

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 7338 of 2015****FOR APPROVAL AND SIGNATURE :****HONOURABLE MS JUSTICE SONIA GOKANI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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JAGAT JAGDISHCHANDRA PATEL....Applicant(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

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Appearance :

MR MRUDUL M BAROT, ADVOCATE for the Applicant(s) No. 1

LAW OFFICER BRANCH, ADVOCATE for the Respondent(s) No. 2 - 3

MR SHALIN MEHTA, SENIOR COUNSEL WITH MR.HEMANG M SHAH,
ADVOCATE for the Respondent(s) No. 2 - 3

MR MITESH AMIN, PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM HONOURABLE MS JUSTICE SONIA GOKANI
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Date : 14/03/2017

CAV JUDGMENT

1. At the outset, this Court palpates to regurgitate the relevant observations of the Apex Court in the latest decision in the case of **State of Karnataka, etc. v. Selvi J. Jayalalitha and others, etc.**, while dealing with Criminal Appeal Nos.300-303 of 2017 and allied matters, wherein the Apex Court has expressed its extreme concern over the issue of corruption in the country in different context of possession of disproportionate assets by the former Chief Minister of the State of Tamil Nadu and the co-accused *Shashikala*, as under :

“(Per : Pinaki Chandra Ghose, J.)

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Approach of Court in PC Cases

166. *Qua the required orientation of a Court vis-a-vis offences under the Act, it has been inter alia emphatically observed in State of M.P. & Ors. Vs. Ram Singh, (2000) 5 SCC 88, that corruption in a civilized society is a disease like cancer, which if not detected in time is sure to afflict the polity of the country leading to disastrous*

consequences. It was ruled that corruption is like a plague which is not only contagious but if not controlled spreads like fire in a jungle. It was proclaimed that corruption is opposed to democracy and social order, being not only anti people but aimed and targeted against them. It affects the economy and destroys the cultural heritage and therefore, unless it is nipped in the bud at the earliest, it is likely to cause turbulence, shaking the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.

167. The history of the enactment of the 1947 Act was traced in *R.S. Nayak Vs. A.R. Antulay*, (1984) 2 SCC 183 and a caveat was sounded to the effect that whenever a question of construction arises upon ambiguity or if two views are possible of a provision of an anti corruption law (then Act 1947), it would be the duty of the Court to adopt that construction which would advance the object underlying the statute, namely to make effective the provision for the prevention of bribery and corruption and at any rate not to defeat it. It was underscored that procedural delays and technicalities of law should not be permitted to defeat the object sought to be

achieved by the statute and the overall public interest and the social object is to be borne in mind while interpreting the various provisions thereof and in deciding cases under the same.

(Emphasis supplied)

168. In Niranjan Hemchandra Sashittal & Anr. Vs. State of Maharashtra, (2013) 4 SCC 642, this Court while dwelling on the same theme, exposited as hereinbelow:

"It can be stated without any fear of contradiction that corruption is not to be judged by decree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality."

169. A Constitution Bench of this Court in *Subramanian Swamy Vs. Director, Central Bureau of Investigation & Anr.*, (2014) 8 SCC 682, reiterated that corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the Act 1988."

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(Per : Amitava Roy, J.)

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5. Corruption is a vice of insatiable avarice for self-aggrandizement by the unscrupulous, taking unfair advantage of their power and authority and those in public office also, in breach of the institutional norms, mostly backed by minatory loyalists. Both the corrupt and the corrupter are indictable and answerable to the society and the country as a whole. This is more particularly in re the peoples' representatives in public life committed by the oath of the office to dedicate oneself to the unqualified welfare of the laity, by faithfully and conscientiously discharging their duties attached thereto in accordance with the Constitution, free from fear or favour or affection or ill-will. A self-serving conduct in defiance of such solemn undertaking in infringement of the community's confidence reposed in them is therefore a betrayal of the promise of

allegiance to the Constitution and a condemnable sacrilege. Not only such a character is an anathema to the preambular promise of justice, liberty, equality, fraternal dignity, unity and integrity of the country, which expectantly ought to animate the life and spirit of every citizen of this country, but also is an unpardonable onslaught on the constitutional religion that forms the bedrock of our democratic polity.

6. This pernicious menace stemming from moral debasement of the culpables, apart from destroying the sinews of the nation's structural and moral set-up, forges an unfair advantage of the dishonest over the principled, widening as well the divide between the haves and have nots. Not only this has a demoralising bearing on those who are ethical, honest, upright and enterprising, it is visibly antithetical to the quintessential spirit of the fundamental duty of every citizen to strive towards excellence in all spheres of individual and collective activity to raise the nation to higher levels of endeavour and achievement. This virulent affliction triggers an imbalance in the society's existential stratas and stalls constructive progress in the overall well-being of the nation,

besides disrupting its dynamics of fiscal governance. It encourages defiance of the rule of law and the propensities for easy materialistic harvests, whereby the society's soul stands defiled, devalued and denigrated.

7. Such is the militant dominance of this sprawling evil, that majority of the sensible, rational and discreet constituents of the society imbued with moral values and groomed with disciplinal ethos find themselves in minority, besides estranged and resigned by practical compulsions and are left dejected and disillusioned. A collective, committed and courageous turnaround is thus the present day imperative to free the civil order from the suffocative throttle of this deadly affliction.

8. Every citizen has to be a partner in this sacrosanct mission, if we aspire for a stable, just and ideal social order as envisioned by our forefathers and fondly cherished by the numerous self-effacing crusaders of a free and independent Bharat, pledging their countless sacrifices and selfless commitments for such cause."

2. This petition preferred by the petitioner under Article 226 of the Constitution of India challenges the action of the Gujarat High Court Vigilance Cell Police Station on various grounds with an urge to transfer the investigation of the first information report being I-C.R. No.1 of 2015, registered on July 26-27, 2015, with the Gujarat High Court Vigilance Cell Police Station, Ahmedabad, to the Central Bureau of Investigation.

3. The factual score that is essential to be depicted is that the petitioner is a practicing advocate registered with Bar Council of India and Bar Council of Gujarat, having Enrolment No.G/436/2009. Two judicial officers working at Vapi, District Valsad, viz. (1) Shri A.D. Acharya and (2) Shri P.D. Inamdar, are alleged to have indulged into serious corrupt practice. It is alleged that not only they distorted the evidence recorded before them, but they also compelled the advocates to approach them by pressurising them in different ways so as to continue their corrupt practice.

4. A written complaint in that regard was forwarded to the then Honourable the Chief Justice of Gujarat on July 20, 2012, with substantiating documents. A communication from the Registrar (Vigilance), High Court of Gujarat, was received by the petitioner on February 05, 2015, requesting the petitioner to address the complaint to Honourable the Acting Chief Justice, Gujarat High Court. The petitioner affirmed another affidavit and filed a complaint to Honourable the Acting Chief Justice Shri Jayant Patel (as His Lordship then was). The petitioner also remained present before the Registrar (Vigilance) on March 05, 2015 and his statement came to be recorded after verifying the video clips from the hard disk and compact disk (CD) submitted to the Registrar (Vigilance). The petitioner's statement came to be recorded in three parts on March 05, 2015, March 09, 2015 and March 11, 2015, respectively.

4.1 The Registrar (Vigilance) also visited the court premises at Vapi on March 18, 2015, and

an additional statement of the petitioner came to be recorded. In all, it contained 28 pages (one side), separated over various dates and such recording thus continued for nearly 21 hours. After a passage of six months from the date of the complaint, both the Presiding Officers and two staff members were suspended by the Gujarat High Court and a first information report being I-C.R. No.1 of 2015 came to be registered with Vigilance Cell Police Station, Gujarat High Court, on July 26-27, 2015.

4.2 Thereafter, both the accused-judicial officers preferred Special Criminal Application No.5260 of 2015, seeking a writ of mandamus, which ultimately came to be rejected by this Court on the ground that it was a large scale scam. The Court further observed in its *prima facie* conclusion that the officers have tarnished the image of the judiciary and the facts of the case are gross and disturbing.

4.3 On September 09, 2015, both the said accused were arrested and produced before the learned District and Sessions Judge, Valsad, on September 10, 2015. The regular bail application preferred by them came to be rejected and they were sent to the judicial custody, as no remand was sought for by the respondent No.2. It is alleged that except the evidence furnished by the petitioner, no fresh evidence came to be collected by the respondent No.2-Investigating Officer. The slipshod manner of investigation of the complaint led the petitioner to approach the High Court. He also addressed a communication to the Registrar (Vigilance).

4.4 It is the grievance of the petitioner that due to improper investigation by an incompetent Police Officer, there are many more accused who are roaming freely in the society and no attempts have been made to arrest the seven advocates who were a part of this corruption racket. It is also their say that in a zeal to protect the erring officer, the remand of both

the accused persons has not been sought for. The reason of unaccounted wealth received towards the illegal gratification has not been pressed into service for seeking remand. The deliberate lapse on the part of the respondent No.2 has jeopardised the audio and video proof which have been tendered. The hard disk which is a preliminary evidence and the CD-a secondary evidence, have been ignored. The charge sheet ought to have been filed within a period of sixty days from the date of the arrest of the accused, which since was not done, it resulted into their release as they both have been given default bail. According to the petitioner, it was the duty of the respondent as well as the Registrar (Vigilance) to check the entire hard disk to find out other and further corrupt practices by the accused persons. Therefore, it is urged that the investigation be carried out by a person having impeccable integrity. Relying upon certain decisions, the following substantial reliefs have been prayed for :

"7(A) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, and be pleased to transfer the investigation of FIR No.I CR No.1 of 2015 dated 26-27.07.2015 registered with Gujarat High Court Vigilance Cell Police Station, Ahmedabad to the Central Bureau of Investigation.

(B) This Honourable Court be pleased to direct the Central Bureau of Investigation to carry out investigation in the subject matter of FIR No.I CR No.1 of 2015 dated 26-27.07.2015 registered with Gujarat High Court Vigilance Cell Police Station, Ahmedabad by registering the case with them." सत्यमेव जयते

5. A communication addressed to the Honourable the Chief Justice of India is produced along with the other documentary evidence.

6. An affidavit-in-reply for and on behalf of the respondent No.3- In-charge Registrar General of the High Court of Gujarat, has been filed, contending *inter alia* that Rule 4(c) of the Vigilance Cell (Judicial Department) Rules, 1986

(hereinafter referred to as 'the Vigilance Rules'), provides that the Vigilance Cell shall work as a separate Department of the High Court, independent of the Directorate of Vigilance and Anti-Corruption in the State.

6.1 A notification dated March 31, 1994, is also referred to, which provides that the office of the Vigilance Cell in Gujarat High Court, Ahmedabad, to be a Police Station and specifies that it shall have jurisdiction over the whole of the State of Gujarat for registering and investigating the corruption cases against the officers and employees of the Judicial Department of the State of Gujarat.

6.2 Rule 17 of the Vigilance Rules provides that no other Anti-corruption Agency in the State shall have any authority or jurisdiction to entertain any complaint against any official in the Judicial Department in the State. Thus, the Vigilance Cell, according to the respondent, is vested with exclusive jurisdiction for registering and investigating the corruption

cases against the officers and employees of the Judicial Department in the State. No other agency would have jurisdiction to deal with the corruption cases against both the judicial officers and employees of the Judicial Department. The judicial officers would include Judges of the subordinate Courts. There are no grounds made out by the petitioner, according the respondent deponent, for handing over the investigation of the first information report in question to the Central Bureau of Investigation.

6.3 It is submitted that it is a well settled law that the High Court in its exercise of powers under Article 226 of the Constitution of India should transfer the investigation to the Central Bureau of Investigation in a very rare and exceptional circumstances.

6.4 On August 25, 2015, the Standing Committee had resolved to suspend both the accused i.e. Shri A.D. Acharya and Shri P.D. Inamdar, from judicial services and thereby, they were

suspended vide order dated August 27, 2015. Thereafter, an order came to be passed by the High Court on administrative side extending the suspension period of both the said accused for a period of 89 days with effect from November 24, 2015 and periodically such orders came to be passed.

6.5 It is further contended that the application dated July 20, 2012, was received by the Secretariat of Honourable the Chief Justice on July 25, 2012. The order was passed by the High Court to forward the said application to the learned Principal District Judge, Valsad, for doing the needful. The application dated January 26, 2015, which was addressed to Honourable the Chief Justice of India, was marked to Honourable the Acting Chief Justice, Gujarat High Court. As the resolution in the Chamber Meeting convened on November 11, 2014, is that unless accompanied by duly sworn affidavit and verifiable material to substantiate the allegations, the complaint should not be entertained. By direction of

Honourable the Acting Chief Justice, the petitioner- complainant was asked to produce the original complaint and the affidavit duly notarised. The matter was placed before the Honourable Administrative Judge, so also before Honourable the Acting Chief Justice for designating the competent authority. It was directed to be placed before the Standing Committee, which resolved to appoint the Registrar (Vigilance) to hold preliminary inquiry.

6.6 The Registrar (Vigilance) conducted the preliminary inquiry in reference to the complaint. He then went to Vapi to record the further statement of the petitioner-complainant to corroborate and also collected the original record. The preliminary inquiry report was submitted to Honourable the Acting Chief Justice. The Standing Committee on May 04, 2015, when the matter was placed before it, resolved that the Committee be constituted of two Honourable Judges to consider the report of the preliminary inquiry. On June 29, 2016, the

pecially constituted Committee considered the report of inquiry submitted by the Registrar (Vigilance). The said report of June 29, 2015, was placed before the Committee and after deliberation, the criminal prosecution was directed to be launched against both the accused-judicial officers and the matter was referred to the Honourable the Acting Chief Justice as there were allegations against some of the advocates too. The Registrar (Vigilance) on July 15, 2015, handed over the entire record to the Vigilance Officer, which included the report, audio-video CDs, statements of the petitioner and the otherside, etc. The filing of the charge sheet, according to the respondent, is pending as two audio-video CDs and spy camera have been forwarded to the Forensic Science Laboratory, Gandhinagar.

6.7 The Vigilance Rules have been placed on record along with the proceedings of Chamber Meeting and the Standing Committee, so also the order of suspension passed by the then Registrar General. The details of extension of

suspension period also has been given. The direction of preliminary inquiry given to the Registrar is also on record. On July 05, 2015, a communication was addressed to the then Vigilance Officer Shri A.C. Jadeja, which is also on record.

The erstwhile Investigating Officer Shri A.C. Jadeja filed his detailed affidavit. He had given chronology of events from July 15, 2015 to October 21, 2015. It is his say that as per Rule 4 of the Vigilance Rules, the Vigilance Cell is to work as a separate department of the High Court independent of the Directorate of Vigilance in the State. He has also given details which have been provided by the In-charge Registrar General, where Rules 9(a) and 9(d) provide that the Vigilance Officer-I shall deal with all the complaints pertaining to the Judicial Officers and the Vigilance Officer or the Vigilance Inspector may take help of Police Head Constable and Police Constables in the process of

investigation. The chart for the period from July 15, 2015 to October 21, 2015, does not require any production at this stage. He further explained that the question of remand did not arise because on perusal of the CD, it was transparent that there was actual demand of bribe, but the actual money had not passed on to the accused, and therefore, there was a question of only drawing inference. The Registrar (Vigilance) had already collected the statements so as to ensure that the faith of general public in the judiciary is not shaken. Before filing of the charge sheet, it is must that the Vigilance Cell Police Station is armed with all the evidence in respect of charge sheet. He denied that he has attempted to shield any officer. He submitted that all the evidence, including CDs have been sent to the Forensic Science Laboratory on October 21, 2015, to ensure that they are genuine. At no occasion, the delay has occurred, but the Forensic Science Laboratory has limited number of staff and yet the request had gone through

the Vigilance Cell Police Station to expedite the matter. It is the say of the deponent of the affidavit-in-reply that upon completion of preliminary inquiry, the offence was registered and nothing was left to recover and, therefore, no remand for recovery has been sought. All the original record had seized and produced before the Court. According to the deponent, the allegations are baseless and denied accordingly.

6.8 It is further his say that there was strength of only two persons in the Vigilance Cell Police Station i.e. Vigilance Police Inspector and Investigating Officer (Vigilance Officer). The entire case is based on electronic instruments and, therefore, there would not be any need to call for Call Detail Records (CDRs). He relied upon Rule 17 of the Vigilance Rules, which bars any agency from registering and investigating the case. He has stated on oath that he carried out his duty utmost sincerity and honesty. The petitioner has not made out any case for transferring the

first information report to the Central Bureau of Investigation.

7. This Court has heard Shri Mrudul Barot, learned counsel appearing for the petitioner. *A fortiori*, he has urged that this is a fit case for transfer of investigation as the remand is not asked for. Moreover, the CDRs have not been called for from the concerned authority, which would also establish that the investigation has been carried out in a slipshod manner on the part of the Vigilance Officer, who investigated the said first information report, accepting the preliminary inquiry, which has been made by the Registrar (Vigilance). Nothing further has been collected in a large scale scam of corruption by two judicial officers in a particular district. It is lamented by him that the entire matter has been treated very casually. He also urged that the Vigilance Cell Police Station has neither any staff nor any amenities to handle serious matters like the present one.

8.A *contrario sensu*, Shri Shalin Mehta, learned Senior Counsel appearing with the learned Standing Counsel Shri Hemang Shah for the respondents, has contended that all the allegations levelled in the petition are baseless. On receiving the complaint in the year 2012, the matter was sent to the learned District and Sessions Judge, Valsad. Thereafter, when the details were called for by the then Honourable the Acting Chief Justice Shri Jayant Patel, the preliminary inquiry was conducted as per the direction of Honourable the Acting Chief Justice by the then learned Registrar (Vigilance) and such report was placed before the Committee constituted by the Resolution of the Standing Committee. Thereafter, accepting the very report of the Registrar (Vigilance), the prosecution was directed to be initiated by the Committee and the same had been accepted. Accordingly, the first information report being I-C.R. No.1 of 2015 came to be registered. It is further his say that there are certain limitations as the post of Vigilance Officer-I, which is the cadre of the

Deputy Inspector General of Police, has not been sanctioned by the State from the time the Vigilance Cell Police Station has been established pursuant to the said Rules. The Vigilance Officer who is otherwise known as "VO-II", was the only officer to handle investigation. The learned Senior Counsel fairly submitted that out of the four posts of inspectors, only one inspector is available. Most of the time, it is the only 'VO-II' and Vigilance Inspector, who are handling this Police Station. The posts of eight Police Constables and four Police Head Constables also continued to remain vacant. However, according to him, there is no laxity nor any indolent attitude in handling the matter as alleged. The then Investigating Officer has detailed how the investigation was handled effectively.

9. When the matter was argued before this Court, on a specific query raised, it was also admitted by the learned Senior Counsel that Shri A.C.Jadeja, who was previously the Investigating Officer, retired on December 25, 2015 and it was for a

considerably long period, nobody was appointed in his place. This Court had called for the details from the learned counsel and the concerned file has also been placed before the Court, which indicates that the request was made through the Registrar General to the State Government pursuant to the directions issued by the authority. The delay in posting the officers as VO-II and Vigilance Inspector is a routine phenomenon. All the posts which have been set up have never been filled in.

10. Before dealing with the contentious rival submissions, it is at the outset necessary to refer to the notification of the Home Department dated March 31, 1994, provides that in exercise of powers conferred by clause (s) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) in its application to the State of Gujarat, the Government of Gujarat declared the office of the Vigilance Cell in the Gujarat High Court, Ahmedabad, to be a Police Station and specified that it shall have jurisdiction over whole of the State of Gujarat for registering and

investigating the corruption cases against officers and employees of the judicial department of the State of Gujarat.

11. It is to be specifically noted at this stage that the Vigilance Rules, 1986, which have been made to provide effective machinery for handling serious issues of bribery and corruption, against the officers and employees of the Judicial Department in the State. The Rules are framed under Article 235 of the Constitution of India.

11.1 Rule 3(a) of the said Rules provides that a Vigilance Cell shall be a department of the High Court.

11.2 Rule 4(a) of the Vigilance Rules speaks as to what the Vigilance Cell would be comprised of and Rule 4(b) provides for administrative set up. Rule 4(c) speaks that it is to work as a separate department of the High Court independently of the Directorate of the Vigilance and Anti-Corruption in the State. The Vigilance Cell, as per Rule 4(d), is to be in-charge of the investigation, including laying

traps, making discreet and/or preliminary enquiries on the complaints received and also launching prosecution.

11.3 Rule 5(a) provides that the Special Officer (Vigilance) is to be appointed from amongst the cadres of City Civil and Sessions Judge or District Judges drawn on deputation by the Honourable the Chief Justice. Even a retired officer can be reemployed.

Rule 5(b) of the Vigilance Rules provides for two posts of Vigilance Officers and 5(c) makes a provision for Vigilance Inspectors, which are to be of the rank of Police Inspector drawn on deputation from the Government or at the option of Honourable the Chief Justice, by reemployment of an officer who has retired from the cadre.

Rule 5(d) of the Vigilance Rules provides that the post of Head Constable shall be filled in by appointment of Police Head Constable drawn on deputation from the Government.

The Police Constable, as provided under section 5(e), is to be appointed by drawing the Police Constables on deputation from the Government. The ministerial staff, as per Rule 5(f), shall be provided from the administrative establishment of the High Court. All the matters in respect of which the High Court is required to take decision needs to be submitted to the Honourable the Chief Justice till the stage of investigation, including laying traps, making discreet and/or preliminary enquiries on the complaints received, is over. Thereafter, such matters shall be submitted to the Honourable the Chief Justice and the concerned Administrative Judge/s for being brought before the Chamber Meeting to consider and decide the launching of prosecution and/or departmental proceedings.

11.4 Rule 7(a) of the Rules provides that all the complaints whether received orally or sent in the form of letters, with the allegation of

corruption or corrupt practice, shall be forwarded to the Special Officer (Vigilance).

11.5 The Rules further provide that for holding a discreet enquiry, the officer concerned shall proceed to the place and make such enquiry as he deems fit without recording any statements in writing. The discreet enquiry is to be made by the Vigilance Inspector who shall submit his report to the Vigilance Officer and the Vigilance Officer shall prepare his report and submit the same to the Honourable the Chief Justice. If the Vigilance Officer himself conducts the enquiry, he shall submit his report to the Honourable the Chief Justice. All the reports shall be routed through the Special Officer (Vigilance). He has to scrutinise all the complaints received or forwarded to him and frame his independent opinion and submit the same along with the opinion of the Vigilance Officer to the Honourable the Chief Justice for direction as to whether any further action in the matter is called for. The Vigilance Officer

may, considering the gravity of the complaint, depute any one of the Vigilance Officer Inspectors working under him.

11.6 However, if the trap is to be laid, the same shall be done by the concerned Vigilance Officer himself. No trap shall be laid except under the specific directions from Honourable the Chief Justice and immediately after the trap, he shall report the outcome to the Honourable the Chief Justice through the Special Officer (Vigilance). On consideration of the report of the Vigilance Officer and the opinion of the Special Officer (Vigilance), the Honourable the Chief Justice may pass appropriate orders regarding further action to be taken.

11.7 Thereafter, the matter shall be submitted to Honourable the Chief Justice and the concerned Administrative Judge/s for being brought before the Chamber Meeting to consider and decide launching of prosecution and/or

departmental proceedings. If the prosecution is ordered the papers are to be forwarded to the Vigilance Officer for filing charge sheet in the Court of the competent jurisdiction.

11.8 Rule 16 provides that the High Court is declared as Police Station as contemplated under the Code of Criminal Procedure, 1973, having jurisdiction over the whole of the State of Gujarat and the Vigilance Inspector shall be the officer-in-charge the Police Station.

The Rules further provide that no other Anti-Corruption Agency in the State shall have any authority or jurisdiction to entertain any complaint against any official in the Judicial Department in the State.

12. Following the entire procedure as detailed in the Vigilance Rules discussed hereinbefore, after once the complaint had been received from the petitioner-complainant, the Committee was constituted to consider the report of the Registrar (Vigilance) on April 28, 2015, which says that both the officers be placed under

suspension with immediate effect and disciplinary proceedings may be initiated against both the said judicial officers. It is further recommended that Principal District Judge, Valsad, may initiate departmental inquiry/ disciplinary proceedings immediately against Balkrishna Prajapati, Junior Clerk and B.D. Shrimali, Stenographer and both the staff members were directed to be placed under suspension, pending the departmental inquiry/ disciplinary proceedings. The Registrar General issued the order of suspension on August 27, 2015.

13. The fulcrum of consideration in the present petition is the request of transferring the investigation to the Central Bureau of Investigation, essentially on three major counts, viz. (i) non-asking of remand after the arrest of both the judicial officers was made; (ii) non-submission of the charge sheet within the stipulated time frame resulting into both the accused getting default bail; and (iii) non-collection of evidence promptly and even

otherwise as expected of the Investigating Officer.

14. Dealing firstly with the first issue of remand, it is not in dispute that the remand of the accused who both are the judicial officers and allegedly involved in corrupt practice has not been sought for. The affidavit-in-reply particularly of the Investigating Officer who has now retired from the post of Vigilance Officer, is that there was sufficient record indicating the demand, but the substantiating documents did not speak of receipt of such illegal gratification physically and moreover, the evidence has been collected during the preliminary inquiry and, hence, the custodial remand had not been sought for.

15. From the beginning it is the case of the complainant that the conduct, which has been alleged in the complaint has brought disrepute to the investigation. It is also his say that huge amount of illegal gratification had been demanded by both the judicial officers in the pending

matters and, therefore, to presume that there was no material to seek remand, is found unpalatable. It is an uncontroverted fact that the Vigilance Officer (VO-II), who has filed his affidavit-in-reply, has retired during the pendency of the investigation. While he continued to act as Investigating Officer also, he could have conducted the investigation more effectively and with scientific precision. To be complacent and/or to presume anything while handling serious investigation cannot be the answer to the requirements of law. It though may not be said to be an attempt to save the accused, it surely is an act, which would raise the eye-brows, particularly when the investigation was at a very nascent stage against the judicial officers. Recourse of the society against all kinds of injustice and violation of law when is in the judiciary, all the more care would be essential when judicial officers themselves are alleged of demand of bribe for discharging their duties under the law. Not that remand in every matter is a must to be sought. But, the stand taken by the

Investigating Officer to justify his stand leaves much to be desired.

16. The second issue which has been pressed into service for transfer of investigation to the Central Bureau of Investigation is of grant of a bail to the accused. Both the judicial officers have been granted default bail as the charge sheet was not filed within the time frame i.e. within 60 days from the date of their arrest.

17. As noted hereinbefore, the Registrar (Vigilance) was handed over the preliminary inquiry by the respondent-High Court. He not only had recorded the statement of the complainant on different dates, but had also visited Vapi and recorded the statements there also. The collection of the CD, spy camera, etc. could be possible as the Registrar (Vigilance) had substantially made such collection. Many of the exhibits were also sent to the Forensic Science Laboratory.

18. At the time of hearing of this petition, when a specific query was raised as to why the

charge sheet was not filed within the time frame, non-receipt of report from the Forensic Science Laboratory was shown to be one of the strongest grounds. It was argued that ordinarily when the entire material and the exhibits are sent to the Forensic Science Laboratory, the report usually arrives, which of course can be placed before the concerned Court belatedly. However, in the present case, the entire material is in the form of CDs and hard disk, which are all found to be genuine and the report of the Forensic Science Laboratory has been received on February 16, 2016. It has found all the video cameras in working condition and it is further reported that the Forensic Science Laboratory is required to examine Hard Disk of the Computer/ CPU used for transferring the data from Video Camera to USB Hard Disk to ascertain procedure used to process/ transfer the data regarding the query raised in the forwarding note. It is given to understand to this Court that repeatedly the request has been made to the complainant to part with the CPU (Central Processing Unit) of the computer, though

ensured, so far the same has not been handed over.

19. Undoubtedly, in every criminal matter where the investigation is to be completed and the charge sheet is to be laid either within 60 days or 90 days, the report of the Forensic Science Laboratory does not necessarily form the part of the papers of the charge sheet. The Criminal Manual also provides for submission of the Forensic Science Laboratory report if not submitted with the charge sheet, at a belated stage.

20. It is to be once again noted that the first information report in question was registered on July 26-27, 2015 and the arrest of the accused judicial officers was made by the Investigating Officer on September 09, 2015. Their production before the Sessions Court was made on September 10, 2015. Going by the date of their arrest, by November 07, 2015, the charge sheet ought to have been laid by the Investigating Agency. It was virtually impossible for the Forensic Science Laboratory to send the report for the exhibits

which were sent to it on October 21, 2015. Whatever material which was available with the Registrar (Vigilance) and the one which had been given by the petitioner, was with the Investigating Officer, however, he needed to collect the evidence during the course of investigation although many of the exhibits were sent to the Forensic Science Laboratory on October 21, 2015. Even in the report dated February 16, 2016, a request was made to the petitioner to hand over the CPU to the Investigating Officer, however, the request was turned down of the Investigating Officer and so far, the CPU has not been handed over by the petitioner to the Investigating Officer.

21. It is not a sound reason put forth on the part of the Investigating Officer that the pendency of the Forensic Science Laboratory report had caused delay in filing the charge sheet. Any Investigating Officer who is well-versed with the process of investigation and the stipulated time period as provided under the law, would know that if the Forensic Science

Laboratory report is awaited in every matter, the time period of 60 days or 90 days could never be honoured. Such time limit to place the charge sheet could not have gone unnoticed and that ought not to have furnished a ground for default bail when otherwise these officers were refused bail by the competent Court.

22. Another vital ground which has been raised is of non-collection of oral as well as documentary evidence with promptness. As mentioned in the beginning one post of senior most Vigilance Officer, which is the post of Deputy Inspector General of Police has not been sanctioned since framing of the Vigilance Rules. Barring one post of VO-II and one post of Police Inspector, three posts of Vigilance Inspectors, at any given point of time, remained vacant. Only one post has been filled in, that too, by posting a retired officer. When the Vigilance Cell, High Court of Gujarat, is declared as a Police Station, there is no reason as to why only retired Police Officers are deputed and that also, after a protracted correspondence and

inexplicable delay. It is never heard that any other Police Station would remain without any officer in-charge of such Police Station. Even the posts of four Police Head Constables and eight Police Constables have never been filled in totally. There are about four to five communications of the Registrar General spread over to months where he requested to expedite sending of names of those who were willing to be considered on deputation. The only officer who continued to hold the fort was Special Officer (Vigilance). However, so far as the pending investigation is concerned, none was there. The first such correspondence is dated August 14, 2013, where the learned Registrar General by addressing a letter to the Director General of Police, Gujarat State, requested to send the names, as per the directions given to him on administrative side. Although the highest seat of the judiciary in the State by the said Rules would direct the Registrar General on administrative side to correspond and yet, the

approach adopted by the State deserves strong disapproval of the Court.

The second, third and the fourth correspondences from the Registry also reiterate the request of sending names of Police Head Constables and Police Constables and yet, no heed is paid to the same.

The Investigating Officer who was investigating the said first information report bearing I-C.R. No.1 of 2015, was to retire on December 25, 2015, and in absence of any other officer of his rank, not only this investigation but other which may be pending or those which might come up, were in the State of jeopardy. However, that did not deter the State to come out of its lackadaisical approach.

23. The requisite speed in collecting the evidence was sadly lacking due to the sorry state of affair of the Vigilance Cell Police Station. The Registrar (Vigilance) even if makes his best possible efforts with all seriousness to act

speedily, with no infrastructure and lack of manpower, would sure to hamper his working considerably.

24. Except the material which has been collected by the Registrar (Vigilance) at the time of preliminary inquiry and thereafter, not much evidence has been collected by the Investigating Officer and as noted hereinabove, for nearly a period of one year, the post of Vigilance Inspector had remained vacant as Shri A.C. Jadeja, who had filed an affidavit, has retired on December 25, 2015, and another officer in his place was not posted by the State Government for an unusually a long period. Even when the CD did not reveal giving of illegal gratification, but only demand, how could all other angles of this serious issues be left to the guesswork. To say that after the Special Officer (Vigilance) recorded the statement of the complainant and collected some material, nothing remained to be collected, is the version of the Investigating Officer wholly unpalatable. After a thorough

investigation, he would have a right to say so and the Court if is not satisfied or the complainant finds it unacceptable, he can request for further investigation under section 173(8) of the Code of Criminal Procedure. But, how could an Investigating Officer presume from the tenor of the complaint or the CD sent by the complainant about non-availability of the evidence.

To give only one example, it is unfathomable as to why the Investigating Officer failed to call CDRs in this matter.

In every ordinary criminal matter also, collecting of CDRs is found to be a very useful tool to prove whereabouts of parties and also to link and resolve many unexplained links. CDRs are held to be the effective tool by a Division Bench of this Court in one of the appeals, by holding thus :

"It would be apt to refer to certain vital details CDR, which known as Call detail record as also Call Data record, available on the internet [courtesy Wikipedia]. The CDR contains data fields that describe a

specific instance of telecommunication transaction minus the content of that transaction. CDR contains attributes, such as [a] calling party; [b] called party; [c] date and time; [e] call duration; [f] billing phone number that is charged for the call; [g] identification of the telephone exchange; [h] a unique sequence number identifying the record; [i] additional digits on the called number, used to route the call; [j] result of the call ie., whether the same was connected or not; [k] the route by which call left the exchange; [l] call type [ie., voice, SMS, etc.].

Call data records also serve a variety of functions. For telephone service providers, they are critical to the production of revenue. For law enforcement, CDRs provide a wealth of information that can help to identify suspects, in that they can reveal details as to an individual's relationships with associates, communication and behavior patterns and even location data that can establish the whereabouts of an individual during the entirety of the call. For companies with PBX telephone systems, CDRs provide a means of tracking long distance access, can monitor telephone usage by department; including listing of incoming and outgoing calls.

Relevant would be also to refer to Mobile Phone Tracking and phone positioning briefly at this stage.

The mobile phone tracking refers to attaining of the current position of a mobile phone, stationary or moving. Localization may occur either via multi-lateration of radio signals between the radio towers of the network and the phone or simply via GPS. To locate the phone using multi-lateration of radio signals, it must emit atleast the roaming signal to contact the next nearby antenna tower, but the process does not require an active call. GSM is based on the signal to nearby antenna masts. Mobile positioning includes locations-based services that disclose the actual coordinates of a mobile phone bearers and it is the technology used by telecommunication companies to approximate the location of a mobile phone and thereby also its user. It is more properly termed as locating rather than positioning. The technology of locating is based on measuring power levels and antenna patterns and uses the concept that a powered mobile phone always communicates wirelessly with one of the closest base stations, so knowledge of the location of the base station implies the cell phone is nearby. Whereas, the advanced

systems determine the sector in which the mobile phone resides and roughly estimate also the distance to the base station. Further proximation can be done by interpolating the signals between adjacent antenna towers. Qualified services may achieve a precision of down to 50 meters in urban areas, where mobile traffic and density of antenna towers is sufficiently high. Rural and desolate areas may see miles between base stations and therefore possibly determine locations a little less precisely.

In order to route calls to a phone, the cell towers listen for a signal sent from the phone and negotiate which tower is best able to communicate with the phone. As the phone changes location, the antenna towers monitor the signals and phone is roamed to an adjacent tower as appropriate. By comparing the relative signal strength from multiple antenna towers, a general location of a phone can be roughly determined. Other means make use of the antenna pattern, which supports angular determination and phase discrimination. Newer phones may also allow the tracking of the phone even when turned on and not active in a telephone call.

In a simpler language, it can be said that the technology can be best put to use

in the form of CDRs which contains data fields describing various details, which also includes not only the phone number of the subscriber originating the call and the phone number receiving such call etc., but, the details with regard to the individual's relationships with associates, the behavior patterns and the whereabouts of an individual during the entirety of the call.

The whole purpose of CDR is not only to establish the number of phone calls which may be a very strong circumstance to establish their intimacy or behavioral conduct. Beyond that, such potential evidence also can throw light on the location of the mobile phone and in turn many a times, the position and whereabouts of the person using them with the aid of mobile phone tracking and phone positioning, location of mobile phone and its user is feasible. As the mobile phone ordinarily communicates wirelessly with the closest base station. In other words, ordinarily, signal is made available to a mobile phone from the nearest Mobile tower. In the event of any congestion or excessive rush on such mobile tower, there is an inbuilt mechanism of automatic shifting over to the next tower and if access is also not feasible there, to the third available tower. This being

largely a scientific evidence it may have a material bearing on the issue, and therefore, if such evidence is established scientifically before the Court concerned, missing link can be provided which more often than not get missed for want of availability of credible eye-witnesses. We have noticed that in most of the matters these days, scientific and technical evidence in the form of Call Data Record is evident. However, its better and further use for the purpose of revealing and establishing the truth is restricted by not examining any witness nor bringing on record the situation of the mobile towers. Such kind of evidence, more particularly in case of circumstantial evidence will be extremely useful and may not allow the truth to escape, as the entire thrust of every criminal trial is to reach to the truth."

25. With the nature of direct allegations of demand of illegal gratification by the judicial officers for disposition of justice, they would facilitate further investigation and also may help establishing vital links. No single reason is given for not collecting the CDRs during the course of investigation of crime in question.

26. In view of the discussion made hereinabove, the question which would arise is as to whether this is a fit case for transfer of investigation to the Central Bureau of Investigation as has been urged by the complainant. It is a settled law that ordinarily no such indulgence is necessary, unless exceptional grounds emerge and are established. Self imposed restraint of the Court while exercising powers under Article 226 of the Constitution of India is very vital.

27. In the decision of the Apex Court in the case of ***State of Bihar and another v. Ranchi Zila Samta Party and another***, reported in AIR 1996 SC 1515, when a question came up as to whether the Central Bureau of Investigation can be handed over the investigation taking it away from the State Police by the High Court in exercise of powers under Article 226 of the Constitution of India, the Apex Court has approved the action as being just and proper from the facts and circumstances which existed.

28. The Apex Court in the case of **State of West Bengal and others v. Sampat Lal and others, reported in AIR 1985 SC 195**, held and observed that in absence of any material to be satisfied that the investigation was not conducted properly, it should not order the transfer of investigation. Further, a Division Bench of the Rajasthan High Court in **The State of Rajasthan v. Phool Chand Garg and another, reported in 1991 Cr.L.J. 125**, held that in case of the High Court orders that the case should be investigated by the Central Bureau of Investigation, no consent of the State Government is necessary. The broad guidelines set out therein had been ingeminated by this Court in the case of **Dharmishtaben Narendrasinh Zala v. State of Gujarat, reported in 1997(2) GLR 1043**.

At this stage, it would be apt to regurgitate the relevant guidelines issued by the Division Bench of the Rajasthan High Court in the case of Phool Chand Garg (supra) deserve reproduction, which read as under :

"4. After hearing learned counsel for the petitioner and Mr. J.P. Goyal for the non-petitioner. We have already said that because the investigation was transferred long back to CBI, and it is almost at the final stage, we will not interfere but we will frame the following guidelines:

(i) If an application for transfer of investigation from local police to CBI is given in this Court, notice must be given to the State, the investigation file must be called for perusal and it is not necessary to give any notice to the accused person because the object of investigation is to collect evidence.

(ii) Generally, the starting investigating agency i.e. the officer of the police where the FIR is lodged should be allowed to continue the investigation and on being satisfied on material on record that the investigating officer is not conducting the investigation on proper lines and is trying to save the real accused, this Court should transfer the investigation from the local police to CBI.

(iii) The transfer of the investigation from local police to the CBI should not be made merely on asking.

(iv) In case the charge-sheet is filed and cognizance is taken by the Magistrate, then proper course for the Court will be to direct the concerned Magistrate, if necessary to proceed under S. 173(8), Cr.P.C. but in case the Court is satisfied that there is prima facie proof against the person against whom neither charge sheet has been filed nor cognizance has been taken, the case is of serious nature, the Court after giving notice to the aforesaid person may make the appropriate order, and any order in respect of further investigation shall be considered to be an order made under S. 173(8), Cr.P.C."

29. The Apex Court in the decision in the case of **Subrata Chatteraj v. Union of India and others, reported in 2014 AIR SCW 2828 (= (2014) 8 SCC 768)**, has considered the question as to whether in exercise of jurisdiction under Article 226 of the Constitution of India, the investigation to the Central Bureau of Investigation is required to be directed. The Apex Court sounded a note of caution against transfer of cases to CBI for mere asking.

At this stage, it would be appropriate to reproduce relevant observations in the said decision, which read as under :

"3. Having said that this Court sounded a note of caution against transfer of cases to CBI for mere asking and observed:

"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill

confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations".

(Emphasis supplied)

4. We may at this stage refer to a few cases in which this Court has either directed transfer of investigation to the CBI or upheld orders passed by the High Court directing such transfer.

5. In *Inder Singh v. State of Punjab* (1994) 6 SCC 275 : (AIR 1995 SC 312) this Court was dealing with a case in which seven persons aged between 14 to 85 were alleged to have been abducted by a senior police officer of the rank of Deputy Superintendent of Police in complicity with other policemen. Since those abducted were not heard of for a considerable period, a complaint was made against their abduction and disappearance before the Director General of Police of the State. It was alleged that the complaint was not brought to the notice of the Director

General of Police (Crime). Instead his P. A. had marked the same to the I.G. (Crime) culminating in an independent inquiry through the Superintendent of Police, Special Staff, attached to his office. The report of the Superintendent of Police recommended registration of a case against the officials concerned under Section 364 of the IPC. Despite the said recommendation no case was registered on one pretext or the other against the concerned police officer till 23rd March, 1994. It was at this stage that a writ petition was filed before this Court under Article 32 of the Constitution of India for a fair, independent and effective investigation into the episode. Allowing the petition this Court directed an independent investigation to be conducted by the CBI into the circumstances of the abduction of seven persons; their present whereabouts or the circumstances of their liquidation. An inquiry was also directed into the delay on the part of the State Police in taking action between 25th January, 1992 when the complaint was first lodged and 23rd March, 1994 when the case was finally registered.

6. In *R.S. Sodhi, Advocate v. State of U.P. and Ors.*, 1994 (Supp) (1) SCC 143 : (AIR 1994 SC 38) this Court was dealing with a

petition under Article 32 of the Constitution of India seeking an independent investigation by the CBI into a police encounter resulting in the killing of ten persons. The investigation into the incident was being conducted at the relevant point of time by an officer of the rank of Inspector General level. The State Government also appointed a one-member Commission headed by a sitting Judge of the Allahabad High Court to inquire into the matter. This Court found that since the local police was involved in the alleged encounter an independent investigation by the CBI into what was according to the petitioner a fake encounter, was perfectly justified. This Court held that, however, faithfully the police may carry out the investigation, the same will lack 'credibility' since the allegations against them are serious. Such a transfer was considered necessary so that all those concerned including the relatives of the deceased feel assured that an independent agency was looking into the matter thereby lending credibility to the outcome of the investigation. This Court observed:

"We have perused the events that have taken place since the incidents but we are refraining from entering upon the details

thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly.

In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order".

(Emphasis supplied.)

7. A reference may also be made to *State of Punjab v. CBI (2011) 9 SCC 182 : (AIR 2011 SC 2962)* where the High Court of Punjab and Haryana transferred an investigation from the State Police to the CBI in relation to what was known as "Moga Sex Scandal" case. The High Court had while ordering transfer of the investigation found that several police officials, political leaders, advocates, municipal councilors, besides a number of persons belonging to the general public had been named in connection with the case. The High Court had while commending the investigation conducted by DIG and his team of officials all the same directed transfer of case to CBI having regard to the nature of the case and those allegedly involved in the same. The directions issued by the High Court were affirmed by this Court and the matter allowed to be investigated by the CBI.

8. More recently, this Court in *Advocates Association, Bangalore v. Union of India and Ors. (2013) 10 SCC 611 : (AIR 2014 SC (Cri) 526)* had an occasion to deal with the question of transfer of an investigation from the State Police to the CBI in the context of an ugly incident involving advocates, police and media persons within

the Bangalore City Civil Court Complex. On a complaint filed by the Advocates' Association, Bangalore, before the Chief Minister for suitable action against the alleged police atrocities committed on the advocates, the Government of Karnataka appointed the Director General of Police, CID, Special Unit and Economic Offences as an Inquiry Officer to conduct an in-house inquiry into the matter. The Advocates' Association at the same time filed a complaint with jurisdictional police station, naming the policemen involved in the incident. In addition, the Registrar, City Civil Court also lodged a complaint with the police for causing damage to the property of City Civil Court, Bangalore by those indulged in violence. Several writ petitions were then filed before the High Court, inter alia, asking for investigation by the CBI. The High Court constituted a Special Investigation Team (SIT) headed by Dr. R.K. Raghvan, a retired Director CBI, as its Chairman and others. The Advocates' Association was, however, dissatisfied with that order which was assailed before this Court primarily on the ground that a fair investigation could be conducted only by an independent agency like the CBI. Relying upon the decision of this Court in State of West Bengal v. Committee for Protection of

Democratic Rights (2010) 2 SCC 571 this Court directed transfer of investigation to the CBI holding that the nature of the incident and the delay in setting up of the SIT was sufficient to warrant such a transfer.

9. It is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the State Police to the CBI in cases where such transfer is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand."

The Apex Court in the said decision further observed that the purpose of investigation is to reach to the truth in every investigation. For reaching to the truth and to meet with the ends of justice, the Court can

exercise its powers to transfer the investigation from the State Police to the Central Bureau of Investigation. Such powers are to be exercised sparingly and with utmost circumspection.

At this stage, it would be appropriate to reproduce relevant paragraphs of the said decision, which read as under :

"33. There is, in our opinion, no basis of the apprehension expressed by the State Governments. It is true that a lot can be said about the independence of CBI as a premier Investigating Agency but so long as there is nothing substantial affecting its credibility it remains a premier Investigating Agency. Those not satisfied with the performance of the State Police more often than not demand investigation by the CBI for it inspires their confidence. We cannot, therefore, decline transfer of the cases only because of certain stray observations or misplaced apprehensions expressed by those connected with the scam or those likely to be affected by the investigation. We may in this regard gainfully extract the following passage from the decision of this Court in Sanjiv Kumar v. State of Haryana and Others (2005) 5 SCC

517, where this Court has lauded the CBI as an independent agency that is not only capable of but actually shows results:

"15. In the peculiar facts and circumstances of the case, looking at the nature of the allegations made and the mighty people who are alleged to be involved, we are of the opinion, that the better option of the two is to entrust the matter to investigation by CBI. We are well aware, as was also told to us during the course of hearing, that the hands of CBI are full and the present one would be an additional load on their head to carry. Yet, the fact remains that CBI as a Central investigating agency enjoys independence and confidence of the people. It can fix its priorities and programme the progress of investigation suitably so as to see that any inevitable delay does not prejudice the investigation of the present case. They can think of acting fast for the purpose of collecting such vital evidence, oral and documentary, which runs the risk of being obliterated by lapse of time. The rest can afford to wait for a while. We hope that the investigation would be entrusted by the Director, CBI to an officer of unquestioned independence and then monitored so as to reach a successful conclusion; the truth is discovered and the guilty dragged into the

net of law. Little people of this country, have high hopes from CBI, the prime investigating agency which works and gives results. We hope and trust the sentinels in CBI would justify the confidence of the people and this Court reposed in them"."

30. Thus, in absence of this being the case of national or international ramification, nor of enforcing fundamental rights, nor of description given above, although no case is made out for transferring the investigation to the Central Bureau of Investigation, surely this case is for investigation by the officer who has proficiency to investigate the matters concerning Anti-Corruption law. This Court is conscious that the Rules are in place for lodging of complaint in relation to corruption against the judicial officers or the staff and Rule 16 provides that the Vigilance Officer is the officer in-charge of Police Station and no other agency in the State shall have jurisdiction to entertain the complaint against any official.

The said Police Station was started with a laudable objective that if under the awe of

judiciary, the complaint of corruption is not registered against any of the judicial officers, the people would be able to register their complaints with the said Police Station and secondly, no judicial officer should suffer by way of any anonymous application in respect of corruption against him by entertaining the complaint indiscriminately in any of the Police Stations in the State. The Vigilance Officer is of the cadre of the Principal District Judge, therefore, the credibility of the process is in no manner questioned. Lodgment of the first information report and the investigation, of course, are the tasks of Police Officers, the same can proceed without any interruption.

31. At this stage, Shri Shalin Mehta, learned Senior Counsel appearing with the learned Standing Counsel Shri Hemang Shah for the respondent-High Court, has submitted that the charge sheet has been prepared and a copy of the proposed (charge sheet) report has been produced before this Court for perusal. He has also submitted that the charge sheet in the

departmental proceedings is issued to the accused delinquents. Mere glance at these two documents also *prima facie* reveal hollowness of the investigation in criminal matter and this Court is further vindicated by these materials that the matter requires consideration.

32. This is today the stage where material absence of evidence, coupled with infrastructural/manpower constraints has necessitated for doing complete justice to direct an officer of Anti-Corruption Bureau to complete investigation. The new incumbent also has chosen to prepare the charge sheet for approval as he has not found any reason to add to what has been left by the then Investigating Officer Shri A.C. Jadeja. Being conscious that the officer who can be brought here shall be on deputation and as in this case, it is a race against the time, no further time can be lost, the specialised assignment for remaining investigation is a must.

33. In light of the discussion made hereinbefore, it is though not a case for

transferring the investigation to the Central Bureau of Investigation, it is certainly a case where the investigation requires to be conducted by a specialised agency which is well equipped with manpower and other expertise. Being fully conscious of the fact that there are specialised Rules and the officer who comes on deputation is authorised to lodge the first information report, this Court, from the discussion held hereinbefore is of the firm opinion that for conducting the remaining investigation, there needs to be a transfer of investigation as specified hereinafter.

34. Shri Mitesh Amin, learned Public Prosecutor, had requested Shri Keshav Kumar, Special Director, Anti-Corruption Bureau, to remain present in the Court for giving his inputs.

35. Considering the suggestions put forth by both the sides and after also giving due consideration to the inputs which have come forth from the Home Department of the State of Gujarat, as also from the Special Director, Anti-

Corruption Bureau, this Court is of the opinion that Ms.Rupal Solanki, Assistant Director, Anti-Corruption Bureau, with her team, needs to be directed to carry out further investigation in this case. She shall attempt to complete such investigation within a period of **three months** from the date of receipt of a copy of this order; and shall carry out the entire investigation in consultation with the Registrar (Vigilance), High Court of Gujarat.

36. Some of the aspects where the said officer Ms.Rupal Solanki, Assistant Director, Anti-Corruption Bureau, needs to closely look at and investigate are :

- (i) The collection of CDRs of the accused and all other persons concerned with the crime in question.
- (ii) Non-recordance of any statements of advocates and litigants by the then Investigating Officer except those which had been recorded by the Special Officer (Vigilance) at the time of preliminary investigation.

- (iii) Investigation concerning various allegations of demand of illegal gratification by both the judicial officers and the details which have been specified in the CD, as also reflected in the imputation of charges for the departmental proceedings.
- (iv) The issue of voice spectography in connection with the collection of the voice sample in accordance with law.
- (v) The examination of hard disk/CPU by the Forensic Science Laboratory, which is in possession of the petitioner.
- (vi) Investigation against all other persons who are allegedly involved in abetting this alleged crime of unpardonable nature.
- (vii) All other facets of investigation provided under the law, including disproportionate collection of wealth which she finds necessary to reach to the truth in the matter.

36.1 Let the entire exercise as aforesaid be completed by Ms.Rupal Solanki, Assistant Director, Anti-Corruption Bureau, within the stipulated period from the date of receipt of a copy of this order. Time being the essence of the matter, the entire set of papers be handed over to the said officer by the respondent-authority within a period of **one week** from today.

36.2 The Home Department of the State of Gujarat shall also ensure that the service of Ms.Rupal Solanki, Assistant Director, Anti-Corruption Bureau, and her team, is spared for the stipulated period for the aforesaid purpose and permit her to concentrate on such investigation. She shall be provided with all the required assistance by the respondent-State, including the Anti-Corruption Bureau.

37. Before parting with this order, this Court is at pains to note that much is required to be done in relation to the Gujarat High Court Vigilance Cell Police Station. Merely issuing a

notification and permitting it to act as a Police Station would hardly serve the purpose. It would utmost be necessary to cloth such Police Station with all the necessary equipment and more particularly, the manpower which has already been sanctioned for it to act like other regular Police Stations. As mentioned above, it is also quite shocking to note that out of total sanctioned staff, the present strength of the staff in the said Police Station is only 15%. It is also given to understand by the learned Senior Counsel that at no stage, these posts were 100% filled in by the respondent-authority. It is a matter of record that after the then Investigating Officer Shri A.C. Jadeja retired on December 25, 2015, his post has remained vacant for almost a year and the present officer is also a Deputy Superintendent of Police on the sanctioned post of Superintendent of Police. Most of the officers, who are manning the post of VO-II and Police Inspector are retired officers. It is after much difficulty that the High Court is able to procure their services.

37.1 The Registrar General shall place this entire issue before the Honourable the Chief Justice of Gujarat High Court for seeking the guidance and direction of His Lordship on administrative side. The learned Public Prosecutor has also ensured to draw the attention of (i) The Chief Secretary, State of Gujarat and (ii) Principal Secretary, Home Department, State of Gujarat, for deputing the manpower with required urgency and also for providing other infrastructural facilities to make it viable and functional.

37.2 If the respondent-State is finding it difficult to send the names of the persons to be deputed in the said Police Station, recruitment of a separate cadre to fill in such posts could be contemplated.

37.3 If deemed fit, for necessary amendment in the Vigilance Rules also, the matter be placed by the Registry before the Honourable the Chief Justice, Gujarat High Court.

Disposed of accordingly.

Direct Service is permitted.

(MS SONIA GOKANI, J.)

Aakar

