claims to have acquired information after he was posted at Additional Director General (Intelligence) in April, 2002. Notably, he had not made any adverse comment against the Government in his initial two affidavits, but started doing so from his third affidavit dated 9.4.2005, presumably, after being superseded by his junior K.R. Kaushik in February, 2005 owing to a pending criminal case against him initiated by the JMFC, Bhuj. The allegations made by him have been duly enquired into by the SIT and found to be false or not based on his personal knowledge nor could be duly corroborated despite best efforts of the SIT.

32. Further analysis regarding the allegation of intimidation of Mr. R.B. Sreekumar, Additional DGP, can be noted as follows[123]: -

> "…..
> **Intimidation of Shri Sreekumar, Addl. DGP**
>
> As regards the allegation made by Shri R. B. Sreekumar that he was tried to influence to depose in favour of the Govt. before Nanavati-Shah Commission of lnquiry through Shri Dinesh Kapadia, Under Secretary, Shri Narendra Modi has termed the allegation as false and without any basis Shri Sreekumar, Retd. DGP while the letter as ADGP (Int) through Shri S.M. Pathak, the then DY. S.P. Gandhinagar. He has further stated that they used to exchange some sankrit verses of mutual interest and used to visit each other in their office.

[123] pages 349-350 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

According to Shri Kapadia, during one of these meeting on 21.8.2004, in the chamber of Shri Sreekumar, he took out a copy of his affidavit filed before a Commission of Inquiry and showed it to him and remarked that he was a born rebel. Shri Kapadia stated to have a glance at the affidavit and made a personal observation that no useful purpose would be served by telling all these thing to the Commission, as all Commission are paper tiger. He also expressed his personal view that Commission was not the proper forum to tell these things and said that Shri P.C. Pande, the then CP, Ahmedabad City had rightly deposed before the Commission and that he Shri R. B. Sreekumar should also emulate him. According to Shri Kapadia, he expressed his personal views that Shri Sreekumar was biased in his assessment of situation and that the same could further put him in same uncalled for controversy. **Shri Kapadia has denied that he was sponsored by anyone to influence Shri R B. Sreekumar and that these were his personal views expressed as a well wisher to Shri R.B. Sreekumar, whom he considered as an honest and good officer. However, subsequently he came to know that Shri Sreekumar had clandestinely recorded his conversation and an enclosed the transcript thereof along with his affidavit submitted to the Commission. Shri Kapadia has also stated that on day of his retirement i.e. 28.02.2007, Shri Sreekumar called him to his chamber offered him a cup of tea and also an unconditional apology for the whole episode. Shri Kapadia has also stated that Shri R.B. Sreekumar regretted the whole incident and stated that he had been advised by his lawyer to do so as the same could have strengthened his case pending before the CAT.** Shri Kapadia has denied to have influenced Shri R. B. Sreekumar and further denied that he was holding any brief on behalf of the Govt. in this regard.

Coming to the allegation made by Shri R. B. Sreekumar that Shri G. C. Murmu, Secretary (Law & Order), Home Department and Shri Arvind Pandya, Govt. Advocate to Nanavati-Shah Commission of Inquiry had tried to influence him not to depose against the Govt. prior to his appearance on 31.08.2004 before Nanavati-Shah Commission of Inquiry, it has come to light that the meeting was held at the request of Shri Sreekumar and the conversation was clandestinely recorded by him it may be mentioned here that initially both, Shri Murmu and Shri Pandya briefed Shri Sreekumar about

the modalities for his examination and advised him about certain precautions to be taken the time of his cross examination. Rest of the conversation is confusing and does not make any sense inasmuch as there are certain gaps, which Shri R. B. Sreekumar has tried to fill in by his own views, on the basis of assumptions and presumptions and has interpreted the things to support his version that he was pressurised, threatened, given illegal direction, intimidated to avoid the revealing of the truth that would harm the Govt. interests and to conceal the facts from the Commission. **Shri Sreekumar has given his own comments, observations and conclusions and has also appreciated/interpreted this conversation in his own manner, which showed that he is not an independent witness and that he wanted to influence the Inquiry officer to accept his inferences and conclusions. Surprisingly, Shri Sreekumar did not state these facts before the Nanavati-Shah Commission of Inquiry, when he appeared before it on 31-08-2004, for his cross examination even through alleged pressure was put on him to depose in certain way in the Commission**. **Obviously, Shri R. B. Sreekumar had kept it secret to be utilised as and when the need arose. Further, he did not disclosed these facts even in his second affidavit filed on 06-10-2004 before the Commission**. **It was only after Shri R.B. Sreekumar was superseded in his promotion to the rank of DG on 23-02-2005 that he filed his third affidavit on 09-04-2005, before Nanavati-Shah Commission of Inquiry of his own, and enclosed the transcript of the recordings of the conversations with Shri Dinesh Kapadia as well as Shri G. C. Murmu and Shri Arvind Pandya. All these facts would go to show that Shri R.B. Sreekumar had anticipated these events, had recorded these conversations, clandestinely and used the same at his convenience, when he was superseded in promotion**. This would prove that actions on the part of Shri Sreekumar were motivated with a view to let down the Govt. after his supersession in promotion. In all the three affidavits filed on 06-10-2004, 09-04-2005 & 27-10-2005 before the Commission, Shri R.B. Sreekumar had made a request to be summoned before the Commission and remedial measures ordered as early as possible, but the Commission did not accede to his request. In view of this the allegation relating to the intimidation of Shri R.B. Sreekumar is not substantiated……"

(emphasis supplied)

33. In the context of the opinion of Mr. Raju Ramachandra, learned *Amicus Curiae* noted after the submission of the report of the SIT before this Court, the SIT undertook further investigation and collected relevant materials, which have been referred to alongwith the previous materials in the final report presented before the concerned Court[124]. As regards comments of the learned *Amicus Curiae* in reference to allegations (i) and (iv), the outcome of the further investigation has been discussed and analyzed from pages 401 to 434[125]. It may be desirable to reproduce the relevant extract of the final report dealing with each observation noted by the learned *Amicus Curiae*, to understand and appreciate the extensive, objective and impartial analysis undertaken by the SIT including the further investigation done after the order of this Court dated 15.3.2011[126]. However, for the sake of convenience, we are appending the relevant extract[127] thereof and have highlighted some pertinent portions, to this judgment to be regarded as part of this judgment[128]. After going through the materials and the analysis undertaken by the SIT,

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[124] pages 398-467 of original copy of the final report forming part of Convenience Compilation of respondent No. 2
[125] pages 401-434 of original copy of the final report forming part of Convenience Compilation of respondent No. 2
[126] see para 5(t) above
[127] pages 398-467 of original copy of the final report forming part of Convenience Compilation of respondent No. 2
[128] Annexure-1 (at pages 308-449 of this judgment)

which commended to the Magistrate as well as, the High Court, we unreservedly hold that no other view is possible.

34. We find force in the argument of the respondent-State that the testimony of Mr. Sanjiv Bhatt, Mr. Haren Pandya and also of Mr. R.B. Sreekumar was only to sensationalize and politicize the matters in issue, although, replete with falsehood. For, persons not privy to the stated meeting, where utterances were allegedly made by the then Chief Minister, falsely claimed themselves to be eye-witnesses and after thorough investigation by the SIT, it has become clear that their claim of being present in the meeting was itself false to their knowledge. On such false claim, the structure of larger criminal conspiracy at the highest level has been erected. The same stands collapsed like a house of cards, aftermath thorough investigation by the SIT.

35. We hasten to add that it is only because of the ultra-sensational revelation projected by Mr. Sanjiv Bhatt and Mr. Haren Pandya, who unabashedly claimed to be privy to the utterances made by the then Chief Minister in an official meeting, the constitutional functionaries and this Court was required to move into action taking serious note

of the same. But, after thorough investigation by the SIT, the falsity of such claim has been fully exposed on the basis of credible indisputable materials collated by the SIT during the investigation in that regard.

36. Besides exposing the falsity of the claims of these two persons, the SIT has been able to collate materials indicative of the amount of hard work and planning of the concerned State functionaries in their attempt to control the spontaneous evolving situation of mass violence across the State of Gujarat, despite the handicap of administration including the inadequate State police force required to be replenished with central forces/Army, which were called without loss of time and the repeated appeals made by the then Chief Minister publicly to maintain peace.

37. Realizing the difficulty in pursuing the stated allegations [Nos. (i) and (iv)], the appellant has been now advised not to pursue the same and in the written note [reproduced in paragraph 6(www)] filed after the conclusion of hearing, confirmed that statement. The learned counsel for the appellant did not contend before this Court that a larger conspiracy emanated from the meeting of 27.2.2002;

and that, therefore, had made no reference to this meeting in this appeal during arguments at all. As aforesaid, we are of the considered opinion that the enquiry to be made in this case is essentially regarding the allegations of larger criminal conspiracy at the highest level. That itself has, now, in a way, been abandoned by the appellant in this appeal. It must follow that no other aspect needs to be examined in this appeal as the finding of the Magistrate and of the High Court in that regard, is being allowed to become final.

38. It is in this context the learned counsel for the SIT had urged that the appellant has been changing goalpost at every stage of the proceedings before different Courts. It is seen that the allegation of larger criminal conspiracy at the highest level spelt out in the complaint and protest petition, was in reference to the sensational revelation made by Mr. Sanjeev Bhatt and Mr. Haren Pandya, the falsity whereof has been exposed by the SIT. As a result, now the appellant is pursuing the same allegation by relying on so-called undisputed extra-judicial confessions recorded in Tehelka tapes on the specious plea that there can be no direct evidence regarding larger conspiracy. Hence, in this appeal, the entire focus of the

appellant has been to highlight the so-called undisputed extra judicial confessions recorded in Tehelka tapes to be read with the inaction of the officials demonstrable from the undisputed official documents to establish a larger conspiracy and which according to the appellant, has not been enquired into by the SIT. The stated undisputed evidence, according to the appellant, points to a larger conspiracy, which appears to involve bureaucrats, politicians, public prosecutors, VHP, RSS, Bajrang Dal and members of the State political establishment.

39. This argument, we unhesitatingly opine, is nothing short of red herring. In that, emphasis has been placed on evidence such as SIB messages. What has been conveniently glossed over is that, to make out a case of larger criminal conspiracy, it is essential to establish a link indicative of meeting of minds of the concerned persons for commission of the crime(s), committed during the relevant period across the State including the heart-rending episode unfolded at Godhra on 27.2.2002, in which large number of Kar-sevaks were burnt alive in train bogies. No such link is forthcoming, much less had been unraveled and established in any of the nine (9) cases investigated by the same SIT under the directions of this Court. Accepting the argument of the appellant would require us to

question the wisdom of this Court and to hold that even the incident at Godhra unfolded on 27.2.2002 was also the outcome of alleged larger criminal conspiracy. Such a view would be preposterous.

40. In that, the Godhra incident has been fully enquired into by the SIT to the satisfaction of this Court and even the trial had ended in recording conviction against the concerned accused (belonging to minority community). As to how the Godhra incident unfolded, has been analyzed by the High Court in confirmation appeals in Godhra train case about the acts of planning and commission by a group of persons. Suffice it to observe that forwarding of messages by the intelligence agencies including inaction or lack of effective measures taken by the concerned officials *per se* does not imply criminal conspiracy on the part of the State authorities. As stated earlier, absent tangible material suggestive of a chain or any perceivable link or connection with the unfolding of mass violence across the State, it is unfathomable as to how the SIT could have still recommended sending the alleged offenders for trial, much less would obligate the concerned Court to take cognizance on such unfounded allegations. There is no material forthcoming to indicate that there was failure on the part of intelligence to collect information and it was a deliberate act on the part of the State Government authorities.

Whereas, the allegation is that intelligence inputs were collected and disseminated to concerned authorities, but not acted upon by the concerned officials in right earnest.

41. Needless to underscore that inaction of the duty holders to take those messages to its logical end, cannot be regarded as act of criminal conspiracy unless there is material to provide link regarding the meeting of minds and deliberate act to effectuate a plan to spread mass violence across the State. The SIT had recorded statement of Mr. Ashok Narayan, the then ACS (Home), Gujarat, dated 12.12.2009, who stated as follows: -

> "…..The State of Gujarat has a long history of communal riots way back to 1714. Thereafter riots had erupted in the State on many occasions during the last three centuries. However, post-independence, major riots took place in the State in 1969, 1985 and 1992-93. Inputs regarding the communal situation in the State had been received from the State Intelligence Bureau as well as Intelligence Bureau, Ministry of Home Affairs, Government of India. This information was sent to the concerned authorities to initiate appropriate preventive and remedial measures. Actionable information was analysed and communicated to the DGP and other field formation for further necessary action.
>
> At the time when I took over as ACS (H), the communal atmosphere in Gujarat State was neither surcharged nor volatile prior to 27.02.2002. It may be mentioned here that the programme of Shilanyas for Ram Mandir at Ayodhya was announced quite a few months back to be done on 15th March 2002 and this announcement had arose some passions across the country. In Gujarat State Intelligence outputs were available to the government about the movement of the Karsevaks from different places in Gujarat to Ayodhya. Keeping in view this information all SsP/CsP were alerted on 07.02.2002 about the movements of Karsevaks. The Government had specific information that on 16.02.2002 that Shri Prahladbhai J. Patel, President of Bajrang Dal would leave for Ayodhya for Maha Yagna along with 150-200 persons. Further on 22.02.2002 he will depart from Mehsana railway

> station at 15.40 hours by Delhi-Ahmedabad Mail train for Ahmedabad and on 24.02.2002 they would leave Ahmedabad railway station by Sabarmati Express train 9165 Dn. at 20.25 hours for Ayodhya. Also there was information that they will return on 26.02.2002 from Ayodhya at night and would reach Ahmedabad on 28.02.2002 morning. The group was supposed to carry Trishuls with them. Accordingly this message was passed on by SP Western Railway, Vadodara Gujarat to IG Communal Intelligence, UP, Lucknow vide fax message dated 16.02.2002. However, no specific information had been received from the IG Communal Intelligence, UP about the return journey of Karsevaks or from anyone else……"

This version belies the claim of the appellant including the unfounded allegation of criminal conspiracy at the highest level for causing mass violence across the State. The materials gathered by the SIT on the other hand, would suggest that despite the corrective measures taken by the concerned officials in right earnest, the situation evolved in unpredictable and sporadic manner and the expanse of the activities were such that the State administration was completely overrun.

42. At the cost of repetition, be it noted that the SIT had not found any conspiracy for linking the separate incidents of mass violence across the State during the investigation of nine (9) separate crimes including the Godhra train incident, dealt with by the SIT under the strict vigil and supervision of this Court and ably assisted by the learned *Amicus Curiae* playing the role of devil's advocate. Whereas, the messages generated by SIB from time to time even before

27.2.2002, in fact would go to show that the concerned officials were vigilant, but the situation as evolved post Godhra incident, was unparalleled and had overrun the State administration.

43. In any case, inaction or failure of some officials of one section of the State administration cannot be the basis to infer a pre-planned criminal conspiracy by the authorities of the State Government or to term it as a State sponsored crime (violence) against the minority community. The SIT had noted that inaction and negligence of the erring officials has been taken note of at the appropriate level including by initiating departmental action against them. Such inaction or negligence cannot pass the muster of hatching of a criminal conspiracy, for which the degree of participation in the planning of commission of an offence of this magnitude must come to the fore in some way. The SIT was not there to enquire into the failures of the State administration, but the remit given to it by this Court was to enquire into the allegations of larger criminal conspiracy (at the highest level).

44. Conspiracy cannot be readily inferred merely on the basis of the inaction or failure of the State administration. In the enquiry

undertaken by the SIT, it had been found that the developments were in quick succession and had overrun the arrangements already in place or for that matter, additional support by calling Army on 28.2.2002 itself besides the curfew imposed in the most disturbed areas of the State. In light of such timely corrective measures taken by the State Government in right earnest and repeated public assurances given by the then Chief Minister that guilty will be punished for their crime(s), and to maintain peace, it would be beyond comprehension of any person of ordinary prudence to bear suspicion about the meeting of minds of named offenders and hatching of conspiracy by the State at the highest level, as alleged, much less grave or strong suspicion as being the quintessence for sending the accused for trial for an offence of criminal conspiracy.

45. The protagonists of quest for justice sitting in a comfortable environment in their air-conditioned office may succeed in connecting failures of the State administration at different levels during such horrendous situation, little knowing or even referring to the ground realities and the continual effort put in by the duty holders in controlling the spontaneous evolving situation unfolding aftermath mass violence across the State. The linking of such

failures is not enough to entertain a suspicion about hatching of criminal conspiracy at the highest level, which requires a concerted effort of all the persons concerned and more importantly, clear evidence about meeting of the minds to accomplish such design, much less of causing and precipitating mass violence across the State. It is apposite to recall the observations in ***Reg vs. Hodge***[128A], adverting to the address by Baron Alderson about the dexterity and ability of ingenious mind to create theories, where he had said: -

> "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

Be that as it may, overrunning of State administration is not an unknown phenomenon. It has been witnessed all over the globe during the second wave of pandemic, where the countries with even best of medical facilities crumbled and their management skills were overrun under the pressure. Can it be said to be a case of hatching of criminal conspiracy? We need not multiply such instances of overrun. Breakdown of law-and-order situation if for short duration,

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[128A] (1838) 2 Lew 227, referred to in ***Hanumant, son of Govind Nargundkar vs. State of Madhya Pradesh*** – 1952 SCR 1091

cannot partake the colour of breakdown of rule of law or constitutional crisis. To put it differently, misgovernance or failure to maintain law-and-order during a brief period may not be a case of failure of constitutional machinery in the context of tenets embodied in Article 356 of the Constitution. There must be credible evidence regarding State sponsored breakdown of law-and-order situation; not spontaneous or isolated instances or events of failure of State administration to control the situation. Suffice it to observe that the breakdown of law-and-order situation in the State including attributable to the alleged inaction of the (State) duty holders, owing to spontaneous mass violence cannot be a safe measure to infer as being a part of the criminal conspiracy at the highest level of political dispensation unless there is clear evidence to so conclude regarding meeting of the minds of all concerned and their concerted efforts to commit or promote commission of such crime. The allegation in the present case, if at all relevant, was founded on falsehood of the claim of Mr. Sanjeev Bhatt and Mr. Haren Pandya regarding the utterances of the then Chief Minister in review meeting chaired by him – which stood completely exposed after the investigation by the SIT.

46. For the same reason, it would not be open to the concerned Court to take cognizance or to call upon the SIT to do further investigation absent any tangible material. On the other hand, the opinion recorded by the SIT while dealing with allegation No. (viii)[129], has dealt with the materials to conclude that it cannot be said that no action had been taken on letters sent by Mr. R.B. Sreekumar. Similarly, while dealing with the allegation [No. (xiv)] regarding undue delay in requisition and deployment of Army[130], the SIT had opined that there was genuine problem of deploying Army despite sending of requisition on 28.2.2002 at 1300 hrs., which message was sent by fax to the Union Defence Secretary, Ministry of Defence at 1430 hrs. and the time taken in posting the Army after its arrival due to logistical reasons.

47. Suffice it to observe that there is no tittle of material, much less tangible material to support the plea of the appellant that the Godhra incident unfolded on 27.2.2002 and the events which followed, was a pre-planned event owing to the criminal conspiracy hatched at the highest level in the State. It is well settled that

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[129] pages 280-283 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

[130] pages 293-294 and 342-343 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

conspiracy requires an act (*actus reus)* and an accompanying mental state (*mens rea*). The agreement constitutes the act and the intention to achieve the unlawful objective of that agreement constitutes the required mental state. The offence of conspiracy is independent of other offences. It takes place when there is an agreement to do or cause to be done an illegal act, or an act which may not be illegal but by illegal means. The rationale of conspiracy is that the required objective manifestations of dispositions of criminality is provided by the act of agreement. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they will accomplish the unlawful object of the conspiracy[131]. As noted earlier, inaction in the response or even in a given case of non-responsive administration, can be no basis to infer hatching of criminal conspiracy by the authorities of the State Government in absence of any clear evidence about the meeting of minds; and that, failure to respond to the messages sent by SIB was a concerted and deliberate act of omission or commission on the part of the State and other functionaries, as alleged. The SIT had recorded the statements of all concerned including the officials

[131] See ***Firozuddin Basheeruddin*** (supra at Footnote No. 43), ***R. Venkatkrishnan*** (supra at Footnote No. 45), ***Shiv Charan Bansal*** (supra at Footnote No. 46), and ***Nazir Khan*** (supra at Footnote No. 59)

before forming the opinion, as noted in the final report, to discard the allegation under consideration. The Magistrate, as well as, the High Court committed no error whatsoever in accepting the final report presented by the SIT.

48. Thus understood, the argument pressed into service about the existence of materials regarding build-up of communal mobilizations and stockpiling of weapons, arms and ammunitions even before the Godhra episode on 27.2.2002 being part of the larger criminal conspiracy, is devoid of merits. This argument proceeded on an erroneous assumption that the SIT had not investigated into this crucial matter. The final report presented by the SIT before the concerned Court has dealt with the relevant aspects while considering allegation No. (viii)[132], as also, under the heading "Failure to Act on Suggestions From State Intelligence", while considering the allegations against the then Chief Minister[133], in the following words: -

> "…..
> **Failure to act on suggestions from State Intelligence**
>
> **Shri Narendra Modi has stated that in order to bring to bring peace and normalcy in the State, he had made regular appeals through media to maintain peace and Communal harmony. CM has claimed to have formed a**

[132] pages 280-283 of original copy of the final report forming part of Convenience Compilation of respondent No. 2
[133] pages 347-348 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

Committee under the Chairmanship of the Governor of the State; Leader of Opposition and others to supervise the relief operation. He has further stated that the relief camps were opened in the affected areas served by the NGOs and local social leaders. He has also stated that the funds were contributed by the Govt. as per policy and the relief operations supervised by the Committee. According to Shri Modi, the necessary food, drinking water, medicines and cash, etc were arranged in these camps and arrangements also made for the children education in these camps. According to Shri Modi, some PIL had been filed in this regard in Gujarat High Court and the same should be looked into……"

And again:

"….. As regards the DO letter dated 24-04-2002 sent by Shri R.B. Sreekumar, the then Addl. DG (Int.) to Shri Ashok Narayan, the then ACS (Home). Shri Narendra Modi has stated that no such letter was put up to him. **However, Shri Ashok Narayan, the then ACS (Home) has stated that the letter contained general observations and concrete details were missing and therefore, he had discussed from Shri R.B. Sreekumar and requested him to take action at his level as far as possible. Shri Ashok Narayan does not recollect having put up this letter to CM. Shri K. Chakravarthi the then DGP has stated that most of the points and issues raised by Shri R.B. Sreekumar had been effect1vely dealt with in March & April, 2002**. Shri Chakravarthi has also stated to have taken adequate steps to restore the loss of faith of the minority community in the Criminal Justice System by instructing the concerned police officers to be fair to ensure proper registration of FIR effect arrests of the accused persons and to proceed ahead With the investigation as per law. Shri Chakravarthi has also stated that the, teams of the police officers were sent to the relief camps for direct contact with the affected persons and to proceed with the investigation in a fair manner. Shri Chakravarthi has also spoken of having given instruction to the senior officers to closely supervise these cases to avoid any allegations. According to Shri Chakravarthi, special instruction was given by him to all the police officers to provide suitable protection to those who wanted to return to their original residence*I* Business. Regarding the law & order situation, review report sent by Shri R.B. Sreekumar to Home Department on 15-06-2002, requesting the postponement of the Rath-Yatra till an atmosphere of durable peace and goodwill was established between the majority and minority community, Shri Ashok Narayan has stated to have discussed the matter with Chief Minister, who did not agree with the views of Shri Sreekumar to stop the Rath-Yatra, as

this was an event in vogue for so many years. Shri Ashok has also stated that the Administration did not agree with the view of Shri Sreekumar and the Rath-Yatra was taken out on 12-07-2002, under police bandobast and the event passed off peacefully. Further, according to Shri Chakravarthi, these were the personal views of Shri Sreekumar, which were duly considered by the Govt. Shri Chakravarthi has also stated that the report sent by Shri Sreekumar was not well through of and was not based on realities and therefore Govt. did not agree with the view of Shri Sreekumar and that his apprehensions were without any basis. Coming to another report on the prevailing law & order situation sent vide 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 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 by him 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. Keeping in view the versions of Shri Ashok Narayan, Shri K. Chakravarthi and Shri Narendra Modi about the Rath-Yatra and also about the DO letter dated 09-09-2002 sent by Shri Ashok Narayan to Shri Sreekumar, **it can not be said that no action was taken on the views sent by the latter to the Govt. In view of the position explained above the allegation is not established**……"

(emphasis supplied)

49. Reverting to the allegation coined as "Allegations Carried by Tehelka Magazine", the final report deals with the same as follows[134]:-

> "…..
>
> **Allegations carried by Tehelka magazine**:
>
> 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 Narender 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.
>
> In this connection, it may be added here that **Shri Haresh Bhatt, formerly MLA** and accused **Babu Bajrangi** in Naroda Patiya case have admitted their voice as also the contents of the CD. Shri Haresh Bhatt has stated that one Shri Ashish had approached him that he wanted to write a thesis on Hindutva and wanted him to contribute some spicy material for the same, so that he could succeed in his mission. He has further stated that Ashish visited him at his residence in Ahmedabad City as well as at Godhra at least 7-8 times in a month period and when the reference came to Gujarat riots, he gave an imaginary story as Ashish wanted some spicy material for his thesis. **He has stated that the talks about a CBI inquiry, the fact that he owned a gun factory where diesel bombs and pipe bombs were made and distributed to Hindus, the fact about two truck load of swords ordered from Punjab and subsequently distributed amongst Hindus, making of a rocket launcher in his gun factory by filling them with gun powder and lighting a 595 local made**

[134] page 352 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

bomb to blast were absolutely false and baseless. He has also mentioned that his talk about Shri Narendra Modi having openly said that we had three days to do, whatever we could do and that he would not give us time after that, were imaginary story and that Shri Modi never told these things to him.

Shri Babu Bajangi 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 Narendera 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 subjudice and hence no further comments……"

(emphasis supplied)

50. It is indisputable that the Tehelka tape was the brainchild of Mr. Ashish Khaitan who was working with Tehelka. He had conducted an enquiry of similar nature in the past, where the workers of VHP had indulged in vandalism and manhandled some of the students and a professor over a painting wherein objectionable

images of Hindu Deities were displayed. Mr. Ashish Khaitan, in order to conduct a sting operation on this occasion, used a spy camera and also prepared an identity card in assumed name of Piyush Agarwal of Delhi University. He visited Baroda and conducted sting operation on Mr. Dhimant Bhatt, Chief Auditor of M.S. University, Baroda and office bearer of VHP. Thereafter, from May to September, 2007, he recorded the audio/visual conversations of 18 individuals pertaining to post-Godhra riots. The telecast of the sting operation was published on 27.10.2007 in television channels. After such publication, the NHRC directed CBI to submit report vide order dated 5.3.2008. The CBI in the course of enquiry, collected certain information and submitted report to the NHRC, opining regarding authenticity of the recordings in the sting operation and operation 'Kalank' delineating four points: -

> "(i) Video signals in the footage of the DVDs P-V/D-1 to P-v/D-15 match in respect of speech, utterances, laugher, stray ringing tones of mobile hand sets, movements of body parts and body language of the persons appearing in the recorded events.
>
> (ii) No Evidence of editing, alteration and tempering has been detected in the audio video recordings and their respective voice track recorded in the DVDs, exhibits P-V/D 1 to P-V/D-15 (ii) Cameras exhibits P-I/I and P-II/I are in working order.
>
> (iii) The camera characteristics of the video clips, their signals, frame coordinates and number of frames per second of the video footage and the time lag of audio track recorded

> I the DVD exhibits P-V/D-I to P-V/D-15 are similar to the camera signals, frame co-coordinators, number of frames per second and the time lag of audio track recordings of cameras P-I/I and PII/I and hence the DVDs could have been recorded with the camera exhibit P-I/I and the camera exhibit P-II/I.
>
> (iv) A large number of video clips produced in the video CDs exhibits P-V/C-I to P-V/C-5 have been taken from the video footages of DVDs exhibits PV/D-I to P-V/D-15 on the CDs. However, in some of the clips of CDs, the voice (audio signals) in the recording of DVDs have not been produced."

From this report, the technical veracity of the tape can be accepted on the basis of CFSL report. However, as that would not be sufficient, the SIT recorded the statements of 13 persons who were available and had made revelations on Tehelka tape. As aforesaid, only one of them has been named as offender (No. 22) in the complaint filed by the appellant, namely, Babubhai alias Babu Bajrangi. The material from sting operation has been submitted by the SIT in three (3) out of nine (9) sets of cases assigned to SIT by this Court, namely, in Gulberg Society, Naroda Patiya and Naroda Gaam, where the persons making revelations have been named as accused in the concerned case. As regards the evidence from the stated sting operation produced by the SIT in CR No. 67/2002 concerning Gulberg Society, the trial Court in its judgment dated 26.12.2013 after analyzing the same, has held that a sting operation can at best be a good corroborative material against the accused who

are stung by the operation, relying on the decision of this Court in ***R.K. Anand***[135] and ***Rajat Prasad***[136]. We do not wish to elaborate further on the view taken by the trial Court in the stated case, as it is pending challenge. Suffice it to mention that Mr. Babu Bajrangi has already been chargesheeted and tried in connection with the evidence concerning sting operation in which he was stung. The SIT had noted that call details of Mr. Babu Bajrangi reveal that he was in Ahmedabad from morning till 11:15 hrs. on 27.2.2008 and could not have remained present at Godhra at the time of incident.

51. We find force in the argument of the respondents that although the sting operation was not part of the complaint filed by the appellant or the report of the learned *Amicus Curiae*, but the same has been thoroughly investigated by the SIT including by recording statement of 13 persons who were stung. At the end of the investigation, the SIT found that other persons whose statements were recorded by the SIT were not accused in any case and also no corroborative evidence pertaining to any larger conspiracy was found in their statements. Absent such corroborative material, the

[135] supra at Footnote No. 85
[136] supra at Footnote No. 85

evidence in the form of sting operation can be of no avail, much less to take forward the allegation of larger criminal conspiracy at the highest echelon of the administration. No evidence regarding meeting of minds could be culled out from the statements of the concerned persons, much less to link the offenders named in the complaint of appellant.

52. The emphasis placed on purported extra-judicial confession of 18 persons as recorded in Tehelka tape, it needs to be understood that the extra-judicial confession can at best be used against the maker and not against others[136A]. Further, such statements need corroboration to be used against other accused. The SIT nevertheless recorded statement of 13 out of 18 persons, who had made revelations, as recorded in Tehelka tape. Out of them, only Mr. Babu Bajrangi Patel, Member, Bajrang Dal has been named as an offender in the complaint submitted by appellant. The SIT in its final report, has considered the relevant aspects while dealing with offender No. 22 – Mr. Babu Bajrangi Patel, in the following words[137]:

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[136A] see: Section 30 of the Indian Evidence Act, 1872

[137] pages 365-366 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

"…..

A-22: Shri Babu Bajrangi Patel, Member, Bajrang Dal.

Shri Babu Bajrangi has stated that he joined Bajrang Dal in 1995, later got introduced to Shri Pravin Togadia, Shri Jaydeep Patel and Home Minister Shri Gordhan Zadafia and also case in contact with other Sangh Parivar activists. He has stated to have come to know about the Godhra carnage through TV news on 27-02-2002, in which one of the Kar-sevaks, namely, Shri Bhimjibhai K. Patel belonging to his community was also killed, whereas other kar-sevaks from his village namely Shri Dharmendra Patel and others survived. He has further stated that his nephew Shri Bharat R. Patel had visited Godhra on 27-02-2002, by car on that day and returned to Ahmedabad in the night. He has taken the plea that mobile phone no. 9825020333 was used by his nephew Shri Bharat Patel. He has further stated that he went to Sola Civil Hospital on 28-02-2002 at about 0700 hrs and the dead body of Bhimji K. Patel was identified by Shri Vashrambhai, uncle of Bhimji Patel, taken by them to their village, and they arrived at about 1330 hrs. The funeral of Late Bhimjibhai Patel was over at about 1530 hrs and thereafter, he has stated to have gone to Khedbrahma along with Shri Dharmendra Patel. He has further stated that he stayed at Khedbrahma on 28-02-2002, as the communal riots had erupted and no transport was available. According to Shri Babu Bajrangi, he returned to Naroda on 01-03-2002 late in the night and was informed by his family members that he had been named as an accused in Naroda Gam and Naroda Patiya carnage cases. Thereafter, he has stated to have left for his elder sister Laxmiben's house on 02-03-2002, who stays in village Kevdia-Kampa and stayed there for about three or four months. As per Shri Bajrangi, he was arrested by the Crime Branch, Ahmedabad City, on 28-02-2002, taken on remand for 10 days and then sent to jail. Subsequently, he was released on bail on 19-10-2002.

He has admitted that Shri Ashish Khetan met him as Piyush Agarwal and informed him that he was making a film on Hinduism and that he has to pay a role in it and speak some dialogues. He has admitted his voice, and the conversation held with Shri Ashish Khetan, but has taken the plea that he had read the dialogues as per a written script given by Shri Ashish Khetan. However, he had stated that all these facts

> were incorrect and that he had spoken the same, as Shri Ashish Khetan asked him to do so.
>
> It may be mentioned here that Shri Babu Bajrangi has already been charge sheeted in Naroda Patia case (Naroda P.S.I. CR No. 100/2002) as well as Naroda Gam case (Naroda P.S.I. CR No. 98/2002) and is facing trial. In view of the fact that the matter is sub-judice, no action is called for in the matter……"

53. The SIT has not found any conspiracy, linking separate and disparate acts of arson and looting or outrageous claims made in sting operations or individual utterances/publications of purported hate speech, to any singular larger conspiracy or planned event. The materials gathered during the investigation, in no way link any "meeting of the minds" in any of the nine (9) cases investigated by the SIT or for that matter, other incidents alleged in the complaint or the protest petition. The riots across the State had taken place spontaneously, immediately after the Godhra Train Carnage. In the investigation done by the SIT in all the nine (9) sets of cases, no material was discovered pointing towards any meeting of minds/conspiracy in the higher echelons of the administration or the political establishment conspired with other persons to cause such riots or for having turned nelson's eye when the riots had triggered and continued. There is no chain or any perceivable link or connection in these occurrences during the relevant period, which

ought to be the quintessence had it been a case of larger conspiracy at the highest level. Indeed, the factum of conspiracy can be inferred, but absent any perceivable link, much less about the meeting of minds of all concerned, it is not open to assume conspiracy in the air.

54. From this discussion, it is amply clear that the argument pressed into service on the premise of no investigation done by SIT on crucial matters is contrary to the materials on record and we find that the opinion recorded by the SIT is after due consideration of all aspects and backed by tangible materials gathered during investigation by it.

55. For the same reason, the argument regarding mass mobilizations and hate speech on 27.2.2002 regarding proactive and aggressive behaviour of persons returning from Ayodhaya/Kar-sevaks after the Godhra attack, is tenuous. During the course of arguments, much effort was made by the appellant to impress upon us that the SIT had not even bothered to record the statement of Mr. Anil Patel, which the respondents have duly refuted by pointing out from the record that there are three persons with the same name -

Anil Patel and the SIT had recorded statement of all of them (Mr. Anil Shankerbhai Patel - VHP worker; Anil Tribhovandass Patel – a former Minister and named as one of the offenders in the complaint; and Anil M. Patel - BJP Doctor Cell) - and also analyzed the same in the final report. The appellant had referred to the statements of Dr. Anil M. Patel, as if he was concerned with the sting rather than reading the statement of Mr. Anil Shankerbhai Patel. Similarly, incorrect submission was made in reference to Mr. Arvind Pandya, Advocate, who was one of the persons stung in operation 'Kalank'. The appellant contended that he was appointed as a public prosecutor in riot cases. As a matter of fact, Mr. Arvind H. Pandya, was appointed as one of the defending Special Counsel for Gujarat State in June, 2002 to defend the State Government before Nanavati-Shah Commission of Enquiry and he later resigned in October, 2008.

56. Be that as it may, much argument was made about the post-mortem of dead bodies in the open in Railway yard and also, parading them from Godhra to Ahmedabad. According to the appellant, the post-mortem was done in the open yard as part of larger criminal conspiracy to obliterate the real cause of death of

Kar-sevaks at Godhra due to fire and then to transport the dead bodies to Ahmedabad so as to parade them amidst shouting of provocative slogans so as to arouse passions. This plea taken in the protest petition is of pure conjectures and surmises. In that, the deaths had been caused due to the violent act of group of persons (who were later identified after investigation and faced trial ending in conviction) for setting the train (Coach S6 of Sabarmati Express) carrying Kar-sevaks on fire. The case concerning Godhra train episode was also investigated by the SIT under the supervision of this Court and that trial ended in conviction of 32 (thirty-two) persons and the confirmation appeals for capital punishment have also been disposed of by the High Court. In those proceedings, the Courts have considered the issue concerning post-mortem of dead bodies in the open in Railway yard. In other words, the issue under consideration raised by the appellant has already passed the muster of judicial scrutiny before the trial Court and the High Court. Accepting the argument of the appellant on this score would need reinvestigation of the concluded case which must be eschewed and cannot be countenanced.

57. The allegation [No. (ii)] regarding parading of dead bodies, has been dealt with by the SIT with in the following words[138]: -

> "…..
> **ALLEGATION No.II :**
>
> **CM's decision to bring the dead bodies of victims of Godhra train fire incident to Ahmedabad and parade them in Ahmedabad City**.
>
> Enquiries revealed that Smt. Jayanti Ravi, the then Collector & District Magistrate, Godhra Panchmahals District received a telephone call at about 0800 hrs from Shri Raju Bhargava, the then Superintendent of Police, Panchmahals District that there had been an incident of stone pelting as also torching of railway coach of the Sabarmati Express near Godhra Railway Station. Immediately, messages were conveyed to the concerned Municipal Authorities at Godhra, Lunawada and Kalol to send the fire tenders to the spot. According to Smt.Jayanti Ravi, she reached the spot near Godhra Railway Station at about 0845 hrs. By that time, a crowd had assembled at Godhra Railway Station and the immediate problem was to take care of the transit passengers who had been stranded there, because of the fire and stone pelting incident. The injured passengers were given medical aid by the Civil Hospital, Godhra, whereas those, who had received severe burn injuries, were immediately admitted to the Civil Hospital, Godhra. Around 1200 hrs, the District Administrative officials could step into the S6 coach of Sabarmati Express with a view to assess the actual number of deaths in the incident. As the bodies in the coach were charred and in mutilated condition, it was virtually impossible to count the head. In order to ensure that the stranded passengers were not put to any further inconvenience, the railway authorities detached the two affected/burnt bogies from the main train, parked them in the railway yard and joined the rest of the bogies together. Finally, the Sabarmati Express left Godhra around 1300 hrs for Ahmedabad, its destination.
>
> Shri Narendra Modi, Chief Minister arrived at Godhra by helicopter sometime between 1600 hrs to 1700 hrs and

[138] pages 261-263 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

was accompanied by Shri Anil Mukim, the then Secretary to CM. He was received at the helipad by Smt. Jayanti Ravi and Shri Ashok Bhatt and he straightaway drove to the Godhra Railway Station. 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 Prabhasinh 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 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**.

Enquiries revealed that as per the call detail records of mobile phone no. 9825023887 of Shri Jaydeep Patel, he reached Godhra on 27-02-2002 around 1248 hrs and remained there till 2358 hrs. At Godhra, he had made/received calls to/from Shri Gordhan Zadafia at the latter's mobile phone no. 9825049145. All these calls had been made/received between 2003 hrs and 2113 hrs. He had also received calls from Shri R. J. Savani, the then DCP, Zone-V, Ahmedabad City from his mobile phone no. 9825049198 between 1305 hrs and 2116 hrs. The aforesaid

call detail records establish that Shri Jaydeep Patel remained at Godhra till about 2358 hrs on 27-02-2002.

Enquiries further revealed that Shri M.L. Nalvaya, the then Mamaldar & Executive Magistrate issued a letter addressed to Dr. Jaydeep Patel of VHP, in which he had mentioned that 54 dead bodies were being sent through five trucks as detailed below:

Sr. No.	**Truck No.**	**No of Dead bodies carried**
1.	GJ-17-5055	12
2.	GJ-17-T-7557	15
3.	GJ-17-X-3225	03
4.	GJ-16-T-9253	12
5.	GJ-17-T-7327 (TATA 608 tempo)	12

One Shri Hasmukh T. Patel of Vishwa Hindu Parishad had acknowledged the dead bodies. It may be mentioned here that the handing over of the dead bodies to their legal heirs/guardians was the duty of the railway police, who had registered a case in connection with this incident. Shri M. L. Nalvaya has stated that these dead bodies were handed over officially to Shri Jaydeep Patel and Shri Hasmukh T. Patel of VHP as per the instruction given by Smt. Jayanti S. Ravi, DM and Late B. M. Damor, ADM, Godhra. Shri M. L. Nalvaya has filed an affidavit before Nanavati Commission of Inquiry to this effect on 05-09-2009. **However Smt. Jayanti Ravi has stated that no such instructions were given to Shri Nalvaya to hand over the dead bodies to Shri Jaydeep Patel or Shri Hasmukh T. Patel of VHP and that Shri Jaydeep Patel was merely to accompany the dead bodies to Ahmedabad**.

Shri Raju Bhargava, the then Superintendent of Police, Godhra has stated that since, there was a curfew in the town, he had arranged for four (4) mini trucks, Tata-407 and one Tata-608 tempo for the transportation of the aforesaid dead bodies. He also arranged for the police escort with a pilot gypsy. Further, one Sub Inspector was sent in gypsy with some other staff and two armed guards each were made to sit in the aforesaid five vehicles. The convoy left Godhra around midnight intervening 27/28-02-2002 for Ahmedabad by road. On the way to Ahmedabad, the

escorts from the concerned districts had replaced each other. The five trucks carrying dead bodies reached Sola Civil Hospital, Ahmedabad between 0330 hrs to 0400 hrs on 28-02-2002. At Sola Civil Hospital, Dr. Pushpa Belani, Medical Superintendent, PI Lathiya of Sola P. S., Shri Prajapati, Deputy Collector, Shri K. Srinivas, Collector and several other Administrative and Police Officers were present. Shri Jaydeep Patel handed over the letter to Shri Prajapati, the then Dy. Collector and the police and the administrative officials got busy with the preparation of panchnama and other documentation. The relatives of the persons, who had died in the Godhra carnage, were also present in the hospital. Accordingly, 35 persons were identified and their dead bodies handed over to their relatives by about 1300 hrs on 28-02-2002 by the police after obtaining receipts from them. It may be mentioned here that 25 dead bodies were claimed by the residents of Ahmedabad, two (2) by the residents of Kadi, Mehsaha, five (5) by the residents of Anand, two (2) by the residents of Khedbramha, Sabarkantha and one (1) from Rajkot. The photographs and DNA samples of the remaining unidentified 19 dead bodies were taken by the hospital authorities. These 19 unidentified dead bodies were cremated on 28-02-2002, at Gota cremation ground near Sola Civil Hospital by the District Administrative and Police officers with the help of Surpanch of Gota village, which is situated on the outskirts of Ahmedabad city. The cremation was completed by about 1830 hrs on 28-02-2002.

On 28-02-2002, twelve (12) charred dead bodies of Godhra carnage were brought to Ramol, Ahmedabad City from Sola Civil Hospital. All these deceased persons belonged to Ramol-Khokhra area. Shri M.K. Tandon, Jt. CP, Sector-II instructed Shri R.J. Savani, DCP, Zone-V to make efforts to ensure that the dead bodies were moved in vehicle and not by foot, as the same would have esoalated the tension. It may be mentioned here that ten (10) kar-sevaks belonged to Ramol and two (2) kar-sevaks were from Khokhra. Shri R.J. Savani succeeded in persuading the relatives and the well wishers of the deceased to take each body in a vehicle and the funeral procession was guarded by the police up to Hatkeshwar cremation ground, about 4 kms away from Ramol-Khokhra. The funeral was over by about 1400 hrs. and the crowd which had gathered on the highway dispersed thereafter.

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 and there was no one on the highway at that point of time in the night to see them. Further, though a letter had been addressed by Shri M.L. Nalvaya in the name of Shri Jaydeep Patel of VHP and the dead bodies were acknowledged by Shri Hasmukh T. Patel of VHP, yet the dead bodies were escorted by the police upto Sola Civil Hospital, Ahmedabad situated on the outskirts of Ahmedabad City. At Sola Civil Hospital, Shri Jaydeep 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. Subsequently, 35 dead bodies were handed to the legal heirs/guardians of the deceased by the police after completing the formalities and documentation. The 19 unidentified dead bodies were cremated quietly on the same evening by the local administration and police authorities at Gota cremation ground nearby with the help of Sarpanch of Gota village after retaining their DNA samples. Subsequently, 12 dead bodies could be identified after conducting DNA tests, while the remaining seven (7) remained unidentified.

The above facts would go to establish that though a letter had been addressed by Mamalatdar, 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. Further, the unidentified bodies were disposed of by the District Administrative and police officers. The fact that 25 deceased persons belonged to Ahmedabad, 2 to Mehsana, 1 to Rajkot and 2 to Sabarkantha places accessible via Ahmedabad and the same were claimed by their legal heirs/guardians at Ahmedabad justifies the decision to transport the dead bodies from Godhra to Ahmedabad. Shri P.C. Pande, the then CP, Ahmedabad City 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 hrs 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 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, is being dealt with departmentally for this lapse……"

(emphasis supplied)

While dealing with the allegation against the then Chief Minister in this regard, the final report has analyzed the same in the following words[139]: -

"…..

Despatch of dead bodies to Ahmedabad:

The allegations as mentioned in the complaint dated 08-06-2006 of Smt. Jakia Nasim are vague and general in nature As regard the specific allegation of the decision to take the dead bodies of Godhra train victims to Ahmedabad, it has come in evidence that Shri Narendra Modi attended the Assembly on 27-02-2002, when Shri Gordhan Zadafia the then MoS (Home) made a brief statement about the Godhra incident. **The Chief Minister also informed the Assembly**

[139] pages 337-338 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

that at a proposal for an ex-gratia payment of Rs. 2 lakhs to each victim was under consideration of the Govt. As it was a budget day, Chief Minister attended the Assembly proceedings and left for Godhra thereafter. At the Godhra Collectorate, 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 (deceased) were scheduled to travel to Ahmedabad by Sabarmati Express. It has further come to light that the decision to send the bodies to Sola Civil Hospital was taken after taking into account that the hospital was situated on the outskirts of Ahmedabad City and thus away from the crowded area for security reasons. It has also come to light that out of 58 dead bodies 4 bodies, belonging to Dahod, Vadodara, Panchmahal and Anand Districts, were handed over to their legal hears guardians after identification at Godhra itself. The remaining 54 dead bodies were spent under police escort to Sola Civil Hospital, Ahmedabad and Shri Jaydeep Patel of VHP accompanied them. Smt. Jayanti Ravi, the then Collector, Godhra has categorically denied that the decision was taken against her wishes.

As regards the parading of dead bodies, it has come to light that Shri M.L. Nalvaya, Mamlatdar, Godhra had issued a letter dated 27.02.2002 addressed to Shri Jaydeep Patel, in which it was mentioned that 54 dead bodies as per list enclosed were being sent to Ahmedabad through five trucks whose details were given in the said letter. It has further come to light that trucks and escorts were arranged by SP, Godhra and the convoy carrying the dead bodies left Godhra around midnight, reached Sola Civil Hospital, Ahmedabad between 0330 hrs to 0400 hrs on 28.02.2002, and were taken charge from Shri Jaydeep Patel by the Deputy Collector in present of the Medical Superintendent, Police Inspector Sola P.S., Collector, DCP Zone-I and several other police and administrative officials. It has further come to light that around 35 identified dead bodies were handed over to their relatives by about 1300 hrs on 28.02.2002. It has also transpired that 25 dead bodies were that of the persons belonging to Ahmedabad, 2 of Kadi-Mehsana, 5 of Anand, 2 of Sabarkantha and 1 of Rajkot. The remaining 19 dead bodies remained unidentified and were cremated together on 28.02.2002, by the Hospital, District Administrative and

> Police Officials on the same evening after retaining their DNA samples in Gota cremation ground nearer to the hospital. The 12 dead bodies belonging to Ramol and Khokhra were taken in vehicles and cremated at Hatkeshwar cremation ground……"
>
> (emphasis supplied)

The thrust of the opinion formed by the SIT upon analyzing the relevant materials in connection with this allegation is that the decision to carry the dead bodies from Godhra to Ahmedabad for being handed over to their relatives, was a unanimous decision taken at the Godhra Collectorate. This decision was taken as most of the passengers were to travel to Ahmedabad and their relatives had not reached or were unable to reach Godhra to collect their bodies. It was also decided that bodies will be carried to Sola Civil Hospital located on the outskirts of Ahmedabad City and thus away from the crowded area for security reasons. Most of the dead bodies (54 unclaimed at Godhra) were of persons who were ordinarily residing in and around Ahmedabad. After the bodies were carried to Ahmedabad hospital under police escort, 35 bodies could be identified and came to be handed over to their relatives on 28.2.2002. The remaining 19 bodies were cremated together by police and the civil administration on 1.3.2002. Out of these 19 dead bodies, 12 could be identified later by DNA test. Thus, the

entire exercise was within the control and supervision of the administration and there was no parading of dead bodies, as alleged. There was no undue haste in carrying the bodies including cremation thereof. The essential protocol was substantially followed in that respect. This opinion recorded by the SIT in its final report is consistent with the circumstances and materials gathered during the investigation. Suffice it to note that the allegation under consideration is unfounded and has been rightly discarded by the SIT.

58. The appellant had also placed emphasis on the allegations [No. (v)] in the complaint about the Cabinet Ministers positioning themselves in the City Police Control Room and issuing instructions, to buttress their argument about State sponsored violence, as stated in the affidavit filed by Mr. R.B. Sreekumar. This allegation has been thoroughly enquired into by the SIT and analysis of the materials can be discerned from pages 266 to 269[140]. The same reads thus: -

> "…..
> **ALLEGATION No.V :**
>
> **Cabinet Ministers I.K Jadeja and Ashok Bhat were positioned in the DGP office and Ahmedabad City Control Room respectively by CM**.

[140] pages 266-269 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

During the course of enquiries into this allegation Shri R. B. Sreekumar has stated that either on 1st or 2nd March, 2002, Shri K. Chakravarthi, had criticised the Govt. about the positioning of Shri I.K. Jadeja in the DGP's office after the Godhra incident and was feeling depressed, as the presence of Minister in his chamber had adversely affected his supervision of the riot situation. He also stated to have personally seen Shri I.K. Jadeja, Cabinet Minister using the official telephone of the DGP in his chamber.

Shri Ashok Narayan, the then ACS (Home) has stated that on 28-02.2002, two high level meetings were called by the Chief Minister, one in the early morning and other late in the evening, which were attended by him, acting Chief Secretary, DGP and ADGP (Int.). In the meeting held in the morning, the law & order situation was reviewed by the Chief Minister. According to Shri Ashok Narayan, he does not recall any instructions given by the Chief Minister to the DGP and CP, Ahmedabad that Shri Ashok Bhatt and Shri I.K. Jadeja would sit in the Ahmedabad City Police Control Room, Shahibaug and State Control Room, Gandhinagar respectively and assist/help the police in their operation.

However, Shri K. Chakravarthi has stated that he was informed by Shri Ashok Narayan that it was decided by the Govt., that Shri I.K. Jadeja would sit in DGP's office on 28-02-2002, to get information about the Law & Order situation in the State, as the State Control Room was located in his office. Shri Ashok Narayan also informed him that Shri Ashok Bhatt would similarly sit in the Ahmedabad City Police Control Room situated in the office of the CP, Ahmedabad City. On this Shri K. Chakravarthi had told him that it would be better if the Ministers get the information through Control Room in the Home Department as he was bound to report all the information to the Home Department. Thereupon, Shri Ashok Narayan informed Shri Chakravarthi that no such facility was available in the Home Department and therefore the Ministers would visit their offices. Shri Chakravarthi has further stated that Shri I.K. Jadeja visited his office on 28-02-2002 (F.N.) and sat in his chamber for 15-20 minutes. According to Shri Chakravarthi, he could not have much conversation with him, as he remained extremely busy with the telephone calls being received by him from the various police officers. Shri Chakravarthi thereafter asked someone to shift the Minister to an empty chamber in his office and this

was done. Shri Chakravarthi was not aware as to what Shri Jadeja did in that room as he himself remained awfully busy with the telephone messages and follow up actions with the prevailing bandh situation in the State. Later, he came to know that Shri Jadeja had left his office. Enquiries conducted by Shri Chakravarthi with his Staff Officer and Officer of the State Control Room revealed that there was no interference from Shri Jadeja on the functioning of State Control Room on that day. Shri Chakravarthi has also stated that to the best of his knowledge, Shri Jadeja did not visit his office subsequently. As regard the positioning of Shri Ashok Bhatt in Ahmedabad City Control Room, Shahibaug, Shri Chakravarthi denied personal knowledge and stated that CP, Ahmedabad City would be in a better position to clarify that matter.

Shri Sanjiv Bhatt, the then DCI (Security) has claimed that he had attended a meeting at CM's residence at 1030 hrs on 28-02-2002 along with the DGP and ADGP (Int.). After the meeting, he returned to his chamber on the second floor of Police Bhavan at about 1100 hrs and shortly thereafter went to meet the DGP on the first floor of the same building. When he entered DGP's chamber he found that as instructed after the conclusion of CM's meeting, two Cabinet Ministers of Gujarat, namely, Shri Ashok Bhatt and Shri I.K. Jadeja had already arrived and were sitting on a sofa-set in DGP's chamber. He further stated that Shri G.C. Raiger the then Addl. DG (Int.) and Shri Maniram, the then ADO (Law & Order) were also present there. Shri Sanjiv Bhatt briefed the DGP and after taking tea, he returned to his chamber. Shortly, thereafter, Shri Sanjiv Bhatt happened to go to State Control Room on first floor to collect some documents and saw Shri I.K. Jadeja and· his supporting staff sitting in the chamber of Dy. SP. Control Room. Finding this a little odd, Shri Sanjiv Bhatt went to DGP and informed him that it would be improper to permit outsiders in the State Control Room and asked him whether the Minister and his supporting staff could be shifted from the State Control Room. DGP agreed with his decision and thereafter, Shri Sanjiv Bhatt again went to Control Room and requested Shri I.K. Jadeja to accompany him as his presence in the Control Room would hamper the smooth functioning of the State Control Room during such a critical period, whereupon the latter got up and followed him. According to. Shri Sanjiv Bhatt, he took Shri Jadeja, Minister to an empty chamber of Shri P. C. Thakur, the then IGP and requested him to make himself comfortable and contact them for any assistance/requirement. Shri Chaktavarthi was

informed about it. Shri Sanjiv Bhatt has also stated that subsequently he learnt that Shri Jadeja left the Police Bhavan sometime in the afternoon, after having lunch. Shri Sanjiv Bhatt was not aware about presence of Shri Jadeja in the Police Bhavan on the subsequent days, but he recollects that the some of the supporting staff of Shri Jadeja was seeking certain information from the State IB on that day and on subsequent two or three days.

However, this version of Shri Sanjiv Bhatt is contradicted from the call detail records of his Govt. mobile phone no 9825049398, which shows that on 28.02.2002, he remained at Ahmedabad till 1057 hrs at his residence and as such he could not have attended a meeting at CM's residence at 1030 hrs as claimed by him. Similarly, his claim of having seen Shri I.K. Jadeja, the then Minister around 1100 hrs in DGP's office is also falsified from the call detail recods of his mobile phone in asmuch as he could not have reached DGP office, Gandhinagar before 1130 hrs from his residence in Memnagar, Ahmedabad.

Shri I. K. Jadeja, the then Minister of Urban Housing, Roads & Building and Capital projects has stated that on 28-02-2002, Shri Gordhan Zadafia, the then MoS (Home) had requested him to remain present in the DGP's office in Police Bhavan, Gandhinagar to see that in case any information is received in the Control Room about any rioting incident or request is received for extra police force or any other issue of importance then the same should be passed on the DGP, Home Minister etc. In view of this request, he remained present in the office of DGP Shri K. Chakravarthi for 3-4 hrs for next 3/4 days. However, he does not recollect as to what work was done by him, but in case some information was received about some incident from the party workers/common man, the same was passed on to the DGP for necessary action. He has denied to have contacted/instructed any of the police officers over telephone installed in the office of the DGP to take action in a particular manner. **He has categorically stated that he did not interfere with the work of the DGP or disturb the police officers in the discharge of their official duties. He does not remember to have used the telephone installed in DGP's office. He has also stated that the DGP had not shared any information with him and therefore, he had left the Police Bhavan within few minutes on subsequent occasions**.

Shri P. C. Pande, the then CP, Ahmedabad City has stated that it was incorrect to say that Shri Ashok Bhatt, the then Health Minister was stationed at Shahibaug Control Room on 28-02-2002 to guide the police force in controlling the Law & order situation. He has further stated that Shri George Fernandes, the then Union Defence Minister visited Ahmedabad on 0l-03-2002 and came to CP office to find out as to whether Army had been deployed in the State or not. Shri Fernandes reached CP's office around l000 or l030 hrs and asked Shri Pande about the deployment of Army, to which latter said that they could check up from the Control Room. Both of them went to the Control Room downstairs. According to Shri Pande, Shri Ashok Bhatt, who had been waiting for Shri Fernandes in the circuit House, also came to CP's office to meet Shri Fernandes and entered the Control Room Shri Pande has also stated that Shri Fernandes and Shri Ashok Bhatt remained in the Control Rooh1 for about ten minutes and then left CP's office. According to Shri Pande, during this visit to the Control Room, some of the press and media persons were also present and as such it was somehow made to appear that Shri Ashok Bhatt had come to monitor the Control Room. Finally, Shri Pande has stated that Shri Ashok Bhatt was never deputed to Shahibaug Police Control Room to guide or advise the police.

According to Shri Ashok Narayan he does not recall instructions given by the Chief Minister, which were conveyed by him either to the DGP or CP, Ahmedabad City to the effect that Shri Ashok Bhatt and Shri I.K. Jadeja would sit in the Ahmedabad City Police Control Room, Shahibaug and State Control Room, Gandhinagar respectively and assist/help the police.

Late Ashok Bhatt had earlier stated that he might have visited Ahmedabad City Control Room for about 5-10 minutes on 28-02-2002. However, he has denied to have interfered with the police work, as being a senior minister he had to maintain his dignity and status. Again on 01-03-2002, he admitted to have visited the Shahibaug Control Room for about 10 minutes to meet Shri George Fernandes, who had gone to CP's office. The call detail records of Govt. mobile phone no. 9825039877 of Late Ashok Bhatt show that he returned from Godhra to Ahmedabad on 28-02-2002, at about 05:16:51 hrs. Thereafter, the call details do not show its location till 15:50:43 hrs on 28-02-2002, when the location was traced to Koba Circle,

Gandhinagar. During this period, it is presumed that he was at Gandhinagar. His location on 28-02-2002 at 16:16:37 hrs to 17:47:22 hrs was shown as Shahibaug Kedar Tower, Ahmedabad City, which would conclusively prove that during this period he attended CM's press conference at Circuit House Annexe, Shahibaug, Ahmedabad City. Thereafter, again the location was seen at 17:59:22 hrs at Koba Circle, Gandhinagar, which shows that he was returning to Gandhinagar. It may thus be seen that these call details would conclusively go to established that Late Ashok Bhatt did not visit Shahibaug Police Control Room on 28-02-2002. It would not be out of place to mention here that the matter was more than seven years old, when Late Ashok Bhatt and others were questioned and as such the documentary evidence is to be relied upon instead of depending upon the memory of the different individuals, who have given different versions.

Shri Nissar Mohammad Malik, the then PSI, who was on duty in the Police Control Room, Ahmedabad City from 28-02-2002 at 0800 hrs to 02-03-2002 at 0800 hrs, has stated that Shri George Fernandes, the then Union Defence Minister and Shri Harin Pathak, the then MoS for Defence, had come to Police Control Room, Ahmedabad City at 1005 hrs. on 01-03-2002, and left at 1025 hrs. He has confirmed that wireless message in this regard to be under his signatures. He has denied knowledge about the visit of Late Ashok Bhatt, the then Health Minister to the Police Control Room either on 28-02-2002 or 01-03-2002.

Shri V.R. Patel, the then PSI has also denied the visit of Late Ashok Bhatt, the then Health Minister to the Ahmedabad City Police Control Room either on 28-02-2002 or 01-03-2002.

Shri Parbatsinh A. Dholetar, the then PSI, Ahmedabad City Police Control Room, who was on duty on 28-02-2002 from 0800 hrs to 1200 hrs and 2000 hrs to 2400 hrs, has denied the visit of any Minister to the Police Control Room.

Shri Maganbhai M. Limbachia the then PI, who was on duty from 0800 hrs to 2000 hrs on 01-03-2002 in State Police Control Room, Police Bhavan Gandhinagar, has denied the visit of any Minister in the Control Room.

It may thus be seen that Shri K. Chakravarthi has categorically stated that Shri I.K. Jadeja did visit his office, but did not go to the State Control Room and he

was made to sit in an empty chamber. Shri I.K. Jadeja himself has confirmed that he shifted to an empty chamber near DGP's chamber and that DGP did not share any information with him. Shri K. Chakravarthi, the then DGP has confirmed that Shri Jadeja did not interfere with their work.

Shri I. K. Jadeja has taken the plea that it is an established practice in Gujarat State that in case of any natural calamities or serious law & order situation the Ministers of the various departments extend their help in handling the crisis. No material is available to rebut his plea. Late Ashok Bhatt had admitted earlier that he might have visited Ahmedabad City Police Control Room on 28-02-2002 for a few minutes, but the call detail records of his' official mobile phone show his location at Shahibaug Kedar Tower between 16:16:37 and 17:47:22 on 28-02-2002, when he attended CM's press conference. This was conclusively proved that he did not visit the Police Control Room on 28-02-2002. Moreover, the officials of Ahmedabad City Police Control Room have denied that Late Ashok Bhatt ever visited the said Control Room either on 28-02-2002 or 01-03-2002. **In view of the aforesaid position, it is established that Shri I.K, Jadeja did visit DGP's office, but did not enter the State Control Room or interfered with the working of the police and the DGP also did not share any information with him. Further, it could not be established that Late Ashok Bhatt visited Ahmedabad City Police Control Room either on 28-02-2002 or 01-03-2002. As per his own admission, he might have visited the Control Room for a few minutes on 28-02-2002 and/or 01-03-2002. 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 fully established** Significantly, Shri I.K. Jadeja remained at State Police headquarters for 2/3 hrs 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 can not be termed of any material value. **In the absence of documentary/oral evidence of any directions by those two Ministers to police officials, it can not be said at this stage that they conspired in the perpetration of riots or took any action for controlling the riots**……"

(emphasis supplied)

Again, while dealing with the allegations in the complaint against the then Chief Minister in this regard, the final report has noted thus[141]: -

> "…..
>
> **Presence of two Ministers at police control room:**
>
> It has been alleged that the CM took a decision to allow Shri Ashok Bhatt, the then Health Minister and Shri I. K. Jadeja, the then Minister of Urban Development and Urban Housing to sit in Ahmedabad City police Control Room and State Control Room respectively. Shri K. Chakravarthi, the then DGP, has stated during further investigation that Shri Ashok Narayan, ACS (Home) informed him that it was decided by 'the Govt. that Shri I.K. Jadeja, the then Minister would be in his office to secure some information about the law & order situation in the State, as the State Control Room is situated in DGP's office Shri Ashok Narayan had further informed him that Late Ashok Bhatt, another Minister, would sit in Ahmedabad City Police Control Room. Shri Chakravarthi has further stated that he had his own reservations in this matter and therefore, he advised the ACS (Home) that it would be better, if these Ministers got the information from the Control Room in the Home Department. However, Shri Ashok Narayan informed him that no such facility was available with him in the Home Department and, therefore, the two Ministers would come to the respective Control Rooms.
>
> According to Shri Chakravarthi, Shri I. K. Jadeja, the then Minister came to his office in the forenoon of 28-02-2002 and sat in his chamber for about 15-20 minutes. Shri Chakravarthi could not attend to him, as he was extremely busy with the telephone calls being received by him from all over the State. As per his recollection, he had asked someone to shift the Minister to an empty chamber in his office and this was done. He has also stated that he was not aware as to what Shri Jadeja did while he was in the DGP's office as he was extremely busy with his work on that day as rioting was taking place at many locations. Later, Shri Chakravarthi came to know that Shri Jadeja had left his office. Shri Chakravarthi has categorically stated that his enquiries with the staff of the State

[141] pages 339-341 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

Control Room had revealed that Shri Jadeja did not interfere with the functioning of the Control Room in any manner. ·

Shri P. C. Pande, the then CP, Ahmedabad City, has stated that it was incorrect to say that Shri Ashok Bhatt, the then Health, Minister remained stationed at Shahibaug control Room on 28-02-2002, to guide the police force in controlling the law & order situation. He specifically asserted that Shri Bhatt did not visit CP's office Control, Room on 28.02.2002. He has further stated that Shri George Fernandes, the then Union Defence Minister arrived at Ahmedabad on 28-02-2002 night. Shri Fernandes reached CP's office on 01-03-2002 around 1000 or 1030 hrs. and asked Shri Pande about the deployment of Army, to which the latter said that he would check up the same from the Control Room. Both of them went to the Control Room downstairs. According to Shri Pande, Shri Ashok Bhatt who had been waiting for Shri Fernandes in the Circuit House, also came to CP's office to meet Shri Fernandes and entered the Control Room. Shri Pande has also stated that Shri Fernandes and Shri Ashok Bhatt remained in the Control Room for about ten minutes and then left CP's office. According to Shri Pande during this to the Control Room, some of the press and media persons were also present, and as such it was somehow made to appear that Shri Ashok Bhatt had come to monitor the control Room. Finally, Shri Pande has stated that Shri Ashok Bhatt was never deputed to Shahibaug Police control Room to assist the Police.

According to Shri Ashok Narayan, he does not recall any instructions given by Chief Minister, which were conveyed by him either to the DGP or Ahmedabad City to the effect that Shri Ashok Bhatt and Shri I. K. Jadeja would sit in the Ahmedabad City police Control Room, Shahibaug and state Control Room, Gandhinagar respectively and assist/help the police.

Shri I. K. Jadeja, the then Urban Development Minister has stated that it was an established norm in Gujarat State that in case of any natural calamities or serious law & order situation, the Ministers of various departments extend their help in handling the crisis. According to his recollection on 28-02-2002, he had volunteered himself, if tie could be of any help in the prevalent situation, to which Shri Gordhan Zadafia, the then MoS (Home) had told him to remain present in the Police Bhavan and to see that in case any information was received in the State Control Room about any rioting incident and any information was received seeking extra police force, then the same should be passed on to the Home Department.

Consequent to these instructions he went to DGP's office around 1100 hrs. and stayed there for 2-3 hours. He has gated to have interacted with the DGP and informed him that if and when his help was required he could ask him. He has denied to have entered the State Police Control Room and has state that there was no question of any interference. However, Shri Gordhan Zadafia, the then MoS (Home) has denied to have any given any suggestion to Shri I.K. Jadeja. Shri Jadeja has further stated to have visited the DGP's office on the next one or two days also, but stayed there for few minutes only. He has also stated that the DGP had not shared any information with him and therefore, he left Police Bhavan in a few minutes on both these occasions.

Late Ashok Bhatt had earlier stated that he might have visited Ahmedabad City Control Room for about 5-10 minutes on 28-02-2002. However, he has denied to have interfered with the police work, as being, a senior minister, he had to maintain his dignity and status. Again on 01-03-2002, he admitted to have visited the Shahibaug Control Room for about 10 minutes to meet Shri George Fernandes, who bad gone to CP's office, The call detail records of mobile phone no 9825039877 of Late Ashok Bhatt show that he returned from Godhra to Ahmedabad on 28-02-2002, at about 05:16:51 hrs. Thereafter, the call details do not show his location till 15:50:43 hrs. 0n 28-02-2002, when the location was traced to Koba Circle, Gandhinagar. During this period, it is presumed that he was at Gandhinagar. His location on 28-02-2002 at 16:16:37 hrs. 17:47:22 hrs. was show as Shahibaug Kedar Tower, Ahmedabad City, which would conclusively prove that during this period he attended the CM’s press conference, at Circuit-House Annexe, Shahibaug, Ahmedabad City. Thereafter, again the location was seen at 17:59:22 hrs. at Koba Circle, Gandhinagar, which shows that he was returning to Gandhinagar. These call details would go to show that he did not visit Shahibaug Police Control Room on 28-02-2002.

Shri Sanjiv Bhatt, the then DCI (Security) has stated that he had attended a meeting at the CM's residence on 28-02-2002 morning along with the DGP and ADGP (Int.). After the meeting, he returned to his chamber on the second floor of Police Bhavan at about 1100 hrs. and shortly thereafter went to meet the DGP on the first floor of the same building. According to Shri Bhatt, when he entered DGP's chamber he found that as instructed after the conclusion of CM's meeting, two Cabinet Ministers of Gujarat, namely, Shri Ashok Bhatt

and Shri I. K. Jadeja had already arrived and were sitting on a sofa-set in DGP's chamber. He further stated that Shri G.C. Raiger, the then Addl. DG (Int.) and Shri Maniram, the then ADG (Law & order). were also present there. Shri Sanjiv Bhatt briefed DGP and after taking tea, he returned to his chamber Shortly thereafter Shri Sanjiv Bhatt happened to go to State Control Room on first floor to collect some documents and saw Shri I. K. Jadeja and his supporting staff sitting in the chamber of Dy. SP, Control Room. Finding this a little odd, Shri Sanjiv Bhatt went to DGP and informed him that it would be improper to permit outsiders in the State Control Room and asked him whether the Minister and his supporting staff could be shifted from the State Control Room. DGP agreed with his decision and thereafter, Shri Sanjiv Bhatt again went to Control Room and requested Shri I.K. Jadeja to accompany him as his presence in the control Room would hamper the smooth functioning of the state Control Room during such a critical period, whereupon the latter got up and followed him. According to Shri Sanjiv Bhatt, he took Shri Jadeja, Minister to the chamber of Shri P.C. Thakur the then IGP, which was vacant at that time and requested him to make himself comfortable and contact them for any assistance/requirement. Shri Chakravarthi was informed about it. Shri Sanjiv Bhatt has also stated that subsequently he learnt that Shri Jadeja left the Police Bhavan sometime in the afternoon, after having lunch Shri Sanjiv Bhatt was not aware about the presence of Shri Jadeja in the Police Bhavan on the subsequent days.

During further investigation, Shri Nissar Mohammad Malik, the then PSI, who was on duty at the Police Control Room, Ahmedabad City from 28.02.2002 at 0800 hrs. to 02.03.2002 at 0800 hrs. has stated that Shri George Fernandes the then Union Defence Minister and Shri Haren Pathak, the then MoS for Defence had come to Police Control Room Ahmedabad City at 1005 hrs. on 01.03.2002, and left at 1025 hrs. He has confirmed the wireless message in this regard to be under his signatures. He has denied knowledge about the visit of Late Ashok Bhatt, the then Health Minister to the Police Control Room either on 28.02.2002 or 01.03.2902. Shri V.R. Patel, the then PSI on duty in the Police Control Room has also denied the visit of Late Ashok Bhatt, the then Health Minister to the Ahmedabad City. Police Control Room either on 28.02.2002 or 01.03.2002. Shri Parbatsinh A. Dholetar, the then PSI Ahmedabad City Police Control Room, who was on duty on 28.02.2002 from hrs. to 1200 hrs. and

2000 hrs. to 2400 hrs. has denied the visit of any Minister to the Police Control Room.

Shri Maganbhai M. Limbachia, the then Pl, who was on duty from 0800 hrs. to 2000 hrs. on 01-03-2002 in State Police Control Room, Police Bhavan Gandhinagar, has denied the visit of any Minister in the Control Room.

In view of the aforesaid position, is established that Shri I. K. Jadeja did visit DGP's office, but did not go to the State Control Room and he was made to sit in a vacant chamber. Shri I. K. Jadeja himself has confirmed that he was shifted to a vacant chamber near DGP'S chamber and, that DGP did not Share any information with him Shri. K. Chakravarthi, the then DGP has confirmed that Shri Jadeja did not interfere with their work.

Shri I.K. Jadeja has taken the plea that it is an established practice in Gujarat State that in case of any natural calamities or a serious law order situation, the Ministers of the various departments extend their help in handling the crisis. Late Ashok Bhatt had admitted earlier that he might have visited Ahmedabad City Police Control room on 28.02.2002 for a few minutes, but the call detail records of his official mobile phone show his location at Shahibaug Kedar Tower between 16:16:37 and 17:47:22 on 28.02.2002, when he attended CM's press conference, which would conclusively prove that he did not visit the Police Control Room on 28.02.2002. Moreover, the officials of Ahmedabad City Police Control Room have denied that Late Ashok Bhatt ever visited the said Control Room either on 28.02.2002 or 01.03.2002. It is, therefore, established that Shri I.K. Jadeja did visit DGP's office, but did not enter the State Control Room or interfere with the working of the police and the DGP also did not share any information with him. Further, it could not be established that late Ashok Bhatt visited Ahmedabad City Police Control Room either on 28.02.2002 or 01.03.2002. As per his own admission, he might have visited the control Room for a few minutes on 28.02.2002 and/or 01.03.2002. Significantly, Shri I.K. Jadeja remained at State Police headquarters for 213 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 cannot be termed of any material value.

Shri Narendra Modi has totally denied that such a decision was taken by him. He has denied any personal knowledge about the visit of these two Ministers to the respective Control Rooms. It may thus be seen that both the Ministers did visit the respective Control Rooms, but there is no evidence to prove that they interfered with the law & order situation. Nor is there any evidence to indicate that they visited the two control rooms at the direct instance of Chief Minister. Since there is nothing to prove that these Ministers interfered or gave any direction in maintenance of law and order, no offence is made out. Further, in the absence of documentary/oral evidence of any directions by those two Ministers to police officials, it can not be said at this stage that they conspired in the perpetration of riots or took any action for controlling the riots……"

(emphasis supplied)

59. The learned *Amicus Curiae* had recorded observations in regard to this allegation [No. (v)], as follows: -

"

V. That Cabinet Ministers Shri I. K. Jadeja and Shri Ashok Bhatt were positioned in DGP's office and Ahmedabad City Control Room on 28-02-2002.	SIT concludes that this was a "Controversial decision" taken by the Govt. to place two ministers in the DGP's office and Ahmedabad City Control Room. However, SIT concludes that there is no evidence that the 2 ministers passed on any instructions to the police to deal with riots in particular manner. Therefore, the	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. Infact, 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

	allegation is only partially proved as per SIT	that these 2 Ministers immediately called the CM and told him about the situation at Gulberg and other places. 9. SIT merely relied upon the statement 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.”

These observations have been dealt with by the SIT at pages 434-439[142], being part of Annexure-1 to this judgment. The analysis

[142] pages 434-439 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

done by the SIT after further investigation in respect of allegation under consideration commended to the Magistrate, as well as, the High Court. We find no reason to deviate from the said opinion or the view taken in that regard.

60. It was then urged that the phone call records produced by Mr. Rahul Sharma before the SIT on 2.7.2009 being CD containing tower details of Ahmedabad and Godhra, the efficacy thereof has not been reckoned in proper perspective. It would reveal the nexus between the BJP leaders and police officers during riots. This aspect has not been investigated by the SIT. The allegation No. (xxiii) culled out by the SIT in this regard has been analyzed at pages 310-312[143] and again in reference to the observations made by the learned *Amicus Curiae*, at page 456[144]. The SIT, after investigation, eventually opined that the CDs collected by Mr. Rahul Sharma from M/s. Cellforce were copied by him on his personal computer kept at home and operated multiple times; and was unable to produce the original received from the original source (cell company). Further, when the SIT wanted to verify the mobile phones of suspected/accused

[143] pages 310-312 of original copy of the final report forming part of Convenience Compilation of respondent No. 2
[144] page 456 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

persons, the cell companies informed that the data was not retained/available due to efflux of time. The SIT analyzed all the aspects in respect of this allegation as follows[145]: -

> "…..
>
> **ALLEGATION No. XXIII:**
>
> **The CD regarding telephone calls by BJP leaders and police officers during riots was not probed into by the Investigating Officers of the Naroda-Patiya and Gulberg Society cases. The CD was produced by Rahul Sharma, SP, CBI before the Nanavati Commission.**
>
> Enquiries revealed that Shri Rahul Sharma was posted as DCP, Control Room, Ahmedabad City on 08.04.2002. On 07.05.2002, Shri Rahul Sharma had been instructed by the then Commissioner of Police, Ahmedabad City, Shri P.C. Pande to report to the Crime Branch, Ahmedabad City and assist the then Additional CP, Crime Branch, Shri A.K. Surolia in the investigation of serious riot-related offences. Shri Rahul Sharma was also informed by Shri P.C. Pande that there would be no formal written order in this regard. Accordingly, Shri Sharma reported to Shri Surolia on the same afternoon. As a matter of prudence, he decided to collect scientific evidence in support of the investigation that was undergoing. Shri Rahul Sharma has stated that he had information about the use of mobile phones in a big way in the alleged riots throughout the State including Ahmedabad City. Accordingly, he drafted à letter calling for data from two mobile phone service providers provider's 'Cellforce' (now Vodafone) and 'AT&T' (now Idea). The letters were issued under the signature of the then ACP, Crime Branch, Shri.S.S. Chudasama, who was also investigating the two serious cases of massacres at Naroda Patiya and Gulberg Society. According to Shri Rahul Sharma the information asked for, was the telephone directory of the two mobile phone companies, calling time called/calling number, location of the mobile phone when they were calling/receiving the calls, etc, for the period from 25.02.2002 to 04.03.2002 in respect of all mobile phones operating from Ahmedabad city area. Shri Rahul Sharma has further stated that the idea behind

[145] pages 310-312 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

the collection of this data was, amongst others, to establish the location of the alleged perpetrators of crime and their accomplices at the time of commission of the offence. Further, it was also required to prove the contact established between the different accused persons as also with 'erring' policemen, bureaucrats and politicians.

In response to the letter sent by Shri Chudasama, data was sent in the correct format by 'AT&T' within a week on a CDR. Shri Rahul Sharma has further stated that he had personally gone to collect the said information from AT&T from their office in Suman Towers in Gandhinagar. The data provided by AT&T was in the "TEXT" format and had all the relevant information that had been asked for**. Shri Rahul Sharma copied out the data on his computer kept at his home and the CD was returned to Shri Chudasma. This copying was required to be done, if the data from the two mobile phone companies were to be analysed together**. Shri Rahul Sharma has further stated that the data from the 'Celforce' was sent quite late and by that time probably Shri A. K. Surolia had been sent on deputation to BSF and Shri P.P. Pandey taken over as the Joint CP, Crime Branch. As per the recollection of **Shri Rahul Sharma, the information from the AT&T had come, while Shri Surolia was in-charge of the Crime Branch, but the information from 'Celforce' had not come during Shri Surolia's tenure According to Shri Rahul Sharma, the information from the 'Celforce' came during Shri Pandey's tenure as the Joint CP, Crime Branch, Ahmedabad City Police, but the data was sent as an MS Access database. Since, Shri Rahul Sharma had no knowledge of MS Access; he took the assistance of PSI Shri K.J. Chandana, who was in the computer section of Ahmedabad Police Commissionerate. Shri Rahul Sharma has further stated that Shri Chandana used to open the files before him in the computer kept in his office. Initially, the data sent was not as had been requested for and the correct data could be obtained only after several attempts**. On all these occasions, it was Shri Chandana who usually went to the office of the 'Celforce' to get the correct data.

As per Rahul Sharma, the final CDR containing the data was not received through Shri Chandana, but was forwarded to him by Shri P.P. Pandey through a DO Letter written in Gujarati. In the DO letter, he had mentioned that the CDs had been prepared under his (Rahul Sharma's)

instructions and that he alone should analyse the data. Shri Rahul Sharma has further stated that 'Celforce' had also furnished data in respect of mobile phones operating from Godhra though the same had not been called for. According to Shri Rahul Sharma, after a few days of the receipt of this letter, he was transferred out and posted as the Commandant, SRPF, Group XI, Vav, District Surat. **Shri Rahul Sharma does not remember, whether the CDs sent by 'Celforce' were two in number or one in number, but given the volume of data received from Celforce, he believes that there should have been two CDs. Shri Rahul Sharma has further stated that he had no knowledge of MS Access at that particular point of time, due to which he could not analyse or interpret the contents of the CDs. However, he has admitted to have copied the contents of the CD(s) sent by 'Celforce' onto the hard disk of his personal computer kept at home**.

Shri Rahul Sharma has further stated that after he received his transfer orders in the first week of July, 2002, he instructed, Shri Chandana, PSI to deliver the original CD(S) personally to Shri P.P. Pandey. As per Shri Rahul. Sharma, Shri Chandana, PSI visited the Jt. CP's office a couple of times, but did not find Shri Pandey and, therefore, he came back with the CD(s). During this period the CD(s) remained in the possession of Shri Chandana. Shri Rahul Sharma has also stated that on probably the second last day of his tenure as the DCP, Control Room, he had called a Rider from Control Room, took the CD(s) from Shri Chandana and directed the 'Rider' to hand over the CD(s) to Shri P.P. Pandey **Further, according to Shri Rahul Sharma, the 'Rider' handed over the CD(s) to Shri Pandey and reported this fact to him. Shri Rahul Sharma is not in a position to identify the 'Rider' after so many years. He has also stated that at that particular time, his PA was on leave on account of his son's marriage and, therefore, he could not the CD(s) through a formal letter**.

Shri Rahul. Sharma has reiterated that he never analysed the information contained in the CDs while posted as DCP, control Room and learnt basic MS Access only in 2004 after he joined the CBI on deputation. He has also stated that it was a practice in Gujarat Police to keep a copy of Case Diaries and other important documents of cases that had been investigated/Supervised by an officer. Consistent with this practice, he wanted to keep a copy of the

CD(s) data that had been copied onto his home computer's hard disk. He also wanted to have the data on one CD for compactness. He had, therefore, consulted Shri Chandana is this regard and who in turn had advised him 'zip' the files, so that they would be compressed. **He did accordingly and data from the CDs sent by 'AT&T' and 'Celforce' was copied on single CD, which he retained. He burnt the information on the CD Writer installed onto his computer himself**.

Shri Rahul Sharma has also stated that he submitted copies of the same CD(s) containing the zipped data to the Nanavati-Shah Commission of Inquiry (two copies) on 30-10-2004, at the time of his deposition/cross examination and to the Banerjee Committee (one copy) on 22-11-2004 at the time of his examination. The original CD first prepared by him was handed over to the SIT constituted by the Hon'ble Supreme Court of India. Immediately after these CD(s) were handed over to Nanavati-Shah Commission of inquiry and also to the Banerjee Committee, it was widely reported in the print as well as electronic media that Shri Rahul Sharma has produced copy of the CD(s) before the commission as well as Committee.

Shri Tarun Barot, the then Police Inspector, Crime Branch Ahmedabad City and now ACP, Special Operation Group, Ahmedabad has stated that he was entrusted with the investigation of Naroda P.S. cr no. I98/02 relating to the death of 11 Muslims killed in 2002 riots and that he had investigated this case from 19-05-2002 to 30-05-2002 and subsequently with effect from 30-11-2002 to 10-04-2008. Shri Barot has further stated that during the course of investigation, he had made an attempt to collect the call detail records of mobile phones of suspected/accused persons, but the Cell companies informed that the data was not available. However, he did not approach Shri Rahul Sharma to get the call details as he did not know that the latter was in the possession of the call details of all the numbers operating from Ahmedabad City during the riots period and no one had told him about it. According to Shri Barot, he did not know whether Shri Rahul Sharma, SP had handed over a copy of the CDs to Nanavati-Shah Commission of Inquiry or Banerjee Committee appointed by the Railways to enquire into the Godhra incident. Shri Barot has also stated that a news item had appeared in an English daily regarding the mobile phone details of Maya Kodnani and

Jaydeep Patel and on the basis of the said news item, both of them were summoned and interrogated about their location on 28-02-2002 and thereafter. Both Mayaben Kodnani and Jaydeep Patel informed that they were present at Sola Civil Hospital. Shri Mayaben Kodnani confirmed that her mobile phone remained in her possession, whereas Jaydeep Patel claimed that his mobile was left in his car, which was taken away by his driver. Shri Barot has also stated that efforts were made to get their call details from the mobile service providers, but the same were not provided and as such the call details could not be obtained, analysed and cross checked. **The plea put forward by Shri Barot is not convincing inasmuch as the news about the production of the CDs containing call detail records of mobile phones at Ahmedabad City by Shri Rahul Sharma before the Commission had appeared in almost all the newspapers and therefore it is difficult to believe that Shri Barot did not come to know about it.**

Shri GL. Singhal, SP, ATS, who remained the IO of Gulberg Society case and Naroda Patiya case, has stated that he did not investigate into the call details 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 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 Kodnani, 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 Tarn 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. However, no criminal offence is made out against them……"
>
> (emphasis supplied)

In other words, the SIT due to lapse of time, was not in a position to verify the authenticity of the CDs regarding telephone calls produced by Mr. Rahul Sharma and in any case, the call history by itself would not have been sufficient to suspect commission of any offence, much less of hatching larger criminal conspiracy, which was required to be investigated by the SIT. The opinion formed by the SIT on the basis of available materials collected during investigation commended to the Magistrate, as well as, the High Court. That view needs no departure.

61. In other words, there is no merit in the argument of the appellant that the SIT had failed to collect the call records of the accused persons, not analyzed the available call records from CD supplied by Mr. Rahul Sharma and failed to seize the phones of persons involved. In that, the events had unfolded in the year 2002 and the SIT was constituted only in the year 2008 by this Court to look into and enquire into the complaint of appellant, dated 8.6.2006. During the contemporary period (year 2002), two mobile operators were providing services in the Gujarat State, namely, M/s.

AT&T and M/s. Cellforce, who had the protocol of maintaining the electronic call records for one year only[146]. This fact has been noted in the statement of Mr. Viraf Fanibanda – Head Legal Advisor, Idea Cellular and of Mr. Dhiren Jayantilal Laria – Legal department, Vodafone, recorded by SIT on 28.11.2008. These statements, though crucial, have not been adverted to by the appellant. Resultantly, it was not possible for the SIT to retrieve the call records from these service providers after its appointment in the year 2008. It is, therefore, not a case of failure of the SIT to collect the call detail records of various persons referred to in the details discernible from the record submitted by Mr. Rahul Sharma.

62. Insofar as the CD record submitted by Mr. Rahul Sharma, as aforesaid, he had failed to handover the case property to the investigating officer (of Naroda police station), dealing with the concerned case nor got it entered in the register of case property (Muddamal) or informed the Court of jurisdiction about seizure of

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[146] 'License Agreement for Provision of Unified Access Services' provide as under:

> "The LICENSEE shall maintain all commercial records with regard to the communications exchanged on the network. Such records shall be archived for at least one year for scrutiny by the Licensor for security reasons and may be destroyed thereafter unless directed otherwise by the licensor."

such case property. He had instead produced the CD on 31.5.2008, which came to be seized by the investigating officer and taken as evidence. These two CDs were collected by the investigating officer from the records of Nanavati-Shah Commission of Enquiry. Mr. Rahul Sharma had submitted the same before the Commission. Additionally, one CD containing the same information was submitted by Mr. Amresh Bhai N. Patel, Jansangharsh Manch, which was obtained by him from the Commission of Enquiry. That was also produced before the investigating officer. In absence of the original CDs which were never produced by Mr. Rahul Sharma, it was not possible for the SIT to obtain the certificate of authenticity under Section 65B of the Indian Evidence Act, 1872 and at the same time, it had been noticed that the CDs were copied by Mr. Rahul Sharma in his computer and format changed, by changing it in Zipped format. The SIT has analyzed all these aspects and opined that MD5 Hash value of the files in all the three CDs was found same. Further, the files containing call detail records or fragments of the files could not be found on the computer storage media. Moreover, due to lapse of time, no fruitful purpose would have been served in seizing the mobile phone of the concerned user after seven years to

undertake roving enquiry. All these aspects have been duly considered by the SIT while dealing with allegation No. (xxiii) as reproduced hitherto, in paragraph No. 60. The opinion so recorded by the SIT commended to the Magistrate, as well as, the High Court. We find no reason to deviate therefrom.

63. Needless to underscore that every information coming to the investigating agency must be regarded as relevant. However, the investigating agency is expected to make enquiries regarding the authenticity of such information and after doing so must collect corroborative evidence in support thereof. In absence of corroborative evidence, it would be merely a case of suspicion and not pass the muster of grave suspicion, which is the pre-requisite for sending the suspect for trial. This is the mandate in Section 173(2)(i)(d) of the Code, which postulates that the investigating officer in his report must indicate whether any offence appears to have been committed and if so, by whom. The opinion of the investigating officer formed on the basis of materials collected during the investigation/enquiry must be given due weightage. That would only be the threshold, to facilitate the concerned Court to take cognizance of the crime and then frame charge if it is of the opinion

that there is ground for presuming that the accused has committed an offence triable under Chapter XIX of the Code.

64. The appellant had also alleged about police inaction which facilitated riots as part of conspiracy giving specific instances in that regard. The SIT has considered this allegation being allegation No. (xxv)[147], and upon analyzing the materials gathered during the investigation, opined that the circumstances highlighted by the appellant were not sufficient link to infer that the named persons had hatched larger conspiracy to cause mass violence across the State targeting the minority community. On closer scrutiny of the analysis in this regard, the opinion of the SIT is a plausible opinion. For, the instances adverted to are essentially matters concerning the acts of commission and omission at the ground level and not indicative of any link to sustain the allegations of larger criminal conspiracy. As noted earlier, the erring officials identified for their acts of commission and omission at the ground/local level have been proceeded with departmentally. Every act of commission and omission would not result in hatching criminal conspiracy unless

[147] pages 320-325 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

the acts have been done deliberately and there is meeting of minds of all concerned.

65. Similarly, the allegation that victims of riots and police firings was predominantly of the Muslim community, has been dealt with as allegation No. (xxx)[148], while noting that the incident referred to unfolded on 28.2.2002, wherein 17 persons were killed in police firing in Ahmedabad City, which included 11 Hindus and 6 belonging to minority community. Further, police firing was required because of the evolving situation and out of compulsion to control the situation. This is observed at page 329 as follows: -

> "….. During enquiries, Shri P.C. Pande, formerly CP, Ahmedabad City has stated that during the riots, it is difficult for the police to identify as to whether any individual belongs to a particular community. He has further stated that on 28-02-2002, 17 persons were killed in police firing in Ahmedabad City, which included 11 Hindus and 6 Muslims, which would go to show that there was no discrimination on the part of police. He has also stated that in the succeeding days, the retaliation started from the Muslim side also and therefore, wherever force was used by the police casualties resulted on both the sides. According to Shri Pande, it is incorrect to say that the administration and police were moving in collaboration with the rioters and were targeting the persons from the minority community with an intention to achieve the alleged objective of CM. In view of the aforesaid position, the allegation is not established……"

[148] page 329 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

66. Even the allegation regarding nepotism practiced in postings, transfers, promotions etc. facilitating the ongoing subversion of the criminal justice system has been rightly discarded as vague and without any specific instances. That allegation is noted in paragraph 85 of the complaint dated 8.6.2006.

67. Be it noted that the SIT was constituted by this Court to investigate into the allegations providing specific inputs/information indicative of commission of offence of larger criminal conspiracy and involvement of concerned person in executing such crime. The SIT was not there to generally enquire into administrative matters of the State, such as posting, transfers and promotions unless specific input is set forth or was to be brought to the notice of the SIT.

68. Suffice it to note that absent clear and direct material indicative of involvement of named person(s) in hatching criminal conspiracy to cause mass violence across the State targeting minority community during the relevant period, the attempt of the appellant, if we may say so, is bordering on sewing of insignificant unconnected circumstances and events regarding the failures and in some cases, laxity in administration, which is being projected as an act of

concerted effort of all the State officials upto the highest level without there being any tittle of material to show that there was meeting of minds of all these persons at some level.

69. The appellant had gone to the extent of attributing motives in relation to transfer of officers from field executive in the thick of riots despite the objections of concerned DGP. In place of such able officers, posting was done of officials who were willing to subvert the system for political and electoral benefits. This allegation has been duly enquired into by the SIT being allegation No. (vi) and dealt with in the following words[149]: -

> "…..
>
> **ALLEGATION NO. VI**:
>
> **Officers from field executive posts were transferred (by CM), in the thick of riots in 2002, despite DGP's objection so as to facilitate placement of those who were willing to subvert the system for political and electoral benefits as narrated in Para 67 of the complaint dated 08.06.2006, wherein instances of punishment, ill-treatment etc. are listed in respect of the following officers: (1) Shri Rahul Sharma, IPS, (2) Shri Vivek Shrivastava, IPS, (3) Shri Himanshu Bhatt, IPS, (4) Shri M.D. Antani, IPS, (4) Shri R.B. Sreekumar, IPS and (6) Shri Satishchandra Verma, IPS.**
>
> This allegation relates to instances relating to punishment, ill-treatment etc. to the various police officers, who were transferred from the field executive posts in the thick of riots in 2002 so as to facilitate the placement of those, who

[149] pages 269-271 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

were willing to subvert the system for political and electoral benefits.

Shri Rahul Sharma, who had been posted as SP, Bhavnagar on 16-02-2002, has stated that on 27-02-2002, he was on leave and after having come to know about the Godhra train carnage, rushed to Bhavnagar and reached there in the evening of 27-02-2002. He has further stated that on 01-03-2002, permission was granted to Sadhu-Samaj by District Administration to take out a procession and after the rally started at 1710 hrs, the riot broke out in Bhavnagar City and the mob had started gathering at different places in Bhavnagar City. Further, one Kishor Bhatt, President of Shiv-Sena, Bhavnagar Branch was arrested by the police and thereafter, some reports of stone pelting, arson and rioting had come in and curfew was imposed by the District Collector at his request. He has also stated that Bhavnagar police had succeeded in controlling the communal riots by the evening of 02-03-2002. Shri Rahul Sharma has stated that Shri Gordhan Zadafia spoke to him over phone on 16-03-2002 and informed him that he had done a good job in controlling the communal riots, but the ratio of deaths, as a result of police firing in the riots was not proper, i.e., more number of deaths of Hindus than Muslims. Shri Rahul Sharma has also stated that on 23-03-2002, a mosque was attacked by a riotous mob following which 21 persons were arrested and that he was pressurised by the local leaders to release them, to which he did not agree. As a result, of he had difference of opinion with the Collector, IGP, Junagadh Range and DGP. Shri Rahul Sharma was transferred as DCP, Control Room, Ahmedabad City and he was relieved from the charge of post of SP, Bhavnagar from 26-03-2002. However, Shri Rahul Sharma has stated that he would not be able to comment on the circumstances that led to his transfer from Bhavnagar to Ahmedabad City as transfer/posting is the prerogative of the Govt.

Shri Vivek Srivastava has stated that he remained posted as SP, Kutch during January, 2001 to March, 2002. He has further stated that as a mark of protest against the Godhra carnage, VHP had given a call for Gujarat Bandh and had taken out a rally in Bhuj town on 28-02-2002, for which adequate arrangements had been made, as a result of which there was no untoward incident in the entire District and no killings were reported from anywhere in the District. According to Shri Vivek Srivastava, a few days after the Godhra incident, a Muslim family had been assaulted with sharp edged weapons

at a Dargah out side Nakhatrana town by some unknown miscreants, causing injury to two persons. Further, according to Shri Vivek Srivastava, a case u/s 307 IPC was registered and one Home-Guard Commandant with BJP leanings of Kutch District had been arrested and charge sheeted on completion of investigation. Shri Vivek Srivastava has also stated that he got a few phone calls from the office of Home Minister and Chief Minister asking him about the details of the case and also as to whether there was adequate evidence against all the accused to which he confirmed that sufficient evidence was available against all the accused persons for effecting their arrest. Shri Vivek Srivastava was transferred in the last week of March, 2002 and posted as Deputy Commissioner, Prohibition & Excise, Ahmedabad Zone. However, Shri Vivek Srivastava was unwilling to comment upon the reasons, as according to him, transfers were the prerogative of the Govt.

Shri M.D. Antani, who remained posted as SP, Bharuch during 10-08-2000 to 26-03-2002, has stated that keeping in view that Baruch was a communally sensitive District with 27% Muslim population, adequate police arrangements were made pursuant to the Godhra carnage incident. According to Shri Antani, from 28-02-2002 onwards, incidents were reported only in respect of Bharuch town, Ankleshwar and Raj-Pardi areas, whereas Palej, Amod, Kavi, Vedach, Nabipur, Hansot and Bharuch Talukas were almost ventless. In all two Muslims had died during the riots, whereas three Muslims were killed in police firing on 19-03-2002. He was transferred on 26-03-2002, as SP, Narmada and was relieved on the same day. However, Shri Antani has stated that he can not comment on the allegation of any motive for his transfer.

Shri Satish Chandra Verma was posted as DIG, Border Range with headquarters at Kutch-Bhuj during the period 2003-2005, which has three Districts including Patan. At that time one Shri Shankar Chaudhary was the sitting MLA of BJP from Radhanpur Assembly constituency. Shri Verma has stated that a criminal case had been registered in Radhanpur P.S. in the context of rioting between Hindu and Muslim crowds after the Godhra carnage on 27-02-2002, in which two Muslims had reportedly died due to police firing. However, it was brought to his notice that the death of these two Muslims by police firing was not substantiated by available evidence and instead evidence was available against private individuals including Shri Shankar Chaudhary, MLA for committing acts,

which led to the death of these persons. Shri S. C. Verma has further stated that he had issued a formal order for the arrest of Shri Shankar Chaudhary, MLA for murder and attempt to murder. Shri Verma has also stated that sometime later, he was transferred as Principal State Reserve Police Training Centre, Chawky, Junagadh, However, Shri Verma has stated that he can not say that this transfer was a consequence of this aforesaid order. He has also stated that he can not call the post of Principal of a training institution unimportant. Shri Verma has further clarified that the scrutiny of the evidence by him in the aforesaid criminal case was not a part of scrutiny of 2000 odd cases entrusted to the DGP by the Hon'ble Supreme Court of India. Shri Verma has further stated that it was not true that the post of Principal, SRRTC had been upgraded from SP to DIG to post him there and that this post had been encadred before his posting there as a DIG level post.

Shri. R. B. Sreekumar has stated before the SIT that he remained posted as Addl. DG (Int.) during 09-04-2002 to 18-09-2002 He has further stated that during this period, he had sent reports against Sangh-Pariwar supporters, about the prejudice of the Govt officials against the Muslims and the general subversion of the Criminal Justice System, to the Govt. and DGP. He has further stated that in his first affidavit filed before Nanavati-Shah Commission of inquiry, he had pointed out that the State IB had informed the State Govt. about the likely repercussions of Godhra incident and measures to be initiated by the field officers, but on account of pressure from the ruling party and some higher officers, no steps were taken to control the emerging communal situation as detailed in Gujarat police Manual and that this paved the way for the violence from the Hindu mob against the Muslims. He had also stated in his affidavit that the imposition of curfew was delayed on 28-02-2002, till 1300 & 1400 hrs in Ahmedabad City to facilitate the parading of dead bodies of Godhra victims. Shri R. B. Sreekumar had also submitted his second affidavit on 06-10-2004, covering the additional terms of Nanavati-Shah Commission, in which he had pointed out the subversion of criminal justice system against the Muslims and specific suggestions to remedy the situation, but the Govt. did not take follow up action on the suggestions made by him in his assessment reports dated 24-04-2002, 15-06-2002, 20-08-2002 & 28-08-2002. Shri R. B. Sreekumar has further stated that he had filed a third affidavit on 09-04-2005, presenting the data on his harassment and victimization on account of his non compliance of intimidator briefing by State Home

Department official, who had asked him to look after the political interests of the Govt. Shri R. B. Sreekumar has also stated that after a charge sheet was served upon him on 06-09-2005, questioning his revelations before the Nanavati Commission, he filed a fourth affidavit before the Nanavati Commission on 27-10-2005. Shri R.B. Sreekumar has further contended that he was superseded in promotion because of the aforesaid acts and thus victimized by the Govt. He has also stated that he had been exonerated of all nine charges served upon him by the Central Administrative Tribunal, Ahmedabad on 28-09-2007 and that the State Govt., sought a stay on the operation of the CAT's order from Gujarat High Court, which was rejected and that the Hon'ble High Court had ordered for the expeditious release of regular pension to him and also grant of promotion from the date of his supersession i.e. 23-02-2005. The State Govt. had complied with the High Court directive and issued orders on 02-05-2008.

The statements of Shri Rahul Sharma, the then SP, Bhavnagar, Shri Vivek Srivastava, the then SP, Kutch, Shri M. D. Antani, the then SP, Bharuch and Shri S. C. Verma, the then DIG, Border Range, Kutchch-Bhuj before the SIT would go to show that though their transfers were immediately after certain events in their jurisdiction, yet according to them postings/transfers being the prerogative of the Govt., the same can not be linked to certain events that took place immediately before their transfers. Shri S. C. Verma has pointed out that the post of Principal of a training institution could not be said to be unimportant. He has further clarified that the scrutiny of the allegation in a murder case of two Muslims was not a part of scrutiny of 2000 odd cases entrusted to the DGP by the Hon'ble Supreme Court of India. Shri Verma has also clarified that the post of Principal, SRPTC had been upgraded before his posting there.

The testimony of Shri R.B. Sreekumar is motivated inasmuch as he had started collecting data/evidence during posting as Addl. DG (Int.). Even subsequently, he clandestinely recorded his conversation with Shri G.C. Murmu, Home Secretary and Shri Arvind Pandya, Govt. Advocate before the Commission with a view to level the allegation of pressure tactics against him. He had also recorded his conversation with Shri Dinesh Kapadia, an under Secretary, Budget and Co-ordination in the Home Department to be utilized subsequently, as evidence against the Govt. Surprisingly, he kept all these things a well guarded secret till he was

> superseded in promotion in February, 2005 and made it public in his third affidavit filed before the Commission on 09-04-2005. All these actions on the part of Shri R.B. Sreekumar therefore, appear to be motivated. In view of this, the credibility of his oral testimony has also been considerably reduced because the same stands uncorroborated. On account of the aforesaid factors, this allegation therefore, is not established……"

70. Concededly, the act of transfer/posting of officials has been after the unfolding of mass violence across the State. It was obviously an administrative matter to address the expediencies of that situation. We fail to understand as to how this circumstance can be reckoned as hatching of criminal conspiracy resulting into mass scale violence across the State aftermath Godhra incident. Such conspiracy ought to have preceded the triggering of mass violence. Be that as it may, the SIT has done everything possible to look into each allegation noted in the complaint dated 8.6.2006 and after collating relevant materials, have formed its opinion, not only allegation-wise, but also offender-wise and witness-wise including to deal with the observations noted by the learned *Amicus Curiae*.

71. To the same end, it was alleged [being allegation No. (xvi)] that the officers at the grassroot level were not transferred as per SIB's recommendations till the arrival of Mr. K.P.S. Gill as Advisor to the Chief Minister, as stated by Mr. R.B. Sreekumar in his second

affidavit dated 6.10.2004 submitted to the Nanavati-Shah Commission. Even this allegation has been dealt with by the SIT in the following words[150]: -

> "…..
>
> **ALLEGATION No. XVI**:
>
> **Officers at grass-root level were not transferred as per State Intelligence Bureau's recommendation till the arrival of Shri K.P.S. Gill as Advisor to CM, as indicated by Sreekumar in his second affidavit dated 06.10.2004 to the Nanavati Commission**.
>
> **Shri R. B. Sreekumar has stated that after taking over as Addl. DG (Int.) on 09-04-2002, he had sent an analytical note on the Current Communal Scenario in Ahmedabad City on 24-04-2002, to Shri Ashok Narayan, the then ACS (Home) with a copy to Shri K. Chakravarthi, the then DGP**. In this report, Shri Sreekumar has stated that repeated and strong media attack on Ahmedabad police had a demoralising impact on the confidence and dedication of the city police personnel. He has further stated that many senior police officers at the decision taking level, i.e. Inspectors in charge of the City police stations had ignored the specific instructions from the official hierarchy on account of their getting direct verbal instructions from the senior political leaders of the ruling party. According to Shri Sreekumar, such officers had become adept in the art of deceptive law enforcement for the benefit of their Political masters and friends, who ensured their placement and continuance in their choicest executive posts at the cost of the spirit and letter of the law of the land.
>
> In this report Shri Sreekumar had suggested amongst other remedial measures, the replacement of the present incumbents from executive posts at the cutting edge level from those cities and districts, where police either remained inactive during the riots or played a collaborative role with the rioters. Shri Sreekumar also suggested that for deterrent, effect, police functionaries, who had played collaborative and participatory roles during the riots should be given statutory punishment.

[150] pages 297-298 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

Shri Sreekumar has further stated that on 04-05-2002, Shri K. P. S. Gill, former DGP of Punjab State, who had been deputed as an Adviser to the Chief Minister, Gujarat on Law & Order matter, convened a meeting of senior police officers in his camp at CRPF group centre, Gandhinagar. Shri K. Chakravarthi, Shri P. C. Pande, Shri R. B. Sreekumar, Shri Maniram, and Shri M. K. Tandon, attended the meeting. As instructed by Shri Gill each officer gave his assessment of the current situation. Both, DGP and CP, Ahmedabad city observed that the situation was normal due to effective police, measures. Shri Sreekumar has further stated that Shri Maniram, who was responsible for maintaining Law & Order in the state, totally disagreed with the assessment given by DGP. And CP, Ahmedabad City. According to the statement made by Shri Maniram before the SIT, he had informed informed Shri K. P. S. Gill that the tension continued to prevail in Ahmedabad city amongst the Hindus and Muslims and the officers, who were responsible for not preventing the riots resulting in loss of life and property in their jurisdiction should be transferred immediately irrespective of their status and good officers posted in their place. Shri Maniram also stated to have mentioned to Shri Gill that wherever effective officers had been posted, the Law & Order situation was under control like, Saurashtra and South Gujarat. In this meeting, Shri R. B. Sreekumar had fully endorsed the views of his Shri Maniram, Shri Sreekumar also handed over a copy of his report sent vide letter dated 24-04-2002 to Shri Gill and had also prepared a separate note at the instance of Shri Gill. According to Shri Sreekumar, Shri K. P. S. Gill had called him on 08-05-2002, and informed that the suggestions and remedial measures indicated in his (Sreekumar's) note here quite relevant and that soon most of the officers at the decision making levels in Ahmedabad City would be transferred and a new team of officers positioned.

Shri K. Chakravarthi has stated that during initial discussions with Shri K.P.S. Gill he along with Shri Ashok Narayan were given to understand that CM wanted to transfer the senior officers of Ahmedabad City and wanted alternate proposal. Shri Chakravarthi had accordingly given his suggestion to Shri Ashok Narayan, who prepared a note and submitted the same to the Chief Minister for his approval. According to Shri Chakravarthi, Shri K.P.S. Gill had asked him about his views on these transfers, to which Shri Chakravarthi informed him that he had given these suggestions. Shri Chakravarthi has further stated

> **that this note was approved by the Chief Minister and the transfers came into force in the end of first week of May, 2002. Shri Chakravarthi has also stated that the matter relating to the shifting of jurisdictional officers was already under consideration and it was not taken up at the instance of either Shri Maniram or Shri RB. Sreekumar.**
>
> **In view of this, the allegation of Shri Sreekumar that the transfers of the jurisdictional officers as suggested by State IB on 24-04-2002, were not carried out till the arrival of Shri K.P.S Gill, an Adviser to CM, is therefore, without any basis**……"
>
> (emphasis supplied)

This analysis has been criticized amongst others on the ground that Mr. K.P.S. Gill has not been examined by the SIT. Non-examination of Mr. K.P.S. Gill by the SIT can have no adverse impact on the otherwise well-considered opinion arrived at by the SIT in the final report on this aspect. In any case, not translating the recommendation of SIB (dated 24.4.2002) into transfer order until end of first week of May, 2002, does not provide any direct link regarding the allegation of hatching larger criminal conspiracy at the highest level for causing or precipitating the violence across the State from February, 2002 onwards. Viewed thus, no fault can be found with the opinion of the SIT that the transfers of the jurisdictional officer, as suggested by the SIB, were not carried out till the arrival of Mr. K.P.S. Gill, Advisor to the Chief Minister, is of no avail. The

opinion of the SIT in this regard is a plausible view and had rightly commended to the Magistrate, as well as, the High Court.

72. That takes us to the other allegation, more or less of the same type being allegation No. (vii), namely, senior officers were awarded with undue benefits for collaborating with the illegal plans of CM/BJP during 2002 riots and afterwards. This has been found to be a far-fetched and unfounded allegation by the SIT, after analyzing the relevant materials on record including the statements of the concerned officials[151], dealing with the case of each officer as named in paragraph 68 of the complaint. Even this opinion of the SIT needs no second look also for the reason that such an act would not be a link to connect the act of hatching of criminal conspiracy resulting in mass violence across the State.

73. Argument was also advanced in reference to allegation No. (xv) that pro-VHP Advocates were appointed as public prosecutors in riots cases. This has been thoroughly examined by the SIT in the following words[152]: -

> "…..

[151] pages 271-280 of original copy of the final report forming part of Convenience Compilation of respondent No. 2
[152] pages 294-296 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

ALLEGATION No. XV:

Pro-VHP advocates were appointed as Public Prosecutors in riot cases as noted in Para 4 under the caption 'Present Situation' in the complaint dated 08.06.2006, wherein appointments of advocates Shri Chetan Shah (as District Government Pleader), Shri V.P. Atre (as Special PP in the Gulberg case), Shri Raghuvir Pandya (as Special PP in the Best Bakery case), Shri Dilip Trivedi (as Special PP in the Sardarpura case), Shri Rajendra Darji (as Special PP in the Dipda Darvaja case), Shri Piyush Gandhi (PP in Panchmahal District), have been questioned).

Enquiries revealed that the procedure for the appointment of a Public Prosecutor in a town is that the vacancy is notified by the collector & District Magistrate in the local news papers. In response to the advertisement a number of eligible candidates are interviewed by a Board comprising Principal Sessions Judge and District Magistrate. Thereafter, a panel of three or four advocates selected by the Board is forwarded to the Govt. for the appointment of the Public Prosecutor. The Govt. exercises its own discretion, select and notify one of the empanelled candidates as a public Prosecutor for a period of three years. It may thus be seen though the selection procedure is transparent yet the Govt. has got the discretion to appoint a particular lawyer out of the panel of 3-4 advocates forwarded to them.

Enquiries further revealed that Shri Chetan K. Shah remained a Member of Vishwa Hindu Parishad during 1990 to 1995. However, at present he is neither a member of BJP nor any of the Sangh Parivar organisations. It has further come to light that on 12-07-1986, seven or nine members of Muslim Parivar were allegedly burnt alive in Meghaninagar area during the riots in 1986. A case in this regard was registered in Shahibaug P.S. Shri Chetan K. Shah was not a FIR named accused in this case, but was arraigned as an accused during the course of investigation and charge sheet filed against him. After the committal proceedings this case was registered as terrorist case no. 1/87 before the Hon'ble Special Court, Ahmedabad City. Shri Chetan K. Shah was charged under TADA and other rioting offences. However, he was not arrested and instead granted anticipatory bail and subsequently regular bail also. On his request to the BAR Association, Shri Chetan Shah was defended by Shri H.M. Dhruv and Shri J.M. Panchal, Shri J.M. Panchal, Sr. Advocates. After trial, Shri Chetan Shah was acquitted of all the charges.

Shri Chetan K. selected as a Public Prosecutor, as per laid down appointed as such on 17-06-2003 for a period of three years Before his appointment as PP, Shri Shah, had defended some of the accused persons of the Gulberg Society case Some of them had been released on bail during that period and Shri Shah, had represented them. Further, as a Public Prosecutor of City Sessions Court, he had 15 Additional Public Prosecutors, who used to work in different courts as per duties allotted by Shri Chetan K. Shah. One Shri V. P. Atre, Additional Public Prosecutor had been appointed as Special PP to conduct case no 67/2002 of Meghaninagar P.S. on 06-10-2003. It has further come to light that this was a special assignment given to Shri Atre by the Govt. of Gujarat directly and he was not junior or subordinate to Shri Chetan K. Shah. In Gulberg Society case, none of the accused persons were released on bail after Shri V. P. Atre took over as Spl. PP. However, the accused persons were released on bail by the Gujarat High court at different stages. Shri Chetan K. Shah did not appear as a Public Prosecutor in any of the riot cases pending in City Sessions Court, Ahmedabad City. He could not have appeared as a Public Prosecutor in Gulberg Society case as he had already appeared in this case from the defence side. Shri Chetan K. Shah has denied that he had been appointed as a Public prosecutor because of his VHP background or being a sympathizer of the ruling party or Sangh Parivar. The three year term of Shri Chetan K. Shah had expired in June, 2006 and was not extended. Shri Chetan K. shah has denied knowledge that Shri V. P. Atre had been appointed as a Spl. PP after a protest had been lodged by the eyewitnesses of the Gulberg Society case regarding his (Shri Shah's) appointment. Both, Shri Chetan K. Shah and Shri Atre have denied that the latter worked under the former.

Shri H M. Dhruv, Sr. Advocate has corroborated the version of Shri Chetan K. Shah and has confirmed to have defended Shri Chetan K. Shah in a TADA case jointly with Shri J.M. Panchal, Sr. Advocate, which ended in acquittal. He has further stated that he had been appointed as Spl. PP to conduct the cases arising out of Meghaninagar P.S. C R No. 67/2002 and Naroda P. S. CR No. 100/2002 on 05-03-2009 and Shri Amit Patel, Advocate was appointed to assist him in the trial. However, Shri H. M. Dhruv did not appear in any of these cases on any of the dates as new Public Prosecutors were appointed by the Govt. of Gujarat on the recommendations of SIT.

Enquiries further revealed that Shri Raghuvir N. Pandya had started his practice in District & Sessions Court, Vadodara in the year 1986 on Civil and criminal side. In the year 1997, he was appointed as Addl. PP in District &

Sessions Court. Further, during the period 2000-2002, he worked as a incharge Public Prosecutor Vadodara District. He was appointed as a District Govt. Pleader in District Sessions Court, Vadodara in 2002 and worked there till 2008. He has denied any direct connection with BJP, Bajrang Dal, RSS or any of the Sangh Parivar organisations, but has admitted to have contested corporation elections from ward no. 20, Majalpur as an independent candidate in the year 1995, when he was elected. He remained Corporator for a period of six years till 2001. He applied for appointment as a Notary in the year 2001 and was appointed as a Notary by the Central Govt. He has also stated that the Best Bakery incident was a serious and sensitive case in Vadodara, as an aftermath of Godhra incident and that he had conducted the prosecuted of this case as the Chief Public Prosecutor of District & Sessions Court in a sincere and diligent manner. According to Shri Pandya, it is incorrect to say that all matters in the fast track Court Judge H. U. Mahida were being handled by Shri Gupta Addl. PP. Shri Pandya has explained that keeping in view the work load as well as the availability of the prosecutors he used to divide the workload between different Prosecutors including Shri Gupta, Addl. Shri Pandya is of the view that being the Chief Public Prosecutor of District & Sessions Court, his appointment and notification in Best Bakery Case was not necessary. Shri Raghuvir N. Pandya ceases to be a Public Prosecutor and Learned Fast Track Court Judge Shri H. U. Mahida had already retired.

Shri Dilip R. Trivedi, Advocate from Mehsana has stated to have started his practice, as an Advocate in Mehsana Courts in the year 1977. He was appointed as Govt. Advocate and Public Prosecutor in Mehsana in April, 2000 and remained there till the end of 2007. He is a member of Rashtriya Swayam Sevak Sangh since childhood. In 1992, he joined VHP as worker and in 1999, he become the General Secretary of VHP, Gujarat State. In 2006, he become the President of Vishwa Hindu Parishad, Gujarat State. According to Shri Trivedi, Vishwa Hindu Parishad is a social Hindu organisation with no political inclinations and had not been banned. According to Shri Trivedi post Godhra carnage there were riots in Mehsana District particularly in Srdarpura, Tal- Vijapur and Dipda Darwaja, Visnagar and the bail application of accused persons Involved in these cases were dealt with by him and other Addl. PPs. He has further stated that the bail application of seven accused persons were argued by him in the Sessions Court, Mehsana and the same were rejected. All these seven accused persons had approached the Gujarat High Court and Subsequently Supreme Court also, but their bail applications were rejected. Some other accused persons arrested in this case had also

filed bail. Applications in the Court and were granted bail. Further, as and when the accused persons were arrested in Sardapura case, Tal-Vijapur, they were released on bail on various conditions. The complainant had filed petitions in Gujarat High Court vide Crl. Misc. Appls. No. 3590/02, 3591/02 & 4026/02 against the bail order, which were dismissed by the High Court. Shri Trevedi has added that as and when the accused persons filed their bail application the same were argued in an honest and impartial manner depending upon the evidence available for and against the accused persons. He has also stated that considering the arguments and the evidence available against and for the accused persons, as per police investigation, the court had either granted them bail or dismissed their bail applications on merits and that the same was purely the discretion of the court. In these cases the charge sheets were filed by the IO in the concerned Court of the competent jurisdiction, but the trail was not conducted by him.

Shri Rajendra Darji, Advocate had denied any connection with Vishwa Hindu Parishad, Bajrang Dal or any of the connected organisations. He has stated that he become Addl. PP and Addl. Govt. Pleader in Mehsana District in April 2000 and reminded there till 2004. In 2005, he appeared for the interview and was appointed as Addl. Govt. Pleader and till 2007. In 2008, he was again appointed as Addl. Govt. Pleader and he continues to be the Addl. PP. He has stated that Dipada Darwaja case was charge sheeted in the first Fast Track Court of Shri P. R. Patel and subsequently transferred to the Court of Shri S. J. Seth and again transferred to the Court of Shri I. B. Waghela, Initially, Shri R. M. Jani was the Prosecutor in this case, who examined 11 witnesses. Thereafter, this case was conducted by Shri Nirmalbhai S. Shah, Govt. Advocate, who examined 16 witnesses. Later on he had further stated that he had got dismissed the bail application of the seven accused persons from the Court. He has also stated to have dealt with this case in an independent and impartial manner.

Shri Piyush L. Gandhi, Advocate remained a RSS activist since 1964, a worker of Akhil Bhartiya Vidharthi Parishad between 1968 to 1972, District Pramukh of Janta-Yuva Morcha between 1973 to 1980, Secretary of Panchmahal District VHP between 1982 to 1990, Officiating Pramukh of Panchmahal District VHP between 1990 to 2006 and Administrator of schools associated with Vidya Bharti since 2006 till date. He had also been appointed as Director of Godhra City CO-operative Bank in 1996 and treasurer of National Blind Samiti in 1994. He remained Govt. Advocate and Public Prosecutor of Panchmahal from 15-01-1996 to 01-09-2009. He has stated that in the riot cases post Godhra

> carnage in the year 2002, Shri J. G. Pathak and Shri B. J. Trivedi advocates were appointed as Spl. PPs to conduct the trial of these cases. However, this appointment was cancelled with effect from 04-12-2003 and these cases were entrusted to him for trial. However, in some of the cases, Shri Rajendra Trivedi, Shri A. R. Dave and Shri D. P. Pathak were also appointed as Spl. PPs. Shri Gandhi has also stated that he had conducted the trial of Shabana-Suhana bang rape and murder case and that in this case, the complainants had filed Crl. Revision Apps. NO. 94/2004 & 142/2004 in Gujarat High Court in Gujarat High Court, in which some allegations had been levelled against him. He has further stated that the Gujarat High Court had dismissed these allegations on the first date of hearing on 12-10-2004. He has also stated that he had concluded the trial of this case and many of the accused persons were convicted, and awarded life imprisonment. He has also stated that appeals had been filed against the acquittal of some of the other accused persons in this case in the Gujarat High Court.
>
> **On overall examination of these allegations, it appears that government had usual practice of appointment of government pleaders, the political affiliation of the advocates did weigh with the Govt. for the appointment of the Public Prosecutors. However, no specific allegation of showing favour by them to any of the accused persons involved in the riots either in grant of bail or during the trial has come to light**……"
>
> (emphasis supplied)

We fail to understand as to how this act can be linked with the allegation of hatching of criminal conspiracy for causing or precipitating mass violence across the State. The appellant having failed to provide sufficient material to raise serious suspicion in respect of allegation of hatching of criminal conspiracy for the intended mass violence, cannot be heard to make that deficiency by raising allegation of the kind of appointments of public prosecutors during the trial of the concerned cases. Be that as it may, the

allegation clearly overlooks the procedure regarding appointment of a public prosecutor. It begins with notification by the Collector and District Magistrate in the local newspaper and the eligible candidates are interviewed by a Board comprising of Principal Sessions Judge and District Magistrate. Such being the selection process for appointment of public prosecutors, the allegation under consideration has been rightly discarded by the SIT *albeit* after thorough analysis of all aspects relevant in that regard. There is nothing to indicate that any grievance was received by the SIT from any quarter during the trial of nine cases assigned to it by this Court for investigation, else there is no reason to doubt that SIT would have taken corrective measures and made appropriate recommendations for being given effect to by the concerned authorities in terms of the order of this Court dated 1.5.2009[152A].

74. Similarly, the allegation No. (xvii) about failure to take action against the print media has been discarded by the SIT[153] being insufficient evidence to make out any criminal case against the named offenders. It is a different matter that such publication must

[152A] supra at Footnote No. 18

[153] pages 298-301 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

have been released, but no material is forthcoming that it has been done at the behest of the named offenders or they prevented the local police from taking action in that regard. Emphasis was also placed by the appellant on the speeches delivered by Dr. Praveen Togadia, named as offender No. 20 in his capacity as International General Secretary, VHP. However, that piece of material cannot be the basis to link it with the allegation of larger criminal conspiracy hatched at the highest level for causing and precipitating mass violence across the State against the minority community during the relevant period. Further, 232 crimes regarding hate speeches came to be registered against the concerned persons across the State. The SIT in connection with the complaint of appellant, was not expected to enquire into utterances made by different persons constituting hate speech during the surcharged situation of riots, as the remit of the SIT was to enquire into the allegation of larger criminal conspiracy at the highest level resulting in spreading of mass violence across the State during the relevant time.

75. Even the allegation No. (xviii) that State Home Department gave misleading reports about normalcy to the State Election Commission, has been discarded by the SIT after analyzing the relevant facts including the decision about the timing to conduct

elections was that of the Election Commission. That was taken by the Election Commission of India despite not accepting the statistics furnished by the State.

76. Reverting to the allegation regarding secret meeting [allegation No. (xxxi) discussed at pages 329-332[154]] and meeting held by Mr. Kalubhai Hirabhai Maliwad [allegation No. (xxxii) discussed at pages 332-337[155]], the SIT after thorough investigation and analyzing the relevant materials, has opined that the same are figment of imagination replete with inaccuracies and contradictions.

77. Our attention was drawn to the recommendations of the NHRC and also the report of the private Tribunal, named as Concerned Citizens Tribunal. The narrative recorded therein cannot be the sole basis to proceed against the offenders. Whereas, dependent upon the quality of materials gathered by the SIT during thorough investigation done by it on all factual aspects including the ones referred to by the NHRC and the private Tribunal, the SIT could form its independent opinion. The SIT had precisely followed this route

[154] pages 329-332 of original copy of the final report forming part of Convenience Compilation of respondent No. 2
[155] pages 332-337 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

before submitting the final report to the concerned Magistrate as per the direction given by this Court.

78. The appellant had urged that the SIT had not investigated the willful failure of the fire brigade in Ahmedabad to respond to the calls made by the minority community being part of the criminal conspiracy. This argument is unfounded and tenuous. The fire services in Ahmedabad City come within the jurisdiction of Ahmedabad Municipal Corporation and not the State police or the State civil administration. The Commissioner of Police of .Ahmedabad City, who has been blamed by the appellant, had nothing to do with the functioning of the fire brigade. No tangible material is forthcoming to indicate that the Commissioner of Police of Ahmedabad City had issued instructions to the officials of fire services in Ahmedabad City under the control of the Ahmedabad Municipal Corporation. Whereas, the materials collected by the SIT would reveal that in the entire city of Ahmedabad, blockades were created at various locations due to mass violence, making it difficult, if not impossible, for movement of the vehicles such as fire brigade. In any case, this argument is one of inaction or failure of fire services in the Ahmedabad City. That cannot be the basis to infer criminal

conspiracy, much less hatched at the highest level to cause mass violence across the State.

79. The respondents had justly contended that the attempt of the appellant was to keep in improvising their grievances and make new allegations including to involve new offenders as being party to the larger criminal conspiracy hatched at the highest level. Appellant in filing the protest petition had the gumption to assert that the list of persons was not exhaustive besides naming new persons as offenders. In the name of protest petition (running into 514 pages), appellant was also indirectly questioning the decisions rendered by the Courts in other cases including sub judice matters, for reasons best known to her. She was obviously doing so under dictation of someone. In fact, the sizeable contents of the protest petition are founded on the affidavits filed by those persons, whose version have been found to be replete with falsehood.

80. Be that as it may, after going through the analysis done by the SIT of the concerned allegations, we have no hesitation in accepting such opinion that no case had been made out against the named

offenders, much less to indicate being party to the hatching of larger criminal conspiracy to cause or precipitate mass violence across the State against the minority community during the relevant period.

81. It is, therefore, not open to hold that the investigation by the SIT in the present case has been deficient or infirm. Suffice it to observe that every allegation found in the complaint (running into 67 pages) had been culled out by the SIT and articulated in the form of thirty-two (32) broad allegations. The same had been duly investigated from all angles before submitting the report to this Court. The analysis and opinion of the SIT of the materials collected during investigation allegation-wise, witness-wise as well as, offender-wise are broadly agreed upon even by the learned *Amicus Curiae* - except the observations made regarding some matters, which observations have also been thoroughly enquired into by the SIT by way of further investigation and duly analyzed for recording its opinion[156] (appended as Annexure-1 to this judgment), in the final report presented to the concerned Court. The Magistrate, as well as, the High Court have accepted the final report presented by the SIT. For, there is no material worth the name to even create a suspicion (leave alone strong suspicion and a ground for presuming that the

[156] pages 398-467 of original copy of the final report forming part of Convenience Compilation of respondent No. 2

named offenders had committed an offence of larger conspiracy), indicative of the meeting of the minds of all concerned at some level; and in particular, the bureaucrats, politicians, public prosecutors, VHP, RSS, Bajrang Dal or the members of the State political establishment - for hatching a larger criminal conspiracy at the highest level to cause and precipitate mass violence against the minority community across the State during the relevant period. Such conclusion reached by the Magistrate and the High Court is unexceptionable.

82. We may hasten to add that our understanding about the thrust of the approach adopted by the SIT is not to form opinion because of doubting the credibility of the witnesses as such, which indeed would have been a matter for trial. However, the SIT went by the logic of falsity of the information or material, including the same remaining uncorroborated despite the best endeavour made by the SIT. It is certainly not a case of failure of SIT in doing proper investigation into the allegations of larger conspiracy as such. The SIT was obviously conscious that it would not be a case of strong suspicion about the commission of offence of larger criminal conspiracy - absent credible, verifiable and corroborated information/material. It is for that reason it had to record its

unambiguous opinion after duly analyzing all angles and the information/material collated during the enquiry/investigation - that there was no case for proceeding against the named offender(s) as the offences under the relevant sections of law were not made out; and, therefore, to urge upon the Magistrate to accept the final report/closure report. This is not to say that the SIT and the Courts have doubted the occurrence of instances registered as crimes during the relevant period, nor have put a seal of approval to such heart-rending instances. Whereas, every registered crime in that regard (including the unfortunate gruesome killing of husband of appellant), has been duly investigated by the Court appointed SIT and accused person(s) involved in commission of such crimes have been duly identified and had to face the trial before the jurisdictional Courts.

83. Relying on the decision in ***Nirmal Singh Kahlon***[157], it was urged that if it is open to file second FIR in connection with the alleged offence, the self-imposed remit of the SIT can be no impediment for proceeding against the concerned persons on the basis of further information/material referred to in the protest

[157] supra at Footnote No. 44

petition or which comes to the notice of the appellant in due course. The argument, though attractive at the first blush, has been stated only to be rejected. In that, for the view that we have taken hitherto that the SIT, as well as, the Courts including the appellant is bound by the *sui generis* directions issued by this Court from time to time, the matter could be examined only in that context and not in reference to the approach to be adopted in general cases. Furthermore, the SIT has observed that the so-called additional information/material would not improve the case of the appellant, as taking the same as it is, there is no indication therein about the perceivable link to show hatching of criminal conspiracy at the highest level for causing and precipitating mass violence across the State against the minority community during the relevant period.

84. The SIT was entrusted with investigation of nine (9) sets of crimes including the occurrences at the Gulberg Society. Status reports regarding the progress of investigation was submitted to this Court in all those cases and after satisfaction of this Court about the completion of proper investigation done by the SIT, report(s) under Section 173 of the Code came to be filed in the concerned cases and the identified persons involved in commission of crime(s) were also

sent for trial. Moreover, the trials of the concerned cases had progressed under continuous supervision of this Court, which have ended in conviction of accused in the concerned cases, as indicated in the Chart submitted alongwith Final Note Part-1 filed on behalf of respondent No. 2, marked as Annexure-2[157A] and deemed to be part of this judgment.

85. Despite the humungous task undertaken by the members of the SIT with sincerity, objectivity and dispassionately including to the satisfaction of this Court in all these cases, the argument of the appellant was bordering on undermining the integrity and sincerity of the members of the SIT. Needless to underscore that the SIT came to be constituted by this Court of experienced senior officials with proven ability of investigating complex offences. Therefore, we find such submission as not only far-fetched and an attempt to undo and undermine the industry of the SIT in having thoroughly investigated all the nine (9) sets of cases assigned to it by this Court, but also in the nature of questioning the wisdom of this Court. Hence, the

[157A] Annexure-2 (at pages 450-452 of this judgment)

assail of the appellant needs to be stated to be rejected. While observing sobriety, we say no more.

86. We do not wish to dilate on the other reported decisions, for the view we have taken and more so, we have followed the settled legal principles in answering the matters in issue.

87. We need to clarify that our analysis regarding sting operation or the Tehelka Tape and its transcript, is not a final determination regarding the evidentiary value thereof. We say so because the same will have to be dealt with in appropriate proceedings, in particular, other cognate criminal cases investigated by the Supreme Court appointed SIT including those pending before the High Court and this Court.

88. While parting, we express our appreciation for the indefatigable work done by the team of SIT officials in the challenging circumstances they had to face and yet, we find that they have come out with flying colours unscathed. At the end of the day, it appears to us that a coalesced effort of the disgruntled officials of the State of Gujarat alongwith others was to create sensation by making revelations which were false to their own knowledge. The falsity of their claims had been fully exposed by the SIT after a thorough investigation. Intriguingly, the present proceedings have been

pursued for last 16 years (from submission of complaint dated 8.6.2006 running into 67 pages and then by filing protest petition dated 15.4.2013 running into 514 pages) including with the audacity to question the integrity of every functionary involved in the process of exposing the devious stratagem adopted (to borrow the submission of learned counsel for the SIT), to keep the pot boiling, obviously, for ulterior design. As a matter of fact, all those involved in such abuse of process, need to be in the dock and proceeded with in accordance with law.

89. To sum up, we are of the considered opinion that no fault can be found with the approach of the SIT in submitting final report dated 8.2.2012, which is backed by firm logic, expositing analytical mind and dealing with all aspects objectively for discarding the allegations regarding larger criminal conspiracy (at the highest level) for causing and precipitating mass violence across the State against the minority community during the relevant period. As aforementioned, the SIT has gone by the logic of falsity of the information or material and including the same remaining uncorroborated. In that, the materials collected during the investigation do not give rise to strong or grave suspicion regarding hatching of larger criminal conspiracy at the highest level for causing

mass violence across the State against the minority community and more so, indicating involvement of the named offenders and their meeting of minds at some level in that regard. The SIT had formed its opinion after considering all the materials collated during the investigation. The question of further investigation would have arisen only on the availability of new material/information in connection with the allegation of larger conspiracy at the highest level, which is not forthcoming in this case. Hence, the final report, as submitted by the SIT, ought to be accepted as it is, without doing anything more.

90. The Magistrate, upon presentation of final report could have exercised different options – as predicated in ***Abhinandan Jha***[158], ***Bhagwant Singh***[159], ***Popular Muthiah***[160] and ***Vishnu Kumar Tiwari***[161]. However, the Magistrate in the present case, after applying his mind independently to the final report dated 8.2.2012 and the materials appended thereto, chose to accept the same as it is, without issuing any other direction to the SIT.

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[158] supra at Footnote No. 28
[159] supra at Footnote No. 21
[160] supra at Footnote No. 30
[161] supra at Footnote No. 27

91. After cogitating over the matter, we uphold the decision of the Magistrate in accepting the stated final report dated 8.2.2012 submitted by the SIT, as it is and rejecting the protest petition filed by the appellant. We do not countenance the submission of the appellant regarding infraction of rule of law in the matter of investigation and the approach of the Magistrate and the High Court in dealing with the final report.

92. Accordingly, we hold that this appeal is devoid of merits and resultantly, deserves to be dismissed in the aforementioned terms. We order accordingly.

Pending applications, if any, shall stand disposed of accordingly.

.....J.
(A.M. Khanwilkar)

.....J.
(Dinesh Maheshwari)

.....J.
(C.T. Ravikumar)

New Delhi;
June 24, 2022.

ANNEXURE-1[162]

.....

 Page: 398

❖ **Opinion of Shri Raju Ramchandran, Amicus Curiae:-**

Shri Raju Ramchandran, Sr. Advocate assisted by Shri Gaurav Aggarwal, Advocate had been appointed as Amicus Curiae by the Hon'ble Supreme Court of India to assist the Court in this matter. Shri Raju Ramchandran, AC initially examined the Inquiry Report submitted by the SIT to the Hon'ble Supreme Court of India and submitted his observations on the findings of the SIT on 20.01.2011, to the Hon'ble Supreme Court of India, in three parts i.e. Chart 'A', Chart 'B' & Chart 'C'.

The aforesaid observations made by the Ld. Amicus Curiae were considered by the Hon'ble Spl. Bench of Supreme Court of India on 15.03.2011, when the following observations were made:-

> *"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 this report thereon. If considered necessary, it will be open to the SIT to carry out further investigation in light of the observations made in the said note. The report shall be submitted by 25th April, 2011. List the case on 27th April, 2011 at 3:00 p.m."*

Pursuant to the aforesaid order, SIT conducted further investigation u/s 173(8) Cr.P.C. in Gulberg Society Case (Meghaninagar P.S. 1 CR No.67/02) as suggested by Ld. Amicus Curiae in his observations submitted in the note dated 20.01.2011 to the Hon'ble Supreme Court of India.

The recommendations made in Chart 'A' by the Ld. Amicus Curiae vis-à-vis further investigation conducted is discussed below:-

Chart- 'A'

ALLEGATIONS	FINDINGS	OBSERVATIONS
I & IV: A statement was	1. None of the officers that attended the	**1.It would be impossible to get**

[162] see para 33 of this judgment

made by Shri Narendra Modi on 27-02-2002, in a meeting at his residence instructing the senior officers to allow the Hindus to give vent to their anger. This is also supported by Late Haren Pandya.	meeting on 27-02-2002, have confirmed the alleged statement made by Shri Narendra Modi 2. The statement of Shri R. B. Sreekumar is hearsay. 3.Sanjiv Bhatt, the then DCI (Security) was not present in the meeting. 4. None of the Cabinet Ministers, including Late Haren Pandya attended the meeting on 27-02-2002. Testimony of Late Haren Padya before the Citizen's Tribunal is unreliable.	**anyone present in the meeting on 27-02-2002 to speak against Shri Modi, especially the bureaucracy and police officials.** **2.The other circumstances would also have to be taken into account. There is nothing to show that the CM intervened on 28-02-2002, when the riots were taking place to prevent the riots. The movement of Shri Modi and the instructions given by him on 28-02-2002, would have been decisive to prove that he had taken all steps for the protection of the minorities, but this evidence is not there. Neither the CM nor his personal officials have stated what he did on 28-02-2002. Neither the top police nor bureaucrats have spoken about any decisive action by the CM.** --- Page: 399 **3. It may not be correct to rule out the**

		presence of Sanjiv Bhatt, IPS, DC (Int.) since Addl. DC (Int.) Shri G.C. Raiger 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 CM came back after the Godhra trip, no Minister was present at his residence. Hence, it may not be totally unbelievable. Shri Haren Pandya is unfortunately dead, but the statements made by Late 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 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.** **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 inspire**

		---------- Page: 400 **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.**
V. That Cabinet Ministers Shri I.K. Jadeja and Shri Ashok Bhatt were positioned in DGP's office and Ahmedabad City Control Room on 28.02.2002.	The SIT concludes that this was a "Controversial decision" taken by the Govt. to place two ministers in the DGP's office and Ahmedabad City Control Room. However, SIT concludes that there is no evidence that the 2 Ministers passed on any instructions to the police to deal with riots in particular manner. Therefore, the allegation is only partially proved as per SIT.	**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. Infact, 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 CM and told him about the situation at Gulberg and other places. **9. SIT merely relied upon the statement 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**

		---------- Page: 401 **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.**
XI. The allegation is that Shri Narendra Modi did not visit the riot affected areas of Ahmedabad immediately, though he visited Godhra on the	The SIT has come to the conclusion that the action of Chief Minister appeared to be discriminatory.	**12. This is one of the circumstances which indicate that the Hon'ble Chief Minister had not taken enough steps to ensure that riots in Ahmedabad City were immediately**

day of the incident.		**controlled by his direct intervention.**
XII. It is alleged that on 01-03-2002, Shri Narendra Modi said in a television interview that the reaction of the Hindus was due to the action by the Muslims, which seems to justify the riot.	The SIT has come to the conclusion that the reaction of the Chief Minister to violence at Gulberg Society and Naroda Patiya was not serious. However, the SIT has concluded this would not be sufficient enough to make out a case against Shri Modi.	**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.**

Observations made by Ld. Amicus Curiae:

It would be impossible to get anyone present in the meeting on 27-02-2002 to speak against Shri Modi, especially the bureaucracy and police officials.

It may not be correct to rule out the presence of Sanjiv Bhatt, IPS, DC (Int.) since Addl. DC (Int.) Shri G.C. Raiger 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.

Result of further Investigation:

Further investigation in this regard revealed that the information about the burning of a railway coach of Sabarmati Express near Godhra Railway Station was received by Shri Narendra

Modi, Chief Minister on 27.02.2002 at about 0900 hrs. from Shri Ashok Narayan, the then ACS

(Home). On receipt of the information, Shri Narendra Modi held a meeting at around 1030 hrs. with Shri Gordhan Zadafia, the then MoS (Home), Shri Ashok Narayan, the then ACS (Home), Shri K. Chakravarthi, the then DGP, Shri P.C. Pande, the then CP, Ahmedabad City and other personal staff of CM. Till then, no specific information was available about the number of casualties and the injured persons. In this meeting, Shri Narendra Modi emphasised that the culprits responsible for the incident should be apprehended and not allowed to escape. No minutes of the meeting were prepared. However, Shri Ashok Narayan had prepared a note on the basis of information provided by DGP for CM and MoS (Home) to make a statement in the Assembly as the question relating to the Godhra incident was likely to be raised in the Assembly which was in Session. The Chief Minister had given directions that the steps should be taken not to delay the medical help to surviving passengers and also to impose curfew to avoid any untoward incident. Godhra being a communally sensitive place. The Chief Minister had also instructed that the senior officers and the extra force, if required, must reach Godhra without any delay.

Around 1200 hrs, Chief Minister attended the Assembly session and a call attention motion relating to the Godhra incident tabled by Shri Punjabhai Vansh, MLA came up for discussion at 1300 hrs, but the Hon'ble Member was not present in the House. Dr. Mayaben Kodnani, MLA from Naroda spoke on the said issue. Shri Gordhan Zadafia, the then MoS (Home) made a statement in the House based on the aforesaid note prepared by Shri Ashok Narayan, the then ACS (Home). **During zero hour, Shri Narendra Modi made a statement that he had discussed the matter with the then Prime Minister Shri Atal Bihari Vajpaee and announced an ex-gratia payment of Rs. 2,00,000/- each to the next of kin of those killed in the Godhra incident and also ordered a High-Level Inquiry into the incident. All these facts were mentioned in the Assembly proceedings, as well as in the press release issued by the Govt. of Gujarat on 27-02-2002**.

Shri Gordhan Zadafia, the then MoS (Home) left for Godhra by road around 1400 hrs. and reached there at about 1630 hrs, Shri Ashok Bhatt, the then Health Minister had already reached Godhra around 1200 hrs. It may be mentioned here that 27-02-2002 was a budget day in the Assembly and after the completion of the budget speech by Shri Nitinbhai Patel, the then Finance Minister, the Assembly proceedings were over at about 1500 hrs. **Shri Narendra Modi left for Ahmedabad airport around 1530 hrs for his onward journey to Vadodara / Godhra. Shri Narendra Modi reached Ahmedabad airport at 1600 hrs and left for Vadodara by Govt. aircraft. The Chief Minister reached Vadodara at about 1630 hrs. and then proceeded to Godhra by helicopter immediately, where he reached around 1645 hrs. He was accompanied by Shri Anil Mukim, the then Addl. PS to CM and Shri Jagdish Thakker, PRO to CM. According to the press release issued by the Govt. of Gujarat on 27-02-2002, CM visited the scene of occurrence at Godhra Railway Station and then went to Civil Hospital and saw the injured admitted there. Thereafter, he went to Collectorate and held meeting with the Ministers present there namely Shri Ashok Bhatt, Shri Gordhan Zadafia, Shri Bhupendra Lakhawala, Shri Prabhatsinh Chauhan (all Ministers in the State Govt.) Shri Bhupendrasingh Solanki, the then Member, Lok-Sabha from Godhra, Collector & District Magistrate, Godhra, Police Officers and Railway Officers. The Chief Minister had also met the press briefly thereafter. As per media reports Shri Narendra Modi said the Govt. would ensure the maintenance of peace in the State and the Govt. would not be lacking in discharge of its duty. He also said that tragedy was unparallel in the history of Gujarat and assured the people that culprits would be punished. At no point of time, Shri Jaydeep Patel, VHP leader, who was at Godhra on that day, had met him. The Chief Minister left Godhra by road around 1945 hrs (after the sunset) and reached Vadodara airport at about 2130 hrs. Shri Narendra Modi left for Ahmedabad by Govt. aircraft at 2130 hrs and reached his official residence at Gandhinagar at about 2230 hrs.**

Investigation has further revealed that a law & order meeting was held by Chief Minister at his residence around 2300 hrs, which was attended by Smt. Swarna Kanta Varma, the then acting Chief Secretary, Shri Ashok Narayan, the then ACS (Home) Dr. P.K. Mishra, the then Principal Secretary to CM, Shri Anil Mukim the then Addl. PS to CM, Shri K. Chakravarthi, the then DGP, Shri P.C. Pande, the then CP, Ahmedabad City, Shri K. Nityanandam, the then Secretary (Home) and Shri Prakash S. Shah, the then Addl. Secretary (Law &

order). Shri G.C. Raiger, the then Addl. DG (Int.), who was on casual leave and had returned to Ahmedabad on 27-02-2002 evening, had not attended the same. However, Shri Sanjiv Bhatt, the then Deputy Commissioner of Intelligence (Security) has claimed to have attended the said meeting at the instance of DGP.

All the aforesaid officials have been re-examined and their statements recorded u/s 161 Cr.P.C. Their deposition in brief is given below:-

(i) According to **Smt. Swarna Kanta Varma**, the then acting Chief Secretary, she was present in the said meeting, but she can not recollect, as to whether any Minister or other police/Govt. officials (besides the individuals indicated above) were present there. **On being shown the photograph of Shri Sanjiv Bhatt, she has stated that she can not recollect having met or seen him in this meeting or in any meeting during the period of her charge as Chief Secretary, Smt. Swarna Kanta Varma has stated that Chief Minister had said in the aforesaid meeting that the Godhra incident was very unfortunate and that it should be handled with a firm hand. However, she has denied that there was any mention by Chief Minister of balancing action against Hindus and Muslims or Muslims be taught a lesson or Hindus be allowed to vent their anger**.

(ii) **Shri Ashok Narayan**, **the then ACS (Home) has stated that Shri Sanjiv Bhatt, the then DC (Security) did not attend the said meeting on 27-02-2002. He has further stated that no Minister was present in the said meeting.** He has also stated that DGP gave sequence of events of Godhra incident, possible repercussions of the same and also about his requirement of additional forces. **He has denied any utterances by Chief Minister to the effect that the police approach of balancing action against Hindus and Muslims would not work any more, Muslims should be taught a lesson and that Hindus should be allowed to vent their feelings/anger. He has, however, stated that Chief Minister did say that the people were outraged by the Godhra incident and therefore, effective steps should be taken to control the communal riots**.

(iii). **Shri P.K. Mishra**, **the then Principal Secretary to CM has categorically denied the presence of Shri Sanjiv Bhatt, the then DCI (Security) in the meeting of 27-02-2002. He has further denied the presence of any politicians in the said meeting. As regards the observation allegedly made by CM that for too long the Gujarat Police had been following the principle of balancing actions against the Hindus and Muslims while dealing with the communal riots in Gujarat; the situation warranted that the Muslims be taught a lesson to ensure that such incidents do not recur and that the emotions were running very high amongst the Hindus and they be allowed to vent their anger, Shri Mishra has stated that it was not true that Chief Minister talked in these terms**. He has further stated that in this meeting, officials of the Home Department and police officers apprised CM about the action already taken to prevent any untoward incident in view of the emerging situation and the bandh call. **He has also stated that CM briefed the officials about his Godhra visit and impressed upon them to take all possible steps including preventive arrests to avoid any untoward incident.**

(iv). **Shri K. Chakravarthi**, the then DGP has stated that Shri G.C. Raiger, the then Addl. DG (Int.) was on casual leave on 27-02-2002, and therefore, he did not attend the said meeting. He does not recollect, as to whether Shri Raiger contacted him over phone on 27-02-2002 evening and informed him about his arrival at Ahmedabad. **However, he has categorically stated that Shri Sanjiv Bhatt did not attend the said meeting on 27-02-2002 night at CM's residence and no such instructions were given by Chief Minister.** Shri Chakravarthi has added that in case Shri G.C. Raiger was available at Ahmedabad, he would have given instructions to him to attend this meeting through the State Control Room rather than asking Shri Sanjiv Bhatt to attend. According to Shri Chakravarthi Shri O.P. Mathur, the then IGP (Admn. & Security) was also available and could have been called in the said meeting instead of calling a junior officer of SP level (Shri Sanjiv Bhatt). **Shri Chakravarthi has further stated that as per his recollection, none of the Ministers/politicians had attended the said meeting on 27-02-2002. Shri Chakravarthi has also stated to have briefed CM about the bandobast made by him in the wake of the bandh call given by VHP on 28-02-2002, and also about the additional requirement of forces. Shri Chakravarthi had also informed CM about the appeal made by him to the general public on Door-Darshan/All India Radio to maintain peace. As per Shri Chakravarthi, CM had said that the Godhra incident was very serious and bound to affect the public at**

large and therefore, adequate arrangements should be made. Shri Chakravarthi has stated that CM had also spoken about the Govt. decision to transport dead bodies of Godhra victims to Ahmedabad City by road and to keep them in Sola Civil Hospital, which was then located on the outskirts of Ahmedabad City. According to Shri Chakravarthi, this decision was not opposed by anyone in the meeting, as a considerable number of victims belonged to Ahmedabad and nearby places. Regarding the allegation against Chief Minister for speaking in the terms that for too long the Gujarat Police

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had been following the principle of balancing the action against the Hindus and Muslims etc. and the Hindus be allowed to vent their anger, Shri Chakravarthi has denied any such utterances by Chief Minister in the meeting. He also denied having spoken to Shri R.B. Sreekumar, the then Addl. DG (Arms Unit) in this regard.

(v) **Shri. P.C. Pande**, the then Commissioner of Police, Ahmedabad City **has denied the presence of Shri Sanjiv Bhatt in law & order meeting called by Chief Minister on 27-02-2002 night**. He has further stated that the meeting lasted for 15-20 minutes and that the discussions centred around maintenance of Law & order in view of the bandh call for the next day, its likely repercussions and availability of forces. **As regards the allegations against Chief Minister about having said that for too long the Gujarat Police had been following the principle of balancing the actions against Hindus and Muslims etc. etc. and the Hindus be allowed to vent their anger, Shri Pande has categorically stated that no such instructions to allow any freedom to any law breaker were given by Chief Minister. He has out rightly denied the presence of any Minister or Shri Sanjiv Bhatt, the then DCI (Security) in the said meeting**. Regarding the Govt decision to transport the dead bodies of Godhra Victims to Ahmedabad, Shri Pande has stated that he does not recollect the exact talks, which took place in the said meeting, **but the sum and substance of the discussions was that the dead bodies were being brought to Ahmedabad City with a view to facilitate the relatives of the deceased persons to identify and claim the same**.

(vi) **Shri Anil Mukim**, IAS, the then Addl. PS to CM has stated that he attended the said meeting for some time and then left after taking

permission from Shri P.K. Mishra, IAS (Retd.) the then Principal Secretary to CM. He has further stated that as long as he was present in the meeting, general discussions were held regarding the Godhra incident and necessary preventive measures required to be taken under the circumstances were also discussed. **He has out rightly denied any utterances/instructions by CM about Muslims being taught a lesson and the Hindus being allowed to vent their anger, in his presence. He has denied the presence of Shri Sanjiv Bhatt, the then DCI (Security) in the said meeting. He has also denied the presence of any Minister or politician in the meeting.**

(viii) **Shri K. Nityanandam**, the then Secretary (Home) has stated that he attended the law & order meeting called by the Chief Minister at his residence on 27-02-2002, at about 2300 hrs. **He has further stated that the deliberations in the meeting mainly revolved around the Law & order situation post Godhra train incident and efforts to handle future Law & order problems in view of the bandh call on 28-02-2002. He has denied the presence of any Minister or Shri Sanjiv Bhatt in the said meeting. He has also denied any such alleged observations made by the Chief Minister about Muslims being taught a lesson etc. etc. and the Hindus be allowed to vent their anger. According to Shri K. Nityanandam, he does not recollect Shri Sanjiv Bhatt being present in any law & order meetings called by the Chief Minister as IGP/Addl. DGP rank officer were available in the State Intelligence Bureau to present the issues relating to intelligence**.

(ix) **Shri Prakash S. Shah**, the then Addl. Secretary (Law & order) has confirmed to have attended the Law & order meeting called by the Chief Minister at his residence on 27-02-2002 night. **He has further stated that the Chief Minister gave an account of Godhra incident, while Shri Chakravarthi and Shri Pande briefed CM about the possible repercussions of Godhra incident about the arrangements and bandobast made by them and also about the deployment of forces. According to Shri Shah, the Chief Minister instructed all the officers that communal peace and harmony be maintained at all costs and all possible steps be taken to control the possible communal flare up. He has denied the presence of any Minister or Shri Sanjiv Bhatt in the said meeting. He has further stated that the Chief Minister did not say anything on the lines of the police approach of balancing action against Hindus and Muslims and also that the Hindus should be allowed to vent their anger.**

(x) **Shri Sanjiv Bhatt**, the then DCI (Security) stated that he received intelligence inputs on 27-02-2002, regarding the despatch of dead bodies from Godhra to Ahmedabad under police escort, the State supported bandh call and the intention of the Sangh Parivar activists to parade the dead bodies in the form of funeral procession in communally sensitive areas of Ahmedabad City. He has claimed to have attended a late night meeting of 27-02-2002 called by the Chief Minister at his residence about which he was intimated by State IB Control Room and State Police Control Room that Shri K. Chakravarthi, the then DGP wanted him to accompany the latter in the said meeting. Significantly; at enquiry stage Shri Sanjiv Bhatt himself has admitted in his signed statement that Shri G.C. Raiger; the then Addl. DG (Int.) was on casual leave till

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28.02.2002, but had curtailed his leave and came back to Ahmedabad on 27.02.2002 evening. This fact has been confirmed by Shri G.C. Raiger, the then Addl. DG (Int.), who has stated to have called DGP and informed about his availability from the evening of 27.02.2002. Moreover, Shri P. B. Upadhay, the then DCI (Communal), the concerned officer dealing with the communal subject has also stated to have curtailed his casual leave on 27.02.2002 and was available in the office. **He also stated that he had accompanied Shri K. Chakravarthi in the latter's car from DGP's office to CM's residence and claimed that he attended the said meeting, which was also attended by Incharge Chief Secretary Smt. Swarna Kanta Varma, ACS (Home) Shri Ashok Narayan, Shri Anil Mukim, the then Addl. PS to CM, Shri P.C. Pande, the then CP, Ahmedabad City and Shri K.Nityanandam, the then Secretary (Home). However, he is unable to recollect, as to whether Shri P.K. Mishra, the then Principal Secretary to CM was present in the said meeting or not Shri Bhatt has further stated that to the best of his recollection, no politician/Minister was present in the said meeting**. He has also stated that Shri G.C. Raiger, the then Addl. DG (Int.) did not attend the said meeting being on casual leave and that he was not aware, as to whether Shri Raiger had returned to Ahmedabad on 27-02-2002 evening. He has denied to have contacted Shri Raiger on 27-02-2002 evening, at his residence. Shri Sanjiv Bhatt has claimed that he used to attend the intelligence related meetings called by the Chief Minister. **As per Shri Bhatt, this meeting was essentially a Law & order review**

meeting and the main issues discussed during the said meeting revolved around the bandh call given by VHP and ruling BJP as well the decision to bring the dead bodies of Godhra victims to Ahmedabad. Shri Sanjiv Bhatt has also stated that Shri P.C. Pande, the then CP, Ahmedabad City had strongly opposed the Govt. decision for the transportation of dead bodies of Godhra victims to Ahmedabad as the same was likely to lead to serious communal riots in Ahmedabad City and these views were supported by Shri K. Chakravarthi, the then DGP. According to Shri Sanjiv Bhatt, Shri Chakravarthi had conveyed to CM that the available resources of Gujarat Police were over stretched to cope with the law & order situation that was likely to arise in the wake of bandh call given by the VHP on the next day and had expressed his inability to supplement the manpower resources of CP, Ahmedabad City. Shri Sanjiv Bhatt has stated that as per his recollection, there was no meaningful contribution from Shri K. Nityanandam, the then Secretary (Home). Shri Ashok Narayan, the then ACS (Home) and Smt. Swarna Kanta Varma, the then acting Chief Secretary. Shri Sanjiv Bhatt has further stated that DGP and CP, Ahmedabad City tried to impress upon the Chief Minister that the bandh call given by VHP on 28-02-2002, which was supported by the ruling party BJP was not a good idea, as far as the law & order situation of the State was concerned but the Chief Minister did not seem to be convinced by their arguments and stated that the incident like burning of kar-sevaks at Godhra could not be tolerated. According to Shri Bhatt, CM impressed upon the gathering as below :-

> "*That for too long the Gujarat Police had been following the principle of balancing the actions against the Hindus and Muslims while dealing with the communal riots in Gujarat. This time the situation warranted that the Muslims be taught a lesson to ensure that such incidents do not recur ever again. The Chief Minister Shri Narendra Modi expressed the view that the emotions were running very high amongst the Hindus and it was imperative that they be allowed to vent out their anger*".

According to Shri Sanjiv Bhatt, no minutes of the meeting were prepared by him or DGP, but he had no knowledge as to whether any minutes were kept by CM's office or Home Department. He also claimed of making a mention of the said meeting in his movement diary for February, 2002. Shri Sanjiv Bhatt has further stated that he expressed his opinion against the decision of BJP to support the bandh call given by

VHP and also the decision of the administration to-bring the dead bodies of the victims from Godhra to Ahmedabad City. He also stated that he expressed a view that the taking out of the funeral procession of the victims in the respective areas would lead to major communal violence in Ahmedabad City and other communally sensitive areas across the State.

Shri Sanjiv Bhatt stated that he took leave thereafter from Shri K. Chakravarthi, the then DGP, and returned to state IB office in order to send alert messages and instructions to the concerned police/intelligence units. Subsequent to the aforesaid meeting at CM's residence, Shri Bhatt has claimed to have issued several messages to the Police units as well as the field units of the IB with respect to the developing situation including the possibility of wide spread communal violence during the Gujarat bandh and wherein, he reiterated to different CsP and SSP to take all possible measures to prevent untoward incidents in their respective jurisdiction. Surprisingly, he

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informed everyone about it but did not inform his own Head of the Department i.e. Shri G.C. Raiger, whom he had allegedly represented in the meeting and whose present in the station was very much in his knowledge. He has denied to have contacted Shri G.C. Raiger over phone in the night of 27-02-2002 and has stated that he briefed Shri Raiger about the said meeting and the deliberations that had taken place, when he had attended office on the next day, i.e. 28-02-2002 morning, at about 1000 hrs which has been denied by Shri Raiger. Interesting, the call details of Govt. mobile phone of Shri Sanjiv Bhatt show that he was at Ahmedabad till 1057 hrs on 28.02.2002. He has further claimed that the details of the discussions held during the said meeting were not mentioned in any of the official correspondence/reports as he had attended the said meeting in the capacity of an intelligence Officer. Further, Shri Sanjiv Bhatt has claimed that the reports had started coming in the office of the State IB regarding the preparations made by the cadres of Sangh Parivar to carry out strict enforcement of the bandh call given by them on 28-02-2002, and that same should be available in the records of State IB. Shri Sanjiv Bhatt has also claimed to have attended the second meeting at CM's residence on 28-02-2002 at about 1030 hrs along with Shri G.C. Raiger, the then Addl. DG (Int), in which

the deployment of manpower during the Gujarat bandh was discussed to monitor the developing situation and that this meeting was also attended by Shri K. Chakravarthi, the then DGP, Shri Anil Mukim, the then Addl. PS to CM, Late Ashok Bhatt, the then Health Minister and Shri I.K. Jadeja, the then Urban Development Minister. Shri Bhatt has further stated that on the conclusion of the said meeting, the Chief Minister had instructed DGP that Late Ashok Bhatt and Shri I.K. Jadeja would be assisting the police in monitoring the situation and that all necessary assistance must be rendered to the Ministers. Shri Sanjiv Bhatt has also stated that CM had not specifically instructed as to how the Ministers would assist the police. Further, according to Shri Sanjiv Bhatt, the issue relating to the requisitioning of the Army was also discussed on the basis of the suggestions given by DGP and Addl. DG (Int.), but the Chief Minister seemed to be reluctant and was of the view that they should wait and watch, as to how the situation developed and not rush for the requisitioning of Army.

According to Shri Bhatt, he returned to the Police Bhavan and went to his chamber on the second floor, but shortly thereafter went to DGP's chamber around 1100 hrs to obtain his signature for requisitioning additional forces and found Late Ashok Bhatt and Shri I.K. Jadeja seated in his chamber, where everyone took tea. Shri Sanjiv Bhatt has further stated that sometime later, he visited State Control Room on the first floor of Police Bhavan, to collect some documents and saw Shri I.K.Jadeja and his staff members occupying the chamber of Dy.SP State Control Room. Finding this arrangement to be little odd and inconvenient, with the permission of the DGP he shifted Shri Jadeja and his staff to the chamber of Shri P.C. Thakur, the then IGP, who was on leave. Later during the day, Shri Sanjiv Bhatt came to know that Shri Jadeja had left the Police Bhavan, However, as per Shri Sanjiv Bhatt, Shri Jadeja did not interfere with the working of State Police Control Room on 28-02-2002, or thereafter. Shri Sanjiv Bhatt has also claimed that he came to know from his staff later that Late Ashok Bhatt was stationed in Ahmedabad City Police Control Room on 28-02-2002.

On being questioned, as to whether deliberations in CM's meeting or the developments in the Control Rooms were mentioned by him in any of the reports submitted to the senior officers at any stage, Shri Sanjiv Bhatt has claimed that he had attended the said meeting along with the DGP and Addl. DG (Int.) as a Staff Officer and as such there was no necessity to submit any report to them. Shri Sanjiv Bhatt has claimed to have received information about a mob attack on Gulberg Society around 1130 hrs on 28-02-2002, and he had deputed PI Shri Bharwad of

Ahmedabad Regional Office located in Meghaninagar to go to Gulberg Society, to report on the developing situation and inform the State IB. According to Shri Bhatt, he had conveyed these developments to DGP and Addl. DG (Int.) personally. In view of the fact that Late Ahesan Jafri, Ex-MP was residing in the Gulberg Society, he (Sanjiv Bhatt) telephonically conveyed the details about the developing situation to the Chief Minister directly. However, he does not recollect, as to whether he had spoken to the Chief Minister over landline or over the mobile phone of Shri O.P. Singh, PA to CM. Shri Sanjiv Bhatt has stated that he attended another meeting at CM's residence on 28.02.2002 afternoon for the assessment of the ongoing situation, which was attended to by ACS (Home), DGP, Addl. DG (Int.), and Secretary (Home), in which the Chief Minister had agreed to send a formal requisition to Govt. of India for deployment of Army. He has claimed that he briefed the Chief Minister about the ongoing developments at Gulberg Society and also about the threat to the life of Late Ahesan Jafri and other residents of the Gulberg Society Shri Sanjiv Bhatt has gone to the extent of claiming that the Chief Minister took him aside after the meeting and informed him that he had learnt that Late Ahesan Jafri had

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opened fire on Hindus during earlier communal riots. According to Shri Sanjiv Bhatt, the Chief Minister asked him to dig out all the facts pertaining to earlier instances, wherein Late Ahesan Jafri had opened fire during the past communal riots. Shri Bhatt claimed that he conveyed these facts to Shri G.C. Raiger, the then Add. DG (lnt.). However, Shri Bhatt has stated that he could not check/collect this information as he remained busy with certain urgent matters connected with the riots. Shri Sanjiv Bhatt has denied having submitted any report to his department and claimed that he had attended this meeting as a Staff Officer to the DGP or AddI DG (Int.), which is incorrect as there was no post of Staff Officer to Addl. DG (Int.).

On being questioned, as to why did he not appear as a witness in response to a public notice issued by SIT on 11-03-2008, he claimed that he did not disclose the same to anyone, as it would not have been appropriate on his part to divulge any information that he was privy to as an Intelligence Officer unless he was under a legal obligation to do so. He

has also stated that he did not file any affidavit or appeared before any commission or any other body enquiring into the communal riots of 2002, because he was not asked by the Govt. of Gujarat, DGP or AddI.DG (Int.) to do so. He has denied knowledge as to whether the alleged instruction given by the Chief Minister were passed on to the field units by any of the officers, who had attended the meeting on 27-02-2002. The stand taken by Shri Sanjiv Bhatt is not acceptable on account of the fact that firstly it was essentially a law & order meeting, in which many civilian officers were present and there was nothing secret about it. Furthermore, Shri Bhatt has various opportunities and legal obligations to disclose these facts, if true, firstly to Shri R.B. Sreekumar, the then Addl. DG (Int.), who had asked him to provide any oral and documentary relevant fact to be included in his affidavit relating to riots Incidents on behalf of State IB required to be filed before Nanavati Commission,

Secondly, Nanavati Commission a legally constituted body under Commission of Inquiry Act had issued a public notice calling upon any one having knowledge about the incident of issues involved before it, to file an affidavit and furnish information, but Shri Sanjiv Bhatt did not file any affidavit. Thirdly, SIT, legally constituted by the Hon'ble Supreme Court of India had also issued a public notice on 11.04.2008 calling upon the people to come forward and give information relating to the riots. but Shri Sanjiv Bhatt conveniently did not come forward. Fourthly. another opportunity was given to him in November, 2009, to make a statement during the course of inquiry ordered by the Hon'ble Supreme Court of India, but Shri Sanjiv Bhatt took the plea that it would not be professionally appropriate on his part to divulge the exact nature of discussion that took place during the said meeting, unless he was duty bound to disclose the same under legal obligation.

Shri Sanjiv Bhatt, on his own and without being summoned appeared before the IO on 25-03-2011, i.e. two days after the recording of his statement, along with one constable named Shri K.D. Panth and requested that his (Bhatt's) further statement should be recorded. In his further statement, Shri Sanjiv Bhatt mentioned the names of two Assistant Intelligence Officers (AIOs) namely, Shri Shailesh Raval and Shri K.D. Panth, who used to accompany him to most of the meetings. He has further stated that subsequent to the recording of his statement on 21 & 22.03.2011, he had been able to recollect that Shri K.D. Panth had followed him to CM's residence with the files in his staff car from DGP's office, whereas he himself had accompanied DGP Shri K. Chakravarthi in the latter's staff car. He has also stated that Shri K.D. Panth returned with him in his car to Police Bhavan and remained in the office till late in

the night and attended to urgent official work. Shri Sanjiv Bhatt also informed that then Shri Tarachand Yadav, was his driver who is presently attached to Shri V.K. Mall, Joint Director, Gujarat Police Academy, Karai, Gandhinagar. Shri Sanjiv Bhatt also disclosed that, as DCI (Security), he was using the Govt. mobile phone no. 9825049398.

During the course of further investigation seven senior administrative and police officers namely, Shri Ashok Narayan, the then ACS (Home), Shri P.K. Mishra, the then Principal Secretary to CM, Shri K. Chakravarthi, the then DGP, Shri P.C. Pande, the then CP Ahmedabad City, Shri Anil Mukim, the then Addl. PS to CM, Shri K. Nityanandam, the then Secretary (Home) and Shri Prakash S. Shah, the then Addl. Secretary (L&O), who had been earlier examined during 2009-10 have categorically stated that Shri Sanjiv Bhatt, the then DCI (Security) was not present in the said meeting held at CM's residence on 27.02.2002 night. During the earlier inquiry, three participants of this meeting namely Shri Nityanandam, Shri Anil Mukim and Smt. Swarna Kanta Verma were not asked this question while three others namely Shri Ashok Narayan, Shri P.C.Pande and Shri P. K. Mishra had stated that they did not recollect. Shri P.S. Shah had not been examined during the inquiry. However, Shri K. Chakravarthi had

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stated at that stage also that Shri Bhatt was not present in this meeting. They have also confirmed that no Minister/Politician was present in the said meeting.

Smt. Swarna Kanta Varma, being ACS (Health & Family Deptt.) and the then acting Chief Secretary was never posted in the Home Department and therefore, she did not know Shri Sanjiv Bhatt, the then DCI (Security). On being shown the photograph of Shri Sanjiv Bhatt, she has stated that she cannot recollect having ever met or seen him in any meeting. According to Smt. Swarna Kanta Varma, the Chief Minister had stated in the said meeting that incident in Godhra was very unfortunate and it should be dealt with a heavy hand. She also does not recollect having seen any Cabinet Minister in the said meeting. All the participants of the meeting held on 27.02.2002 night, have denied that CM had uttered any words on the lines that Gujarat Police had been following the principle of balancing the actions against the Hindus and Muslims while dealing with

the communal riots in Gujarat and that the situation warranted that Muslims be taught a lesson to ensure that such incident do not recur ever again and that the emotions were running very high amongst the Hindus and they be allowed to vent their anger.

There is unanimity amongst all the participants of the said meeting that no Minister/politician was present in the meeting. Shri Bhatt has contended that Shri P.C. Pande, the then CP Ahmedabad City had strongly opposed the Government's decision regarding transportation of the dead bodies to Ahmedabad City, as the same was likely to lead to communal riots and that his views were supported by Shri K. Chakravarthi, the then DGP. His version stands contradicted by Shri P.C. Pande, the then CP, Ahmedabad City, who had stated that the sum and the substance of the meeting was that the dead bodies were being brought to Ahmedabad City with a view to facilitate the relatives of the deceased to identify and claim the same.

Shri K. Chakravarthi, the then DGP has clearly stated that the decision of the Govt. To bring the dead bodies of Godhra victims at Ahmedabad City, was not opposed by anyone on the ground that a large number of victims belonged to Ahmedabad and nearby places, which were easily approachable, from Ahmedabad. This would go to show that Shri Sanjiv Bhatt was giving an imaginary account of the deliberations of the meeting and did not know as to what exactly transpired there. Further, it has been contended by Shri Sanjiv Bhatt that both DGP and CP, Ahmedabad City had tried to impress upon the Chief Minister that the band call given by the VHP on 28-02-2002, which was supported by the ruling party BJP was not a good idea as far as the Law & order situation of the State was concerned and that the Chief Minister was not convinced by their arguments. In this regard, Shri K. Chakravarthi, the then DGP has stated that in the night of 27.02.2002, he did not know that the bandh call given by the VHP was supported by the ruling party BJP and as such there was no question of any such opposition by him. Shri P.C. Pande has also stated that on 27.02.2002, he did not know that the bandh was supported by the BJP and came to know about it only on 28.02.2002, through newspaper reports. All the participants of the meeting have stated that the Chief Minister had expressed the apprehension that the Godhra incident was very serious and bound to affect the public at large, as a result of which there could be repercussions and therefore, adequate bandobast was needed to avoid any untoward incident.

Shri Sanjiv Bhatt has claimed that he mentioned the fact of having attended the said meeting on 27-02-2002 night in his

movement diary. However, the State IB has reported that no such diary was being submitted by Shri Sanjiv Bhatt, Shri G.C. Raiger, the then Addl. DG (Int.) has stated that there was no such system of submitting any monthly movement diary by DC and that Shri Sanjiv Bhatt had never submitted any such diary. Shri Sanjiv Bhatt have claimed to have briefed Shri G.C, Raiger, the then Addl. DG (Int.) on 28.02.2002, at about 1000 hrs about the alleged meeting held by the Chief Minister and also about the illegal instructions given by the latter. This claim is absolutely false and is contradicted from the call detail records of the Govt. mobile phone no. 9825049398 of Shri Sanjiv Bhatt, which show that the location of Shri Sanjiv Bhatt was at Memnagar, Ahmedabad till 10:57:43 hrs on 28.02.2002. Further, Shri Sanjiv Bhatt has claimed that he did not submit any report about the meeting held by the Chief Minister at his residence on 27.02.2002 night, as he attended the meeting as a Staff Officer to DGP/Addl. DG (Int.). This contention put forward by Shri Sanjiv Bhatt is absurd because there was no post of Staff Officer to Addl DG (Int.) and Shri K. Chakravarthi has denied that Shri Sanjiv Bhatt was posted as Staff Officer to DGP, as the Staff Officer was of the rank of Dy. SP and not SP Shri Sanjiv Bhatt has contended that he did not file affidavit nor appeared as a witness before the SIT in response to a public notice issued by the SIT, as it would not have been appropriate on his part

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to divulge any information that he was privy to as an intelligence officer unless he was under a legal obligation to do so. In this connection, it would not be out of place to mention here that assuming for the time being that Shri Sanjiv Bhatt attended the alleged meeting of 27.02.2002 the same was essentially a law & order meeting attended by the various officials of State Administration and therefore the question of oath of secrecy or application of the Official Secrets Act does not arise because it was neither a secret meeting nor would the revelation of the contents of the said meeting jeopardized the public interest. Shri Sanjiv Bhatt has used the weapon of the Official Secrets Act only as a pretext with a view to justify a long delay of nine years just because an official of the intelligence unit attended a law & order meeting, the same does not

became a secret meeting for which a privilege of secrecy is being claimed by Shri Sanjiv Bhatt. In any case, Nanavati Commission and SIT have been set up under the provisions of law of the land and all the citizens/ officials are legally bound to divulge the information available with them which are relevant to the terms of reference/ crimes of the Commission being investigation by SIT.

In view of this, the explanation put forward by Shri Sanjiv Bhatt does not hold good Shri Sanjiv Bhatt had gone to the extent of saying that he learnt from the other staff that Late Ashok Bhatt was stationed in Ahmedabad City Police Control Room, which has no value, whatsoever, being the hearsay evidence. The claim of Shri Sanjiv Bhatt that he had opposed the bringing of dead bodies to Ahmedabad from Godhra, is belied from the fact that all the participants of the said meeting have categorically stated that Shri Sanjiv Bhatt did not attend the said meeting.

Shri Sanjiv Bhatt has specifically claimed that he had accompanied the DGP Shri K. Chakravarthi to the residence of the Chief Minister in the night of 27.02:2002 in latter's staff car, which has been denied by Shri K. Chakravarthi. The statement of Shri K. Chakravarthi has been supported by the entry made by Shri K. Chakravarthi in his staff car log book written by him on the relevant date in his hand, which show that two persons (1+1), i.e. DGP and his PSO used the car on 27.02.2002. The version of Shri K. Chakravarthi is further corroborated by his PSOs namely Shri Dilip Ahir and Shri Dharmpal Yadav, who have categorically stated that Shri Sanjiv Bhatt never accompanied the DGP in his staff car.

It is a fact that Shri Sanjiv Bhatt did send four wireless messages on 27-02-2002 to all the jurisdictional officers to take all precautionary measures to prevent communal riots as Godhra incident was likely to have State wide repercussions. These wireless messages were sent by him as DCI (Communal) as Shri P.B. Upadhyay, the then DCI (Communal) was on casual leave on that day i.e. 27-02-2002. However, he had resumed duty in the evening. Significantly, on 28-02-2002, all the concerned wireless messages were sent by Shri P.B. Upadhyay, the then DCI (Communal), who was dealing with the subject. Shri Sanjiv Bhatt as DCI (Security) had also sent a fax message on 28-02-2002, to Home Secretary, Gandhinagar with information to PS to CM, PS to MoS (Home), DGP and Commissioner of Police, Ahmedabad City, in which he had intimated about a Hindu mob attack on Gulberg Society resulting into death of atleast 18 persons including Late Ahesan Jafri, Ex-MP and its

family members and the attack was continuing. Shri Bhatt had expressed his apprehension that this incident could have State wide ramifications. Though no time had been mentioned on this message, yet it appears that this fax message was sent only after the killings had taken place and the Gulberg Society had been set on fire. In all probability this message had been sent on the basis of the fax message sent by PI C.J. Bharwad, the then PI, Ahmedabad City Regional State IB office at 1700 hrs.

Shri Sanjiv Bhatt has further contended that in view of the fact that Late Ahesan Jafri, Ex-MP was residing in Gulberg Society, he had telephonically conveyed the details directly to the Chief Minister either on landline or on the mobile phone of Shri O.P. Singh, PA to CM. However, he has not been able to specify on which telephone he rang up the Chief Minister. Shri O.P. Singh has denied that he received any call from Shri Sanjiv Bhatt. The call details of Gandhinagar tower are not available as the same had not been requisitioned by Shri Rahul Sharma, the then SP, during investigation of the riot cases Notably there is no practice in Gujarat of SP level officers speaking directly to CM over phone. Further, Shri G.C. Raiger the then Addl. DG (Int.), who was very much in office on 28.02.2002, has stated that this was totally false and that Shri Sanjiv Bhatt had never informed him about it.

Shri C.J. Bharwad, the then PI, State IB, Ahmedabad Region has stated that on 28.02.2002, on the basis of information collected by him during the riots, he had gone to Gulberg Society Meghaninagar of his own and passed on the various information reports collected by him

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to State IB Control Room. He has further stated that around 1215 hrs on 28-02-2002, he had sent a message to State IB Control Room that since Muslims reside in Gulberg Society in Meghaninagar area, a strict watch should be kept there. He has contradicted the statement made by Shri Sanjiv Bhatt, the then DCI (Security), and has denied to have any telephonic discussions with him about the situation in Gulberg Society in as much as the subject concerned the "Communal" Desk of IB was being looked after by Shri P.B. Upadhyay, the then DCI(Communal). He has further stated to have passed on a message at 1450 hrs on 28.02.2002, that a mob of 3000 rioters had surrounded Gulberg Society. On 28-02-2002 itself, he had passed on another message at 1700 hrs that a mob of

5000 rioters had surrounded and set fire to the Gulberg Society, in which several persons including Late Ahesan Jafri, Ex-MP had been burnt alive and that police deployment was required. The version of Shri Bharwad belies the testimony of Shri Sanjiv Bhatt, the then DCI (Security), who has claimed that he had given directions to Shri Bharwad to go to the Gulberg Society and give the latest updates and that Shri Bharwad was in constant touch with him.

Investigation further revealed that the headquarters of State Intelligence Bureau is located at Gandhinagar and is headed by an Addl. DG, assisted by IGP (Security), DIG (Political & Communal) and three Deputy Commissioners of Intelligence and other officers and supporting staff. Besides State IB, there are intelligence units headed by Inspectors/ Dy SsP working independently in the Districts. The State IB has been entrusted with the duties of collection of intelligence in respect of maintenance of law & order including communal intelligence in Gujarat State. In brief, the functions, of the State IB relate to collection and collation of information regarding political, industrial and other similar development in the State, verification of antecedents, protection and security of the VIP's, watch over anti-national activities, movement of foreigners and all other matters pertaining to the internal security, collection of intelligence regarding all types of communal activities and to keep the Govt. informed of all these activities from time to time.

In February, 2002, Shri G.C. Raiger was posted as Addl. DG (Int.) and was assisted by Shri O.P. Mathur, IGP (Security & Admn.). In addition, there was another post of IGP (Political & Communal), which was lying vacant due to the death of Shri S.Kumar in January, 2002. There were three SP rank officers out of which, Shri Sanjiv Bhatt was posted as DCI (Security), Shri P.B. Upadhyay as DCI (Political & Communal) and the third post was DCI (Admn.) which was lying vacant. It has further come to light that Shri G.C. Raiger was on casual leave from 26.02.2002 to 28.02.2002 and was away to Rajasthan, but returned on 27.02.2002 evening. Shri P.B. Upadyay, the then DCI (Communal) was on leave from 26.02.2002 onwards to arrange for sacred thread ceremony of his grandson fixed for 01.03.2002. However, Shri O.P. Mathur, IGP had called him up on 27.02.2002 afternoon, informed him about the Godhra incident and instructed to resume duties immediately. Accordingly, Shri Upadyay had resumed duties on 27.02.2002 evening. However, in his absence, his work was being looked after by Shri Sanjiv Bhatt, who was the only other SP rank officer in the State IB.

Shri G.C. Raiger has stated that on his return to Ahmedabad on 27-02-2002, he had come to know about the Godhra incident and had telephonically informed DGP Shri K. Chakravarthi on 27.02.2002 evening that he would cut short his leave and come to Gandhinagar, if necessary, to which the DGP asked him to join on 28.02.2002. Shri Raiger has denied having been informed by the DGP about the meeting called at CM's residence on 27.02.2002 late in the night. Shri Raiger denied having received any information about the meeting from either the State IB Control Room, State Control Room or even Shri Sanjiv Bhatt, the then DCI (Security). Shri O.P. Mathur has also denied that he received any such information about a meeting called at CM's residence on 27.02.2002 night. Shri P.B. Upadhyay, the then DCI (Communal), who had resumed the duties on 27.02.2002 evening, and used to look after Communal and Political section and was the concerned officer to be associated with the said meeting, had also no information about the said meeting thereby suggesting that no one from the intelligence was required to attend the said meeting.

Shri K. Chakravarthi, the then DGP has stated that he had gone to studios of Door-Darshan, Ahmedabad City on 27-02-2002 late in the evening, for the telecast of an appeal to the general public to maintain communal harmony and peace, when he received a message from State Control Room that CM had called for a meeting at his residence at Gandhinagar around 2230 hrs. Shri Chakravarthi has stated that he straight away went to CM's residence at Gandhinagar and reached there a little earlier and waited as CM had not arrived from Godhra by

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that time. According to Shri Charkravarti, Smt. Swarna Kanta Varma, the then acting CS, Shri Ashok Narayan, the then ACS (Home), Shri P.C. Pande, the then CP, Ahmedabad City and Shri K. Nityanandam, the then Secretary (Home) arrived only subsequently. Shri Chakravarthi has categorically denied having given any instructions to Shri Sanjiv-Bhatt, the then DCI (Security) to attend the aforesaid meeting. He has further stated that Shri Sanjiv Bhatt did not accompany him to CM's residence in his car from DG's office, as he (DGP) did not visit office at that time. He has also stated that in case Shri Raiger was available at Ahmedabad, he would have given instructions to State Control Room to call him. According to Shri Chakravarthi even otherwise, Shri O.P. Mathur, the

then IGP (Admn. & Sec.) was available and could have been called to attend the meeting rather than asking Shri Sanjiv Bhatt, a junior officer of SP level to attend the said meeting.

Shri Sanjiv Bhatt, the then DCI (Security) has named two AIOs namely Shri K.D. Panth and Shri Shailesh Raval, who used to accompany him to such meetings along with the files. After Shri Sanjiv Bhatt's further statement was recorded at his own request on 25-03-2011, he insisted that Shri K.D Panth, who was accompanying him and was waiting outside, should also be examined. He Stressed that Shri Panth should be examined in his presence. However, Shri Bhatt was informed that Shri K.D. Panth would be called on a date convenient to the IO and examined. Accordingly, Shri Panth was informed on 04-04-20 11, to attend SIT office on 05-04-2011, for his examination.

Shri K.D. Panth in his examination has stated that he was on casual leave on 27-02-2002. Further, he has denied that he followed Shri Sanjiv Bhatt, the then DCI (Security) to CM's residence on 27-02-2002 night. However, he has stated that Shri Sanjiv Bhatt had called him to his residence on 24-03-2011 night and informed that he was going to make a statement before the SIT that he (K.D. Panth) had gone to attend a meeting at CM's residence on 27-02-2002 night, and that he (Panth) had been called at State IB office and be ready with the files for the said meeting. Shri Sanjiv Bhatt further informed Shri Panth that he should accompany him to SIT office on 25-03-2011, and make a statement on these lines.

During his examination, Shri Panth further stated that he has contacted Shri Sanjiv Bhatt over his landline telephone no.27455117 from mobile no. 8140657775 (belonging to one of his friends) after he was called for examination scheduled for 05-04-2011. Shri Sanjiv Bhatt called him at his residence on 04-04-2011 at 2030 hrs. At his residence, Shri Sanjiv Bhatt informed Shri Panth that he has made a statement to the SIT that he (Bhatt) had accompanied DGP. Shri K. Chakravarthi in his official car to CM's office from DGP's office on 27-02-2002 night and that he (Shri Panth) had followed him in his (Shri Sanjiv Bhatt's) staff car along with the files. Shri Sanjiv Bhatt asked Shri Panth to make a statement accordingly.

Subsequently, Shri K.D. Panth lodged a complaint against Shri Sanjiv Bhatt with the local police to the effect that Shri Sanjiv Bhatt had influenced, detained, put severe pressure and compelled him to sign an affidavit containing false/wrong and incorrect facts, in

pursuance of which a case no. I CR No.149/2011 was registered u/s 189, 193, 195, 341, 342 IPC with Ghatlodia police station, Ahmedabad City, Gujarat State. Shri Sanjiv Bhatt has since been arrested in this case and the matter is under investigation. In view of this, no reliance can be placed upon the version of Shri Sanjiv Bhatt.

This conduct of Shri Sanjiv Bhat, in arranging, prompting and controlling the witness to corroborate his statement is highly suspicious and undesirable. Shri Sanjiv Bhatt also contacted Shri Shailesh Raval on 28-03-2011/29-03-2011, over mobile phone no.9825688223 of one Shri NJ. Chauhan, a clerk in CM's Security and informed him that he would be called by SIT for his examination. Shri Sanjiv Bhatt also asked Shri Shailesh Raval that he had worked with him in Security Branch for a long time and was aware that he (Sanjiv Bhatt) used to attend meetings, to which Shri Raval reacted by saying that he had accompanied him in Border Security Nodal Committee meetings, which used to deal with the Border Security only. Shri Raval also informed Shri Sanjiv Bhatt that he never worked in the Communal Branch and was not aware of anything about it. Shri Sanjiv Bhatt thereafter disconnected the phone. Shri Shailesh Raval, PI later sent a complaint in writing to the Chairman, SIT that he feared reprisal from Shri Sanjiv Bhatt as he had refused to support the false claims of Shri Bhatt. This is yet another attempt on the part of Shri Sanjiv Bhatt to tutor a witness to depose in a particular manner so as to support the statement made by him, which further makes his claim of having attended the meeting at CM's residence on 27-02-2002 false.

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Shri Tarachand B. Yadav, driver constable in SRP Group-XII, who had been dismissed from service on the charge of getting employment in Gujarat Police on the basis of false and forged certificate, has stated that he used to drive the staff car allotted to Shri Sanjiv Bhatt, the then DCI (Security) during February-March, 2002. However, he does not remember the registration number of the staff car. Shri Yadav could not give the name of Personal Security Officer of Shri Sanjiv Bhatt, the then DCI (security). However, he has stated that he recollects that Shri Sanjiv

Bhatt, the then DCI (Security) had gone to CM's residence in a three star car with either DGP or some ADGP from Police Bhavan and that he had followed him in his staff car, in which Shri K.D. Panth, the then AIO, State IB sat with some files. He has also stated that Shri Sanjiv Bhatt, the then DCI (Security) returned after about 25 minutes and he took him to Police Bhavan, where he worked till midnight i.e. 0030 hrs and then drove him back to his residence at Ahmedabad. Shri Yadav could not say as to whether Shri Sanjiv Bhatt, the then DCI (Security) accompanied DGP or some ADGP rank officer. He has denied knowledge, as to whether Shri Sanjiv Bhatt went inside CM's office to attend the meeting or not, as he was waiting outside. He has also stated that on 28-02-2002, Shri Sanjiv Bhatt reached Police Bhavan at about 0900 hrs and worked in his office and did not go out to attend any meeting at CM's house. On 28-02-2002, he has stated that he started from Gandhinagar dropped Shri Sanjiv Bhatt at his residence at about 1900 hrs. However, he could not recollect the details of the various events of 1st, 2nd & 3rd March, 2002 due to passage of time.

The version of Shri Tarachand B. Yadav is contradicted by Shri K.D. Panth, who has denied to have followed Shri Sanjiv Bhatt in his staff car driven by Shri Tarachand Yadav. Besides that he is an unreliable witness due to his background. He has been dismissed from service due to his own misconduct. Moreover, he has admitted to have gone to the residence of Shri Sanjiv Bhatt, the then DCI (Security) on 17-04-2011 afternoon, for getting a briefing before making a statement to SIT. The call details of his mobile phone clearly show that he was in touch with Shri Sanjiv Bhatt, the then DCI (Security). Even when he was being interrogated in SIT office, Shri Sanjiv Bhatt was repeatedly contacting him over his mobile phone to which he did not respond. In addition, the version of Shri Tarachand Yadav about the movements of Shri Sanjiv Bhatt on 28-02-2002, are proved to be false in as much as Shri Sanjiv Bhatt did not come to Gandhinagar at 0900 hrs, as the call detail records of his official mobile phone show his location at Ahmedabad City till 1057 hrs. Shri Tarachand Yadav further contradicts the version of Shri Sanjiv Bhatt, who claims to have attended a meeting on 28-02-2002 at 1030 hrs, at CM's residence. The overall impression left in the matter is that Shri Sanjiv Bhatt has introduced him as a false witness with a view to corroborate his own false version about having attended a meeting at CM's residence on 27-02-2002 night, whereas in fact Shri Tarachand Yadav does not recollect anything about the events of 27-02-2002 onwards. Moreover, he is a motivated witness, who has got an axe to grind against the Govt. on

account of his dismissal from service. In view of this no reliance can be placed upon his evidence.

During further investigation, PSOs of the then DGP Shri K. Chakravarthi were examined. PSI Dilip Jivaram Ahir and Head constable Dharampal Jagaram Yadav stated that they had never seen Shri Sanjiv Bhatt sitting in the vehicle along with DGP.

Shri G.C. Raiger, the then Addl. DC, (Int.) has stated that Shri Sanjiv Bhatt was never posted as Staff Officer to Addl. DG (Int.), because there is no post like that in the State IB. Further, Shri Sanjiv Bhatt could not have been a Staff Officer to the DGP, as Late V.S. Shinde, Dy.SP was posted as Staff Officer to the DGP. Shri Raiger has further stated that Shri Sanjiv Bhatt used to accompany him in the meetings called by the Chief Minister sometime, but was normally made to wait outside with the relevant files/information and did not join the meetings. Shri Raiger was unable to recollect any meeting called by the Chief Minister, which Shri Sanjiv Bhatt attended along with him. Shri Raiger has further stated that on 28-02-2002, he did come to know about the meeting called by the Chief Minister at his residence on 27-02-2002, but Shri Sanjiv Bhatt did not inform him of having attended the said meeting and also about its agenda or the matters discussed in the said meeting.

Shri R. B. Sreekumar formerly ADGP Intelligence, in his interview given to the Star Hindi News Channel at 12.35 hrs on 22.04.2011 has stated that Shri Sanjiv Bhatt, DCI (Security) had never informed him about having attended a meeting at CM's residence on 27.02.2002. He has further stated that at the time of filing an affidavit before Nanavati Shah Inquiry Commission, he had asked all the officers of State IB to provide him with the relevant

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information and documents in respect of Godhra riots but Shri Sanjiv Bhatt did not give him any information about the said meting. According to Shri Sreekumar, Shri Sanjiv Bhatt was handling security portfolio and communal portfolio was being looked after by another officer. Shri Sreekumar has also stated in the interview that it was a normal procedure that if a junior officer had attended a meeting on behalf of senior, he was required to submit a report to his superior and that Shri G.C. Raigar, the

then ADGP (Int) should be asked about it. As already stated above, Shri Raigar has denied having received any information/report from Shri Sanjiv Bhatt in this regard.

The call detail records of the Govt. mobile phone no.9825049398, allotted to Shri Sanjiv Bhatt show that on 27-02-2002, Shri Sanjiv Bhatt remained at Ahmedabad till about 1120 hrs and returned to Ahmedabad at 1925 hrs. He attended to various calls till 2040 hrs and thereafter, there is no record of any calls made or received by him. However, the call details record do not indicate that he was going towards Gandhinagar on or at 2040 hrs. Further, on 28-02-2002, as per call details the location of Shri Bhatt was noticed at Ahmedabad till 10:57:43 hrs and again at Ahmedabad at 2056 hrs. The claim of Shri Sanjiv Bhatt that he had attended a meeting at CM's residence on 28-02-2002, at 1030 hrs is, therefore, proved to be false and incorrect. CM's residence is at Gandhinagar, more than 25 KMs from his residence at Memnagar, Ahmedabad, and it normally takes 30 to 45 minutes to reach Gandhinagar. His further claim that he had seen Late Ashok Bhatt and Shri I.K. Jadeja, the then Ministers in the DGP's office at about 1100 hrs on 28-02-2002, is also belied from the call detail records in as much as the location of the mobile phone of Shri Sanjiv Bhatt was at Prerna Tower, Vastrapur-1, Ahmedabad, which happened to be at a distance of 1.5 Kms approximately from his residence and by any stretch of imagination Shri Bhatt could not have reached Police Bhavan, Gandhinagar before 1130 hrs.

Shri Ashok Narayan, the then ACS (Home) has stated that a meeting was held by the Chief Minister in the morning of 28-02-2002, which was attended by acting Chief Secretary, DGP and Addl. DG (Int.) and the matter relating to the calling of Army was also discussed, but no decision was taken and it was decided to watch the situation. He has categorically denied that Late Ashok Bhatt and Shri I.K. Jadeja, Ministers had attended the said meeting. The claim of Shri Sanjiv Bhatt that he had attended the said meeting at 1030 hrs at CM's residence is proved to be false from the location of his mobile phone, which was at Prerna Tower, Vastrapur-I, Ahmedabad City at 10:57:43 hrs. Moreover, his contention that the aforesaid two Ministers were present in the said meeting is proved to be false from the statement of Shri Ashok Narayan, the then ACS (Home), who has categorically stated that they were not present in the said meeting.

As regards the alleged utterances made by the Chief Minister in the meeting called on 27-02-2002 night at his residence, it may be mentioned here that Shri R.B. Sreekumar, the then Addl. DG (Int.) had claimed that Shri K.Chakravarthi, the then DGP had informed him on 28-02-2002 that the Chief Minister had said in the meeting that "*KOMI HULLADO MA TAME POLICE BARABARI KARO CHO, TAME BE HINDU NE PAKDO TO TAME BE MUSALMANO NE PAN PARDO CHO, HAVE EM NAHI CHALE. HINDUONO GUSSO UTTARWA DO.*" (*In communal riots police takes action against Hindus and Muslims on one to one* basis. This will not do now-allow Hindus to give vent to their anger.) Shri Chakravarthi as denied that he held any such talks with Shri R.B. Sreekumar. Even otherwise, the version of Shri R.B. Sreekumar becomes hearsay. However, on the other hand Shri Sanjiv Bhatt, who insists that he was in the said meeting, has alleged that the Chief Minister had said "that for too long the Gujarat Police had been following the principle of balancing the actions against the Hindus and Muslims while dealing with the communal riots in Gujarat. This time the situation warranted that the Muslims be taught a lesson to ensure that such incidents do not recur ever again. The Chief Minister Shri Narendra Modi expressed the view that the emotions were running very high amongst the Hindus and it was imperative that they be allowed to vent out their anger". Assuming for the time being that the Chief Minister did say so, there is a material difference between the two versions in as much as Shri Sanjiv Bhatt has tried to improve his version by way of addition "that this time the situation warranted, that the Muslims be taught a lesson to ensure that such incidents do not recur ever again" Since there is no independent corroboration of the version of either Shri R.B. Sreekumar or Shri Sanjiv Bhatt, no reliance can be placed on either of them. It is relevant to mention here that the Ld. Amicus Curiae has agreed with the findings of SIT that the aforesaid statement of Shri R.B. Sreekumar was not admissible in evidence.

Shri Sanjiv Bhatt has not been able to give any satisfactory explanation that when he was in possession of plethora of information and was an eyewitness to some of the important events,

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then why did he not file an affidavit before Nanavati Commission and also did not appear as a witness in response to the Govt. circular before any legal authority. He does not explain as to why he did not

respond to a public notice issued by SIT on 11-04-2008. However, on 21/22—03-2011, when he made a statement, u/s 161 Cr.PC before the SIT, it is not understood as to by whom and how the claimed secrecy was waived. His silence for a period of more than nine years without any proper explanation appears to be suspicious and gives an impression that he is trying to manipulate the things to his personal advantage to settle his service matters.

During the course of further investigation a complaint was received from Shri Dharmesh P. Shukla, an accused in I CR No.67/2002 of Meghaninagar P.S. (Gulberg Society Case), who is facing trial, in which he contended that there was no justification to record the statement of Shri Sanjiv Bhatt on account of the following reasons:-

(i) That Shri Sanjiv Bhatt, IPS is known to be a police officer of dubious character facing several criminal cases of serious nature and whenever he wants a favour from the Govt., he creates a situation whereby the Govt. is compelled to help him.

(ii) Thai Shri Sanjiv Bhatt, who had not even whispered about any such meeting in the past contemporaneously, surprisingly came out with a new theory that he was a part of the meeting.

(iii) That this sudden stand taken by Shri Sanjiv Bhatt after nine years of silence and his insistence that his statement be recorded only after an offence is registered, is at the behest of some person's with vested interests.

(iv) That it is known to almost everyone in Gujarat that Shri Sanjiv Bhatt is famous for his pressure tactics to get illegal favours.

Since the allegations leveled by the complainant were serious, a communication was sent to the Govt. to make available the details of all complaints/pending inquiries/prosecutions/departmental proceedings etc. against Shri Sanjiv Bhatt. A detailed reply has been received from the Govt. of Gujarat, which shows that Shri Sanjiv Bhatt has faced a number of departmental inquiries and he was granted three promotions to the rank of Junior Administrative Grade, Selection Grade and DIG Grade on one day i.e. 21-09-2007, after dropping of three departmental inquiries pending against him vide orders dated 06-08-2005, 03-09-2005 & 24-07-2006. Shri Sanjiv Bhatt, who is eligible for the IGP grade has not been promoted because of the departmental inquiries and criminal cases pending against him. A charge-sheet served upon him on 29-12-2010,

for irregularities in police recruitment under his Chairmanship as SP, Banaskantha is still pending.

It has further come to light that while handling a law and order situation during his posting as ASP Jamnagar in the year 1990, Shri Sanjiv Bhatt committed police atrocities on peaceful and innocent villagers belonging to a particular community at a place called Jam Jodhpur. In the beatings by police, one person was killed. The victims included a pregnant woman, two assistant engineers of Irrigation, department and one Circle officer of Revenue Department. Shri Bhatt applied provisions of draconian law TADA against the innocent persons and arrested 140 individuals under this Act. Due to public pressure, the Government got an inquiry conducted from a retired Judicial officer into the incident and Shri Bhatt was found guilty of (a) misuse of TADA (b) police atrocities and (c) unnecessary imposition of curfew for 70 hours leading to hardship and harassment to the people.

It has also come to light that the criminal case relating to death of a person due to police atrocities in the incident was investigated by State CID (Crime) against Shri Sanjiv Bhatt and others. On completion of investigation, the I0 sought prosecution sanction from the Government u/s 197 Cr.PC. which was declined and therefore, a closure report was filed in the competent court. However, the Court rejected the closure report on 20.12.1995 and took cognizance. The State Government filed a Criminal Revision Application in the Sessions Court, which was rejected. A case u/s 302,323,506(1), 114 of IPC has now been committed to Sessions Court, Jamnagar and is presently pending with the Fast Track Court, Jam-khambhalia for framing of charges against Shri Sanjiv Bhatt and others. Significantly, Gujarat High Court awarded a compensation of Rs.1,50,000/- to the victim who had died due to police atrocities in the above case.

Another criminal complaint was filed against Shri Sanjiv Bhatt, while he was posted as SP, Banaskantha District in 1996 by Shri Sumersingh Rajpurohit, an Advoçate practicing at Pali, Rajasthan and a criminal case was registered against Shri Sanjiv Bhatt & others vide FIR No.403/96 dated 18-11-1996 u/s 120B, 195, 196,342, 347,357,365, 388,458,482 IPC and Sec. 58 (1) & 58 (2) of NDPS Act. On completion of

the investigation, a chargesheet was filed against Shri Sanjiv Bhatt & others u/s 114, 120B, 323, 342, 348, 357, 365,368, 388, 452, 201 & 482 IPC and Sec. 9, 17, 18, 29, 58(1): & 58 (2) r/w Sec. 37 of NDPS Act in the court of Spl. Judge, NDPS Act, Jodhpur, Rajasthan. The allegations in brief are that the complainant Shri Surnersingh Rajpurohit, Advocate was occupying a property as a tenant in Pali (Rajasthan), which was owned by a lady, who happened to be a sister of Shri R.R. Jain, a sitting Judge of Gujarat High Court. As per the said criminal complaint Shri Sanjiv Bhatt and his subordinate police officers planted 1½ kg of Narcotic drug in one room in a hotel at Palanpur, Gujarat, which was shown as occupied by the said complainant though he was at Pali (Rajasthan) at that time. The said Advocate was abducted at midnight, on the instructions of Shri Sanjiv Bhatt by his subordinate police officers of Gujarat police, who went from Palanpur, Gujarat to Pali (Rajasthan) to abduct him. The said Advocate was brought to Palanpur, Gujarat and pressurized by Shri Sanjiv Bhatt and his subordinate police officers to vacate the said property by showing him arrested under NDPS offence. The said Advocate, while in the custody of Gujarat Police and due to police torture, vacated the property and physical possession of the property was handed over to the sister of Shri R.R. Jain, Judge of Gujarat High Court. Shri Sanjiv Bhatt and his subordinate police officers thereafter released Shri Surnersingh Rajpurohit on 08-05-1996, by filing a report u/s 169 Cr.PC. in which it was mentioned that Shri Sumersingh could not be identified in the Test Identification Parade. Quashing Petitions were filed in this matter by the accused persons in Rajasthan and Gujarat High Courts, but the same had been dismissed. The matter is now pending before the Hon'ble Supreme Court of India.

In the meantime, on the complaint of Shri Sidheshwar Puri, Secretary, Bar Association, Pali (Rajasthan), National Human Rights Commission, taking a very serious view of this false case under NDPS Act, vide its order dated 15-09-2010 asked Govt. of Gujarat to pay a sum of Rs. one lakh as monetary relief to Shri Sumersingh, Advocate Pali.

Significantly, Gujarat Vigilance Commission recommended twice on 15-07-2002 and 19-10-2006 that Shri Sanjiv Bhatt should be placed under suspension for his professional misconducts, but the Govt. of Gujarat did not do so.

In view of the aforesaid position, it can be inferred that Shri Sanjiv Bhatt is facing a lot of problems in service matters and has

got an axe to grind against the Govt. of Gujarat and, therefore, his evidence is ill motivated and can not be relied upon.

Government of Gujarat vide its letter dated 22-06-2011 forwarded a set of emails exchanged between Shri Sanjiv Bhatt, DIG, Gujarat Police and certain individuals during April & May 2011. It was mentioned in the above letter that during the course of an inquiry instituted against Shri Sanjiv Bhatt, IPS by DG (Civil Defence), Gujarat regarding misuse of official resources, some revelations have been made having direct bearing on the cases being monitored by SIT. The material forwarded by Govt. of Gujarat has been scrutinised and the salient features of the same are summarized as below:-

(1) That top Congress Leaders of Gujarat namely Shri Shaktisinh Gohil, Leader of Opposition in Gujarat Legislative Assembly and Shri Arjun Modhvadia, President of Gujarat Pradesh Congress are in constant touch with Shri Sanjiv Bhatt, DIG. They are providing him "Packages", certain materials and also legal assistance Further, on 28-04-2011, Shri Sanjiv Bhatt exchanged mails with Shri Shaktisinh Gohil and the former gave points for arguments in Hon'ble Supreme Court matter, allegations to be made against the members of SIT and to establish that the burning of a coach of Sabarmati Express at Godhra Railway Station was not a conspiracy. From the emails, it appears that Shri Sanjiv Bhatt was holding personal meetings with senior congress leaders as well. In one of the emails, he even mentions that he was "under exploited" by the lawyer representing Congress before Nanavati Commission of Inquiry.

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(2) That Shri Sanjiv Bhatt had been persuading various NGOs and other interested groups to influence the Ld. Amicus Curiae and the Hon'ble Supreme Court of India by using "Media Card" and "Pressure Groups".

(3) Shri Sanjiv Bhatt had been exchanging emails with one Nasir Chippa and in the email dated 11-05-2011 Shri Bhatt has stated that he (Nasir Chippa), should try to mobilize support/pressure-

groups in Delhi to influence Ld. Amicus Curiae Shri Raju Ramchandran in a very subtle manner. In another email dated 18-05-2011, Shri Sanjiv Bhatt had requested Shri Nasir Chippa to influence Home Minister Shri P. Chidambaram through pressure groups in U.S. It is believed that Shri Nasir Chippa has strong U.S. connections and his family stays there.

(4) That Shri Sanjiv Bhatt arranged an appeal from Shri M. Hasan Jowher, who runs a so called NGO titled SPRAT (Society for Promoting Rationality) to Amicus Curiae on 13-05-2011, to call Shri Sanjiv Bhatt, IPS, Shri Rajnish Rai, IPS, Shri Satish Verma, IPS, Shri Kuldeep Sharma, IPS and Shri Rahul Sharma, IPS (all police officers of Gujarat) to tender their version of the Gujarat story. It may be mentioned here that the draft for the said appeal was sent by Shri Sanjiv Bhatt himself to Shri Jowher. Further, a copy of this mail was circulated by Shri Sanjiv Bhatt to Ms. Shabnam Hasmi, Ms. Teesta Setalwad, Shri Himanshu Thakker, journalist, Shri Leo Saldana, Journalist, and Shri Nasir Chippa to encourage the persons/organisation to write to Amicus Curiae on the similar lines so as to pressurize him.

(5) In emails exchanged on June 1, 2011 between Shri Sanjiv Bhatt and Shri M.H. Jowher, it was proposed that a PIL may be filed through a lawyer named Shri K. Vakharia (a Sr. Advocate and Chairman of Legal Cell of Congress Party in Gujarat) in the Gujarat High Court for providing security to Shri Sanjiv Bhatt. It was also proposed that another complaint may be filed with the Commissioner of Police, Ahmedabad City against Shri Narendra Modi & others for his alleged involvement in 2002 riots which would be taken to appropriate judicial forums in due course.

(6) That Ms. Teesta Setalwad, her lawyer Shri Mihir Desai and Journalist Shri Manoj Mitta of Times of India were in constant touch with Shri Sanjiv Bhatt, IPS and were instrumental in arranging/drafting of the affidavit for filing the same in Hon'ble Supreme Court. Vide email dated 10-04-2011, Shri Bhatt solicited "Co-ordinates" from Ms. Teesta Setalwad, who had also arranged for a meeting with her lawyer Shri Mihir Desai at Ellisbridge Gymkhana, Ahmedabad. Shri Sanjiv Bhatt sent the first draft of his proposed affidavit to Shri Manoj Mitta on 13-04-2011, after meeting Shri Mihir Desai, Advocate and invited his suggestions. Shri Manoj Mitla advised Shri Sanjiv Bhatt to

incorporate a few more paragraphs drafted by him which were incorporated by Shri Sanjiv Bhatt in his final affidavit sent to Hon'ble Supreme Court of India as suggested by Shri Mitta.

(7) That Shri Sanjiv Bhatt was instrumental in arranging an affidavit of one Shri Shubhranshu Chaudhary, a journalist, to corroborate his claim that he had gone to attend a meeting called by the Chief Minister at his residence in the night of 27-02-2002. Significantly, Shri Bhatt had sent his mobile phone details of 27-02-2002 to Shri Shubhranshu Chaudhary and had also suggested the probable timings of his meeting to Shri Shubhranshu Chaudhary on 15-05-2011. Simultaneously, these details were sent to Ms. Teesta Setalwad on 26-05-2011, for drafting the document, presumably the affidavit to be filed by Shri Shubhranshu Chaudhary. Shri Sanjiv Bhatt sent an email to Shri Shubhranshu Chaudhary that the said affidavit could be leaked out to the print media which would force the Amicus Curiae and Hon'ble Supreme Court to take notice of the same. Shri Sanjiv Bhatt also sent another email to Shri Shubhranshu Chaudhary, in which he has stated that they should play the "Media Trick" so that affidavit is taken seriously by Amicus Curie and the Hon'ble Supreme Court

(8) That Shri Sanjiv Bhatt had been exchanging emails with one Leo Saldana, a Narmada Bachao Andolan activist, with a view to mobilize public opinion in their favour. On 01-05-2011, Shri Sanjiv Bhatt had sent an email to the latter to the effect that what they needed to do at this stage was to create a situation, where it would be difficult for three judges Supreme Court Bench to disregard the shortcomings of SIT under stewardship of

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Mr. 'Raghavan' and that the Pressure groups and opinion makers in Delhi could be of great help in forwarding the cause. He has further stated in the mail that he was hopeful that things would start turning around from the next hearing, if proper pressure was maintained at National level.

(9) That Shri Sanjiv Bhatt was trying to contact Shri K.S. Subramanyam, a retired IPS officer, through Shri Nasir Chippa to make an affidavit supporting his stand with a view to convince the Amicus Curiae arid through him the Hon'ble Supreme Court of India that Shri K Chakravarthi former DGP of Gujarat, was a liar.

(10) That Shri Sanjiv Bhatt had been taking advice of Ms. Teesta Setalwad in connection with his evidence before Nanavati Commission of Inquiry. He had also been in touch with various journalists, NGOs and had been forwarding his representations, applications and other documents through email; whereas on the other side he had been claiming privilege that being an Intelligence Officer he was duty bound not to disclose anything unless, he was legally compelled to do so.

(11) That Shri Sanjiv Bhatt had been maintaining a close contact with Shri Rahul Sharma, DIG of Gujarat Police and had been getting his mobile phone calls analysed with a view to ascertain his own movements of 27-02-2002. This shows that Bhatt does not recollect his movements on that day. He has also been trying to ascertain the movements of Late Haren Pandya, the then Minister of State for Revenue on 27-02-2002, with a view to introduce him as a participant of the meeting of 27-02-2002 held at CMs residence, but could not do so, as Shri Rahul Sharma had informed him after the analysis that there was absolutely no question of Late Haren Pandya being at Gandhinagar on 27-02-2002 night.

From the study of emails, it appears that certain vested interests including Shri Sanjiv Bhatt, different NGOs and some political leaders were trying to use Hon'ble Supreme Court/SIT as a forum for settling their scores. This would also go to show that Shri Sanjiv Bhatt had been colluding with the persons with vested interests to see that some kind of charge-sheet is filed against Shri Narendra Modi and others.

Observations made by Ld. Amicus Curiae:

"The other circumstances would also have to be taken into account. There is nothing to show that CM intervened on 28-02-2002, when the riots were taking place to prevent the riots. The movement of Shri Modi and the instructions given by him on 28-02-2002, would

have been decisive to prove that he had taken all steps for the protection of the minorities, but this evidence is not there. Neither CM nor his personal officials have stated what he did on 28-02-2002. Neither the top police nor bureaucrats have spoken about any decisive action by CM".

This 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.

Result of further investigation:

During further investigation Shri Sanjay Bhavsar, OSD to CM has stated that on 28-02-2002, the Chief Minister held a meeting in the morning concerning business in the Assembly. Further, at 0830 hrs the Chief Minister attended the Assembly session, in which there was an obituary reference for those killed in Godhra incident. In the Assembly, the Chief Minister announced the Judicial Inquiry into the incident under the Commission of Inquiries Act instead of a High Level Inquiry announced earlier on 27-02-2002, and the house was adjourned. The Chief Minister held a meeting in the Assembly Secretariat with the acting Chief Secretary, ACS (Home), DGP and Addl. DG (Int.) about the prevailing situation in the State. **In this meeting, the matter relating to the calling of Army was also discussed, but no decision was taken and it was decided to watch the situation. Shri Ashok Narayan has categorically stated that Late Ashok Bhatt, the then Health Minister and Shri I.K. Jadeja, the then Minister did not attend the said meeting.** Though, Shri K. Chakravarthi, the then DGP has stated that ACS (Home) had conveyed to him about the Government's instructions to the effect that the aforesaid two Ministers would

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sit in the two Control Rooms at Gandhinagar and Ahmedabad City to assist the police, yet Shri Ashok Narayan has stated that he does not recollect any such instructions.

Shri Ashok Narayan has further stated that the Army had already been alerted on 27-02-2002, but inquiry conducted with the local Army authorities had revealed that no force was available in

Gujarat and that the same had been deployed at the Borders. On 28-02-2002, another law & order review meeting was called by the Chief Minister at his residence around 1300 hrs or so, in which the situation was discussed and deployment of forces was reviewed. In this meeting, it was unanimously decided that Army should be called to assist the civil administration to maintain law & order as the situation in the State was getting out of control. In view of this, the Chief Minister made an oral request to Shri L.K. Advani, the then Union Home Minister over phone for deployment of Army in the State. As decided in the meeting, a fax message was sent by Shri K. Nityanandam, the then Secretary (Home) to the Secretary, Ministry of Defence, Govt. of India at 1430 hrs seeking deployment of 10 columns of Army at Ahmedabad City and other affected places immediately by airlifting them. The Chief Minister had earlier given instructions for the safe escort of the Hajj Pilgrims returning to the State to avoid any untoward incident. The fax message in this regard was sent on 27-02-2002, to Addl. DG (Int.) with information to the DGP by the Section Officer (Spl.), Home Department, Govt. of Gujarat.

The chief Minister along with his cabinet colleagues and officials of the Home Department reached Circuit House Annexe, Shahibaug, Ahmedabad City around 1600 hrs or so and held a meeting with the officers of the Home Department. Subsequently. the Chief Minister held a press conference at Circuit House Annexe, Shahibaug, Ahmedabad City between 1630 hrs and 1745 hrs. In this press conference, CM announced that a decision had been taken by the State Govt. to call the Army. A video CD of the press conference has been produced by Shri Sanjay Bhavsar. At about 1800 hrs, the Chief Minister's appeal to public for keeping peace and to maintain law & order was recorded by the Dood-Darshan at Circuit House Annexe, Shahibaug, Ahmedabad City and the same was televised at 1855 hrs before the regional news bulletin. The Chief Minister held another law & order meeting at his residence at 2030 hrs 28-02-2002, which was attended by the senior officers of the Home Department and the police. The Chief Minister met the Union Defence Minister Shri George Fernandes at his residence at 2230 hours on 28.02.2002, in the presence of concerned officers, in which the prevalent law and order situation was reviewed and security arrangements discussed. This is confirmed from the records of the Protocol Department as well as the Police Control Room messages.

According to Shri Sanjay Bhavsar, OSD to CM, the Chief Minister met Shri George Fernandes, the then Union Defence Minister on 01-03-2002 at about 0830 hrs at his residence in the presence of Govt. Officials and Army Officers. As per the press release issued by the Gujarat Information Bureau on 01-03-2002, Shri Gordhan Zadafia, the then MoS (Home), Shri G. Subba Rao, the then Chief Secretary, Shri Ashok Narayan, the then ACS (Home) and other senior police officers including Shri K. Chakravarthi, the then DGP, Shri K. Nityanandam, the then Secretary (Home) and senior Army and Air-force officer attended the said meeting. In this meeting, CM requested for deployment of more Para Military Forces (PMFs) and BSF, to which Shri George Fernandes agreed. CM also apprised the Defence Minister about the allotment of 5 Coys of PMFs to the State of Gujarat. The Chief Minister met the H.E. Governor of Gujarat at 0930 hrs at Rajbhavan and apprised him about the latest law & order situation in Gujarat and also about the security arrangements and bandobast made in the State. During 1000 hrs to 1300 hrs, CM had attended to the Govt. work and gave directions to the Administrative functionaries to take preventive actions to ensure that the disturbed situation did not spread. The Chief Minister also met the Congress delegation, informed them about the action taken by the Govt, and advised them not to lodge any protest in this regards. The Chief Minister also gave directions for the safety and security of the Haj Pilgrims returning to Gujarat. CM also discussed the cash doles and about the other help to be given to the riot victims. He also discussed the packages for the relief camps started by various NGOs and gave directions for other essential services to be provided to riot affected victims. He also gave directions to the Hospitals in the State to make available uninterrupted medical services to the affected persons and other citizens. CM held a law & order review meeting at 1300 hrs. Another law & order review meeting was held by CM at 1500 hrs at his residence. At 1630 hrs, CM held a press conference at Circuit House Annexe, Shahibaug Ahmedabad City. In this press conference, CM informed the press that 13 columns of Army had been deployed to assist the State Civil Administration and that shoot at sight orders to maintain law & order situation had been issued. CM also briefed the press about his meeting with the Union Defence Minister and also about the deployment of Army. He also gave the

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details of various riot incidents and also about the deployment of CPMFs in the Stare. CM also informed the press about the requisitioning of the additional security forces from the neighbouring States and appealed to the media to keep restraint. CM held another law & order review meeting at 2030 hrs at his residence.

As per the request made by the Govt. of Gujarat, the Army personnel were airlifted from the border and they started arriving at Ahmedabad City in the night intervening 28-02-2002/01-03-2002. Shri P.S Shah, the then Addl. Secretary (L&O) has stated that on receipt of intimation from the Army authorities, a programme indicating the arrival of the Army and their logistic requirements was sent to the CsP and DMs, Ahmedabad City, Baroda City and Rajkot City by him on 28-02-2002 itself. However, vide letter dated 01-03-2002, a revised deployment scheme of Army with 3 columns for Ahmedabad City and 2 columns each for Baroda City and Godhra and 1 column for Rajkot City was sent by him. Shri P.S. Shah has also stated that Shri Gurdayal Singh, the then Addl. DG had submitted a report to ACS (Home) on 02-03-2002, vide which he informed that 3 Battalions of Infantry Division reached Ahmedabad City on 01-03-2002 and that 1 Battalion strength having 3 columns was deployea in Bapunagar, Gomtipur, Raikhad and Amraiwadi at Ahmedabad City. He further informed that the IInd battalion was deployed in Dariyapur, Shah-Alam, Danilimda, Khadia, Kalupur, Shahpur and Madhupura P.S areas. Shri Gurdayal Singh had also informed that 2 companies of the IIIrd battalion were deployed in Juhapura, Vejalpur and Paldi areas and one company kept in reserve.

Shri P.S. Shah has further stated that on 01-03-2002, another crash wireless message was sent by Shri J.R. Rajput, the then Under Secretary, Home Department with the approval of the ACS (Home) to all CsP, DMs, SsP, IGs and Western Railway SP, Baroda, in which it was emphasised that in view of the prevalent surcharged and tense atmosphere, directions given by the Home Department time and again for maintenance of public order and peace should be implemented. In this message, several other instructions including implementation of communal riots scheme, guidelines given by the Govt. of India to promote communal harmony, effective actions

against unruly mobs and unlawful assembly and meetings of Peace Committee etc. were also given.

Shri P.S. Shah, the then Addl. Secretary (L&O) has also stated that on 01-03-2002, DGP felt that the resources available with him were insufficient to deal with the law & order situation in the Gujarat and as such with the approval of ACS (Home), 3 letters were sent by Shri K. Nityanandam, the then Secretary (Home) to Chief Secretary, Madhya Pradesh, Rajasthan and Maharasthra, through which these states were requested to spare 10 companies each of their Armed police to help the Gujarat police in handling the law & order situation. A reply dated 01-03-2002 was received from Shri R.K. Nair, Addl. Chief Secretary, Govt. of Rajasthan, in which he regretted to spare any police force for duties in Gujarat for the time being. However, 2 Coys of SRP were provided by the Govt. of Maharasthra on 03-03-2002, and the same were deployed in Surat.

Shri G. Subba Rao, the then Chief Secretary has stated that he had gone abroad and was recalled on 01-03-2002., He has further stated that, he sent a wireless message to all CsP, DMs, Range IGs and SsP to the effect that District Administration and police had to act in a decisive, prompt and effective Manner to bring the situation under control and that they should no hesitate to use whatever force was necessary to bring the situation under control. The Chief Secretary also emphasised in this message that when lives and properties were threatened in communal situation, necessary, force including firing should to be resorted to bring the situation under control and if the situation deteriorated beyond a point besides imposing curfew, "shoot at sight" orders also be issued to prevent gathering of unlawful mobs at public places. The jurisdictional officers were asked to acknowledge this communication and ensure that no major incident took place under their jurisdiction.

Shri Sanjay Bhavsar, OSD to CM has stated that on 02-03-2002, the Chief Minister held another meeting with Shri George Fernandes, the then Union Defence Minister at 0830 hrs at his residence. During 0930 hrs to 1230 hrs, CM met the H.E. the Governor of Gujarat and apprised him of the latest situation and the security arrangements and bandobast made by the administration. CM further discussed the packages for the relief camps started by the various NGOs. CM also discussed the cash doles and the other help to be given to the riot. victims. The Chief Minister also gave instructions that SSC/HSC board examination be held as scheduled in peaceful atmosphere and

also to ensure the safely of students. Two Law & order review meetings were held, by the Chief Minister at his residence at 1300 hrs and 1500 hrs respectively. CM held

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meeting of the officials of the Home Department at 1600 hrs at Circuit House Annexe, Shahibaug, Ahmedabad City. CM also held a press conference at 1630 hrs in Circuit House Annexe, Shahibaug, Ahmedabad City, during which a detailed press release was issued by the Govt. of Gujarat. CM held an all party meet at 1800 hrs, in which the congree leaders did not participate. Another law & order review meeting was held by the Chief Minister at his residence at 2030 hrs.

According to Shri P.S. Shah, the then Addl. Secretary (L&O) some instances of attack on life and property in villages had been reported on 02-03-2002. He has stated that in view of violence in rural areas he sent a crash wireless message to all CsP, DMs and SsP including SP, Western Railway, Baroda to the effect that sufficient police patrolling be organised to cover villages, where a particular community may be in smaller number and steps be taken to prevent the entry of antisocial elements from out side the State or from large cities into rural areas through nakabandi. The jurisdictional officers were asked to convene peace committee meeting at Taluka level to sensitise social leaders in rural areas for the need to keep peace. They were also instructed to keep a telephonic contact with the villagers through the concerned police station in rural areas to obtain information and act quickly. Directions were also issued to these officers to deploy the available forces suitably to meet the developing situation and also to maintain sufficient mobility.

Shri Ashok Narayan, the then ACS (Home) has also stated that he sent a wireless message on 02-03-2002, in which it was emphasised upon the jurisdictional officers that apart from their duties of maintenance of law & order. the process of healing, building confidence amongst the people, diffusing tension and promoting communal harmony was also required to be geared up immediately by the District Administration and to achieve this object the District/City Ekta Committee, Peace Committees and Mohalla Committees should be activated and arrangements made to hold

these meetings. The jurisdictional officers were also asked to involve the prominent members of all the communities, social leaders and NGOs in this process and to report compliance by 04-03-2002.

As per Shri Sanjay Bhavsar, the Chief Minister left for Ahmedabad airport on 03-03-2002 at 0900 hrs, and received the then Union Home Minister Shri L.K. Advani at 1050 hrs. From airport the Chief Minister accompanied the Union Home Minister at 1145 hrs to some of the riot affected areas like Delhi Darwaja, Idgah area and then went to Civil Hospital to see the riot victims. At 1215 hrs, CM accompanied the Union Home Minister to Godhra by helicopter and reached Godhra at 1300 hrs. At Godhra, the. Union Home Minister visited Godhra Railway Station and inspected the scene of occurrence. Later, he visited Civil Hospital, Godhra and met victims of the train incident. Shri Advani left Godhra at 1345 hrs by helicopter and reached Ahmedabad at 1430 hrs. Shri L.K. Advani held a law & order review meeting with the officials of Home Department as well as the police department at 1600 hrs, which was attended by the Chief Minister, MoS (Home), Chief Secretary, ACS (Home), DGP and senior officers of Home, Police and Revenue department. The Union Home Minister asked the State Govt. to trace the culprits responsible for Godhra incident and get them punished to take measures to restore peace, to prevent violence and that, strict action be taken against those who indulged in violence. Shri Advani reviewed the measures taken by the State Govt. to restore law & order in the State. In this meeting the Chief Minister gave directions to organise joint peace marches. Thereafter, Shri Advani held a press conference at Circuit House Annexe, Shahibaug, Ahmedabad City at 1700 hrs. Shri L.K Advani went to Gandhinagar accompanied by the Chief Minister and met the then H.E. the Governor of Gujarat at 1830 hrs. At 1900 hrs Shri L.K. Advani met the Ministers of Gujarat Govt. at CM's residence. Shri L.K. Advani thereafter, left for Hyderabad. Later, the Chief Minister held a law & order review meeting at his residence at about 2030 hrs.

Shri Sanjay Bhavsar, OSD to CM has further stated that on 04-03-2002, the Chief Minister met the H.E. Governor of Gujarat at latter's residence at 0930 hrs and apprised him of the latest law & order situation and bandobast made in Ahmedabad City. Between 1030 hrs and 1300 hrs, CM held a law & order review meeting and also held discussion with the officials of Home, Police and Legal department for the appointment of a Judicial Inquiry Commission. The chief Minister further held discussion about the Panchayat

elections and local bodies elections, which were due in March/April 2002. The Chief Minister also held discussions for ex-gratia payment to the riot affected persons, NGO relief camps, compensation for destruction of the properties during riots with the concerned officers. The Chief Minister also discussed the issues relating to Gram Panchayat and local bodies' elections and SSC/HSC exams. Shri Advani came

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to Bhavnagar directly on 04-03-2002. In view of this, the Chief Minister left for airport at 1300 hrs and then left for Bhavnagar by air at 1330 hrs. The Chief Minister reached Bhavnagar at 1410 hrs and met Shri L.K. Advani at 1420 hrs. At Bhavnagar, they had a round of riot affected areas like Ranika, Ghogha Darwaja and S.T. Station Road. They also visited Akwada Madressa, where 400-500 Muslim students were saved on account of a timely action by the police, held law & order review meeting and met the representatives of different organisations including minority delegations and political leaders. They left for Rajkot at 1600 hrs and reached there at 1630 hrs. At Rajkot, CM, the then Union Home Minister and others visited Gondal Road, Lodhawad chawk. Parevadi Chawk and Lati plot areas. It may be mentioned here that during the earlier riots in Gujarat, the Kutch and Saurasthra region were peaceful, but in the year 2002 some signs of riots were noticed in these areas, as a result of which CM and other leaders visited these areas so that the riots did not spread there. A law & order meeting was also held with the police officers at Rajkot. At Bhavnagar and Rajkot, high level meetings were held by CM and other leaders, in which CM directed to launch combing operations to track down the antisocial elements and recover lethal weapons and explosives. CM left Rajkot at 1800 hrs and reached his residence at Gandhinagar at 1915 hrs. At 2030 hrs, CM held a meeting with the Ministers of his Government. CM has also instructed on 04-03-2002, that "SHANTI KOOCH" should be held in villages and as such a wireless message to this effect sent by ACS (Home) to all the DMs, CsP, SsP etc on the same day.

As per Shri Ashok Narayan, the then ACS (Home), he sent another message dated 04-03-2002, to all CsP, SsP, DMs, in which it

was emphasised that rumour mongers should be dealt with in an exemplary manner and that city peace committees be activated to assist in restoring peace. He also pointed out that the Hon'ble Chief Minister had instructed that "Shanti-Kooch" be held in villages after looking into the local situation. It was also mentioned in this message that all class-I & II officers of Revenue and Panchayat should be instructed to visit the villages at least twice a week and that the Talatis and primary school teachers should be instructed to stay in their respective places of duties and keep in touch with the village leaders and sensitise them about the need to keep peace in their villages.

Shri P.S. Shah, the then Addl. Secretary (L & O) has stated that he has sent a crash wireless message on 04-03-2002, all CsP, DMs, SsP to convene the peace committee meetings immediately, in which the participation of individuals from every community be ensured and also to hold peace marches in all the villages viewing the local situation. The jurisdictional officers were also requested to involve revenue/ development machinery as per the instructions contained in the Home Department crash message dated 02-03-2002 and document the same with the help of either videography or photography and send the same to the Home Departmeint.

Shri P.S. Shah, the then Addl. Secretary (L&O) has also stated that he sent another fax message dated 04-03-2002 to all CsP, DMs and DDOs, in which he pointed out about the receipt of disturbing reports of attempts to disturb the traditional peace and amity in the villages. It was highlighted that there was failure of the society represented by village panchayat and the village peace committees in meeting out this responsibility. He also impressed upon the aforesaid officers to take action u/s 50 of the Bombay Police Act, which provides for imposition of punitive fines and also about the temporary withdrawal of developmental grants and facilities, if any village was bent upon indulging in senseless and sectarian violence against its own members or neighboring villages.

On 04-03-2002, a letter dated 02-03-2002 was received from Dy. Secretary, Information and Broadcasting department, Govt. of Gujarat by Shri Ashok Narayan, in which it was pointed out by I & B deptt. that in view of the prevailing situation in the Gujarat State, if any cable network exhibits programme/news, which might incite violence or might create law & order problems, strict action should be taken immediately against them under the provisions or Cable

Televisions Networks Regulation Act 1995 & rules thereunder. On receipt of the same, a DO letter was sent by Shri Ashok Narayan on 05-03-2002, to Shri K. Chakravarthi, the then DGP, to ensure strict and effective implementation of the revised guidelines issued by the Govt. of India for promotion of communal harmony. DGP was further advised to take action against those elements, who had demolished/damaged certain places of worship and also against those who had converted some of the religious places of worship of a religious denomination into places of worship of different religious denomination under the provisions of Places of Worship (Special Provision) Act 1991. Besides that DGP was advised that reporters, editors, printers, publishers and owners of the media must be advised to discourage distorted reporting /telecasting and action

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u/s 153 (A) & 505 (2) IPC should be taken against writers/publishers of the objectionable of inflammatory material promoting or attempting to promote disharmony or feeling of enmity, hatred or ill will between different religious communities/groups. DGP was also advised that in order to maintain sanctity of religious places and prevent their misuse for criminal, subversive or communal activities the provisions of Religious Institution (Prevention of Misuse) Act be invoked, as it would help in maintenance of peace, order and transquillity.

Shri Sanjay Bhavsar has also stated that on 05-03-2002, CM held a law & order review meeting at his residence. The Chief Minister also addressed a High Level meeting attended by Chief Secretary, Revenue Secretary, Health Secretary, Secretary (R&B) and Health Commissioner and gave specific instructions to them to visit 18 relief camps in different areas. CM also instructed the Collector & District Magistrate, Ahmedabad to make arrangements for the distribution of food and essential commodities with the help of commercial organizations. At 1430 hrs, CM left for Ahmedabad and held a meeting with prominent citizens at Gujarat Chamber of Commerce, Ahmedabad. The Chief Minister made an appeal to the trade and industry, heads of religious organisations and intellectuals to help revive and restore economic activities, which evoked

encouraging response from all quarters. CM categorically said that the Govt. would not compromise with law breaking antisocial elements and that, the Govt. was committed to re-establish the sense of mutual trust and confidence. The Chief Minister out rightly condemned the law breakers and subsequent violent incidents. At about. 1630 hrs, CM visited C.G. Road at 1700 hrs, Mahajan Vando, Jamalpur at 1730 hrs, Shethia building char rasta and Revadi Bazar, Relief Raod at 1800 hrs, Delhi Darwaja at 1830 hrs, Gulberg Society at 1900 hrs and Naroda Patiya at 1930 hrs. CM was accompanied by Late Ashok Bhatt, the then Health Minister, Shri Kaushikbhai Patel, the then Energy Minister, Smt. Anandiben Patel, the then Education Minister, Late Haren Pandya, the then MoS Revenue Minister, Shri Bharatbhai Pandya, the then sitting MLA, Smt. Mayaben Kodnani, the then MLA and Shri P.C. Pande, the then CP. Ahmedabad City.

Shri Ashok Narayan, the then ACS (Home) has further stated that he sent a confidential wireless message on 05-03-2002, to all CsP, Range IGPs, DMs and all SsP that the surcharged communal atmosphere in parts of Gujarat was returning to normal and that measures suggested by the Govt. of India in the revised guidelines for communal harmony should be implemented with a view to gear up the process of restoration of normalcy and promoting communal harmony.

On 05-03-2002, Shri Ashok Narayan has also stated that he sent a DO letter to Shri K. Chakravarthi, the then DGP that the law & order situation was being brought under control and the State was gradually returning to normal with the curfew being lifted in a phased manner from the places where the situation was improving, but it was due to the presence of Army and CPMFs, which was only a temporary measure and reinforcement to the State Police resources should be done. It was further pointed out that the anti-social elements night be awaiting the withdrawal of these forces and might attempt to create disturbances again and that the possibility of sporadic incidents, revenge or an organised backlash from either community or attacks on the law enforcing agencies could not be ruled out. It was also emphasized upon the DGP that the respite provided by the temporary assistance of Army and CPMEs should be used to strengthen, their own control over the law & order situation to meet these possible Challenges. DGP was also asked to chalk out a suitable strategy in this regard. On 05-03-2002 itself, a representation dated 04-03-2002 was received from Kadi Muslim Samaj, Kadi, Mehsana to provide protection to them his

representation was forwarded by him to the DGP vide his DO letter dated 05-03-2002 to provide all necessary protection to the Muslim samaj as soon as possible.

On 06-03-2002, Shri P.S. Shah, the then Addl. Secretary (L&O) sent another wireless message to CsP, DMs and all SsP to make necessary, bandobast, give protection to the Haj Yatris and to ensure that they reach safely to their residences. On the same day, he sent another message to all the aforesaid officials to review the local position and made adequate bandobast at various mosques for thwarting any act of provocation and also for the protection of the mosques on 08-03-2002, when a large number of Muslim were likely to assemble in the mosque for Namaz.

On 06-03-2002, a representation was received by Shri Ashok Narayan, the then ACS (Home) from the residents of Jawahar Chawk, Raikhad, Ahmedabad City for giving adequate police protection to them, which was immediately forwarded by him to Shri K. Chakravarthi, the then DGP for further necessary action. On 06-03-2002 itself, a DO letter was received by ACS

(Home) from Shri Arvind Shukla, PS to the Governor of Gujarat forwarding there with a representation from Daudi Vohra Community of Garbada taluka, Dahod Distt. with a request to continue the BSF protection. This representation from Daudi Vohra Community was forwarded by him to DGP Shri K. Chakravarthi immediately that the H.E. Governor of Gujarat had desired that in Garbada, Gangardi and Jesawada and surrounding rural area of Garbada taluka in Distt. Dahod, the BSF baridobast should be continued, and an intensive police patrolling should be done. On 06-03-2002, another representation was also received by ACS (Home) from Ahmedabad-Mehsana High Way Hotel Association requesting financial assistance for the damage done to the hotels during the riots in Gujarat and the same was forwarded by him to Shri C.K Koshi, Principal Secretary, Revenue Department, Gandhinagar for further necessary action.

On 06-03-2002, a DO letter was sent by Shri Ashok Narayan, the then ACS (Home) to DCP stating that as the violence in the State

continues, it was necessary that the police should strictly adhere to the principles of rule of law, take effective action to prevent further violence and deal ruthlessly with all the violators. He also suggested that effective but controlled use of force be resorted to deal firmly with violators, to arrest all ring leaders and people whose names figured in the FIR, to conduct combing operations to recover arms/explosives and other material used or likely to be used in the present situation and also to recover all stolen/looted property. DGP was also requested to initiate action immediately so that supremacy of law could be established.

On 06-03-2002, some members of the press had mentioned to Shri Ashok Narayan that though the names of some of the VHP and Bajrang Dal leaders figured in the FIR No. 98/2002 of Naroda P.S. against Shri Kishan Korani & others and in Gulberg case FIR against Shri Dipak Patel yet they had not been arrested. This information was immediately passed on by ACS (Home) to the DGP for suitable action in the matter.

Shri P.S. Shah, the then Addl. Secretary (L&O) has further stated that on 07-03-2002, he sent another wireless message to CP, Range IGPs, DMs and all SsP to exercise strict vigil at temples on Maha-Shivratri festival to be celebrated on 12-03-2002, in view of the highly surcharged and tense situation prevailing on the communal front. It was highlighted that antisocial and hardcore communal minded elements bent upon to jeopardise communal harmony should be dealt with firmly and promptly. It was also emphasised that peace and communal harmony must be maintained at all costs. Further instructions were given by him to all the jurisdictional officers to provide adequate security to Shiva temples to avoid any untoward incident. These instructions were given in the light of the fact that symbolic pooja at Ayodhya was scheduled to be held on 15-03-2002.

Shri Ashok Narayan has further stated that on 07-03-2002, he sent a DO letter to Shri K. Chakravarthi, the then DGP, in which he referred to the earlier discussions held with him during which it was felt that there was a need to overhaul the intelligence set up and also to increase the lump sum amounts available to the field officers and requested him to send a proposal in this regard. He also pointed out that during the discussions with the Chief Minister, he had pointed out that there was a necessity to do very effective combing and to identify areas to prevert further incidents of terrorism and violence.

On 07-03-2002, a note was sent to Shri Ashok Narayan by the Chief Secretary that tough law & order situation was fast returning normal, it was necessary to intensify the efforts by taking effective steps regarding rounding up of all known anti-social elements and also to conduct combing operations for detection and seizure of illegal arms and ammunition. These instructions were communicated to DGP on 07-03-2002 itself by Shri Ashok Narayan through a DO letter requesting him to take effective steps on these lines. On 07-03-2002 itself, a representation was received from Shri Farook Sheikh, MLA, Kalupur, Ahmedabad City intimating that he and his family had been receiving telephonic threats on their life for a long time and armed police protection be provided to him. This representation of Shri Farook Sheikh MLA, Kalupur was forwarded to DGP on 07-03-2002, by Shri Ashok Narayan with a copy to CP, Ahmedabad City.

Shri P.S. Shah, the then Addl. Secretary (L&O) stated that he sent a wireless message on 13-03-2002, to the jurisdictional officers to monitor the situation/developments closely for maintenance of law & order in their respective jurisdiction in the light of Hon'ble Supreme Court's order in Writ Petition filed by Mohd. Aslam Vs. Union of India to maintain status-quo and that Ram-Sevaks should not be allowed to perform symbolic pooja.

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Shri P.S. Shah, the then Addl, Secretary (L&O) has also stated that on 14-03-2002, a wireless message was sent by him to all CsP, Range IGPs, DMs and all SsP that in the light of order passed by the Hon'ble Supreme Court of India in a Writ Petition filed by Aslam Bhura Vs. Union of India on 13-03-2002, either symbolic or actual Bhumi-Pooja should not be permitted to take place. Further, as a statement had been made by Secretary, VHP to the effect that demonstrations would be held from 14-03-2002 onwards all over the country, it was likely to lead to the communal clashes. All the aforesaid jurisdictional officers were specifically directed to strengthen security arrangements at religious places, deal firmly with anti-social, disgruntled and hardcore communal minded element, implement prohibitory orders, strictly set up pickets at all

sensitive points, to pick up rumour mongers, to intensity foot and mobile patrolling, to maintain communal harmony and to keep close watch over the situation.

On 14-03-2002, Shri Ashok Narayan received information about the protection sought by some Muslim families residing in Baroda City. These families had asked for RAF deployment between 14-03-2002 to 16-03-2002 for their protection, in view of the VHP programme fixed for 15-03-2002. This information was passed on by him to the DGP, Collector & CP, Baroda City through separate DO letters dated 14-03-2002 with a request to look into the security of these specific areas.

On 15-03-2002, Shri Ashok Narayan had written DO letter to Shri K. Chakrayarthi, the then DGP in the context of several discussions with the Chief Secretary regarding the need to activate the intelligence machinery in the prevailing situation. It was further mentioned that CM had already given several suggestions to facilitate unearthing of antisocial and antinational links. He also, mentioned that in the prevailing situation of general tension, it was even more necessary to take concrete steps in order to prevent worsening of the situation. Shri Ashok Narayan had suggested to DCP to constitute a task force involving Shri R.C. Mehta, Shri R.B. Sreekumar and Shri G.C. Raiger to work out a suitable plan within about 3 days.

Shri P.S. Shah, the then Addl. Secretary (L&O) has further stated that on 21-03-2002, he sent a crash wireless to all CsP, Range IGPs, DMs and all SsP, in which he had emphasised the need to keep a close watch over communal situation in the light of the festivals of Mohharram, Holi/Dhuleti and Good Friday to be celebrated on 25-03-2002, 28-03-2002 and 29-03-2002 respectively by different communities of the society. In the light of highly surcharged and tense atmosphere prevailing in the State, it was further emphasised upon the jurisdictional officers that HSC/SSC examination were also being held in all over the state (except 5 cities) and therefore, special attention should be paid to the sensitive areas and places, which had recently witnesses communal violence. All the jurisdictional officers were also advised to make foolproof bandobast on the eve of Mohharram i.e. *Qattal ki rat* and during Tazia processions. Instructions were also given to all the aforesaid officers to remain present at their headquarters and closely supervise all the

arrangements for maintenance of public order and communal harmony under their jurisdiction.

Shri Ashok Narayan, the then ACS (Home), Shri P.S. Shah, the then Addl. Secretary (L&O) and Shri K. Chakravarthi, the then DGP have stated that in addition to the aforesaid references, a number of complaints/representations were received personally/telephonically, for which immediate, necessary action was taken by them over telephone, for which no records are available. According to them, after 72 hours, the situation was gradually coming under control though even subsequently stray incidents of violence were reported from different parts of the State for a few days. However, the Panchayat elections were held in March-April, 2002 peacefully, and the Haj-Pilgrims who had returned from pilgrimage were safely escorted to their respective places without any untoward incident. The fact that the festivals like Maha-Shivratri, Holi, Good Friday and the religious function of Mohharram, as well as SSCI-/HSC examination passed off peacefully in March, 2002 would go to show that the State was returning to normalcy fast.

Keeping in view the aforesaid facts, it is established that the Godhra train burning incident took place on 27-02-2002 between 07.47 and 08.20 hrs. There is evidence available on record to show that immediately the State machinery, was put on the high alert and this was communicated to all District authorities and Commissioners of Police. The first alert message of 27-02-2002 from the Home Department covered the need to take precautionary measures including adequate police bandobast and preventive measures including issuance of prohibitory

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orders depending upon the local situation. It was instructed that antisocial and hardcore communal elements should be dealt with family. It was also impressed upon the district administration that when the dead bodies arrive in the respective native places, there was a likelihood of heightened communal tension and hence bandobast should be arranged, especially for the funeral procession. All Commissioners of Police DMs and SsP should remain in HQ and closely monitor the situation.

This alert message of 27-02-2002 was followed by another message from Home Department on 28-02-2002, to all concerned to round-up anti-social and known communal elements under the preventive laws. It was further instructed that mobile patrolling should be intensified and adequate protection should also be provided at places of worship and that effective action should be taken to disperse unruly mob, unlawful assemblies, using whatever force necessary. It was also made clear that anti-social elements indulging in violence and bent upon jeopardizing communal harmony must be controlled firmly. Another message dated 28-02-2002, impressed upon all concerned officers to maintain adequate bandobast for 01-03-2002, being Friday and the day of Namaz for the Muslims. Adequate bandobast was directed to be provided to all sensitive areas and curfew was ordered to be strictly enforced. On 28-02-2002, another message was sent to the Addl. DG (Int.) to maintain adequate bandobast for the security of returning Haj Pilgrims at their point of entry. It appears that realising the seriousness of the situation, the Chief Minister took a decision on 28-02-2002, to call the Army to assist the civil administration in maintenance of law & order in the State. Accordingly, the Chief Minister spoke to the Union Home Minister on 28-02-2002 around 1400 hrs and orally requested him to depute the Army to control the law & order situation. This was followed by a fax message sent by Shri K. Nityanandam, the then Secretary (Home) to the Secretary, Ministry of Defence, Govt of India on 28-02-2002 at 1430 hrs. Unfortunately, the Army was not locally available as it had been deployed on the borders, as a result of which the Army had to be airlifted to Ahmedabad and could be effectively deployed from 01-03-2002 onwards only.

It is established that on 28-02-2002, events in the aftermath of the gruesome Godhra episode of 27-02-2002 unfolded and violent incidents were reported from many parts of the State. A high level review of the situation at the Chief Minister's level was made on 28-02-2002 afternoon. The meeting was attended by the Chief Minister, MoS (Home), the DGP and Addl. DG (Int.). By 1430 hrs, the Chief Minister had made an oral request to the Union Home Minister for Army deployment. At about the same time, an official request was sent in writing by Shri K. Nityanandam, the then Secretary (Home) to the Secretary, Ministry of Defence to make the Army available for internal security duties. The Chief Minister publicly announced at 1600 hrs. in a press conference the decision of the State Govt. to call

the Army. Efforts were also made to requisition available Army personnel in the cantonment area of Ahmedabad, but no force was available. It was understood that withdrawing the Army at such critical juncture when war like situation existed with the neighbour needed a high level decision at the Centre. This decision to withdraw the Army and deploy in Gujarat has immediately taken at highest level in the Centre at the request of Gujarat Govt.

Army personnel were airlifted from forward positions and they started arriving by the midnight of 28-02-2002. It may be mentioned here that 40 aircrafts were used to airlift Army personnel to Ahmedabad. The first plane, landed at Ahmedabad on 28-02-2002 mid night and the last one on 01-03-2002 at 2300 hrs. The deployment of the Army also required additional logistic support by the civil administration in the form of Executive Magistrates, vehicles, Liaison officer, mobile phones, guides and maps and same were promptly made available to them. The deployment of Army commenced by 1100 hrs after a high level meeting with the Chief Minister and the Union Defence Minister along with senior officials of the Army and the state administration. The Army was deployed in the affected areas of Ahmedabad City i.e. Paldi, Juhapura, Vejalpur, Shahpur, Bapunagar, Rakhial, Gomtipur, Meghaninagar; Dariapur, Kalupur, Naroda and Dani Limda. It may thus be seen that 9 columns of Army were deployed on 01-03-2002. Later on, 2 columns of the Army were moved to Vadodara on 01-03-2002 at 1830 hrs, 2 columns despatched to Godhra on 02-03-2002, and they reached Godhra at 0130 hrs, 2 columns moved to Rajkot on 02-03-2002 at 1100 hrs. It may be mentioned here that while the situation in the other parts of the Gujarat was grave, cities like Bhavnagar and Surat were initially unaffected. However, as incidents of violence were reported from Bhavnagar and Surat, Army columns were moved to Surat on 03-03-2002 at 1100 hrs and to Bhavnagar on 03-03-2002 at 2235 hrs. In all 26 Army columns had been deployed at the peak of riots in the State.

In addition, the Govt. of India had approved the deployment of CPMFs and therefore, 6 Coys of CISF, 11 Coys of BSF, 5 Coys of Border Wing Home-guards and 4 Coys of RAF were deployed in the

State by 03-03-2002. The State Govt. had also made a request on 28-02-2002, to the neighbouring States of Maharasthra, Rajasthan and Madhya Pradesh to spare the services of their Armed Reserve Police companies. However, only Maharashtra responded by sending 2 Coys of SRP, whereas the Govt. of Rajasthan and Madhya Pradesh expressed their inability to spare any police force due to the internal commitments. It may thus be seen that there was no delay, whatsoever in requisitioning the Army and its deployment by the State as and when they realised. on 28-02-2002 afternoon that the situation was going beyond control. Significantly, Union Defence Minister arrived at Ahmedabad on 28.02.2002 night to ensure that Army formations take their positions without any delay.

Shri G. Subha Rao, the then Chief Secretary, who had gone aboard, was recalled and he arrived on 01-03-2002. The Chief Secretary had issued a clear cut message to all the jurisdictional officers to take effective action including implementation of Communal Riot Scheme, to act in a decisive, prompt and effective manner to control the situation and not to hesitate to use whatever force was necessary to bring the situation under control, if any life and property were threatened. It was impressed by him that firing be resorted to as per situation and if the situation deteriorates beyond a point, besides imposing curfew even shoot at sight orders should be given to control the unruly mobs. This wireless message from the Chief Secretary gives clear cut indication and mind of the State that the riots had to be controlled at any cost.

Frantic messages were sent by the Home Department on 01-03-2002 to 06-03-2002 and specific instructions were given to the effect that the riots had to be controlled and all steps should be taken to restore normalcy and peace in the State. In addition, 14 messages were sent by the Home Department, which included measures, to be taken for ensuing festivals, arrival of Hajj pilgrims and their security, Jumma Namaz, Ram-Navami, Moharrum, Holi-Dhuleti and Good Friday. These messages also included the necessary precautions to be taken in the issues relating to symbolic or actual bhumi pooja proposed to be performed by the Ramsevaks on 15-03-2002, about which the specific orders had been issued by the Hon'ble Supreme Court of India to maintain status-quo.

Further investigation has also disclosed that the Chief Secretary and Addl. Chief Secretary (Home) had arranged for two video conferences with the CP, DMs, SP and other concerned officers

on 04-03-2002 and 11-03-2002, in which important items on agenda were as follows:-

i. Review of current law and order situation in the state

ii. Effective deployment of various forces

iii. Instruction for holding Peace Committee meetings and Peace Marches

iv. Curbing violence and protecting places of worship.

v. Preventive measures and other actions against criminals including, detention

vi. Incidents of 15-03-2002 at Ayodhya and Ram-mandir issue

vii. Bandobast for SSC/HSC examination

viii. Attention to various alert messages issued about law & order, ensuing festivals and Haj pilgrims

It has also come to light during further investigation that from 27-02-2002 onwards, high level meetings with the Chief Minister and senior officers were held in the morning as well as in the evening. The Chief Secretary and the ACS (Home) also held atleast one meeting per day with DGP and other senior police officers, in which the current situation during the last 24 hours was reviewed including the bandobast and deployment of forces. The Chief Secretary also held separate high level meetings with Army officers on 07-03-2002, 18-03-2002 & 23-03-2002.

Further investigation has established that the State Govt. was reasonably vigilant vis-à-vis the developments on the law & order front and immediately responded by bringing to the notice of all District officials, the need to maintain adequate bandobast in view of the Godhra incident on 27-02-2002. In addition, written communications were sent on day to day basis with specific instructions to control the law & order situation with a view to bring normalcy, communal peace and harmony in the State at all costs. The State authorities also impressed upon jurisdictional officers that violators of law should be effectively dealt with, no laxity shown and maximum force used to suppress and contain the violence. The allegation about the inaction on the part of State Govt. as well as police department is, therefore, not established.

Observations made by Ld. Amicus Curiae:

It is difficult to believe that when CM 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 (Ret.) can be used, even if his statement is not been formally reproduced in the writing by the Citizen's Tribunal.

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 CM's office was uncomfortable with the disclosure made by an unidentified Minister to the Citizen's Tribunal.

Result of further investigation:

Further investigation revealed that the Chief Minister left Godhra at about 1945 hrs on 27-02-2002 by road and reached Vadodara airport at about 2130 hrs. Shri Narendra Modi left for Ahmedabad by Govt aircraft around 2130 hrs. From Ahmedabad airport CM went to Gandhinagar by road and reached his official residence at about 2230 hrs. On his return, he called for a law & order meeting at about 2300 hrs, which was attended by the top officials of administration, Home and Police department. Shri K. Chakravarthi, the then DGP said that on 27-02-2002, late in the evening while he was in Door-Darshan studio, Ahmedabad City, he received a message from State Police Control Room that CM had called for a meeting at his residence at Gandhinagar at about 2230 hrs. He has further stated that he had reached at CM's residence alone a little earlier and waited there as CM had not arrived at that time. Subsequently, Smt. Swarna Kanta Varma, the then acting Chief Secretary Shri Ashok Narayan, the then ACS (Home), Shri P.C. Pande, the then CP, Ahmedabad City and Shri K. Nityanandam, the then Secretary (Home) also arrived there. According to Shri Chakravarthi,

the meeting was held around 2300 hrs or could be a little earlier and lasted for about 20-30 minutes. All the participants of the said meeting have categorically stated that none of the Minister/politician attended the said meeting. Mr. Justice P.B.Sawant, Retired Judge of Hon'ble Supreme Court of India and Mr. 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 Justice Sawant, Late Haren Pandya revealed that 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.

Further investigation revealed that an inquiry into the Godhra incident as well the riots that followed the Godhra carnage was conducted by Concerned Citizen Tribunal sometime in April-May, 2002 and their report was published on 21-11-2002, in the form of a book titled “Crime Against Humanity”, which bears the signatures of Mr. Justice P.B. Sawant, Retd. and Mr. Justice Hosbet Suresh, Retd. beside others. The extracts from page 249 of volume-1 of “Crime Against Humanity” are reproduced below:-

> “Witnesses deposing before us testified to the fact that the chief minister called a meeting of senior police and other officers on that very night of February 27, 2002. At this meeting specific instructions were given by him in the presence of state home minister on how the police should deal with the situation on the bandh day. We were informed that instruction were given in this meeting by the Chief minister specifically not to take action against any Hindu reaction to Godhra”.

This report would go to show that, the State Home Minister i.e. Shri Gordhan Zadafia, the then MoS (Home) was present in the said meeting, whereas there is conclusive evidence to establish that Shri Gordhan Zadafia, had stayed at Godhra on 27-02-2002 and returned on 28

-02-2002 morning. Nowhere, the name of Late Haren Pandya, who was holding the portfolio of Minister of State for Revenue had been mentioned in the said report. On the contrary, Late Haren Pandya had been severely criticized by the Concerned Citizen Tribunal in its report. Some of the extracts from the said report are reproduced below:-

> "Naroda Patiya and Naroda Gaon have a long history of VHP provocation. Police sources revealed to expert witnesses who deposed before the Tribunal, that in 1999 a dargah was broken down and an idol installed in its place. At the time, the local police repaired the dargah and arrested 10-15 persons, including Dr. Jaideep Patel, Maya Kodnani and Amrish Pandey. Pressure was mounted on the police by the then home minister, Haren Pandya, but the police stood their ground and the law-breakers were forced to back down" (page-36. of Vol.1)
>
> "On the night of February 27-28, the elephants that are kept inside the temple premises were made to drink liquor. The sounds and trumpeting that followed caused terror in the entire locality. During the last election, former minister Haren Pandya, who won from the Paldi area, had openly proclaimed during his campaign, Baandyo nahin bachwo joyiye. (Not a single baandyo, abusive term for a Muslim/circumcised person must be spared..)" (page-44 of Vol.1)
>
> "Three eyewitnesses, who deposed before the Tribunal, saw former revenue-minister Haren Pandya opposite the VS Hospital, setting fire to the Apna Bazaar Medical. Aa Miyaone aag lagadiye. (Let us burn these Muslims.), he was shouting after he had burnt it down himself. The Ellis Bridge police station is close by but they did nothing. The fire brigade was called and they tried desperately to put out the fire. But Pandya, leading the mob, prevented them. An FIR has been launched against him and BJP MLA Ashok Bhatt. Just outside the Ellis Bridge police station, Haren Pandya was overheard telling the PI, even as Hotel Ellis was aflame, Aah

samaj kayi nathi kartoo. (This community does nothing.) The PI concerned had a special room permanently booked for him at Hotel Ellis". (page-44 of Vol.1)

"There were attacks on 6 housing societies in Paldi, where about 1,000 Muslims live. In all, there are about 5-6,000 Hindus living in this area. Kazmi Apartments, Elite, Delite, Corner 2, Tarana Apartments and Bungalows No. 16 and 24 in Paldi, occupied by the owners of Motimahal, were completely burnt. Eyewitesses testified to seeing the then Gujarat revenue minister, Haren Pandya, leading mobs who then committed arson". (page-48 of Vol. 1)

"Detailed evidence was recorded by us regarding the desecration of the tomb of Wali Gujarati, a renowned poet remembered as the founder of Urdu poetry. On March 1. His tomb, located not more than 10 metres from the office of Ahmedabad's commissioner of police (also the police headquarters) was demolished and a saffron flag hoisted on the site. It is believed that the shrine was torn down by marauding mobs under the directions of Gujarat's revenue minister, Shri Haren Pandya. This flag was removed on the night of March 2. On March 8, a tarred road was constructed at the site, leaving no trace whatsoever of the tomb that had stood there for nearly three centuries. It is shocking that a calious government and an unprincipled administration participated in the utter obliteration of this cultural monument and allowed a road to be constructed over it". (page - 48 of Vol. 2)

"On the night of March 3, a 400-year-old mosque owned by the Wakf Board, and located near Anjali Cinema in Ahmedabad, was broken down in the presence of state ministers Shri Haren Pandya and Shri Amit Shah. As in many other cases, a Hulladiya Hanuman idol was installed there, followed by darshans and artis". (page-49 of Vol.2)

"The Tribunal observes that in Gujarat, many cabinet ministers are simultaneously prominent leaders of the VHP. The home minister, Shri Gordhan Zadaphiya, is one of them. So, too, is the former revenue minister Shri Haren Pandya, a senior VHP functionary. He has been named by many witnesses who appeared before us, as trying to influence police not to take action against the accused. Minister for

forests, Shri Prabhat Singh Chauhan and minister for cottage Industres, Shri Narayan Laloo Patel are also two clear examples of this". (page-52 of Vol.2)

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"Some of the senior BJP leaders and ministers in Shri Modi's cabinet were also alleged to have participated in the destruction of minority places of worship. Minister for revenue, Shri Haren Pandya and health minister, Shri Ashok Bhatt led the mobs enthusiastically in Ahmedabad. Shri Bharat Barot, a sitting MLA, was also at the forefront. Residents of Paldi, from where Shri Pandya was elected, actually saw him lead arson attacks. Shri Pandya's election promise the last time was to wipe any trace of Muslims out of Paldi". (page-77 of Vo1.2)

"One of the most shocking aspects of the Gujarat carnage was that the constituencies of some minister and sitting MLAs were the arena for the worst incidents of carnage. Bapunagar in Ahmedabad, one of the worst affected areas, is the home constituency of the minister of state for home, Shri Gordhan Zadaphiya. Paldi, Ahmedabad is the constituency of Shri Haren Pandya, former state home minister and, until recently, revenue minister in Shri Modi's cabinet". (page-87 of Vol .2)

As regards the deposition of Late Haren Panda before the Concerned Citizens Tribunal, further investigation has established that the meeting convened at CMs 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 and was holding the portfolio of Minister of State for Revenue. Shri Gordhan Zadafia, the then MoS for Home 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 questionable.

As regards the entries made by Shri R.B. Sreekumar at page-21 on 12-06-2002, in a register unauthorisedly maintained by him that the call details of the mobile phone of Late Haren Pandya were handed over to Shri P.K. Mishra, the then Principal Secretary to CM through Shri O.P. Mathur in his office, the same appears to be doubtful as Shri Mathur has denied to have handed over any such call details to Dr. P.K. Mishra in his office and that Principal Secretary to CM never visited the office of the State IB, as stated in the said entry made in the register. Moreover, Shri S.M. Pathak, the then Dy.SP, State IB has confirmed to have conducted secret inquiry about one of the Ministers, which had met a Forum of which Justice Krishna lyer, a retired Judge of Supreme Court and some others were the members, who had come to Ahmedabad to enquire into the riots in the state. Shri Pathak has also confirmed to have conducted secret inquiries, which revealed that Late Haren Pandya had met and deposed before them and that this fact was reported to Shri R.B. Sreekumar orally. However, Shri Pathak has stated that he does not recollect, as to whether he was asked to collect the mobile phone details of Late Haren Pandya or not, which again creates a doubt about the entry made by Shri R.B. Sreekumar in his register. Shri PK. Mishra, the then Principal secretary to CM has stated that he does not recollect, as to whether be asked Shri R.B. Sreekumar to collect the mobile call records of Late Haren Pandya and that no phone call details were made available to him by either Shri Sreekumar or Shri O.P. Mathur. 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 surprising 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 fact that the register maintained by Shri R.B. Sreekumar can not be considered to be an authenticated document, the entries made by him in his said register can not be considered to be reliable**.

Further investigation revealed that Govt. mobile no. 9825039852 was allotted to Late Haren Pandya. The call detail records of the said mobile phone for 27-02-2002 have been sorted out from CD made available by Shri Rahul Sharma, DIG and the same show that Late Haren Pandya remained at Ahmedabad City till 10:46:55 on 27-02-2002. His location at Ahmedabad City again

comes at 16:24:24 hrs and thereafter he remained at Ahmedabad City till 22:52:07 hrs on 27-02-2002 and therefore, this would conclusively establish that Late Haren Pandya did not attend the law & order review meeting that took place at CM's residence at Gandhinagar on 27.02-2002 night.

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In view of the aforesaid position, it appears that Late Haren Pandya had misled the Hon'ble Members of Concerned Citizen Forum namely, Mr. Justice (Retd.) P.B. Sawant and Mr. Justice (Retd.) Hosbet Suresh that he was present in the meeting called by the Chief Minister at his residence on the night of 27-02-2002 with a view to increase his credibility. It has been established beyond doubt that Late Haren Pandya could not have been present in the said meeting and that the so called evidence given by him was only on hearsay basis. Since the statement made by Late Haren Pandya is on hearsay basis, it is not admissible under any provisions of law.

***Observation made by Ld. Amicus Curiae**:*

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

Result of further investigation:

As far as allegation, which suggests that a statement was made by the Chief Minister Shri Narendra Modi on 27.02.2002, in a meeting at his residence instructing the senior officers to allow the Hindus to give vent to their anger is concerned, it is significant that Shri R.B. Sreekumar came on to the scene much afterwards and evidence brought by him is all hearsay. Shri R.B. Sreekumar became Addl. (Int.) only on 09.04.2002 and had not attended the meeting which was held much prior to his joining Ld. Amicus Curiae is of the view that the above statement of Shri R.B. Sreekumar cannot be discarded as hearsay in the light of Section 6 of the Evidence Act. However, the facts suggest otherwise. If there is an interval between the acts of occurrence and the statement made by the person

concerned, it blocks the statements so made from acquiring legitimacy u/s 6 of the Indian Evidence Act.

Keeping in mind the principles of law laid down by the Hon'ble Supreme Court of India in regards to hearsay evidence, it has been found that the evidence given by Shri R.B. Sreekumar neither forms part of the same transaction nor the said statements have been made by Shri Sreekumar at the time of occurrence of the incident or at least immediately thereafter and, therefore are not relevant as per Sec 6 of the Indian Evidence Act. **In the instant case, the so called evidence of Shri R.B. Sreekumar, concerning the events before the riots was his own perception as he had no direct knowledge of the same**.

Shri R.B. Sreekumar has contended that no follow up action was taken on the reports sent by him on 24-04-2002, 15-06-2002, 20-08-2002 & 28-08-2002 about anti-minority stance of the administration. A letter dated 24-04-2002 addressed to ACS (Home) with a copy to DGP contained an analytical note on current communal scenario in Ahmedabad City, which is general in nature and no specific instance has been cited. In brief, it has been mentioned in this note that of late the minority community was found to be taking an increasingly belligerent postures as they felt themselves as a section of population left at a total mercy of radical communal elements of Bajrang Dal and VHP. It was further mentioned chat the Muslim communities being the major victims of the riots developed a major grudge against the Criminal Justice System, which they felt was highly biased. According to Shri Sreekumar certain VHP and Bajrang Pal leaders had started extorting protection money from the businessmen from both the communities and were pressurising the merchants and general public not to employ the members of the minority community. It was further reported that both Hindu and Muslim communities had been inciting violence by way of distribution of pamphlets.

Shri Sreekumar appeared on the scene 40 days after the riots and whatever has been claimed by him has no direct bearing on the facts in issue. Shri Sreekumar had also reported that the inability of Ahmedabad police to control the violence by the communal mob had eroded the image of police as a law enforcing agency of the society and the media attacks on the police had a demoralising impact on the police personnel. It was also pointed out that the Inspectors in charge of the police stations had been ignoring the instructions given by the senior officers and complying with the direct verbal instructions from the political leaders of the ruling party, who ensured their placement and

continuance in their choice postings. He had also suggested the remedial measures such as restoration of faith amongst the minorities in Criminal Justice system replacement of present incumbents from executive posts at the cutting edge level, the spiritual leaders of Hindus and Muslims should launch a state wide campaign to expose the politicised pseudo religious leaders, action at social level through non-political leaders, intellectuals and

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NGOs to restore mutual trust between the Hindus and Muslims, improvement of security in the riot affected areas to facilitate the rehabilitation of riot victims and purposeful legal action against publication and distribution of pamphlets inflaming communal passions etc.

According to Shri Ashok Narayan, the then ACS (Home), this letter contained general observations and concrete details were missing. Shri K. Chakravarthi, the then DGP has stated that most of the points and issues raised by Shri R.B. Sreekumar, had been effectively dealt with by him in March-April/2002. He is also of the view that the observations made by Shri Sreekumar were totally general in nature and no specific instance had been cited by him, which could have called for any immediate action on his part.

Shri R.B. Sreekumar had sent a review report of law & order situation on 15-06-2002, in which he had mentioned about an unprecedented degree of revengefulness of the majority community resulting in massive and ghastly violence against Muslims in a period of five days since Godhra carnage and that the communal violence was still continuing, Shri Sreekumar strongly recommended for the implementation of remedial measures to contain communal violence and neutralizing the fundamentalist element in both majority and minority communities as suggested in his analytical nore dated 24-04-2002. This law & order assessment report was called for in view of Rath-Yatra, which was likely to be held sometime in July 2002. In this report, Shri Sreekumar had expressed the view that on various grounds mentioned by him, the Rath-Yatra should not be taken out in near future till an atmosphere of durable peace and goodwill between the majority and minority communities was established. Shri Ashok Narayan the then ACS

(Home) has stated that the administration did not agree with the views of Shri Sreekumar and the Rath-Yatra was taken on 12-07-2002, under police bandobast and no untoward incident took place anywhere.

Shri R.B. Sreekumar has further stated that he had sent another report on the then prevailing law & order situation vide his letter dated 20-08-2002. According to Shri Sreekumar, even at the time this letter was sent, the communal tension continued and the communal gap between Hindus and Muslims had widened to an unprecedented degree. It was further mentioned that there was latent communal tension in most of the places where incidents were reported and that any minor issue involving members of minority and majority community would reignite communal passions resulting in clashes, as had been witnessed in Dhoraji (Rajkot District) on 17-08-2002. It was further mentioned by Shri Sreekumar that large sections of the minorities being the major victims of the recent riots were still to develop adequate faith in Administration, Police Department and Criminal Justice System. This letter was replied by Shri Ashok Narayan, the then ACS (Home) on 09-09-2002, in which he had clearly informed Shri Sreekumar that his assessment of law & order situation was not in tune with the feedback received from other agencies. Shri Ashok Narayan further mentioned that some apprehension and a feeling of insecurity amongst the members of the minority community was understandable in isolated pockets from where incidents were reported, but the same do not indicate the feelings of insecurity anymore. Shri Ashok Narayan has also mentioned that Dhoraji's incident was an isolated incident and that communal incidents had come down drastically during the last few months. **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**.

Shri R.B. Sreekumar had sent another report regarding the emerging law & order vide his letter dated 28-08-2002. In this letter, he had assessed that the social relations between the Hindus and Muslims remained highly strained including the traditional communal pockets as well as new areas where the riots had taken place, due to various reasons. Shri Sreekumar had suggested that District Magistrates/Commissioners of Police/Superintendent of Police be suitably advised to ensure that the organizers of the public function/political campaign should avoid projecting communal issues that might widen the rift between the two communities and also to abide by the conditions of the license/ permission granted to them. Shri K. Chakravarthi has stated that Shri R.B. Sreekumar had given same suggestions and most of it pertained to the Revenue Department and other departments. **As far as police**

department was concerned, he (Shri Chakravarthi) had given directions based on his suggestions.

In view of the aforesaid position, it cannot be said that no action was taken by the Govt. on the assessment of situation made by Shri R.B. Sreekumar. Of course, there was difference of opinion between Shri R.B. Sreekumar and the Home Department on certain issues. However, the fact remains that Shri Sreekumar appeared on the scene 40 days after the riots and remained

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posted as Addl. DG (In1.) for a little more that five months, and therefore, whatever has been claimed by him has no direct bearing the issue i.e. events of 27/28-02-2002 or subsequently in March 2002.

> ***Observation made by Ld. Amicus Curiae**:*

***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 inspire 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**.*

Result of further investigation:-

Further investigation revealed that Shri Narendra Modi, Chief Minister arrived at Godhra by helicopter around 1645 hrs and was accompanied by Shri Anil Mukim, the then Secretary to CM. He as received at the helipad by Smt. Jayanti Ravi and Shri Ashok Bhatt and he **straightaway drove to the Godhra Railway Station. CM inspected the spot and talked to some of the persons gathered there. From Godhra Railway Station, he went to Civil Hospital and saw the persons injured in the Sabarmati Express train burning incident. Since, curfew had been imposed in Godhra town, the Chief Minister**

then proceeded to Collectorate and held a meeting with the Ministers present there, namely Shri Ashok Bhatt, the then Health Minister, Shri Gordhan Zadafia, the then MoS (Home), Shri Bhupendra Lakhawala, the then MoS (Civil Defence), Shri Prabhatsinh Chauhan, the then MoS for Aviation & Pilgrimage and Shri Bhupendrasinh Solanki, the then MP, Godhra, Collector & District Magistrate, Police Officers and Railway Officers. The Chief Minister had also met the Press thereafter. Smt. Jayanti Ravi has stated to SIT that in the meeting held at Collectorate, 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 these deceased passengers were heading towards Ahmedabad in Sabarmati Express. 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 and Shri Jaydeep Patel, who was present at Collectorate, was to accompany these dead bodies to Ahmedabad.

Further investigation revealed that Shri M.L. Nalvaya, the then Mamlatdar & Executive Magistrate prepared a letter addressed to Dr. Jaydeep Patel of VHP, in which he had mentioned that 54 dead bodies were being sent through five trucks as detailed below:

Sr. No.	**Truck No**	**No. of Dead Bodies carried**
1.	GJ-17-5055	12
2.	GJ-17-T-7557	15
3.	GJ-17-X-3225	03
4.	GJ-16-T-9253	12
5.	GJ-17-T-7327 (TATA 608 tempo)	12

Shri Hasmukh T. Patel of VHP had acknowledged the receipt of dead bodies. It may be mentioned here that the handing over of the

bead bodies to their legal heirs/guardians was the duty of the railway police, which had registered a case in connection with this incident.

On his further examination Shri Nalvaya has stated that these dead bodies were handed over officially to Shri Jaydeep Patel and Shri Hasmukh T. Patel of VHP as per the instructions given by Smt. Jayanti S. Ravi, District Magistrate, Godhra and Late B.M. Damor, ADM, Godhra. Shri M.L Nalvaya has filed an affidavit, before Nanavati Commission of Inquiry to this

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effect on 05-09-2002. However, Smt. Jayanti Ravi has stated that no such instructions were given to Shri Nalvaya to hand over the dead bodies to Shri Jaydeep Patel or Shri Hasmukh T. Patel of VHP and that Shri Jaydeep Patel was merely to accompany the dead bodies to Ahmedabad.

Shri Jaydeep Patel visited Godhra on 27-02-2002 and was present at the Collectorate. Further investigation revealed that as per the call detail records of mobile phone no. 9825023887 of Shri Jaydeep Patel, he reached Godhra on 27-02-2002 around 1248 hrs and remained there till 2358 hrs. At Godhra, he had made/received calls to/from Shri Gordhan Zadafia at the latter's mobile phone no. 9825049145. All these calls had been made/received between 2003 hrs and 2113 hrs. It is, therefore, quite possible that Shri Gordhan Zadafia, the then MoS (Home), might have instructed the police authorities to allow Shri Jaydeep Patel to accompany the dead bodies. The aforesaid call detail records establish that Shri Jaydeep Patel remained at Godhra till about 2358 hrs on 27-02-2002.

Shri Jaydeep Patel has stated that he did not meet Shri Narendra Modi, Chief Minister. Since most of the persons, who had died in Godhra carnage were the karsevaks of Vishwa Hindu Parishad, he met some local administrative and police officials, whose names he could not recollect at this stage, and requested them to hand over the dead bodies of the Karsevaks to him for onward transportation to Ahmedabad. The district officials accede to his request and accordingly a letter was prepared by Mamlatdar and Executive Magistrate, Godhra in his name specifying the details of the dead-bodies and the number of trucks in the same. Shri Hasmukh T. Patel of VHP, who had accompanied him, acknowledge the

receipt of these dead-bodies as per his signature appering on the list. It may be mentioned here that 58 persons had dies in this incident out of which 4 persons were identified at Godhra railway station itself by their relatives. The dead-bodies of these four persons were handed over to their relatives after identification. Five trucks were arranged by the district administration for the transportation of the dead bodies. Shri Jaydeep Patel has stated to have met the lady collector of Godhra around 23.30 or 24.00 hours. A police escort had accompanied the dead bodies from Godhra and on the way to Ahmedabad the escorts from the concerned districts joined. The convoy reached Sola Civil Hospital, Sola, Ahmedabad between 0330 hours to 04.00 hours on 28.02.2002. At Sola Civil Hospital, a lady doctor, PI Shri Lathia of Sola Police station, Shri Prajapati, Deputy Collector, Collector and Mamlatdar were present. There were several other administrative and police officials present there, whose names he does not recollect. He handed over the letter to Shri Prajapati, Deputy Collector. Thereafter, the police and administrative officials got busy with the preparation of panchnama and other papers.

Further investigation revealed that the relatives of the persons, who had died in the Godhra carnage, were also present in the hospital. Accordingly, 35 persons were identified and their dead bodies handed over to their relatives by about 1300 hrs on 28-02-2002 by the police after obtaining the receipts from them. It may be mentioned here that 25 dead bodies were claimed by the residents of Ahmedabad, two (2) by the residents of Kadi, Mehsana, five (5) by the residents of Anand, two (2) by the residents of Khedbramha, Sabarkantha and one (1) from Rajkot. The photographs and DNA samples of the remaining unidentified 19 dead bodies were taken by the hospital authorities. These 19 unidentified dead bodies were cremated on 28-02-2002 evening, at Gota cremation ground nearer to the Sola Civil Hospital by the District Administrative and Police officers with the help of Surpanch of Gota village. The cremation was completed by about 1830 hrs on 28-02-2002.

Shri Narendra Modi, Chief Minister had earlier stated that Shri Jaydeep Patel, the then VHP General Secretary was known to him. However, he does not remember to have met him at Godhra. According to Shri Modi, 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.

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 and there was no one on the highway at that point of time in the night to see them. Further, though a letter had been addressed by Shri M. L. Nalvaya in the name of Shri Jaydeep Patel of VHP and the dead bodies were acknowledged by Shri Hasmukh T. Patel of VHP, yet the dead bodies were escorted by the police upto Sola Civil Hospital, Ahmedabad situated on the outskirts of Ahmedabad City. At Sola Civil Hospital, Shri Jaydeep 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. Subsequently, 35 dead bodies were handed over to the legal heirs/guardians of the deceased by

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the police after preparing the panchnama and documentation. The 19 unidentified dead bodies were cremated on the same evening by the local administration and police authorities at Gota cremation ground nearby with the help of Sarpanch of Gota village after retaining their DNA samples. Subsequently, 12 dead bodies could be identified after conducting DNA tests, while the remaining seven (7) remained unidentified.

The above facts would go to establish that though a letter had been addressed by Mamalatdar, 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 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 properly, and therefore, the Govt. of Gujarat is being requested to initiate departmental proceedings against him.

- ***Observations made by Ld. Amicus Curiae:***

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. Infact, 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 CM and told him about the situation at Gulberg and other places.

SIT merely relied upon the statement of the police officers to conclude that these 2 Ministers did not give any instructions to Police department, but it appears highly unlively that 2 Cabinet Ministers of the Government of Gujarat would have not given some kind of directions when CM had directed them to remain present.

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 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.

Result of further investigation:

Further investigation has been conducted into the allegation relating to the. positioning of Shri I.K. Jadeja, the then Urban Development Minister in the State Police Control Room, DGP's office and Late Ashok Bhatt, the then Health Minister in the Ahmedabad City Police Control Room.

Shri K. Chakravarthi, the then DGP has stated during further investigation that Shri Ashok Narayan, ACS (Home) informed him that it was decided by the Govt. that Shri I.K. Jadeja, the then Minister would be in his office to secure some information about the law & order situation in the State as State Control Room is situated in DGP's office. Shri Ashok Narayan had further informed him that Late Ashok Bhatt another Minister would sit in Ahmedabad City Police Control Room. Shri Chakravarthi has further stated that he had his own reservations in this matter and, therefore, he advised the ACS (Home) that it would be better, if these Ministers got the information from the Control Room in the Home

Department. However, Shri Ashok Narayan informed him that no such facility was available with him in the Home Department and, therefore, the two Ministers would come to the respective Control Rooms.

According to Shri Chakravarthi, Shri I.K, Jadeja, the then Minister came to his office in the forenoon of 28-02-2002 and sat in his chamber for about 15-20 minutes. Shri Chakravarthi could not attend to him, as he was awfully busy with the telephone calls being received by him from all over the State. According to his recollection, he had asked someone to shift the Minister

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to an empty chamber in his office and this was done. He has also stated that he was not aware as to what Shri Jadeja did while he was in the DGP's office as he was extremely busy with his work on that day as rioting was taking place at many locations. Later, Shri Chakravarthi came to know that Shri Jadeja had left his office. Shri Chakravarthi has categorically stated that his enquiries with the staff of the State Control Room had revealed that Shri Jadeja did not interfere with the functioning of the Control Room in any manner.

Shri P.C. Pande, the then CP, Ahmedabad City has stated that it was incorrect to say that Shri Ashok Bhatt, the then Health Minister remained stationed at Shahibaug Control Room on 28-02-2002 to guide the police force in controlling the law & order situation. He specifically asserted that Shri Bhatt did not visit CP's office Control Room on 28-02-2002. He has further stated that Shri George Fernandes, the then Union Defence Minister arrived at Ahmedabad on 28-02-2002 night. Shri Fernandes reached CP's office on 01-03-2002 around 1000 or 1030 hrs and asked Shri Pande about the deployment of Army, to which the latter said that he would check up the same from the Control Room. Both of them went to the Control Room downstairs. According to Shri Pande, Shri Ashok Bhatt, who had been waiting for Shri Fernandes in the Circuit House, also came to CP's office to meet Shri Fernandes and entered the Control Room. Shri Pande has also stated that Shri Fernandes and Shri Ashok Bhatt remained in the Control Room for about ten minutes and then left CP's office. According to Shri Pande, during this visit to the Control Room, some of the press and media persons were also present and as such it was somehow made to appear that Shri Ashok Bhatt had

come to monitor the Control Room. Finally, Shri Pande has stated that Shri Ashok Bhatt was never deputed to Shahibaug Police Control Room to assist the police.

According to Shri Ashok Narayan, he does not recall any instructions given by the Chief Minister, which were conveyed by him either to the DGP or CP, Ahmedabad City to the effect that Shri Ashok Bhatt and Shri I.K.Jadeja would sit in the Ahmedabad City Police Control Room, Shahibaug and State Control Room, Gandhinagar respectively to assist/help the police.

Shri I.K. Jadeja, the then Urban Development Minister has stated that it was an established norm in Gujarat State that in case of any natural calamities or serious law & order situation the Ministers of various departments extend their help in handling the crisis. According to his recollection on 28-02-2002, he had volunteered himself, if he could be of any help in the prevalent situation, to which Shri Gordhan Zadafia, the then MoS (Home) had told him to remain present in the Police Bhavan and to see that in case any information was received in the State Control Room about any rioting incident and any information was received seeking extra police force, then the same should be passed on to the Home Department. Consequent to these instructions, he went to DGP's office around 1100 hrs and stayed there for 2-3 hours. He has stated to have interacted with the DGP and informed him that if and when his help was required he could ask him. He has denied to have entered the State Police Control Room and has stated that there was no question of any interference. However, Shri Gordhan Zadafia, the then MoS (Home) has denied to have any given any suggestion to Shri I.K. Jadeja. He has further stated to have visited the DGP's office on the next one or two days also, but stayed there for few minutes only. He has also stated that the DGP had not shared any information with him and therefore, he left Police Bhavan in few minutes on both these occasions.

Late Ashok Bhatt had earlier stated that he might have visited Ahmedabad City Control Room for about 5-10 minutes on 28-02-2002. However, he has denied to have interfered with the police work, as being a senior minister he had to maintain his dignity and status. Again on 01-03-2002, he admitted to have visited the Shahibaug Control Room for about 10 minutes to meet Shri George Fernandes, who had gone to CP's office. The call detail records of mobile phone no. 9825039877 of Late Ashok Bhatt show that he returned from Godhra to Ahmedabad on 28-02-2002, at about 05:16:51 hrs. Thereafter, the call details do not show its location till 15:50:43 hrs on 28-02-2002, when the location was traced

to Kaba Circle, Gandhinagar. During this period, it is presumed that he was at Gandhinagar. His location on 28-02-2002 at 16:16:37 hrs to 17:47:22 hrs was shown as Shahibaug Kedar Tower, Ahmedabad City, which would conclusively prove that during this period he attended CM's press conference at Circuit House Annexe, Shahibaug, Ahmedabad City. Thereafter, again the location was seen at 17:59:22 hrs at Koba Circle, Gandhinagar, which shows that he was returning to Gandhinagar. These call details would go to show that he did not visit Shahibaug Police Control Room on 28-02-2002.

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Shri Sanjiv Bhatt, the then DC (Int.) has stated that he had attended a meeting at CM's residence on 28-02-2002 along with the DGP and ADGP (Int.). After the meeting, he returned to his chamber on the second floor of Police Bhavan at about 1100 hrs and shortly thereafter went to meet the DGP on the first floor of the same building. When he entered DGP's chamber he found that as instructed after the conclusion of CM's meeting, two Cabinet Ministers of Gujarat, namely, Shri Ashok Bhatt and Shri I.K. Jadeja had already arrived and were sitting on a sofa-set in DGP's chamber. He further stated that Shri G.C. Raiger, the then Addl. DG (Int.) and Shri Maniram, the then Addl. DG (Law & order) were also present there. Shri Sanjiv Bhatt briefed DGP and after taking tea, he returned to his chamber. Shortly thereafter, Shri Sanjiv Bhatt happened to go to State Control Room on first floor to collect some documents and saw Shri I.K. Jadeja and his supporting staff sitting in the chamber of Dy.SP, Control Room. Finding this a little odd, Shri Sanjiv Bhatt went to DGP and informed him that it would be improper to permit outsiders in the State Control Room and asked him whether the Minister and his supporting staff could be shifted from the State Control Room. DGP agreed with him and thereafter, Shri Sanjiv Bhatt again went to Control Room and requested Shri I.K. Jadeja to accompany him as his presence in the Control Room would hamper the smooth functioning of the State Control Room, during such a critical period, whereupon the latter got up and followed him. According to Shri Sanjiv Bhatt, he took Shri Jadeja, Minister to the chamber of Shri P.C. Thakur, the then IGP, which was empty at that time and requested him to make himself comfortable and contact them for any assistance/requirement. Shri Chakravarthi was informed about it. Shri Sanjiv Bhatt has also stated that subsequently he

learnt that Shri Jadeja left the Police Bhavan sometime in the afternoon, after having lunch. Shri Sanjiv Bhatt is not aware about the visit of Shri Jadeja in the Police Bhavan on the subsequent days.

During further investigation, Shri Nissar Mohammad Malik, the then PSI, who was on duty in the Police Control Room, Ahmedabad City from 28-02-2002 at 0800 hrs to 02-03-2002 at 0800 hrs, has stated that Shri George Fernandes, the then Union Defence Minister and Shri Harin Pathak, the then MoS for Defence had come to Police Control Room, Ahmedabad City at 1005 hrs on 01-03-2002, and left at 1025 hrs. He has confirmed the wireless message in this regards to be under his signature. He has denied knowledge about the visit of Late Ashok Bhatt, the then Health Minister to the Police Control Room either on 28-02-2002 or 01-03-2002. Shri. V.R. Patel, the then PSI has also denied the visit of Late Ashok Bhatt, the then Health Minister to the Police Control Room either on 28-02-2002 or 01-03-2002.

Shri V.R. Patel, the then PSI has also denied the visit of Late Ashok Bhatt, the then Health Minister to the Ahmedabad City Police Control Room either on 28-02-2002 or 01-03-2002.

Shri Parbatsinh A. Dholetar, the then PSI, Ahmedabad City Police Control Room, who was on duty on 28-02-2002 from 0800 hrs to 1200 hrs and 2000 hrs to 2400 hrs, has denied the visit of any Minister to the Police Control Room.

Shri Maganbhai M. Limbachia, the then PI, who was on duty from 0800 hrs to 2000 hrs on 01-03-2002 in State Police Control Room, Police Bhavan Gandhinagar, has denied the visit of any Minister in the Control Room.

It may thus be seen that Shri K. Chakravarthi has categorically stated that Shri I.K. Jadeja did visit his office, but did not go to the State Control Room and he was made to sit in an empty chamber. Shri I.K. Jadeja himself has confirmed that he was shifted to an empty chamber near DGP's chamber and that DGP did not share any information with him. Shri K. Chakravarthi, the then DGP has confirmed that Shri Jadeja did not interfere with their work.

Shri I.K. Jadeja has taken the plea that it is an established practice in Gujarat State that in case of any natural calamities or serious law & order situation the Ministers of the various departments extend their help in handling the crisis. Late Ashok Bhatt had admitted earlier that he might have visited Ahmedabad City Police Control Room on 28-02-2002 for a few minutes, but the

call detail records of his official mobile phone show his location at Shahibaug Kedar Tower between 16:16:37 and 17:47:22 on 28-02-2002, when he attended CM's press conference. This would conclusively prove that he did not visit the Police Control Room on 28-02-2002. Moreover, the officials of Ahmedabad City Police Control Room have denied that Late Ashok Bhatt ever visited the said Control Room either on 28-02-2002 or 01-03-2002. In view of the aforesaid position, it is established that Shri I.K. Jadeja did visit DGP's office, but did not enter the State Control Room or interfere with the working of the police and the DGP also did

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not share any information with him. However, it could not be established that Late Ashok Bhatt visited Ahmedabad City Police Control Room either on 28-02-2002 or 01-03-2002. As per his own admission he might have visited the Control Room for a few minutes on 28-02-2002 and/or 01-03-2002. 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, Shri I.K. 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 Batt'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 Minister IO Police officials, it can not be said at this stage that they conspired in the preparation of riots or did not take any action to control the riots.

Observation made by Ld. Amicus Curiae:

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.

Result of further investigation:

Further investigation conducted about the role played by Shri P.C. Pande, the then Commissioner of Police, Ahmedabad City revealed that on 27-02-2002, Shri Pande remained in the office till late in the night as well as in the early hours of 28-2-2002. During this period, he had informally discussed the law & order situation and the arrangements to be made on 28-2-2002, with Shri Shivanand Jha, the then Addl. CP, Sector-1 and Shri M.K. Tondon, the then Jt. CP, Sector-II. On 28-2-2002, Shri Pande came to office around 08:00 hrs. After sometime, he came to know that the dead bodies of victims of Godhra incident had been brought to Sola Civil Hospital and that some kind of dispute/altercation was going on and the atmosphere was tense at Sola Civil Hospital. Accordingly, Shri P.C. Pande went to Sola Civil Hospital around 10:00 hrs and found that the doctors were under pressure to complete the documentation whereas the relatives of the victims were in a hurry to take the dead bodies. However, Shri Pande did not find anything alarming and, therefore, returned to his office at about 11:00 hrs.

On the way, he found that the mobs had assembled at many places in large numbers, but they were not violent and most of them being spectators. While Shri Pande sat in his office, the reports started pouring in from all parts of the city about stone pelting, arson, looting and damaging of properties. He does not exactly remember, but whenever any information came to him about any incident or any distress call was received from any individual the same was promptly attended and the information immediately passed on to the concerned officer with instructions to attend to it on priority basis. The Control Room was flooded with numerous calls for help and as such with the available force it was not possible to effectively deal with all the situations. It may be mentioned here that on that day many distress calls had been received from Police Station areas like Satellite, Navrangpura, Ellisbridge, Bapunangar, Amraiwadi, Meghaninagar, Naroda and Odhav, which had comparatively faced lesser communal problems in the past. A few calls had been received from walled city as well namely Shahpur in particular, but the extent of damage was much less. Keeping in view the gravity of the situation curfew was declared in many parts of the city from 1220 hrs onwards.

As far as Shri P.C. Pande recollects, he had instructed Shri M.K. Tandon, the then Jt. CP, Sector II on 28-2-2002 forenoon, to go to Meghaninagar as some calls of crowd gathering and stone pelting etc were being received in the Control Room Meghaninagar P.S. area. He has stated

that he did not know Late Ahesan Jafri, Ex-MP personally and also did not have knowledge that he was residing in Gulberg society till 28-02-2002 afternoon.

Shri P.C. Pande had earlier stated that Shri M.K. Tandon, Jt. CP, Sector-II had reached Naroda Patiya around 12:30 hours and had Spoken to him over mobile phone that the situation was alarming and recommended that curfew should be declared in the Naroda P.S. area. He concurred with the advice of Shri Tandon and curfew was declared in Naroda P.S. area at about 12:30 hrs. Shri Pande has also stated that Ahmedabad City was totally disturbed and communication as well as transport system had come to standstill. According to Shri Pande, the additional force wherever sent was unable to reach in time because the roads had been

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blocked/obstructed by the rioters by putting different kind of obstacles and large crowds had collected making movement difficult.

On 28-2-2002 at about 12:20 hrs, a message was sent by PI Meghaninagar P.S. in the Control Room that Gulberg society in Meghaninagar area which is a Muslim society had been surrounded by a mob of 10,000, which was pelting stones and also setting fire to shops nearby and rickshaws. He requested for additional officers police personnel and SRP immediately. On receipt of this message, Shri P.C. Pande deputed three officers namely Shri G.D. Solanki, Dy. SP, Group-VII, Shri Ajitkumar Gupta, Dy. SP, Group-XII and Shri A.B. Qureshi, PI, CID Crime to go to Gulberg society for the assistance of PI Meghaninagar. At about 13:45 hrs. one section of CISF was also sent to Gulberg society, Meghaninagar. At 1405 hrs., Shri M.K. Tondon, Jt. CP, Sector-II sent a message to the Police Control Room that Late Ahesan Jafri Ex-MP and others had been surrounded by the mob in Gulberg society and extra force and PI, Sardarnagar be sent there to shift them. At 14:14 hrs, another message was sent by Senior PI Erda, Meghaninagar P.S. in the Police Central Room that a mob of about 10,000 persons had gathered at Gulberg society/Kalapinagar and was about to set fire to the entire society and as such ACP, DCP along with additional force be sent immediately. At 14:45 hrs, Shri K.G. Erda, Sr.PI Meghaninagar sent another message to the Control Room that in the Gulberg society in Meghaninagar area,

the Muslims had been surrounded by a mob of 10,000 persons from all the sides and even the police force had also been surrounded and that the mob was about to set fire to the society. Shri Erda requested for additional SRP and police force to be sent as the situation was critical. Since, two Dy. SsP, One PI and one section of CISF had already been sent to Gulberg society, no additional force was sent as nothing was available as reserves. Shri Pande contacted Shri P.B. Gondia, the then DCP, Zone-IV at 15:16 hrs and told him that Muslims were being burnt in the Gulberg Society and that he should reach there immediately. However, Shri Gondia reached Gulberg Society only at 1605 hrs. At about 15:45 hrs, Shri M.K. Tandon, the then Jt. CP, Sector-II though fully aware of the situation at Gulberg Society sent a message to Ahmedabad City Police Control Room asking as to whether there was any incident relating to loss of life at Gulberg society at Meghaninagar and thereof a detailed report be sent to him. No other information was available with the Control Room at that time. Shri Pande has also stated that Shri K. Chakravarthi, the then DGP had also informed him that a mob had surrounded the Gulberg Society and that reinforcements should be sent there, to which he had informed him that extra force and officers had already been sent to Gulberg Society in Meghaninagar P.S. area. However, Shri Pande has claimed that he did not know as to when the additional police force sent by him had actually reached Gulberg Society. He has stated that he had come to know about the incident at Gulberg Society sometime in the evening and as such personally visited the society sometime between 19:00 hrs to 19:30 hrs. Shri Pande found that the houses were ransacked and belongings set on fire and some wooden articles/furniture etc. was still smoldering. According to Shri Pande, since the Jt. CP had already shifted most of the inmates of the society in vans to safer places, he gave instructions to the Sr. PI and other staff present over there to go ahead with the inquest and send the dead bodies for post-mortem examination. He returned to office thereafter.

As per Shri Pande, Late Ahesan Jafri, Ex-MP did not contact him either on his landline phone or mobile phone on 28-2-2002, seeking help. No one else from Gulberg society contacted him either on his landline or mobile phone seeking help on 28-2-2002. The call detail records of official mobile phone no. 98250 48303 of Shri Pande have been scrutinised and the same does not show any call from the landline no. 2125166 of Late Ahesan Jafri, Ex-MP. Shri Pande has further stated that as per his information, Late Ahesan Jafri, Ex-MP did not have any mobile phone and there was no other landline in Gulberg Society.

Shri Pande has added that on 28-2-2002, requests were received from different police stations areas seeking additional force/SRP and whatever resources were available with him, the same were dispatched to them. However, he found that no feedback had been received from anyone of them. This led him to presume that the additional force reached them in time and that they were able to control the situation. Shri Pande is also of the view that similar was the case of Gulberg Society where initially three officers, two Dy. SsP and one Pl and subsequently one section of CISF was sent by him.

Shri Pande also stated that on 28-2-2002 around 2 o'clock in the afternoon, he heard a noise outside the CP's office. He immediately checked and found that a dargah adjoining CP office had been attacked by a mob. Since, there was no other force available with him, he

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personally came down and went to the spot along with his gunman. He has claimed to have dispersed the mob almost single handedly and waited there for sometime to ensure that the mob did not re-assemble. By this timely action, the dargah could be saved from the rioters.

Shri P .C. Pande has stated that the circumstances did not exist on 27-2-2002 or even 28-2-2002 to variant the imposition of curfew, in Ahmedabad City and any hasty action would have led to the panic in the city. He has further stated that even otherwise with limited force available enforcement of curfew poses serious problems and large scale breach becomes common. According to Shri Pande, as and when the sector commanders reported over phone about the seriousness of the situation at any place, he immediately concurred over telephone and ordered for the imposition as well as enforcement of the curfew. As per Shri Pande, almost the whole of the city was under curfew by noon time. In view of this, there does not seem to be any deliberate and gross negligence on his part.

Shri Nisar Mohd. Malik, the then PSI, Police Control Room, Ahmedabad City, who was on Police Control Room duty from 0800 hrs on 28-02-2002 to 0800 hrs on 02-03-2002, has stated that he was not aware or any communications of Shri P. C. Pande, the then CP, Shri M. K. Tandon, the then Jt. CP, Sector-II Shri Shivanand Jha, the then Addl. CP,

Sector-I or any other officer on 28-02-2002 and 01-03-2002, which might have suggested/instructed for inaction on the part of police while dealing with the Hindu rioters. He has further stated that the instructions/messages of the senior officers, which were passed through Ahmedabad City Police Control Room, were for taking all the required measures to control the riots and prevent any untoward incident. Shri Malik has also stated that Shri P.C. Pande, the then CP had visited the Police Control Room and passed on the instructions personally to the jurisdictional officers to use effective force and control the riots. He does not remember the exact date and time of the said message passed on by Shri Pande, but had noted down the said instructions in the message register of PCR, Ahmedabad City. He has also stated that as and when CP was made aware of messages regarding law & order situation, he had passed necessary instructions such as imposition of curfew and deployment of manpower. Shri Malik has denied the visit of Late Ashok Bhatt, the then Health Minister to the Control Room.

Shri V.R. Patel another PSI, who was on duty in Ahmedabad City Police Control Room from 0800 hrs on 28-02-2002 to 0800 hrs on 02-03-2002 has fully corroborated the statement of Shri Nissarmohmad Malik, the then PSI.

Shri Shivanand Jha, the then Addl. CP. Sector-l, Ahmedabad City had stated that there were no instructions from any of the senior officers not to act or to allow the Hindus to vent their anger.

Shri M.K. Tandon, the then Jt. CP, Sector-II had also stated that no such instructions were given by any of the senior officers to allow the Hindus to vent their anger against Muslims in the light of Godhra carnage and that the police should not act against them. Shri Tondon has further stated that on the contrary the instructions were given to deal with the situation firmly.

Shri Pande has explained that the mobs had swelled to such an extent that they openly defied the curfew orders and as and when they were challenged by the police, they hid themselves in the lanes and after the police left they regrouped. He is also of the considered opinion that this had happened due to the inadequate number of policeman on duty and those present could not leave the places where they were deputed. He stated that the police force was engaged in a particular area, the mobs concentrated on other areas. Similarly, the fire tenders sent to Gulberg society and Naroda could not reach there in time due to obstacles put on by the rioters resulting in loss of life and property in these areas. He has also mentioned that the

Meghaninagar and Naroda P.S. had never been communally sensitive in the past and as such the attacks in Naroda Patiya and Gulberg society were beyond their expectations. In view of the aforesaid position, the allegation that Shri Pande did not take adequate actions to control the situation at Gulberg Society is not established.

Observation made by Ld. Amicus Curiae:

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 as certain approach. The statement made by Shri Modi cannot be seen in isolation. It has to

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be seen in conjunction with other facts mentioned hereinabove which provides sufficient justification for a detailed investigation in the matter.

Result of further investigation:

During further investigation, a requisition was sent to the Zee TV to make available a copy of the CD of a television interview of Shri Narendra Modi, Chief Minister, Gujarat conducted by their correspondent Shri Sudhir Chaudhary on 01.03.2002. Despite two reminders and a notice u/s 91 Cr.P.C. sent to them, the CD has not been made available.

Shri Sudhir Chaudhary has stated that he attended a press conference held by Shri Narendra Modi on 01-03-2002, at a Circuit House on the outskirts of Gandhinagar. He has further stated that Shri Narendra Modi was known to him and that he had interviewed him earlier several times in Delhi. Shri Sudhir Chaudhary has stated to have requested Shri Narendra Modi for a short interview after the conference to which the latter agreed and as such he was interviewed for about 10 minutes. After going through the Editor's Guild Fact Finding Mission report dated 03.05.2002, Shri Chaudhary has stated

that the same were only a few excerpts from the said interview and that the original CD of the said interview was not before him. As per his recollection, he had questioned Shri Narendra Modi about the Chamanpura massacre (Gulberg Society Case), in which former Congress MP Late Ahesan Jafri had been killed with many others to which the Chief Minister had replied that the mob had reacted on account of private firing done by Late Ahesan Jafri, Ex-MP. After refreshing his memory from the Editor's Guild report, Shri Sudhir Chaudhary has stated that the Chief Minister was of the view that he neither wanted action nor reaction. He has further stated to have questioned the Chief Minister about the wide spread violence post Godhra, the Chief Minister stated as follows:-

> ***"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 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".***

Shri Sudhir Chaudhary has shown his inability to elaborate the same as he has not been able to recollect the exact sequence of events after a span of 9 years and moreover, the CD was not before him.

Shri Narendra Modi had been questioned about the aforesaid interview given to Zee TV on 01.03.2002. He has stated that those who have read the history of Gujarat would definitely be aware that communal violence in Gujarat has a long history and the State had witnessed serious incidents of such communal violence. As regards the Zee TV interview of 01.03.2002 is concerned, Shri Modi has stated that after a period of eight years, he did not recollect the exact words, but he had always appealed only and only for peace. He (Shri Modi) had further stated that he had tried to appeal to the people to shun violence in straight and simple language. He had also stated that if his words cited in this question are considered in the correct perspective, then it would be evident that there is a very earnest appeal for people refraining from any kind of violence. He had denied all the allegations against him in this regard.

Regarding the statement made to the media about post Godhra riots by citing Newton's law that every action has equal and opposite reaction, Shri Narendra Modi had stated that the Times of India had published a news item on 03.03.2002, purportedly as though he had

given an interview to them. According to Shri Modi, the truth is that nobody had met him in this regard. He had further stated that the falsehood of his so-called justification "Action-Reaction Theory" is evident from this fact. According to Shri Modi, the State Govt. issued a denial with regard to his not having given any interview and the same was belatedly published in a remote corner of the newspaper. He had also stated that it had been his considered opinion that violence can not be replied by violence and he had appealed for peace. As per Shri 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.

The recommendations made in Chart 'B' by the Ld. Amicus Curiae vis-a-vis comments of SIT are given below:-

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Chart-'B'

ALLEGATIONS	FINDINGS	OBSERVATIONS
VII: The allegation is that 13 IAS/IPS officers were rewarded for their support during the post Godhra riots.	The finding of the SIT is that there was nothing to indicate that 13 officers had been rewarded with postings for their support to CM. However, the SIT had concluded that the conduct of Shri M.K. Tandon, the then Jt.CP, Sector-Il, Ahmedabad, was not satisfactory and therefore, Departmental Action be taken against them.	**1. As regards, Shri M.K. Tandon, the then Jt. CP, Sector-Il and Shri P.B. Gondia, the then DCP, Zone- IV it does not appear to be a simple case of mere dereliction of duty, section 304A IPC would be squarely attracted in such a case.** **2. In so far as promotion of other IAS and IPS officers are concerned, the view taken by SIT seems to be acceptable.**

IX. The allegation is that the Govt. of Gujarat has been seriously indicted- by this Hon'ble Court due to fresh investigation in *Bilkisbano case* by CBI and retrial of *Best Bakery Case* outside the State of Gujarat.	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. 2. The SIT has recommended that the matter requires to be handled by state of Gujarat to take departmental action for major penalty against Shri K Kumaraswamy, Jt CP, Baroda City and Shri Ramjibhai Pargi, former ACP in light of observation of the Ld Sessions Judge, Greater Bombay. It also recommends setting up of a Committee by Govt. of Gujarat to fix responsibility on the officials.	**1. The investigative agencies let off the accused in *Bilkisbano case.* If the CBI had not stepped in, the accused would have gone unpunished. Similarly, in *Best Bakery case,* it appears that the prosecution was done in a shoddy manner to protect the accused.** **2. The recommendations of the SIT that the Govt. 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 IPC.**

X. The allegation is that the investigations were partial in nature and there was ---  Page: 442 prejudice against the riot victims.	The finding of the SIT is that Supplementary chargesheets have been filed in Gulberg, Society case and Naroda Patiya case, but that by itself cannot be a reason to hold that investigations were conducted in a partial manner.	**The grievance of the Petitioner may not survive after the SIT has conducted** **fresh investigations, but it would be unjust to spare those people who conducted, partisan or negligent investigation. Hence, this issue needs to be addressed. The role of the officials in the Crime Branch, especially DCP, Vanzara and ACP Chudasama needs to be inquired into especially in the light of the statement of Shri Rahul Sharma, DCP, Control Room, Ahmedabad. To that extent the finding of SIT is not acceptable.**

XV. The allegation is that pro VHP lawyers were appointed as Public Prosecutors, which had adverse effect on the trial of the riot accused.	The finding of the SIT is that though the political affiliation of the advocate weighed with the government in their appointment as Public Prosecutors, there is not 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.	**The issue may not though 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.**
XXI & XXII. These allegations relate to inaction against senior police officers as they did not carry out proper investigation of riot related cases, specially the Bilkisbano rape case.	The SIT has stated that the allegations were vague 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 Dahod in the *Bilkisbano* case.	**In so far as Shri Jadeja is concerned, the documents 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.**

XXIII. The allegation is that the CD relating to telephonic calls of BJP leaders and police officers were not looked into by the Investigating Officers Gulberg Society and Naroda Patiya.	The SIT has found that Shri Tarun Barot, the investigating Officer of the case and Shri G.L. 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.	**The Govt. of Gujarat may be directed to take departmental actions against these two officers immediately within a time bound manner.**

XXV: The allegation is that the police at Gulberg ---  Page: 443 Society and Naroda Patiya did not take action and acted as mute spectators to the acts of lawlessness. Real culprits were not arrested and no preventive action was taken.	The SIT has found this allegation to be incorrect.	**1. Shri M.K. Tandon, the then Jt. CP, Sector- II said that he reached Gulberg Society 4.00 pm and ordered CISF firing. It is not clear why CISF could not reach earlier, though it had been sent at 1:45 pm. It is not clear why the other officers, namely G.D. Solanki, Dy.SP etc. could not reach Gulberg Society on time. It appears that nothing was done by the police personnel present at Gulberg Society and Naroda Patiya to dispel the gathering mob. It would appear that the mob was being permitted to gather at these two places. Hence, there is substance in the allegations of police inaction. 2. It is not clear what action was taken by Shri M.T. Rana, the then ACP. 'G' division, who was present at Naroda Patiya to prevent the mishap from happening. This**

		aspect also needs to be looked into.

SPECIFIC RECOMMENDATIONS FOR SIT:-

(i) Shri M. K. Tandon and Shri P.B. Gondia be prosecuted u/s 304A IPC

(ii) 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.

(iii) 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.

(iv) The SIT may examine the role of the prosecuting agency in Best Bakery case and recommend suitable action against those who are responsible.

(v) 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.

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

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

The aforesaid recommendations of the Ld. Amicus Curiae would show that he concurred with the findings of SIT with regard to Allegations No.lX & XXIII. Further, as regards Allegation No. XV, Ld. Amicus Curiae has opined that the issue may not survive because of the intervention of the Hon'ble Supreme Court, whereby Public Prosecutors have been appointed in an independent manner.

The recommendations made by Ld Amicus Curiae in Chart - 'B' have been examined and the comments on the same were as follows:-

SPECIFIC RECOMMENDATIONS FOR SIT:

Observation made by Ld. Amicus Curiae:

Shri M.K. Tondon and Shri P.B. Gondia be prosecuted u/s 304A IPC.

Result of further investigation:

Ld. Amicus Curiae has recommended that Shri M.K.Tandon (the then Joint Commissioner of Police, Ahmedabad city) and Shri P.B Gondia (the then Deputy Commissioner of Police, Ahmadabad City) should be prosecuted u/s 304-A IPC. Role and evidence available on record [after further investigation of three cases (Meghaninagar Police Station I.CR No.67/2002, Naroda Police Station I.CR Nos. 100/2002 & 98/2002)] against Shri Tandon and Shri Gondia was analysed and it was found that the same is not adequate to launch prosecution of the above two officers. For understanding the issue in hand, details of this cases/evidence are given below:

Brief facts :

(I) Meghaninagar P. Stn. I. CR No.67/2002 (Gulberg Society):

A call for Gujarat Bandh on 28.02.2002 was given by VHP, which was supported by ruling-BJP, to protest against the killing of Karsevaks at Godhra Railway Station on 27.02.2002. An unlawful mob of around 20,000 Hindus, armed with deadly weapons attacked shops and houses of Muslims residing in Gulberg Society on 28.02.2002 morning

/afternoon resulting in death of 39 persons and injuries to 15 others. 31 Muslim individuals went missing, Shri Ahesan Jaffri, ex-MP fired in self defence from his private licensed weapon resulting in injuries to 15 persons in the mob, out of which one died later. Police fired 124 rounds to disperse the mob resulting in death of 4 rioters. On the complaint of Police Inspector of Meghaninagar Police Station Shri K. G. Erda, the above case was registered under different sections of IPC relating to unlawful assembly, murder, Bombay Police Act and Arms Act against 11 named individuals and unknown others. After investigation, 11 charge sheets were filed against 71 individuals while 2 persons were arraigned as accused by the trial Court u/s 319 Cr.PC. Recording of prosecution evidence in that Trial Court is over and arguments are continuing.

(II) Naroda Police Station I. CR No. 98/2002 (Naroda Gaam Case) :

During the above-mentioned Bandh on 28.02.2002, an unlawful mob of 5,000 to 7,000 rioters gathered around Naroda Gaam area around 12:00 hours and attacked the houses, shops and vehicles with the inflammable materials killing 8 Muslim individuals; 3 victims went missing. On the complaint of ASI Vala of Naroda Police Station, a case was registered under different sections of IPC and Bombay Police Act. Though only 5 persons were named in the FIR, 86 persons were charge-sheeted in I0 different charge-sheets filed over the years. Presently the trial is going-on.

(III) Naroda Police Station I. CR No. 100/2002 (Naroda Patiya):

In yet another major incident on the above mentioned Bandh day, an unlawful mob of 15,000 to 17,000 attacked the houses of Muslims situated in Hussein-ni Chali, Naroda Patiya and nearby areas between 11:00 hours and 20:00 hours killing 58 Muslim individuals. 15 rounds were fired by the police to control the mob. Later, it was found that total 85 persons were killed including 2 in police firing. On the complaint of PSI V. K. Solanki of Naroda Police station, the above case was registered under different sections of IPC and Bombay

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Police Act against 5 named individuals and unknown others. 70 persons were charge-sheeted in 8 charge-sheets. The case is presently under trail.

Facts/Sequence of events establish during investigation:

Enquiry by Shri A. K. Malhotra, Member, SIT / earlier investigation / further investigation has established the following:

(A) Shri M. K. Tandon was Joint Commissioner of Police, Sector-Il, Ahmedabad City during the relevant period. Sector-Il comprises 3 Zones (Zone-IV, V & VI) and covered 15 police stations including Meghaninagar and Naroda. Certain police stations in his jurisdiction namely, Dariapur, Gomtipur; Rakhial and Bapunagar were traditionally communally sensitive while Meghaninagar and Naroda did not have history of serious communal riots though these also had a few Muslim pockets. Each Zone is headed by a Deputy Commissioner of Police (DCP). Shri P. B. Gondia was posted as DCP Zone-IV, who had jurisdiction over Meghaninagar, Naroda Dariapur, Shahibaug and Sardarnagar Police stations.

(B) Though Shri Tandon had received information regarding Godhra train incident as well as the proposed VHP Bandh on 28.02.2002 on the morning of 27.02.2002 itself, he did not held any formal meeting with DCsP/SHOs or chalked out any plan to handle the law and order situation on the coming day. In fact, no major preventive police action was taken. Similarly, no meeting of SHOs/chalking out of law and order plan was done by Shri P. B.Gondia, DCP.

(C) Shri Tandon was allotted 1 Coy of State Reserve Police (SRP) for the Bandh day, which was distributed among 3 DCsP (1 Platoon each). During his movements on 28.02.2002. Shri Tandon was having a Striking Force comprising 2 Police Sub-Inspectors and a few armed men in 2 vehicles.

(D) In the morning of 28.02.2002, Shri M. K. Tandon left for Dariapur P.S. as it was considered communally very sensitive. On the way around 1035 hours, he received a wireless message from Assistant Commissioner of Police, 'G' division requesting Police Control Room to send more vehicles to Naroda Patiya area. In view of this message, he changed his route towards Naroda Patiya. En route, he inquired about location of Sr. PI of Meghaninagar P.S. and after having learnt that he had gone to Gulberg Society due to some problem there, he proceeded towards the same and reached there around 1130 hours.

In the meantime, Shri P. B. Gondia, DCP received information regarding trouble at Naroda Patiya/ Naroda Gaam and reached Naroda Patiya at about 1100 hours. Inspector Shri Mysorewala of Naroda P.S,

and ACP Shri M. T. Rana were already there to deal with mob which had gathered in large numbers.

(E) Shri M K. Tandon found a mob of around 1,000 Hindu rioters around Gulberg Society and ordered for bursting of tear gas shells and lathi charge by his Striking Force. Official records suggest that six tear gas shells were fired by the Striking Force attached to Shri Tandon at that time. As a result, the mob got dispersed in the lanes/by-lanes near Gulberg Society. It is believed that Shri Tandon also met late Shri Ahesan Jafri, ex-MP and certain other residents of Gulberg Society who were assured of strengthening the police presence there. Though witnesses claim that Late Ahesan Jafri had met the Commissioner, investigation has revealed that Shri P.C. Pande, the then CP, Ahmedabad City had not visited the Gulberg Society at that time. So most likely, Late Jafri had met Shri M. K. Tandon, the then Jt. CP, Sector-Il. However, Shri Tandon denies this fact. Around 1150 hours Shri M. K. Tandon left for Naroda Patiya.

(F) On reaching Naroda Patiya area around 1220 hours Shri Tandon found the situation to be very explosive and requested Commissioner of Police for imposition of curfew in Naroda Patiya. The Commissioner of Police, Ahmedabad City agreed with the request made by Shri Tandon and curfew was imposed at 1230 hrs.

(G) Significantly, Shri P. B. Gondia received a massage at 1235 hrs from Sr. PI, Meghaninagar about the grave situation at Gulberg Society where a mob of around 5,000 had reportedly gathered.

(H) Around 1240 hours, Shri M. K. Tandon left Naroda Patiya for Dariapur Police Station area ostensibly on the ground that it was communally hyper sensitive. Incidentally, Shri Tandon did not take any concrete action, at Naroda Patiya except requesting for imposition of curfew. As per call detail records he was in Bapunagar-Rakhial area between 1241 hrs and 1325 hrs. Further, he remained in Dariapur and Kalupur Police Stations area between 1351 hours and 1542 hours.

(I) At about 1220 hrs and 1230 hrs, Sr. PI Erda of Meghaninagar P.S. sent alarming messages to Police Control Room about the critical situation at Gulberg Society requesting for reinforcements.

(J) Around 1405 hrs, Shri Tandon sent a message to Control Room to send additional force for shifting Late Ahesan Jafri and others who had been surrounded by a mob in the Gulberg Society. Shri Tandon did not bother to inquire about the latest position till 1545 hrs when he asked Control Room to check-up as to whether there was any incident relating to loss of life in Gulberg Society. By that time, the Society had been set ablaze and lot of lives including that of Late Ahesan Jafri had been lost.

(K) Shri. P. B. Gondia sent Shri V. S. Gohil, IInd Police Inspector, Naroda P.S. to Naroda Gaam around 1300 hrs due to critical situation there. He also ordered police firing in Naroda Patiya area, which resulted in death of 1 Hindu and 1 Muslim miscreant. As per police records, during this period, 48 rounds (22 rounds of 9 mm + 26 rounds of 303) as well as 95 tear gas shells were fired by the Striking Force of Shri P.B. Gondia. He left Naroda Patiya at 14:20 hrs ostensibly to go to Pithadiya Bambha (Dariapur P.S.) in view of some trouble there. (However, in a signed statement made earlier in point of time to Shri A.K Malhotra, Member, SIT during inquiry, he has claimed that he had left for Hotel Moti Manor owned by a Muslim and Rosary School in Shahibaug area, which were being set on fire).

(L) On way to Pithadiya Bambha, Shri P. B. Gondia received instructions from CP Ahmedabad City at 1516 hrs to go to Gulberg Society and he reached there sometime around 1600 hrs. Shri M.K. Tandon arrived at Gulberg Society thereafter and arranged for prisoner vans, ambulances etc. for safe shifting of 150 survivors of Gulberg Society to Shahibaug police station.

(M) Late after the departure of Shri M. K. Tandon, Shri P. B. Gondia, ACP Shri M. T. Rana and PI Shri K. K. Mysorevala from Naroda Patiya area, a major incident of rioting took place between 1800 hrs and 1830 hrs there in which 85 persons were killed and 13 persons went missing. Five VHP activists were named as accused in the FIR.

(N) Shri M. K. Tandon was in touch with certain accused persons of Naroda Patiyal/Naroda Gaam cases. He had received 2 telephone calls on 01.03.2002 at 1137 hrs for 250 seconds and 1256 hrs for 161 seconds from accused in Naroda Patiya case Jaydeep Patel of VHP and 2 calls on 01.03.2002 at 1458 hrs for 32 seconds and 1904 hrs for 61 seconds from accused Dr. Mayaben Kolnani.

(O) Shri P. B. Gondia was also in touch with some accused persons of Naroda Patiya/Naroda Gaam cases. He had received 3 calls on his Mobile phone from Dr. Mayaben Kolnani on 28.02.2002, 01.03.2002 and

02.03.2002 at 1039 hrs, 1339 hrs and 1249 hrs respectively. He had also received 3 calls on 28.02.2002 at 1140 hrs, 1152 hrs and 1220 hrs, 2 calls on 01.03.2002 at 1004 hrs and 1135 hrs and 2 calls on 02.03.2002 at 1156 hrs and 1848 hrs from accused Shri Jaydeep Patel.

Role of Shri M.K. Tondon:

During further investigation efforts were made to ascertain whether Shri M.K. Tandon could be part of the conspiracy of these offences. However, no evidence has come on record to establish that he was a party to criminal conspiracy hatched by the rioters. Normally conspiracy is hatched secretly and only circumstantial evidence is available to establish the same. In case of Shri 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

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Patiya area by the Commissioner of Police, Further, from Naroda Patiya area, he went to Dariapur which was communally very sensitive.

As far as telephonic contact with accused persons namely, Dr. Mayaben Kodnani and Shri Jaydeep Patel is concerned, it has come to light that Dr. Kodnani was MLA from Naroda constituency and Shri Jaydeep Patel was Joint General Secretary, VHP, Ahmedabad Unit. These individuals were interrogated but they expressed inability to recollect the conversations and claimed that the same must be about the prevailing law and order situation. As regards the telephone calls made a day after the offence, from certain local leaders who were later prosecuted in the offence by itself does not make an individual a part of the conspiracy unless the contents of the conversation are known. In view of this. it would not be appropriate to conclude just on the basis of telephone calls that he was part of the conspiracy.

Investigation has revealed that Shri Tandon got the mob dispersed outside Gulberg Society around 1130 hrs. However, he did not take any step to strengthen the hands of Shri K.G. Erda, Sr. Pl by providing him

some additional force as requested by the latter despite the fact that he had assured late Ahesan Jafri and others.

Investigation has revealed that 1 platoon of SRP was allotted to DCP Zone-IV and that had reported at Naroda Patiya at about 1245 hrs and was deployed there. As cremation of 12 Karsevaks who had died on previous day in Godhra train incident was also to take place in Hatkeshwar cremation ground, which was also in the jurisdiction of Shri M.K. Tandon, he had some justification to leave Naroda Patiya for communally hyper sensitive areas in his jurisdiction. Furthermore, DCP Shri P. B. Gondia, along with ACP M T Rana, were already there at Naroda Patiya for handling the situation.

Investigation revealed that Dariapur was traditionally communally hyper sensitive. On the day between 1215 hrs and 2100 hrs, one person had been killed in police firing and one Masjid was heady damaged, besides setting of Lunsawad police post on fire by miscreants. However, records of that period do not reveal any action taken by Shri M. K. Tandon at any of the locations in Dariapur. Further, there is no mention of any firing done at any of the places under his orders. The objective assessment of the situation reveals that Shri 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 if place to mention here that Shri M.K. 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 Ahesan 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. However, it is pitiable to note that he sent a message at 1545 hrs asking there was any loss of life at Gulberg society and if so, a detailed report should be given to him. As Joint Commissioner of Police, he was expected to monitor and keep a track of developments throughout his jurisdiction especially when he had left the locations at Gulberg Society and Naroda Patiya which were by no means peaceful at that time. He left the locations at the mercy of concerned PI (in the case of Gulberg Society) and DCP (in the case of Naroda Patiya) and did not bother to inquire/take corrective actions though, he had come to know of the gravity of the situations.

Role of Shri P. B. Gondia

Investigation revealed that Shri P. B. Gondia had received 3 calls on his Mobile phone from Dr. Mayabern Kodnani on 28.02.2002, 01.03.2002 and 02.03.2002 at 1039 hrs, 1339 hrs and 1249 hrs respectively. He had also received 3 calls on 28.02.2002 at 1140 hrs, 11.52 hrs and 1220 hrs, 2 cal!s on 01.03.2002 at 1004 hrs and 1135 hrs and 2 calls on 02.03.2002 at 1156 hirs and 1848 hrs, from accused Shri Jaydeep Patel. Dr. Mayaben Kodnani, Shri Jaydeep Patel and Shri P. B. Gondia have taken the plea 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 Shri P. B. Gondia is concerned. As Dr. Kodnani was the local MLA and Shri 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 police firing ordered by him. 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 to personally. Furthermore, from Naroda Patiya he went towards Pithadiya Bambha from where some incidents of rioting

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had been reported. In any case, he was instrumental in controlling a riot situation at Moti Manor Hotel and Rosary School on the way.

Investigation has further revealed that he had left Naroda Patiya at 1420 hrs despite the fact that a huge of 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, Shri 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. Shri Tandon has stated that on receipt of a message from Shri K.G. Erda at 1445 hrs that the Gulberg society had been surrounded by a mob and was about the set fire to the same, he had directed Shri PB. Gondia to reach Gulberg society immediately. Though this fact has been mentioned by Shri M K. Tandon in his affidavit filed before the Nanavati Commission in July, 2002, yet he has not been able to explain as to how this direction was given to Shri Gondia as there is no Control Room

message or mobile phone call to Shri Gondia at this point of time. However, Shri Gondia has denied having received any such instructions from Shri Tandon.

As indicated earlier, sufficient evidence has not come on record regarding police involvement of these two police officers in the conspiracy/abetment of the offences. However, 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.

Ld. Amicus Curiae has recommended prosecution of aforesaid two officers u/s 304A IPC. In view of this recommendation, available evidence was analysed to assess whether the inaction on the part of these two officers, was of the nature of Criminal negligence or professional misconduct.

The basic requirements for prosecution under the above section are that the acts (including omission) must be rash or negligent. Here the issue is whether the acts of Shri M.K.Tandon and Shri P.B. Gondia would amount to criminal negligence justifying their prosecution. Their actions need to be seen and analysed in the proper perspective and situation prevalent on that day. The following actions would analyse the role played by Shri M.K. Tandon.

a. In the morning of 28.02.2002 he had left for Dariyapur Police Station (communally hyper-sensitive). On the way at 1035 hrs, he had heard a wireless message of ACP 'G' Division requesting control to send more vehicles to Naroda Patiya. In view of this message, he proceeded towards Naroda Patiya. En-route he asked location of Senior Police Inspector of Meghaninagar Police Station and after having learnt that he was at Gulberg Society, he proceeded there and reached Gulberg Society at about 1130 hrs. At that time, a mob of around 1000 Hindu rioters had gathered there. Shri Tandon had ordered bursting of tear gas shells and lathi charge through his striking force. As a result of this action, the mob was dispersed in the lanes and by-lanes near Gulberg Society.

b. Around 1200 hrs. Shri Tandon left for Naroda Patiya. At 1220 hrs he had made a phone call to Commissioner of Police and requested for imposition of curfew in Naroda Patiya. Curfew was imposed in Naroda Patiya area at 1230 hrs.

c. He had informed Commissioner of Police, Ahmedabad City regarding the situation at Naroda Pariya through a phone call at 1237 hrs. He also informed CP regarding the funeral procession of Kar-sevaks. The Commissioner of Police instructed him to go to Dariapur, as the Dariapur Police Station is communally hypersensitive. As ACP of Dariapur was on leave and presence of senior officer was required there, he had left for Dariapur. Therefore, his leaving the spot for a known communally hyper-sensitive place does not amount to criminal negligence though it could be an error of judgment/ poor appreciation of the situation.

d. During the investigation of offence at Naroda Patiya, it has been established that the incident took place after 1800 hrs. When Shri Tandon left Naroda Patiya around 1240 hrs, then Senior Police Inspector of Naroda Police Station along with his force, ACO'G' Division along with his force, DCP Zone IV and his striking force and one platoon of State Reserve Police were

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present there. Therefore, it was not possible to envisage that such an incident might take place at Naroda Patiya.

e. Shri M.K Tandon has stated that first wireless message regarding the situation at Gulberg, Society was received at 1414 hrs on his wireless handset. He has further stated that he had not received the messages passed by Senior Police Inspector of Megharinagar P.S. at 1225 hrs and 1238 hrs as the situation was very noisy in Naroda Patiya area and he was using public address system of his vehicle for declaration of curfew and ordering the mob to get dispersed.

f. Regarding the situation at Gulberg Society, Shri M.K. Tandon has stated that he was informed by an unknown Muslim individual that late Ahesan Jafri, Ex-MP and other Muslims of Gulberg Society need to be shifted immediately. However, his enquiries with Control Room revealed that additional force of two DySsP, one inspector and one section of CISF had been sent to Gulberg Society, as per orders of Commissioner of Police.

g. Shri M.K. Tandon has claimed that he had called Commissioner of Police on his mobile phone at 1425 hrs and discussed the situation. As per his statement, taking the communal sensitivity of Dariapur in

consideration, leaving Dariapur without any senior police officer could have lead to drastic consequences as ACP was on leave and DCP was busy in handling the law & order situation elsewhere.

Following actions by Shri P.B.Gondia are relevant to decide as to whether he was liable for criminal negligence:-

a. As per call details of mobile phone of Shri P.B.Gondia for 28.02.2002, he was in Dariapur Police Station area (which is communally hypersensitive) since 0830 hrs. Further, on receipt of an information regarding trouble at Naroda Patiya/ Narode Gaam, he had reached there around 1100 hrs. He was allotted one platoon of State Reserve Police, which he had deployed at Naroda Patiya and Naroda Gaam. Curfew was imposed at Naroda Patiya at 1230 hrs.

b. He had ordered police firing at Naroda Patiya which had resulted in death of one Hindu and one Muslim rioter. Shri P.B. Gondia had left Naroda Patiya at 1420 hrs on receiving message regarding trouble at Pitadiya Bamba in Dariapur. Pitadiya Bamba had a history of serious communal violence in the past.

c. At 1516 hrs, he had received instructions from Commissioner of Police, Ahmedabad City to go to Gulberg Society where he reached around 1600 hrs and took measures to disperse the mob and rescue the survivors.

d. During the investigation of the case, it has been established that the incident at Naroda Patiya, in which major loss of lives took place occurred after 1800 hrs, i.e., approximately four hours after Shri Gondia had left the spot. In any case, the killings had taken place at a corner location in the lane which was away from the main road where police personnel were stationed and handling the mobs belonging to the two communities. In view of this, there does not appear to be any direct nexus of these killings with Shri P.B. Gondia, who had left the spot at about 1420 hrs.

e. On 28.02.2002, he had ordered firing of 110 rounds of bullets and 183 tear gas shells to disperse the rioters at different locations which lead to killing of 7 rioters (including 6 Hindus).

Section 304A means an act which is the immediate cause of death and not an act or omission which can be said to be a remote cause of death. It is necessary to show an immediate nexus between the wrongful act of an accused and the injuries received by another. In order to constitute the offence, the death should have been the direct result of a rash and negligent act that must be proximate cause without intervention

of any third factor. Furthermore, in case of criminal negligence, it must be gross and not which is merely an error of judgment or arises because of defect of intelligence.

Therefore, considering all the circumstances, evidence on record and the defence available with the suspect police officers namely Shri M.K.Tandon and Shri P.S. Gondia, it may not be viable to prosecute them for the offence u/s 304-A IPC as proposed by Ld. Amicus Curiae. It is worth mentioning here that inspite of best efforts, no additional evidence (other than already

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available) which could help in fixing, criminal liability u/s 304A IPC of these two individuals could be brought on record during further investigation However, the conduct of Shri M. K. Tandon, the then Joint CP. Ahmedabad City (since retired) and Shri P. B. Gondia, the then DCP, Ahmedabad City was unprofessional and unbecoming of senior police officers.

Observation made by Ld. Amicus Curiae:

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

Result of Further Investigation:

The *Bilkis Bano rape case* has investigated by the CBl under the orders of Hon'ble Supreme Court of India. The case has ended it conviction of 12 accused persons and acquittal of 8 accused persons. The appeals against conviction are now pending in the High Court. CBI had already recommended Regular Departmental Action for major penalty against five police officers for the lapses on their part.

Observation made by Ld. Amicus Curiae:

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.

Result of Further Investigation:

Departmental action has been recommended against Shri S.S. Chudasma, the then ACP, Crime Branch (since Retd.). The role played by Shri D.G. Vanzara, the then DCP, Crime Branch (now under suspension), who is in judicial custody in *"Sohrabuddin fake encounter case"* since 2007 has been re-examined with a view to ascertain the lapses, on his part. However, no fresh material has come on record to establish the same.

Observation made by Ld. Amicus Curiae:

The SIT may examine the role of the prosecuting agency in Best Bakery case and recommend suitable action against those who are responsible.

Result of Further Investigation:

The Best Bakery case was investigated by the Gujarat Police and the same ended in acquittal of all the accused persons in a trial conducted at Baroda in Gujarat. However, subsequently the case was remanded by the Hon'ble Supreme Court of India for a retrial under the jurisdiction of Bombay High Court and the same ended in the conviction of 9 accused persons and the acquittal of 8 accused persons.

Observation made by bd. Amicus Curiae:

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).

Result of Further Investigation:

Govt of Gujarat would be requested to initiate appropriate action against the concerned officials for various administrative lapses on their part.

SPECIFIC RECOMMENDATIONS IN RELATION TO GOVT. OF GUJARAT:

Observations made by Ld. Amicus Curiae:

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

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

Result of Further Investigation:

As discussed above the recommendations made by the Ld. Amicus Curiae, have been agreed upon and further necessary action in the matter is being recommended to the Govt. of Gujarat.

The recommendations made in Chart 'C' by the Ld. Amicus Curiae vis-a-vis comments of SIT are given below:-

Chart-'C'

ALLEGATIONS	FINDING OF SIT	OBSERVATIONS MADE BY AMICUS CURIAE
II. Alleged decision of the CM to transport dead bodies from Godhra to Ahmedabad with a view to parade them	The allegation is not established.	The findings of the SIT appear to be justified

III. It is alleged by Shri R.B. Sreekumar that there were a number of verbal instructions given by Chief Minister, which were illegal.	The SIT had stated that there is doubt about the genuineness of the entries in view of the fact that this register was revealed for the first time in 2005 {after the supersession of Shri Sreekumar by the Govt.} and there is further no corroboration of the statements made by Shri R.B. Sreekumar from any other source	**It may not be possible to prove the so called illegal instructions in absence of any other material, except the statement6s of Shri R.B. Sreekumar himself. Hence, though the finding of the SIT be accepted, it may not be appropriate to say that the register is motivated.**
VI. The allegation is regarding transfer of 6 police officers by Hon'ble Chief Minister during the thick of riots to facilitate placement of pliable officers.	The finding of the SIT is that this allegation could not be proved.	**We may accept SIT's recommendations. There are 3 instances which are far too remote to lead to any conclusion.**
VIII. The allegation is that no follow up action was taken up by the Gujarat Govt. on the reports sent by Shri R.B. Sreekumar	The finding of the State Govt. relating to the concerned subject had not been produced, and therefore, it is not clear how the Govt. deal with the letters of Shri R.B. Sreekumar. The SIT further observes that from the evidence of witnesses, it is incorrect to say that the letter of Shri R.B. Sreekumar were	**The findings of the SIT may be correct. The letters of Shri R.B. Sreekumar were written after the riots had got over. Secondly, the contents of these letters appear to be of general nature. The subsequent developments have supported the findings of the SIT that some action was taken by the Govt.**

	not acted upon by the Govt.	**Hence, we may accept SIT's recommendation.**
XIII. The allegation is that Shri Narendra Modi did not give a direction declaring as Bandh called by VHP on 28-02-2002 illegal	The SIT has found that the Bandh was not declared illegal by the Govt. of Gujarat and hence the allegation is proved	**This issue is not having very material bearing. Nothing would turn upon the fact whether the Bandh was declared illegal or not.**
XV. The allegation is that there was undue delay in deployment of Army --- Page: 452	The SIT has come to a conclusion that there was no undue delay in deployment of the Army	**The factual records are the matter of investigation and if the records are correct, than** **the SIT finding may also be correct.**
XVI. The allegation is that police officials were not transferred until the arrival of Shri KPS Gill	The SIT has found this allegation is not correct.	**The finding of the SIT may be accepted.**
XVII. The allegation is that no action was taken against media or publishing communally inciting reports	The SIT has found that the allegation is true	**Action should have been taken against the Media, but due to lapse of more than 8 years, it is not advisable to pursue this matter any further**
XVIII. This allegation relates to misleading reports submitted by the State Home Department regarding normalcy in the State so as to persuade the	The SIT concluded that the allegation is not conclusively established in view of the fact that the elections were subsequently held within 3-4 months in	**This issue may not survive any further and it would not serve any purpose to examine this issue in detail. Hence, it is recommended that**

Election Commission to hold early elections.	December, 2002 and passed off peacefully.	**this issue be dropped.**
XIX & XX. That Shri G.C. Murmu, Home Secretary was deputed to tutor the witnesses who were to depose before Nanavati Commission	The SIT has found this allegation is not established as the version given by Shri R.B. Sreekumar is motivated and cannot be relied upon	**The allegation is found not proved by SIT, which recommendation be accepted. It may not be justified to say that the ver5sion of Shri Sreekumar is motivated.**
XXIV. Allegation is that the Gujarat Govt. did not provide conducive atmosphere for rehabilitation of riot victims.	The SIT has found this allegation is not correct as it is believes that the Govt. did everything for rehabilitation	**The conclusion may be accepted**
XXVI. This allegation relates to non-preparation of minutes of meeting.	SIT has found that in Gujarat Govt. no minutes of meeting are prepared in case of law & order review meets.	**Since the minutes of the meeting have not been prepared, nothing would come out in further investigation. In any event, the minutes of the meeting would never be prepared to implicate any Minister/official directly or indirectly. Therefore, this issue can be closed.**
XXXVII. This allegation relates to not taking action against officers for filing incorrect affidavits before the Nanavati Commission	SIT has concluded that this matter has to be dealt with by the Nanavati Commission which has still to submit its report.	**The view taken by the SIT appears to be correct.**
XXVIII. It is alleged that the review of post trial cases was slack and the officers acted	SIT has held that this allegation is not established.	**The recommendations of the SIT be accepted.**

according to the political interests of BJP and the CM.		
XXIX. The allegation is regarding nepotism in posting, transfer etc.	SIT has found that this allegation is very vague and general and it is not possible to conduct any inquiry in the said allegation.	**The finding of the SIT seems to be correct and may be accepted.**
XXX. That only Muslims were victims of riots and police firing due to collaboration between rioters and the administration.	SIT has found that this allegation is not substantiated.	**This aspect may get covered if the request for further investigation is accepted by this Hon'ble Court.**
XXXI. It is alleged that there --- Page: 453 was a secret meeting in Lunawada where 50 top people allegedly met and made out a plan for rioting and use of violence.	The SIT has examined this issue in detail and found that the information was a figment of imagination of some interested elements, based on rumors and therefore, not established.	**The view taken by the SIT be** **accepted.**
XXXVII. It is alleged that on 28-02-2002, 5000 Bajrang Dal activists met at village Borvai in which attack on minorities was planned.	SIT has conducted investigation in detail and found that this is a cooked up story and the information given by Shri Mahboob Rasool was not correct.	**The view taken by the SIT may be accepted.**

It may thus be seen that the Ld. Amicus Curiae has agreed with the fundings of SIT in respect of Allegations No. II, III, VI, VIII, XIV,

XVI, XIX, XX, XXIV, XXVII, XXVIII, XXIX, XXXI & XXXII and has recommended to the Hon'ble Supreme Court of India that the recommendation of SIT may be accepted in respect of these allegations. Further, as regards Allegations No. XIII, XVII, XVIII & XXVI the Ld. Amicus Curiae is of the view that the issued were not very material and, therefore, recommended the same to be dropped. However, as regard the Allegation No. XXX, the Ld Amicus Curiae opined that the allegation would get covered in the case the request for further investigation was accepted by the Hon'ble Supreme Court of India. The Ld. Amicus Curiae has also opined that the further investigation conducted by the SIT u/s 173(8) Cr.PC about the involvement of Shri Gordhan Zadafia has revealed that there is lack of evidence to suggest his involvement in the riots and that this findings of the SIT appears to be acceptable.

As ordered by the Hon'ble Supreme Court of India, the matter was listed for hearing on 05.05.2011, when the following order was passed:-

> ***"Pursuant to our order dated 15th March, 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 ofwitnesses 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 Mrs. Raju Ramchandran, the Learned Amicus Curiae.***
>
> ***The learned Amicus Curie shall examine the report, analyse 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 Curie 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.***
>
> ***List on 28th July, 2011 at 3:00 p.m."***

Pursuant to the aforesaid order passed by the Hon'ble Supreme court of India the Ld. Amicus Curie submitted his report dated 25.07.2011. In his report, Ld. Amicus Curiae agreed with the findings of the SIT on the following issues and opined that the same are acceptable:-

I. That though he had observed in his note dated 20.01 .2011 that late Haren Pandya, the then MoS for Revenue could have been present in the meeting on 27.02.2002, yet considering the material gathered by the SIT and that further investigation report of the SIT, he agrees with the SIT that late Haren Pandya could not have been present in the meeting on 27.02.2002 and therefore, his (late Haren Pandya) statement regarding the alleged statement made by Shri Modi in the aforesaid meeting may be disregarded.

II. That he would also agree with the findings of SIT that the statement made by Shri R.B. Sréekumar, the then Addl. DG (Int.) to Shri K. Chakravarthi, the then DGP would be

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hearsay evidence not saved by *res gestae* and therefore, would be inadmissible in evidence.

III That as far as SIT's conclusion with regard to the steps taken by Shri Narendra Modi to control the riots in Ahmedabad City is concerned, the same may be accepted.

IV. That as far as the observations of the Chairman, SIT on the handing over of the bodies of the Godhra victims to Shri Jaydeep Patel are concerned, the same may be accepted.

V. That as far as the observations of the SIT with regard to the Chief Minister's statement on television on 01.03.2002 are concerned the same may be accepted.

VI. That as far as SIT's observations with regard to the alleged inaction of Shri P.C. Pande, the then Commissioner of Police, Ahmedabad City are concerned, no comment is necessary at this stage as an application u/s 319 Cr.PC, has been filed in respect of Shri P.C. Pande also, and the sane may be dealt with

by the concerned Court in accordance with law, in the same manner as suggested in respect of Shri M.K. Tandon and Shri P.B Gondia.

Shri Raju Ramchandran, Amicus Curiae has come to the conclusion that at this prima facie stage offences inter-alia u/s 153 A(1)(a) & (b), 153B(1) (c),166 and 505(2) IPC are made out against Shri Narendra Modi. He has further stated that 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 offences. These findings are based on the following grounds :-

a. **That Shri Sanjiv Bhatt has brought his former driver Shri Tarachand Yadav and had submitted his affidavit sworn on 17.06.2011, which supports Shri Bhatt's version that he had gone to the residence of the Chief Minister on 27.02.2002.**

b. **That Shri Sanjiv Bhatt submitted an affidavit of Shri K.D. Panth, Constable affirmed on 17.6.2011 supporting the version of Shri Bhatt about going to Chief Minister's residence on the night of 27.02.2002.**

c. **That Shri Rahul Sharma, DIG submitted an analysis of the call records of senior police officers, which according to Shri Sharma corroborates the statement of Shri Bhatt.**

d. **That though Shri Sanjiv Bhatt has been contending that he would speak only when under a legal obligation to do so, his conduct after making a statement u/s 161 Cr.PC has not been that of a detached police officer, who is content with giving his version.**

e. **That it does not appear very likely that a serving police officer would make such a serious allegation against Shri Narendra Modi, Chief Minister without some basis.**

f. **That 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 and in the absence of the minutes of the meeting, there is again no documentary evidence is available, as to the participants in the meeting and what transpired at the said meeting. Therefore, it is the word of Shri Sanjiv Bhatt against the word of other officers senior to him**.

g. That it is difficult to accept that Shri Bhatt's statement is motivated because he has an axe to grind with the State Govt. over issues concerning his career and it may not be proper to disbelieve Shri Sanjiv Bhatt at this stage only because the other officers have not supported his statement.

h. That the delay in making the statement can not 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.

i. That Shri G.C. Raiger, Addl. DG (Int) was on leave on

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27.02.2002 and DGP Shri K Chakravarthi does not state that he had gathered intelligence from the office of Shri Raiger. Further, Shri P.C. Upadhay, the then DCI (Political & Communal) was on leave on 27.02.2002 and Shri Bhatt was looking after his work. Also Shri Raiger has stated that Shri Bhatt had accompanied him in the past to meetings called by the Chief Minister, though he used to wait out side with files or information and therefore, it is quite possible that Shri Bhatt was directed to attend the meeting on 27.02.2002 at the residence of Chief Minister.

j. That the phone calls records do not contradict the statement given by Shri Sanjiv Bhatt to the SIT and 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 Addl. DG (Int.) Shri Raiger was not available and Shri O.P. Mathur, the IGP (Security & Admn.) who was next in seniority was not called for the meeting and that this aspect was of little significance in the context of an emergency meeting called at short notice in response to an escalating situation.

k. That the discrepancies about the exact language used or the time of meeting at the Chief Minister's residence at Gandhinagar on 28.02.2002, are inevitable considering the lapse of time.

As regard the assessment of the role played by Shri M.K. Tandon, the then Jt. CP, Sector-II, Ahmedabad City and Shri. P.B.Gondia, the then DCP, Zone-IV, Ahmedabad City, the Ld. Amicus Curiae has recommended that it would be appropriate for the Hon'ble Supreme Court of India to direct the trial Court to consider an application u/s 319 Cr.PC filed by the victims in Gulberg Society Case on the evidence brought before it and also consider the further investigation report submitted by Shri Himanshu Shukla, DCP to the Hon'ble Supreme Court of India on 26.11.2010 and the statements recorded by him and to pass appropriate orders in accordance with law. The Ld. Amicus Curiae has also submitted to the Hon'ble Supreme Court to consider whether an offence u/s 304A IPC is made out. The Ld. Amicus Curiae has finally come to the conclusion that since the SIT has conducted a statutory investigation u/s 173 (8) Cr.PC, the report is required to be filed in the Court and it is for the competent Court to pass necessary orders after hearing the concerned parties. However, the Hon'ble Supreme Court has refrained from passing any order in this regard except that Chairman, SIT has been directed to forward a Final Report along with entire material collected by it to the Court, which had taken cognisance of Cr.No.67/2002 u/s 173(2) Cr.PC.

Shri Raju Ramachandran, the Ld. Amicus Curiae has agreed with the findings of the SIT on all the major issues. Whereas the complainant has made an allegation that Shri Narendra Modi, Chief Minister sponsored the riots, the Ld. Amicus Curiae has come to the conclusion that sufficient steps were taken by the Chief Minister to control the riots. The Ld. Amicus Curiae did not allege any conspiracy or abetment on the part of Chief Minister. He has further agreed with the recommendations of SIT that the statement made by Shri R. B. Sreekumar that Shri K. Chakravarthi had informed him about the utterances made by the Chief Minister on 27.02.2002 night would not be admissible as the same amounted to hearsay evidence and therefore, inadmissible. He is also of the view that the recommendations of the SIT about the steps taken by the Chief Minister to control the riots may be accepted. He has also agreed with the recommendations of chairman, SIT about handing over the dead bodies of Godhra victims to Shri Jaydeep Patel. About the Chief Minister's alleged statement on television on 01.03.2002, by referring to the Newton's third Law of Motion also the Amicus has agreed the recommendations of the SIT.

Shri Raju Ramchandran, Ld. Amicus Curiae is of the view that a prima facie case u/s 153 A(1)(a) & (b), 153B(1)(c), 166 and 505(2) IPC is made out against Shri Narenda Modi, Chief Minister. However, he is further of the view that 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. This recommendations of Ld. Amicus Curiae is based on the sole testimony of Shri Sanjiv Bhatt, the then DCI (Security), who has claimed to have attended a meeting called by the Chief Minister on 27.02.2002 night at his residence. It may be mentioned here that seven (7) other participants of the said meeting have categorically stated that Shri Sanjiv Bhatt did not attend the said meeting. According to the Ld. Amicus Curiae, Shri Sanjiv Bhatt produced his driver Shri Tarachand Yadav, a dismissed constable driver of Gujarat Police along with his affidavit dated 17.06.2011, who supports, Shri Bhatt's version that he had gone to the residence of the Chief Minister on 27.02.2002. In this connection, Shri Sanjiv Bhatt has stated that he had gone along with Shri K. Chakravarthi, the then DGP in the latter's staff car to CM's residence

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from DGP's office and that Shri K.D. Panth, the then AIO, State IB followed him in his staff car driven by Shri Tarachand Yadav. The Ld. Amicus Curiae has wrongly projected that Shri K.D. Panth, constable has supported the version of Shri Sanjiv Bhatt about the latter's visit to CM's residence on 27.02.2002, in as much as Shri K.D. Panth has lodged a complaint on 17.06.2011 against Shri Sanjiv Bhatt for wrongful confinement and also for getting an affidavit signed from him under duress and threat and a case I CR No.149/2011 was registered u/s 189, 193, 195, 341, 342 IPC has been registered against Shri Sanjiv Bhatt on 22.06.2011 in Ghatlodia P.S, Ahmedabad City. Shri Raju Ramchandran has relied upon a copy of this affidavit which was handed over to him by Shri Sanjiv Bhatt on 17.06.2011. In fact, Shri K.D. Panth had sent a letter to Chairman, SIT in this regard on 17.06.2011 itself along with another affidavit sworn before the Dy. Collector, Gandhinagar to the effect that he was on leave on 27.02.2002, and that his statement made before the SIT in this regard was correct. It would not be out of place to mention

here that a copy of the said letter along with the affidavit submitted to SIT by Shri K.D. Panth with its English translation were handed over to Shri Raju Ramchandran by Shri Y.C. Modi, Member, SIT and Shri A.K. Malhotra, Member, SIT personally on 21.06.2011, but the same has been conveniently ignored by the Ld. Amicus Curiae. The claim of Shri Sanjiv Bhatt has been dismissed by Shri K. Chakravarthi, the then DGP, who has denied that Shri Bhatt accompanied him in his staff car to CM's residence on 27.02.2002. Significantly, log book of the vehicle of Shri Chakravarthi shows only PSO accompanied him and there is no mention of Shri Sanjiv Bhatt in the same. Further, Shri Dilip Ahir and Shri Dharampal Yadav, the then PSOs to the DGP and Shri Panchusinh Yadav and Shri Mangilal Kala, the then drivers attached to the DGP have categorically denied that Shri Sanjiv Bhatt ever travelled in DGP's staff car. The observation made by the Ld. Amicus Curiae that Shri K.D. Panth had supported the version of Shri Sanjiv Bhatt is, therefore, incorrect. Further, keeping in view the version of Shri K.D. Panth that he was on leave on 27.02.2002, would falsify the statement made by Shri Tarachand Yadav, driver to the effect that he had followed the DGP's vehicle with Shri K.D. Panth, Constable.

It is significant to note that the Ld. Amicus Curiae has admitted that

> ***"I am conscious of the fact that though Shri Bhatt has been contending that he would speak only when under a legal obligation to do so, his conduct after making his statement u/s 161 Cr.PC has not been that of a detached police officer, who is content with giving his version. I am left with no doubt that he is actively "strategising" and is in touch with those, who would benefit or gain mileage from his testimony":***

The Ld. Amicus Curiae has also mentioned that Shri Rahul Sharma, DIG submitted an analysis of the call records of senior police officers, which according to Shri Sharma corroborates the statement of Shri Bhatt. Shri Rahul Sharma never stated anything like that before the SIT Shri Rahul Sharma has not stated that in what manner the call details of the senior officers corroborate the statement of Shri Sanjiv Bhatt. The Ld. Amicus Curiae has accepted the contention of Shri Sanjiv Bhatt that as an Intelligence Officer, he was privy to some information and would speak only, when he was legally bound to do so. In this connection it may be stated that the alleged meeting called by the Chief Minister in the night of

27.02.2002 was essentially a law and order review meeting which was attended by the various officials of State Administration and therefore the question of oath of secrecy or application of the Official Secrets Act does not arise because it was neither a secret meeting nor would the revelation of the contents of the said meeting jeopardized the public interest. Shri Sanjiv Bhatt has used the Official Secrets Act as a pretext to justify a long delay of nine years and the fact that an official of the intelligence unit attended a law & order meeting, the same does not became a secret meeting for which a privilege of secrecy is being claimed by Shri Sanjiv Bhatt. The view of the Ld. Amicus Curiae that it does not appear very likely that a serving police officer would make such a serious allegation without some basis appears to be erroneous in as much as Shri Sanjiv Bhatt had been all along a delinquent in his career and had been trying to bargain with the government. The very fact that three departmental enquiries against Shri Sanjiv Bhatt were dropped in 2006-07 and he was given three promotions on a single day would by itself go to show his service career progression. Again his promotion to the rank of IGP was due for quite sometime but he did not get the same because of other departmental enquiries as well as court cases pending against him. This reason by itself is sufficient to bring a motive on the part of Shri Sanjiv Bhatt to make a statement against the Chief Minister. Further, it is true that no minutes of the meeting were maintained and there is no documentary evidence available to show as to what transpired in the said meeting. However, the evidence of seven senior officers can not be ignored to the effect that Shri Sanjiv Blatt was not present in the said meeting and claim of Shri Sanjiv

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Bhatt about his having attended the said meeting and also about some alleged utterances made by the Chief Minister is not acceptable. The observation made by the Ld. Amicus Curiae that Shri Sanjiv Bhatt can not be disbelieved because his statements was motivated and he has an axe to grind against the government over issues concerning his career and also that absurd. The further observation of Ld. Amicus Curiae that in the absence of Shri G.C. Raiger, the then Addl. DGP (INT) and Shri P.B. Upadhya, the then DCI (Political & Communal) being on leave, it was quite possible that Shri

Sanjiv Bhatt was directed to attend the meeting on 27.02.2002 is based on conjectures and surmises. The contention of Ld. Amicus Curiae that the phone call records do not contradict the statement of Shri Sanjiv Bhatt is without any basis in as much as the same do not even support his statement. The call detail records show the location of Shri Sanjiv Bhatt at Ahmedabad and the last call was received by him at 20.40 hours, which do not establish that Shri Sanjiv Bhatt had gone to Gandhinagar to attend a meeting around 22:30 hours.

Significantly, the claim of Shri Sanjiv Bhatt of having attended the meetings on 27/28.02.2002 becomes false and unacceptable as according to his call detail records he could not have been present in the alleged meeting that took place at CM's residence on 28.02.2002 at 1030 hrs. Another claim of Shri Sanjiv Bhatt that he left the meeting of 27.02.2002 night halfway is suggestive of the fact that in reality he did not attend the meeting. This meeting was of a very short duration and it was practically impossible for a junior officer of the level of Shri Bhatt to leave the meeting midway.

Further, the view of Ld. Amicus Curiae that the exact language allegedly used by the Chief Minister in the said meeting on 27.02.2002 is not material, can not be accepted in as much as there are atleast three versions available on record in this regard. Smt. Jakia Nasim in her complaint has claimed that a high level meeting was convened by the Chief Minister at which Chief Secretary Subba Rao, Home Secretary Ashok Narayan and senior police men were summoned at which clear instructions were given 'not to deal with the Hindu rioting mobs'. Further, Shri R. B. Sreekumar has claimed that Shri K. Chakravarthi had informed him on 28.02.2002 that Shri Narendra Modi, CM had convened a meeting of senior officers on 27.02.2002 late in the evening on return from Godhra and had said that in communal riots police takes action against Hindus and Muslims on one to one basis. This will not do now – allow Hindus to give vent to their anger. As against this, Shri Sanjiv Bhatt claims that the Chief Minister allegedly impressed upon the gathering in the meeting for that for too long the Gujarat Police had been following the principle of balancing the actions against the Hindus and Muslims while dealing with the communal riots in Gujarat. This time the situation warranted that the Muslims be-taught a lesson to ensure that such incidents do not recur ever again. The Chief Minister Shri Narendra Modi expressed the view that the emotions were running very high amongst the Hindus and it was imperative

that they be allowed to vent out their anger. It is not understood as to whose words should be relied upon because none of them i.e. Smt. Jakia Nasim, Shri R. B. Sreekumar and Shri Sanjiv Bhatt were present in the said meeting. Another factor worth consideration at this stage is that there is no evidence available on record that any instructions on these lines were passed on to the police formation down below thereby ruling out the possibility of such utterances as alleged were made by CM in the meeting.

Based on the aforesaid three versions Amicus Curiae has arrived at a conclusion that the same would attract the offences u/s I53 A (1) (a) & (b), 153B (1) (c),166 and 505 (2) IPC.

Section 153A (1) (a) IPC states that 'whoever, by words promotes or attempts to promote disharmony or feelings of enmity, hatred, or ill will on the ground of religion between different religious communities. In other words, Section 153A(1)(b) IPC can be paraphrased as 'whoever commits any act which is prejudicial to the maintenance of harmony between different religious communities and which is likely to disturb the public tranquility'. Even if any of the aforesaid three versions allegedly made by Chief Minister, the ingredients of section 153A(1) (a) & (b) are not attracted. The facets of the allegations attributed to Shri Narendra Modi can not fall under sub-class (a) or (b) of the 153 (A) (1) IPC. At this juncture, it would not be out of place to mention that the Chief Minster made four statements within 24 hours on 27/28.02.2002. At Godhra on 27.02.2002 evening the Chief Minister publicly said that burning of karsevaks in a train at Godhra was unparalleled in the history and assured the people that the culprits would be punished. He also said that the Government would ensure that the peace was maintained in the State and the Government would not be lacking in discharging its duty. On 28.02.2002 morning, he spoke in the assembly after obituary reference that the State government has taken this cruel, inhuman, heinous and organized crime very seriously and is committed to take symbolic strict

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steps and to punish the culprits in such an exemplary manner that such an incident may not recur in future. On 28.02.2002 afternoon

in his press conference in Circuit House Annexe, Ahmedabad, Shri Narendra Modi reiterated that Government of Gujarat has taken this heinous train burning incident at Godhra very seriously and that people should help the government to ensure that the culprits are punished. Shri Narendra Modi also told the press that those who had acted in retaliation and anger after the incident shall also not be spared. Further, he appealed made to the people of Gujarat on Doordarshan on 28.02.2002 evening to keep restrain and maintain peace and harmony. He also said that the Government was determined to bring these culprits to justice and give them unimaginable punishment. It may thus be seen that the thrust of CM's speech everywhere was that the incident was heinous, organised and that the culprits would be brought to strictest, punishment.

Similarly, section 505 (2) IPC can be paraphrased as Whoever makes any statement with intend to create (or permit to create (or is likely to create or permit to create) feelings of enmity or hatred or ill will between different religious community. In view of the reasons enumerated above a case u/s 505(2) IPC is also not made out.

Also, section 153B (1) (c) IPC can be paraphrased as Whoever by words makes any assertion concerning, the obligation of any class or person by reason of their being members of a religious community and such assertion is likely to cause disharmony or feeling of enmity or hatred or ill will between such members and other persons. As regards the application of this section, it may be mentioned that it is not the case that the Chief Minister made any assertion concerning the obligation of any religious community to do such acts as are likely to cause disharmony. He did not make any appeal to Hindus or Muslims to take up arms against each other. On the other hand Shri Narendra Modi made an appeal on 28.02.2002 that both the communities should desist from doing any act by physically attacking each other. This appeal was broadcasted by the Doordarshan intermittently. In view of this no offence u/s 153B (1) (c) IPC is made out.

As regards section 166 IPC, it deals with the public servants disobeying any direction of law as to the way in which he is to conduct himself as a public servant. It can not be extracted from the statement attributed to Shri Narendra Modi that he was thereby disobeying any directions of law as to the way, in which he is to conduct himself as Chief Minister. No such directions can be quoted

from law as for the Chief Minister to disobey it. In view of this there is no application of section 166 IPC at all against Shri Narendra Modi.

Thus recommendations of Amicus Curiae and evidence collected during further investigation u/s 173 (8) Cr.PC have been examined in detail to see, if the ingredients of the suggested sections for prosecution are attracted or not. On such assessment it is reasonably concluded that no utterances on part of Shri Narendra Modi could be attributed suggestive to any intended promotion of hatred ill-will etc. amongst religious groups. The settled legal position is that mensrea is required for offences u/s 153A IPC. In view of the same and evidence discussed in preceding paras, there is no evidence to prima facie allege commission of suggested offences by Shri Narendra Modi.

Shri Sanjiv Bhatt, DIG (under suspension) has sent a letter dated 30.12.2011 to the Secretary, Hon'ble Justice Nanavati & Justice Mehta Commission of Inquiry enclosing herewith an Annexure 'D', which is a copy of fax message No. D-2 /2-COM I/ALERT /174/ 2002, dated 28.02.2002, which he claimed to have sent to different authorities under his signature. The same Annexure 'D' has been uploaded on website www.twocircle.net. It is reproduced below:

ANNEXURE-D
FAX MESSAGE
(PRIORITY: CRASH)

TO PS to CM Gandhinagar
PS to MOS (Home)

INFO Home Sec Gandhinagar

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Police Gandhinagar
CP Ahmedabad

FROM Addl. D.G.P. Intelligence, G.S. Gandhinagar

O. No D-2/2 COWALERT/100/2002 Date: 28.2.2002

Text As informed telephonically to the Hon'ble CM Ex-MP Ehsan Zafri and his family members residing at Gulbarg Society, Chamanpura Meghaninagar have been surrounded and are being attacked by a Hindu Mob in the presence of Police Bandobust (.) The lives of Ehsan Zafri and other family members are in imminent danger (.)

CP Ahmedabad is requested to take immediate effective action and provide a situation report to SCR under intimation to this office at the earliest (.)

(Sanjiv Bhatt)
Dy. Commissioner (Communal)
For Addl. D. G. P. Int., G. S.
Gandhinagar

Subsequently, on 04.01.2012, Shri Sanjiv Bhatt forwarded to Chairman, SIT a copy of his letter No. SRB/COI/120104/01 dated 04.01.2012 addressed to Secretary, Justice Nanavati Commission of Inquiry enclosing therewith a copy of fax message No.D-2/2-COM/ALERT /100/2002, dated 27.02.2002, claiming to have sent the same under his signature. A copy of the said fax message is also reproduced below:

FAX MESSAGE
(PRIORITY: CRASH)

To CP Ahmedabad
Info: PS to CM Gandhinagar

PS to MOS (Home) Gandhinagar

Home Sec Gandhinigar

Police Gandhinagar

From D. G. P. Intelligence, G. S. Gandhinagar

O. No D-2/2 COWALERT/100/2002 Date: 27.2.2002

TEXT: Pursuant to the meeting held by the Hon'ble Chief Minister it has become clear that the State Government wishes to go ahead with the decision of bringing the dead bodies of Kar Sevaks to Ahmedabad by road under Police escort (.)

The dead bodies will be brought to Sola Civil Hospital in your Jurisdiction before being taken out for cremation (.) Local cadres of BJP/ Bajrang Dal are being massively mobilized for enforcing the VHP/BJP supported Gujarat Bandh (.) Widespread retributory communal violence is anticipated, in your jurisdiction (.) Request appropriate preventive action (.)

(Sanjiv Bhatt)
Dy. Commissioner (Communal)
For Addl. D. G. P. Int., G. S.
Gandhinagar

On receiving Shri Bhatt's communication dated 04.01.2012 a notice u/s 91 Cr.PC was issued to Shri Sanjiv Bhat on 13.01.2012, to produce the original/office copy of the fax message dated 27.02.2002. However, Shri Sanjiv Bhatt refused to accept the said notice. Instead, he sent a letter dated 15.01.2012 contending that the aforesaid document had already been handed over to Shri A.K. Malhotra of SIT in the year 2009 and IO Shri Himanshu Shukla in

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2011. Shri Sanjiv Bhatt further contended that, in the normal course of investigation, the Investigating Officer should have called for the original and/or office copy of the aforesaid fax message from the State IB Gandhinagar and the offices of the respective recipients of the said fax message.

In this connection, it may be emphasized that the statement of Shri Sanjeev Bhatt was recorded by Shri A.K. Malhotra, Member, SIT during Enquiry on 25.11.2009 & 26.11.2009, and the same was signed by Shri Bhatt. However, the same did not contain any reference to the aforesaid two messages, which Shri Bhatt now claims to have sent on 27.02.2002 & 28.02.2002, despite the fact

that copies of all others messages duly mentioned by him in his statement were handed over by Shri Bhatt to Shri Malhotra. Similarly, the statement of Shri Sanjiv Bhatt was recorded u/s 161 Cr.PC by the IO Shri Himanshu Shukla on 21.03.2011 & 22.03.2011, and the same also did not contain any reference to the aforesaid two messages. This raises very serious doubts about the authenticity of the claim that these messages had in fact been sent to the concerned addresses. Significantly, the statements recorded by Shri A.K. Malhotra and the IO (Shri Himanshu Shukla) were submitted to the highest Court of country (Supreme Court) at the relevant point time.

Apart from the aforesaid position, the following points would go to show that Shri Sanjiv Bhatt had the full opportunity to produce these messages if they had in fact been prepared and sent to concerned authorities, and did not produce before SIT:

1. **Shri Sanjiv Bhatt did not file any affidavit before the Nanavati Commission of Inquiry, and, in case, he, was in possession of these documents, he should have filed the same as per the instructions given by Govt. of Gujarat in the year 2002.**

2. **Shri R.B. Sreekumar, formerly Addl. DGP (Int.) in his letter dated 27.12.2011 addressed to Secretary, Nanavati Commission of Inquiry has categorically stated that he had requested all the senior officers of the State IB in the rank of SP and above including Shri Sanjiv Bhatt (who had assisted his predecessor Shri G.C. Raiger, Addl. DG (Int.) from 27.02.2002 to 08.04.2002) to submit any affidavit covering the terms of reference of the Commission; but none of them filed any affidavit. Shri Sreekumar further stated in his letter to the Nanavati Commission that he had asked all the senior officers of State IB to provide him all the relevant documents in their possession relating to riots. Accordingly, all these documents received by him from his officers were appended by him to his first affidavit filed before the Commission on 15.07.2002. However, Shri Sanjiv Bhatt did not produce any such message before Shri Sreekumar.**

3. **Shri Sanjiv Bhatt did not produce any of the aforesaid messages, either before Shri A.K.Malhotra, Member, SIT during the course of the preliminary inquiry conducted by him under the orders of Hon'ble Supreme Court of India or before Shri Himanshu Shukla, DCP, Crime, Ahmedabad City, who had conducted further investigation u/s 173(8) in this case**

(Cr.No.67/2002 of Meghaninagar P.S. (Gulberg Society Case)). He did not also refer to either of these two fax messages in his statements made before Shri A.K. Malhotra Member, SIT on 25.11.2002 & 26.11.2002 and before Shri Himanshu Shukla on 21.03.2011. As already highlighted above, both these statements were submitted to the Hon'ble Supreme Court of India on 14.05.2010 and 25.04.2011 respectively.

4. **Shri Sanjiv Bhatt, suo moto, filed an affidavit dated 14.04.2011 before the Hon'ble Supreme Court of India in SLP (Crl.) 1088/2008 filed by Smt. Jakia Nasim. In that affidavit also he did not mention anything about the two aforesaid fax messages.**

5. **Shri Sanjiv Bhatt was summoned before the Nanavati Commission in May, June & July, 2011 for his deposition and cross examination. However, he did not mention anything about the aforesaid two fax messages to the Commission.**

6. **Shri Sanjiv Bhatt was called by Shri Raju Ramchandran, Amicus Curiae for personal interaction at Gandhinagar on 18.06.2011. On that occasion also, Shri Sanjiv Bhatt did not mention anything about the aforesaid two fax messages to the Amicus Curiae and confirmed his statements recorded during the SIT's Preliminary Inquiry as well as subsequently recorded u/s 161 Cr.PC by the IO**.

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7. **Shri R.B.Sreekumar, in his letter dated 28.12.2011 addressed to Shri Sanjiv Bhatt (copy sent to SIT), has clearly stated that the plethora of incriminating information against the Govt., which he (Sanjiv Bhatt) claimed to possess now, had not been put up to him at the time of filing his first affidavit on 15.07 2002. Further, if it had come to his (Sanjiv Bhatt), notice that such material had not been included in his affidavit, nothing stopped him from filing a separate affidavit bringing these relevant inputs to the notice of the Commission. Shri Sreekumar also highlighted that nearly 12 intelligence reports produced before him by Shri Sanjiv Bhatt were included in it, and the same did not contain anything about the role of the**

Govt. officials in the alleged planning and execution of the antiminority genocide and subsequent prolonged subversion of the criminal justice system and delayed justice to the riot victims.

It may thus be seen that Shri Sanjiv Bhatt produced two fax messages for the first time before Nanvati Commission of Inquiry only in the month of December, 2011, and subsequently before the SIT in January, 2012.

A perusal of the photo copy of the office copy of fax message No. D-2/2-COM / ALERT/100/2002, dated 27.02.2002 claimed to have been sent by Shri Sanjiv Bhatt, the then DCI (Security) on behalf of Addl. DGP (Int.) to CP, Ahmedabad with information to PS to CM, PS to MoS (Home), Home Secretary and Police Gandhinagar, would go to show that there was no security classification of the said message. The dispatch register of the D-2 section of the State IB does not show any dispatch of the said message as the dispatch number on the said date was under serial number 90. Investigation revealed that actually a letter No. D-2 /2-COM/BANAO/100/2002, dated 02.03.2002 was sent on behalf of Addl. DG (Int.) to ACS (Home), Govt. of Gujarat with information to Police Gandhinagar, PS to CM and PS to MoS(Home) and the same related to I Cr. No. 9/02 u/s 302, 114 etc. of Khanpur P.S., Distt. Panchmahals. The said message bears a typed dispatch number, which is very unusual, because all the dispatch numbers on the messages sent by State IB on 27.02.2002 were hand written. It is not understood as to what prompted Shri Sanjiv Bhatt to send such a message, when all the individuals to whom this message had been addressed were present in the meeting held at the CM's residence on the night of 27.02.2002, and it was known to all of them that the Govt. had already decided to bring the dead bodies to Ahmedabad, for which the necessary bandobast was required to be made: The said message had not been marked to IGP (P&C), but was allegedly put up to Shri O.P. Mathur, the then IGP (PRC) who allegedly initialled the same in token of having seen the same on 28.02.2002. Surprisingly, this message was not put up to Shri G.C. Raiger, the then Addl. DG (Int.), who was very much in the office on 28.02.2002. Further, Shri O.P. Mathur, the then IGP (P & C) also did not mark it to Addl. DG (Int.), a fact which raises serious doubts about the genuineness of the message in question.

A perusal of the photo copy of the office copy of fax message No. D-2 /2-COM/ALERT/174/2002, dated 28.02.2002, now claimed to have been sent by Shri Sanjiv Bhatt, the then DCI (Security), on behalf of Addl. DGP (Int.) to PS to CM and PS to MoS (Home) with information to Home Secretary, Police Gandhinagar and CP, Ahmedabad, would go to show that there was no security

classification of the said message. The dispatch register of the D-2 section of the State IB also does not show any dispatch of the said message as the dispatch number on the said date was under serial number 100. Investigation revealed that O.No. D-2/2-Com/174/2002, dated 16.03.2002 was sent by Addl. DG (Int.) to Shri B.K. Haldar, Jt. Secretary (NI), MHA, New Delhi and related to the daily report about the communal incidents up to 16.03.2002 (1800 hrs) in Gujarat state. This message was allegedly put up to Shri G.C. Raiger, the then Addl. DG (Int.), for favour of perusal, and the same allegedly bears the initials of Shri Raiger dated 28.02.2002. Interestingly, the message in question had been addressed to PS to CM and PS to MoS (Home), whereas the same was actually actionable by Commissioner of Police, Ahmedabad City. Further, Shri Sanjiv Bhatt had signed a fax message No. C/ D-2 /BANAO /178 /2002, dated 28.02.2002, which was received by Shri E.L. Christian, the then PI, State IB Control Room and written by Shri Bharatsinh Rathod, the then AIO, to the dictation of Shri Christian, who subsequently took it personally to Shri Bhatt for his signature. In this message, it had been mentioned that, based on received information, Gulberg Society located in Chamanpura, Meghaninagar had been attacked by a mob of Hindu rioters and late Ahesan Jafri, Ex-MP along with his family members and 18 others had been killed, and that the attack was still continuing and this incident was likely to have Statewide repercussions. This message would clearly show that no earlier intimation prior to the attack on Gulberg Society had been sent by Shri Sanjiv Bhatt, as the same did not contain any reference to the earlier message claimed to

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have been sent by Shri Sanjiv Bhatt vide message No.D-2/2-COM/ALERT/174/2002 dated 28.02.2002. The information contained in the message No.178 dated 28.02.2002 had actually been received over telephone by Shri E.L. Christian, PI who had dictated the same to his AIO Shri Rathod and not by Shri Sanjiv Bhatt as claimed by him. Undoubtedly at the time of signing this message, Shri Sanjiv Bhatt had marked the message as "MOST URGENT" in his own handwriting. Efforts were made to locate the dispatch register and fax register of State IB Control Room, but the same had been reportedly destroyed. Further efforts were made to locate the so called message No. 174 dated 28.02.2002 with the persons to whom

the said message had been shown addressed, but without any success till date.

During the course of further investigation, the persons who are supposed to have received the two messages dated 27.02.2002 & 28.02.2002 as well as the concerned officials of State IB, who were present in the office as also in the Control Room on the aforesaid two dates were examined and the evidence collected is discussed in subsequent paras.

Dr. P.K. Mishra, the then Principal Secretary to Chief Minister, has denied having received or seen the message dated 27.02.2002, purportedly sent by Shri Sanjiv Bhatt. He is of the view that there was no occasion for Shri Sanjiv Bhatt to send such a message, because every participant at the law & order review meeting called by the Chief Minister on the night of 27.02.2002 was aware of the fact that the dead bodies of kar-sevaks who were killed in Godhra train carnage incident, were being brought to Ahmedabad by road under police escort. Dr. Mishra denied receiving or having seen the fax message No. D-2/2- COM/ALERT/174/2002, dated 28.02.2002. He added that the claimed message was quite alarming, and that had he received any such message, he would certainly remember the same. On being shown fax message No.C/ D-2 / BANAO / 178/2002, dated 28.02.2002 handwritten in Gujarati and signed by Shri Sanjiv Bhatt on behalf of Addl. DG (Int.) and addressed to Home Secretary, Gandhinagar with information to PS to CM, PS to MoS (Home) Police Gandhinagar and Ahmedabad City. Dr. Mishra stated that the language/expression of this message clearly indicated that the information about the said incident was being sent for the first time, as there was no reference to the message No. 174, which Shri Bhatt now claims to have sent earlier during that day. Finally, Dr. Mishra stated that the aforesaid two fax messages dated 27.02.2002 & 28.02.2002 in English allegedly sent by Shri Bhatt were false and fabricated documents.

Shri Gordhan Zadafia, the then MoS (Home), denied having received or seen the two typed fax messages No. D-2 /2-COM / ALERT/100/2002, dated 27.02.2002 & D-2/2-COM/ALERT/174/2002, dated 28.02.2002 in English now claimed to have been sent by Shri Sanjiv Bhatt, the then DCI. He further stated that both these messages were false and bogus, and had never been received in his office. According to Shri Gordhan Zadafia, these messages have been fabricated and have been introduced for the first time after a lapse of about 10 years of the events mentioned therein, and that this appears to be a deliberate attempt on the part of Shri Sanjiv Bhatt to involve him in the Gulberg Society incident. He does not remember receiving message No. C/D-2/ BANAO/178/2002, dated 28.02.2002 in Gujarati bearing the signature of Shri Sanjiv

Bhatt. However, Shri Gordhan Zadafia has stated that the fact that this message does not contain any reference to the earlier message No. 174 allegedly claimed to have been sent by Shri Sanjiv Bhatt on the same day, would show that the earlier message was a fabricated one. He has stated that he came to know about the Gulberg Society incident late in the afternoon of 28.02.2002, and that on receipt of the said information, necessary instructions were given to the concerned police officers to deal effectively with the situation.

Shri V.P. Patel, the then Private Secretary to MoS (Home) has denied receiving or having seen the two typed fax messages No.D-2/2-COM/ALERT/100/2002, dated 27.02.2002 and D-2/2-COM/ALERT/174/2002, dated 28.02.2002 in English claimed to have been sent by Shri Sanjiv Bhatt, the then DCI. He further stated that he did not remember to have received the handwritten fax message No. C/D-2/BANAO/178/2002, dated 28.02.2002 in Gujarati bearing the signature of Shri Sanjiv Bhatt.

Shri Ashok Narayan, the then ACS (Home), denied having received or seen the typed fax message No. D-2/2-COM/ALERT/100/2002, dated 27.02.2002 claimed to have been sent by Shri Sanjiv Bhatt. Shri Ashok Narayan is of the view that such a message was not required to be sent by Shri Sanjiv Bhatt, because as a decision to bring the dead bodies of the kar-sevaks to Ahmedabad by road had already been taken by the Chief Minister at Godhra itself sometime in the evening of 27.02.2002, and this fact was well within the knowledge of DGP and CP,

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Ahmedabad. He further denied having received or seen a typed fax message No.D-2 /2-COM/ALERT/174/2002, dated 28.02.2002 purportedly sent by Shri Sanjiv Bhatt on behalf of Addl. DS (Int.) to PS to CM and PS to MoS (Home) with information to Home Secretary, Gandhinagar. According to Shri Ashok Narayan, the message was rather unusual. He added that both these fax messages are not genuine and are false and fabricated documents. He denied having received any information about the attack on Gulberg Society, and he came to know about the killing of late Ahesan Jafri, Ex-MP through Shri Nityanandam, the then Home Secretary some time after the incident. After going through the message No.C/D-2/ BANAO/178/2002, dated 28.02.2002 handwritten in Gujarati. Shri Ashok Narayan stated that he does not remember to have received such a message after the incident, and has stated that the same does

not contain any reference to any earlier message vide No.174 claimed to have been sent by Shri Sanjiv Bhatt.

Shri K. Chakravarthi, the then DGP, Gujarat has stated that the fax message in English bearing No.D-2/2-COM/ ALERT/100/2002, dated 27.02.2002 purportedly sent by Shri Sanjiv Bhatt as DCI (Security) was not received or seen by him on 27.02.2002 night, though a copy of the same is shown to have been marked to Police Gandhinagar. He has further stated that in all such law & order matters normally senior officers of State IB were expected to inform their superior telephonically and thereafter follow it up with such written message. He has also stated that Shri Sanjiv Bhatt did not contact him telephonically or in person on the night intervening 27/28.02.2002 in this regard. He has denied to have received any intelligence report about the massive mobilization of local cadres of BJP for the VHP supported Gujarat Bandh. After going through a photo copy of another fax message bearing No. D-2/2-COM/ ALERT/174/2002, dated 28.02.2002, Shri Chakravarthi has denied to have received any such message at the relevant time. According to Shri Chakravarthi, a member of a minority community from Ahmedabad had telephoned him at about 1400 hrs on 28.02.2002, about an attack on late Ahesan Jafri, Ex- MP's house and that he had immediately telephoned CP, Ahmedabad City in the matter, to which CP, Ahmedabad city, had informed that he had already sent officers and additional reinforcements to deal with the situation. Shri Chakravarhti has also stated that a fax message was also sent by the State Control Room to CP, Ahmedabad City at 1405 hrs on 28.02.2002 in this regards. On looking into the photo copy genuine of handwritten fax message bearing No. C/D-2/BANAO/178/2002, dated 28.02.2002 in Gujarati, Shri Chakravarthi has stated that the language of the said fax message shows that the Gulberg Society incident was reported for the first time through this message after the occurrence of the incident on 28.02.2002, which proves the falsity of earlier message No. D-2 /2-COM / ALERT / 174 / 2002 dated 28.02.2002 claimed to have been sent by Shri Sanjiv Bhatt.

Shri P.C. Pande, the then CP, Ahmedabad City, has stated that it was well within his knowledge after the meeting of 27.02.2002 night held at CM's residents, that the dead bodies of the kar-sevaks killed in the Godhra incident were being brought to Ahmedabad City with a view to facilitate the relatives of the deceased to identify and claim the dead bodies. As such there was no need for Shri Sanjiv Bhatt to send a fax message No.D-2/2-COM/ALERT/100/2002, dated 27.02.2002 to him. He denied having received any such fax message in his office on the night intervening 27/28.02.2002 as he remained in his office in Shahibaug till about 0100 hrs on 28.02.2002. He further denied seeing any such message. He has also denied having received or seen fax message No. D-2/2-COM/ALERT/174/2002,

dated 28.02.2002. He has given the details of the additional force/officers sent by him on receipt of the messages from Sr. PI, Meghaninagar regarding the surrounding of Gulberg Society by a mob. He has also stated that the DGP might have spoken to him about the situation in Gulberg Society and also about the declaration of curfew, to which he was informed that the curfew had been declared in Chamanpura Chowky area around 1220 hrs. Shri Pande is of the view that both these fax messages now claimed to have been sent by Shri Sanjiv Bhatt, the then DCI, are false and fabricated documents. According to Shri Pande, this message was only marked to him for information, though he was required to take action on the same and send a situation report. Shri Pande has denied sending any situation report with regard to the Gulberg Society matter to the SCR, Gandhinagar as the message was never sent to him. As regards the message No.C/D-2/BANAO/178/2002, dated 28.02.2002 handwritten in Gujarati and signed by Shri Sanjiv Bhatt, Shri Pande has stated that this message could have been sent only after the incident had taken place at Gulberg Society, and the very fact that it did not contain any reference to the alleged earlier message No. 174 claimed to have been sent by Shri Sanjiv Bhatt would go to show that the said message was not a genuine one and appears to have been manipulated subsequently.

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Shri O.P. Mathur, the then IGP (Political & Communal), has stated that fax message No.D2/2-COM/ALERT/100/2002, dated 27.02.2002 does not have any security classification and in case it passed through the Control Room, it should have contained details about the time and date. Further, the fax message does not bear the date and time at which it was passed on to the authorities, and as such it can not be said as to whether the said message was actually passed on to the concerned authorities or not. Also, according to Shri Mathur, the language of the fax message does not show as to under whose instructions the said message was sent and who informed Shri Sanjiv Bhatt as to what had transpired in the meeting, because in the said message did not say that Shri Sanjiv Bhatt had himself attended the said meeting. Had Shri Sanjiv Bhatt attended the said meeting, he was duty bound to submit a report in writing to Addl. DG(Int.) on 28.02.2002, when Shri G.C Raiger, the then Addl. DG (Int.) was very much in the office. Shri Mathur has further stated that the said fax

message had not been marked to anyone including himself. After looking into his alleged initials dated 28.02.2002 on the office copy of the typed fax message dated 27.02.2002 claimed to have been sent by Shri Sanjiv Bhatt, Shri Mathur has stated that the said initials were not his and the same had been fabricated by someone, as the message was not marked to him. Shri Mathur has also stated that had it been genuine paper, he would have marked the same to Addl. DG (Int.) for his information (being the overall Head of Intelligence wing) as Shri G.C. Raiger was very much in the office on 28.02.2002. Shri Mathur finally stated that the said fax message was a forged document, which had been fabricated subsequently by someone with a vested interest. He has denied receiving the message No. D-2/2-COM/ALERT/174/2002, dated 28.02.2002 in English allegedly sent by Shri Sanjiv Bhatt to different authorities.

Shri G.C. Raiger, the then Addl. DG (Int.) has stated that the typed fax message No. D-2/2-COM/ALERT/174/2002, dated 28.02.2002 was never put up to him on 28.02.2002 for perusal, and his initials dated 28.02.2002 on the said message are fabricated. He has stated that the said message was never seen by him and that it was a fabricated document. He has also stated that another typed fax message No.D-2/2-COM/ALERT/I00/2002, dated 27.02.2002 claimed to have been sent by Shri Sanjiv Bhatt to different authorities was neither put up to him for his information nor shown to him. He was also not orally informed about the same by Shri Sanjiv Bhatt. However Shri Raiger has stated that on 28.02.2002 afternoon, Shri Sanjiv Bhatt came to his chamber and conveyed a message based on a report from local IB unit, Ahmedabad City about the collection of a mob outside Gulberg Society, where late Ahesan Jafri, Ex-MP was residing and also about the inadequate presence of police on the spot. Shri Raiger has stated that the said message was passed on to the Ahmedabad City Police Control Room. Further, according to Shri Raiger, he along with Shri Sanjiv Bhatt, met the DGP immediately and informed him about the developing situation at Gulberg Society. Shri Raiger further stated that the DGP was requested to impress upon the CP, Ahmedabad City to declare curfew in the area. To this, DGP immediately responded by telephonically speaking to Shri P.C. Pande the then CP, Ahmedabad City to ascertain the factual position CP, Ahmedabad, Shri Pande informed the DGP over phone that a curfew had already been imposed. Shri Raiger has also stated that after meeting the DGP, there was no reason for Shri Sanjiv Bhatt to send such a fax message on 28.02.2002. After going through the

message No.C/D-2/BANAO/178/2002, dated 28.02.2002 handwritten in Gujarati and bearing the signature of Shri Sanjiv Bhatt, Shri Raiger has stated that the said message does not contain any reference to message No.D-2 /2-COM/ALERT/ 174/2002, dated 28.02.2002 claimed to have been sent earlier during the day by Shri Sanjiv Bhatt. This would go to show that the message No. D-2/2-COM/ALERT/174 /2002, dated 28.02.2002 was not a genuine one.

Shri P.B. Upadhyay, the then Deputy Commissioner in charge of Communal section has stated that he had proceeded on leave on 26.02.2002. However, Shri O.P.Mathur, the then IGP (Admn. & Security), who held the additional charge of the post of IGP(P & C) spoke to him over phone and cancelled his leave, with instructions to report immediately for duty in the light of Godhra train carnage incident. Shri Upadhyay accordingly reported for duty in the office on 27.02.2002 evening around 1700 hrs or so. He has further stated that Shri Sanjiv Bhatt, the then DCI (Security) looked after his work in his absence and had sent some messages during the day (27.02.2002.). He has also stated that he remained in the office till late hours of 27.02.2002 as he stayed in Gandhinagar and that Shri Sanjiv Bhatt left the office earlier than him as he used to live in Ahmedabad city. He has denied complete knowledge about the two-typed fax messages No.D-2/2-COM/ALERT/100/2002, dated 27.02.2002 and D-2/2-COM/ ALERT/174/2002, dated 28.02.2002 in English, and has stated that neither Shri Sanjiv Bhatt informed him about it nor these messages were shown to him. According to Shri P.B. Upadhyay, these messages do not appear to be genuine, as the dispatch number had been typed, which was quite

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unusual as all dispatch numbers used to be put down in hand by the dispatcher. According to Shri P.B. Upadhyay, had such message been issued either on 27.02.2002 or 28.02.2002, the same would have definitely been put up to him for perusal as he used to handle the 'Communal' subject in the office as per the then division of work. He has also stated that the initials dated 28.02.2002 of Shri O.P. Mathur on the fax message dated 27.02.2002 do not appear to be genuine. Shri P.B. Upadhyay has also stated that the very fact that the message dated 28.02.2002 was addressed to PS to CM and PS to MoS (Home) and on which CP, Ahmedabad City was to take action, to whom only a copy was marked, would go to show that the message

was not a genuine one. He has denied knowledge about a meeting at CM's residence on 27.02.2002 evening and that Shri Sanjiv Bhatt also did not inform him on 28.02.2002 of having attended any meeting with the CM in the night of 27.02.2002.

Shri Iftekhar Ahemad V. Pathan, AIO, who is posted to D-2 section (Communal section) of State IB since 2000, has stated that the office copies of fax messages No.D-2/2-COM/ALERT/100/2002, dated 27.02.2002 and D-2/2-COM/ALERT/174/2002, dated 28.02.2002 typed in English are not available on records of D-2 section and that he had never seen the same. He has further stated that these messages were not dispatched from the dispatch register from the office of State IB and proved that the dispatch No. 100 related to a letter dated 02.03.2002 sent by Shri P.B. Upadhyay to ACS (Home) regarding I Cr.No. 9/02 u/s 302 IPC of Khanpur P.S. Distt. Panchmahals, and dispatch No. 174 related to a fax message sent by Add. DG (int.) to Shri B.K. Haldar, Jt. Secretary, MHA, New Delhi on 16.03.2002 regarding communal incidents reported up to 16.03.2002. According to Shri Pathan, the very fact that the dispatch numbers had been typed would show that the messages are false and bogus. He has further stated that Shri Sanjiv Bhatt did not come to State IB office late in the evening of 27.02.2002 while he was in the office till quite late. He has proved that fax message No.C/D-2/BANAO/178/2002, dated 28.02.2002, handwritten in Gujarati, to be in the handwriting of Shri Bharatsinh Rathod and signed by Shri Sanjiv Bhatt, was a genuine message and a copy of the same was available in D-2 branch. The same does not contain any reference of either message No D-2/2- COM/ALERT/174/2002, dated 28.02.2002 claimed to have been sent by Shri Sanjiv Bhatt, which appears to be bogus.

Shri V.M. Sonar, the then PI and Shri S.R. Shukla, the then IO of State IB, who were posted to D-2 Branch and were present in the office on 27.02.2002 & 28.02.2002 have corroborated the statement of Shri I.V. Pathan, AIO, D-2 branch, State IB.

Shri Bharatsinh Rathod, the then AIO, State IB Control Room, who was on duty from 0800 hrs to 2000 hrs on 28.02.2002, has stated that the fax message No. C/D-2/BANAO/178/2002, dated 28.02.2002 was in his hand writing and was written to the dictation of Shri E.L. Christian, the then PI, State IB Control Room, who had received the said information over telephone from IB, Ahmedabad Region. Shri Rathod has stated that Shri Christian took this message personally to Shri Sanjiv Bhatt, who signed the same in Gujarati. He

has further stated that he put down the dispatch No.178 from the Control Room dispatch register in his hand writing and passed on the same to the fax operator for transmission to the concerned authorities. However, he does not recollect the exact time of the receipt of the said message, but it was certainly after the incident had taken place at the Gulberg Society. On looking into the photo copy of the office copy of fax message No.D-2/2-COM/ALERT/174/2002, dated 28.02.2002 in English, he has stated that the message does not bear State IB Control Room dispatch number, which was essential had the same been dispatched from D-2 branch. He has denied having seen or passed on the said fax message. His version has been corroborated by Shri E.L. Christian, the then PI, State IB Control Room.

Shri A.S. Kasiri, the then PI, State IB Control Room has stated to have sent the Control Room messages No. D-2/2-COM/ALERT/172/2002, dated 27.02.2002 and D-2/ 2-COM/ALERT/173/2002, dated 27.02.2002 during his day duty hours from 0800 hrs to 2000 hrs on 27.02.2002 and has confirmed his signature thereon.

Shri N.M. Gohil, the then AlO, State IB Control Room has confirmed writing the fax messages No. D-2/2-COM/Kar-Sevak/78/2002, dated 28.02.2002 & D-2/2-COM/ Kar-Sevak/80/2002, dated 27.02.2002 and has identified the signature of Shri V.J. Solanki, the then PI, State IB Control Room on the same. Shri V. J. Solanki could not be examined, because he is unable to speak or walk following a paralytic attack.

To sum up, on the basis of the further investigation conducted into the two typed fax messages NO.D-2/2-COM/ALERT/100/2002, dated 27.02.2002 and D-2/2-COM/ALERT/174/2002, dated 28.02.2002, it is conclusively established that Shri Sanjiv Bhatt, the then DCI, did not produce the same or copies thereof before any of the authorities before December, 2011, though a number of opportunities arose for him to do so. From the records of D-2 section, it is conclusively established that one of these fax messages were issued/dispatched from the said section of State IB dealing with the

communal affairs. Besides that Shri P.B. Upadhyay, the then DCI(Communal) and Shri I.V. Pathan, AIO, who is posted to D-2 Section since the year 2000 till date, have categorically stated that neither of those two fax messages was issued from their section and that copies thereof are not available in the records of the State IB. Shri O.P. Mathur, the then IGP(P & C) has categorically stated that fax message NO.D-2/2-COM/ALERT/100/2002, dated 27.02.2002 was fabricated document and that his initials thereon are not genuine. Shri G.C. Raiger, the then Addl. D.G.(Int) has denied his initials on the fax message No. D-2/2-COM/ALERT/174/2002, dated 28.02.2002 and has stated that the same have been forged by someone and that no such fax message was ever sent by Shri Sanjiv Bhatt. Shri Gordhan Zadafia, the then MoS (Home), Shri V.J.Patel, the then P.S. to MoS(Home), Dr. P.K. Mishra, the then Principal Secretary to Chief Minister, Shri Ashok Narayan, the then ACS (Home) and Shri P.C. Pande, the then CP, Ahmedabad City, to whom the aforesaid fax messages were claimed to have been sent by Shri Sanjiv Bhatt, all have denied having received any such fax messages. The very fact that there is no reference to fax message No. 174 dated 28.02.2002 by Control Room in fax message No.178 actually sent on 28.02.2002 after the Gulberg Society incident, would conclusively prove that no such message was sent earlier on 28.02.2002. The oral and documentary evidence available on record would therefore conclusively prove that these fax messages now produced by Shri Bhatt have been fabricated subsequently with an ulterior motive, and have been produced by Shri Sanjiv Bhatt for the first time before the Nanavati Commission of Inquiry and subsequently before SIT in January, 2012. No reliance can, therefore, be placed upon both these fax messages.

To sum up, Shri A.K. Malhotra, Member, SIT has conducted an inquiry into the complaint made by Smt. Jakia Nasim as per the orders of the Hon'ble Supreme Court of India passed on 27.04.2009. In compliance to the said order a report was submitted by the SIT to the Hon'ble Supreme Court of India on 13.05.2010, in which further investigation u/s 173(8) Cr.PC was suggested to be conducted in respect of Shri Gordhan Zadafia, Shri M.K. Tandon, Jt. CP and Shri P.B. Gondia, DCP, Zone-IV, Ahmedabad City. Further investigation in the matter was conducted by the undersigned (Shri Himanshu Shukla, DCP, Crime Branch, Ahmedabad City) under the supervision of Shri Y.C. Modi, Addl. DG & Member, SIT and a report in the matter was submitted to the Hon'ble Supreme Court on 17.11.2010. Both

the aforesaid reports were given to Shri Raju Ramchandran, Sr. Advocate, who had been appointed as Amicus Curiae in the matter by the Hon'ble Supreme Court of India. The Amicus Curiae submitted his Interim Report in the matter to the Hon'ble Supreme Court of India on 20.01.2011, vide which he suggested further investigation in respect of some of the issues.

In compliance to the order passed by the Hon'ble Supreme Court of India on 15.03.2011, to conduct further investigation into the matter u/s 173 (8) Cr.PC, Shri Himanshu Shukla, DCP, Crime Branch carried out further investigation under the overall supervision of Chairman, SIT Shri R.K. Raghavan, Shri Y.C. Modi, Addl. DG & Member, SIT and Shri A.K. Malhotra, Member, SIT and another report was submitted to the Hon'ble Supreme Court of India on 25.04.2011. The Hon'ble Supreme Court of India handed over the said report to the Ld. Amicus Curiae for his examination and independent opinion.

The Ld. Amicus Curiae accordingly examined the SIT reports and also interacted with some of the witnesses including the police officers and submitted his report to the Hon'ble Supreme Court of India on 25.07.2011. The Hon'ble Supreme Court of India after careful consideration of the matter passed an order on 12.09.2011, directed the Chairman, SIT to forward a Final Report along with the entire material collected by the SIT to the Court which had taken cognisance of FIR of I. CRNo. 67/2002 of Meghaninagar P.S as required u/s 173 (2) Cr.PC of the Court.

It may be mentioned here that the Ld. Amicus Curiae has agreed with the various recommendations made by the SIT on the different issues inquired into/investigated by the SIT. However, the Ld. Amicus Curiae is of the view that at this *prima facie* stage offences u/s 153A(1)(a)& (b), 153B (1)(c), 166 and 505 (2) IPC are made out against Shri Narendra Modi

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regarding the statement made by him in the meeting on 27.02.2002. In this connection, as discussed, above SIT is of the view that the offences under the aforesaid sections of law are not made out against Shri Narendra Modi.

In the light of the aforesaid facts, a closure report is being submitted for favour of perusal and orders.

(Himanshu Shukla)
DCP & IO, SIT
Gandhinagar

(emphasis supplied)

ANNEXURE-2[163]

DETAILS OF GODHRA RIOT CASES INVESTIGATED BY SPECIAL INVESTIGATION TEAM

Sr. No.	Police Station CR No. and date of registration of offence	Pre-SIT No. of accused arrested	Pre-SIT No. of Charge Sheet and Supplementary charge sheets	Post SIT No. of accused arrested	Post SIT No. of Charge Sheet and Supplementary charge sheets	Total accused arrested	No. of accused convicted by Trial Court	No. of accused acquitted by Trial Court	No. of Appeals filed in the Hon'ble High Court	Whether the appeals disposed in the High Court or not?	No. of accused convicted by High Court	No. of accused acquitted by High Court	No. of Appeals filed in the Hon'ble Supreme Court
1.	**2.**	**3.**	**4.**	**5.**	**6.**	**7.**	**8.**	**9.**	**10.**	**11.**	**12.**	**13.**	**14.**
1.	Meghaninagar I CR No.67/2002 **(Gulbarg Society Case) 28.02.2002**	46	1 + 5	26	6	72 (Including 2 accused arraigned u/s 319 Cr.PC). Trial in case of 4 juveniles is in progress. 7 accused died during the trial and 3 died after the pronouncement of judgment	24	39	17	Pending in the Hon'ble High Court	---	---	--
2.	Naroda I. CR No.100/2002 **(Naroda Patiya case) 28.02.2002**	**46**	**1+3**	**24**	**4**	**70 (Including 2 accused absconded during the trial). 7 accused died during the trial.**	**32 (2 died after the pronouncement of judgment**	**29**	**12**	**Yes. All the appeals have been disposed off on 25.04.2018**	**16 (1 convict out of 32 died. 13 out of the remaining 31 convicts have been convicted by the High Court and 3 accused who have been acquitted by the Trial Court, has**	**18**	**10 – All are pending**

[163] see para 84 of this judgment

											been convicted by the High Court		
3.	Naroda I. CR No.98/2002 **(Naroda Gaon Case) 28.02.2002**	49	1+3	37	6	86 (1 accused released by the Trial Court).	--	--	--	--	--	--	--
4.	Godhra Rly I. CR No.09/2002 **(Sabarmati train case)**	**103**	**1+17**	**10**	**8**	**134 (including 3 absconding accused). 13 accused have been released u/s 169 Cr.PC. 8 accused died. 8 accused are absconding. 4 Juvenile accused. Total 101 accused**	**34 (Including 3 absconding accused)**	**67**	**13**	**2 appeals disposed off. Filing of appeal against 3 absconding accused arrested is in progress.**	**31 (1 convict died during the appeal)**	**61**	**2 – both are pending**
5.	Khambholaj I CR No.23/2002 **(Ode case) 01.03.2002**	51	1+2	16	1	51 (Including 1 absconding accused). 1 accused has been released u/s 169 Cr.PC. 3 accused died	23	23	6	Yes.	19	3 + 1 died in the jail	3 – All are pending
6.	Khambholaj I CR No.27/2002 **(Ode case) 05.03.2002**	**44**	**1**	**--**	**--**	**48 (including 4 accused arraigned u/s 319 Cr.PC). 6 out of 48 are absconding and two died. Total 40 accused**	**10**	**30**	**4**	**Pending in the Hon'ble High Court**	**--**	**--**	**--**
7.	Vijapur I. CR No.46/2002 **(Sardarpura**	54	1	22	3	76	31	43 (Including 1 juvenile). 2 accused	4	Yes. All the appeals have been disposed off	17	14	3 – All are pending

	case) 02.03.2002							died during the trial.		on 02.01.2012.			
8.	Visnagar I. CR No.60/2002 **(Dipda Darwaja case) 28.02.2002**	**79**	**1+2**	**4**	**2**	**85 (Including 2 accused arraigned u/s 319 Cr.PC**	**22**	**62 (Including 1 juvenile). 1 accused died during the trial.**	**13**	**All the appeals are pending in the Hon'ble High Court**	--	--	--
9.	Prantij I. CR No.26/2002 **(British National case) 28.02.2002**	6	1	--	--	6	--	6	1	Appeal is pending in the Hon'ble High Court	--	--	--