# CENTRAL ADMINISTRATIVE TRIBUNAL

## BANGALORE BENCH : BANGALORE

## ORIGINAL APPLICATION No. 170/00623/2017

TODAY, THIS THE 24TH DAY OF JANUARY, 2018

**HON'BLE DR. K.B. SURESH ... MEMBER (J)**

**HON'BLE SHRI PRASANNA KUMAR PRADHAN ... MEMBER (A)**

H. Basavarajendra
S/o Shri BHonnappa
Aged 50 years
Occupation: Deputy Secretary,
Industries & Commerce,
Benagaluru,
Residing at No. 382,
13th Main, RMV Extension,
Sadashivanagar Bangalore – 560 018 …Applicant.

(By Advocate Shri C.R. Goulay)

Vs.

1. Union of India
Represented by Secretary,
Department of Personnel and Training,
North Block, Central Secretariat,
New Delhi – 110 001.

2. Union Public Service Commission
Represented by its Secretary
Dholpur House,

Shah JahanRoad, New Delhi – 110 069

3. State of Karnataka
Represented by its Chief Secretary,
VidhanaSoudha,
Dr.AmbedkarVeedhi, Bengaluru – 560 001.

4. Department of Personnel &
Administrative Reforms
Represented by the Secretary
Vidhana Soudha, Dr.Ambedkar Veedhi,
Bengaluru – 560 001

5. Sri G.C. Vrushabendra Murthy,
S/o late G N Chandrashekar
Aged about 57 years
Deputy Commissioner (Administration)
Bruhat Bengaluru MahanagaraPalike,
N R Square, Bengaluru – 01.

6. Sri Peddappaiah R S
S/o Sanjeevarayappa
Aged about 55 years
Managing Director,
ST Corporation,
Vasanthanagar,
Bangalore – 01

7. Sri Gopalkrishna H N
S/o Late Narayana Gowda
Aged about 43 yrs
Private Secretary to Urban
Development Minister,
Government of Karnataka
VidhanaSoudha Bengaluru – 01. …Respondents.

(By Shri M.V. Rao, Senior Panel Counsel for Respondent No. 1,
Shri M. Rajakumar, Counsel for Respondent No.2
Shri Ponnanna, Additional Advocate General & S. Mahanthesh,
Counsel for Respondent No. 3 & 4 &

Shri K.L. Ramesh, Counsel for Respondent No. 5 - 7)

**ORDER**

**DR. K.B. SURESH, MEMBER (J):**

The applicant seeks his continuance in the Select List of 10/17 and prays that if the Government seeks to rely on a vague FIR and DE charge which follows it, it will be a malafide exercise. The issue in this case is like what is described by the poet Robert Herrick in his poem **"The Rose"**

***Before man's fall the rose was born,***
***St. Ambrose says, without the thorn;***
***But for man's fault then was the thorn***
***Without the fragrant rose bud born;***
***But ne'er the rose without the thorn.***

2. Like the beautiful fragrant rose hiding behind the bed of thorns the truth in this matter is ever present but lies inside the bed of thorns of crucial issues of demography and democracy. In fact, before we go into the factual narration of the issue we must thus settle several legal parameters available as it seems to us that the factual situation in this case is mostly admitted by the parties themselves and both the

applicant and the respondents concentrated on the questions of law than on questions of fact during the entire hearing which took several days in various forms.

3. Let us therefore examine the legal issue of the Bangalore Development Authority which was formed and formulated on the conversion of the ordinance in view of the statute vide the Karnataka Act No. 12 of 1976 and published in the Karnataka Gazette Extraordinary dated 05.02.1976.

4. Apparently at the conference of the Ministers of Housing and Urban Development in November, 1971 it was agreed that a common authority for the development of metropolitan city should be set up. Thus for the speedy implementation of the objective of merging together the activities of the Bangalore Municipal Corporation, the City Improvement Trust Board, the Karnataka Industrial Area Development Board, the Housing Board and the Bangalore City Planning Authority; exercising competing jurisdiction and to have an established co-ordinating central authority; the Bangalore Development Authority was brought into being.

5. The Hon'ble High Court of Karnataka in ***K.K. Poonacha Vs. State of Karnataka and Others*** reported in 2011 (1) Karnataka Law Journal 177B indicated *"It is not a law enacted for acquisition or requisitioning of property. The terms like amenity, civic amenity, Bangalore Metropolitan Area, betterment tax, building, building operations, development, engineering operations, means of access, street as defined in Section 2 of the 1976 Act are directly related to the issue of development. Section 14 lays down that the object of the Authority shall be to promote and secure development of the Bangalore Metropolitan Area and for that purpose it shall have the power to acquire, hold, manage and dispose of movable and immovable property* ***but the provision relating to acquisition of land contained in Chapter 4 in Section 35 – 36 are only incidental to the main object of enactment namely development of the city of Bangalore and the area adjacent thereto".***

Thus the Hon'ble High Court had held that acquisition of property is only an incidental objective of the statute to the purpose behind it is overall development of Bangalore Metropolitan Area. This in our humble view have a bearing on the entire situation developing in the case later on.

6. The Section 2 of the Act describes amenity and civic amenity as roads, street, lighting, drainage, public works and such other conveniences and a market, a post office, a telephone exchange, a bank, a fair price shop, a milk booth, a school, a dispensary, a hospital, a pathological laboratory, a maternity home, a child care centre, a library, a gymnasium, a bus stand or a bus depot, a recreation centre run by the Government, a centre for educational, social or cultural activities, a centre for educational, religious or philanthropic services, a police station, a Bangalore Water Supply and Sewerage Board service station or any such other amenity. Therefore these are the purpose for which the Bangalore Development Authority is established and as held by the Hon'ble High Court in this regard the acquisition of land for the above purpose or any other ancillary purpose is only ancillary to its

functions.

7. In the case of ***B. Krishna Bhat and Others Vs. Bangalore Development Authority*** reported in 1988 (2) Karnataka Law Journal 481, the Hon'ble High Court of Karnataka held that “there is no power in Bangalore Development Authority to levy property tax under the Karnataka Municipal Corporation Act, 1976.” Thus it held that the BDA even though a creation of the statute do not acquire the status of local self Government under the Municipal Corporations Act and therefore even though acting as an engine of development has no statutory powers or in other words the power of sovereignty do not rest in it as the power to tax can only be held by sovereign bodies. In ***B.S. Muddappa and Others Vs. State of Karnataka and Others*** reported in 1989 (2) Karnataka Law Journal 574, the Hon'ble High Court of Karnataka held that “allotment of civic amenities site for running Hospital/Nursing Home by a Charitable Trust which is not a civic authority under Section 2(bb) was held to be not in accordance with the law. In ***Judicial Layout Residents and Site Holders***

***Association, Bangalore Vs. Bangalore Development Authority& Others*** reported in 2016 (5) Karnataka Law Journal 353E the Hon'ble High Court of Karnataka held that the diversion for residential purpose of lands set aside for the use of park and civic amenity areas by a society cannot be allowed and such alteration of diversion is not acceptable. Therefore even though under the Act the power to determine the usage of the land thus acquired is held to be resident in the authority by the statute the Hon'ble High Court held that this is a limited prerogative to be enjoined by the compulsions of other portions of statute as well as the law of land as laid down. Section 2(bb) sub clause (vi) enables the Government to issue notification specifying civic amenity and then dealing with ***Aicoboo Nagar Residents Welfare Association Vs Bangalore Development Authority*** reported in 2002 (6) Karnataka Law Journal Page 260A held that this is a power resident in the Government to determine a civic amenity. ***Thus it is this power of the Government to determine for the authority to determine or delegate the***

***usage such land shall be put to even though acquired by the authority.*** In ***Manyatha Residents Association Vs. Bangalore Development Authority*** reported in 2013 (6) Karnataka Law Journal 25B the Hon'ble High Court held that if without notice and knowledge of the society the authority leased two amenity sites to third parties for establishing a gas management centre and a 10 floor multistorey corporate office. Even though the lowest floor will house a bank, since it is not an amenity for the primary benefit of the housing layout as the civic amenity site it was struck down. Therefore even when the authority under the Government approves an amenity as a civic amenity needed for the betterment of that particular acquisition process, it was held by the Hon'ble High Court that ***even then it must relate to the fundamental purpose for which it was acquired.*** Therefore it all rolls round one issue and one issue only that the ***power of BDA to acquire a parcel of land is resident within the objective parameters as***

***provided by the intention behind the statutory formation.***

8. The Hon'ble High Court of Karnataka in ***Smt C.V. Shantha and Others Vs. State of Karnataka and Others*** reported in 2006 (5) Karnataka Law Journal 361D held that the BDA has the jurisdiction under Section 15 (1) of the BDA Act to prepare, frame or draw up a development scheme in respect of adjoining areas of the Bangalore Metropolitan Area as could be seen from Section 14 of the BDA Act. But in terms of Section 15,16,17, 18 and 19 for the preparation of the formation of Arkavathi Layout the omission to provide layout plan and other process such as extent of land acquired etc., and the Chief Minister approving the scheme pending ratification by the Cabinet was held to be not valid. This raises two questions since Section 17,18 and 19 are complementary and before finalizing the declaration the Government of the State has the power to either declare or not to declare a scheme as coming into force. The ratification or not by the Cabinet on the presumption of function by Chief Minister was held to be invalid. What is the legal firmament

arising out of this? The Hon'ble High Court of Karnataka has explained in ***Sharadamma and Others Vs. State of Karnataka and Others*** reported in 2005 (4) Karnataka Law Journal Page 481A it thus pertains to the power of the State Cabinet and of course the functional focus of the Chief Minister as the head of the Executive to make such declaration as coming under Section 17, 18 and 19 of the BDA Act but in this particular case a distinction was sought to be made as the provisions of the Act will bind such functionaries and since such provisions were not adhered to the whole action it became invalid but at the same time ***it also recognized the powers of certain functionaries to do certain acts as we will see later on.*** These examinations will have a bearing on the issue arising at a later stage.

9. The Hon'ble High Court of Karnataka in ***Mrs Latha U Kamath and Others Vs. Commissioner, BDA*** and Others reported in 2003 (7) Karnataka Law Journal 642 held that even though the factual situation of *"all before possession was taken"* is a factual

question to determine by the authority but **Section 48 of the Act gives liberty to the State Government to withdraw from acquisition any land on which possession has not been taken.** Therefore we need to consider the importance of Section 48 in the scheme of things before we come to the focus of issue. In ***P. Nagarathna Vs. The Commissioner, BDA*** reported in 2013 (1) Karnataka Law Journal 258 (a) the Hon'ble High Court held *"sometimes it is compelled to proceed with the acquisition in which the award was inordinately in excess of the original valuation. Section 48 was enacted giving liberty to the Government to withdraw the land from acquisition, the possession of which has not been taken.* ***The power conferred on the Government under this provision is an absolute power which can be exercised at its discretion before taking possession, if it is of the opinion that the land is not required for the public purpose.*** *In the present case lands have been withdrawn from acquisition at the*

*instance of certain persons who had purchased the same after the issue of notice for acquisition. The second reason is that the Bangalore Development Authority has not formed the layout which is contrary to the materials placed before the Hon'ble Chief Minister. Thus the withdrawal of acquisition is totally against the authority of law and public interest and the order issued by Government is hereby quashed."*

This also raises two distinct possibilities: 1) The Government has powers to withdraw from the acquisition before possession is taken. 2) In that particular case the power to withdraw was held to be wrongly exercised as the concerned persons have purchased that property after preliminary notification was issued. 3)These facts were not in the knowledge of the Chief Minister when he passed the order **4) But this power under Section 48 is pervasive.**

10. **Indicating whereby that had it been otherwise this exercise of power might have been proper.**

11. The great Judge Ram Mohan Reddy held in ***Gladius D.***

***Kulothungan Vs. State of Karnataka and Others*** reported in 2016 (1) Karnataka Law Journal 330A after describing the factual situation surrounding the land in question *"If regard is had to the observations of the Apex Court in paragraph 145 that all lands except small pockets are deleted without any valid ground and persons whose lands were acquired can also seek deletion on the ground that all the surrounding lands have been deleted, when read in conjunction with the conclusion at paragraph 160 it is for the BDA to consider the situation that the petitioner's land being an isolated pocket in Jakkur village must be dealt with as has been done over the balance extent of land in Sy. Nos. 10/2 and 10/3 by deletion. But the affidavits of the Land Acquisition Officer and the BDA demonstrate such a consideration as directed by the Hon'ble Apex Court. In the circumstances, it is needless to state that the land in question did not qualify for acquisition in the revised final notification of the scheme for formation of Arkavathi layout."* Therefore the Court determined the parameters under which the legislative intention behind the BDA Act can be brought into actual practice.

12. In other words, there cannot be a situation of robbing Paul for the gain of Peter. **To explain it further the fairness which is the hallmark of a reasonable Executive authority has to be maintained at all levels.** Therefore under the statute in question which are the nodal figures that are eligible to exercise this cautionary exercise under Section 16, 17, 18 and 19 and Section 48 of the Bangalore Development Authority Act as held by the Hon'ble High Court in several instances. The preliminary function is that of the BDA itself but the overriding supervisory powers lie with the State Government and as precedence shows the Chief Minister as the case may be.

13. The factual situation of the case is admitted by both sides. The applicant was in the Select List of KAS officers and placed as Rank No. 2 in the said list having his integrity and ability verified by the State Government. The Rule 7 speaks thus:

***"7. Select List:–***

*7(1) The Commission shall consider the list prepared by the Committee along with :*

*(a) the documents received from the State Government under regulation 6;*

*(b) the observations of the Central Govt, and unless it considers any change necessary, approve the list.*

*7(2) If the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government [and the Central Government] of the changes proposed and after taking into account the comments, if any, of the State Government [and the Central Government], may approve the list finally with such modifications, if any, as may, in its opinion, be just and proper.*

*7(3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.*

*Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge-sheet or a charge-sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional.*

*7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or up to sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later :*

*Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as "unconditional" to the Commission during the period when the select list was in force, the Commission shall decide*

*the matter within a period of forty-five days or before the date of meeting of the next selection committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under Regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force.*

*Provided further that in the event of any new Service or Services being formed by enlarging the existing State Civil Service or otherwise being approved by the Central Government as the State Civil Service under Clause e (j) of sub-regulation (1) of regulation 2, the select list in force at the time of such approval shall continue to be in force until a new list prepared under regulation 5 in respect of the members of the new State Civil Service, is approved under sub-regulation (1), or, as the case may be, finally approved under sub-regulation (2).*

*Provided also that where the select list is prepared for more than one year pursuant to the second proviso to sub-regulation (1) of regulation 5, the select lists shall remain in force till the 31st day of December of the year in which the meeting was held to prepare such lists or upto sixty days from the date of approval of the select lists by the Commission under this regulation, whichever is later."*

14. Some of the parties who were apprehensive of deletion had filed a written submission indicating that the rights of the applicant may not take away their rights in the said Select List. However, they have not filed any impleading application or got themselves impleaded in the party array. But however since justice must be done to them as well we will refer to their contentions as well in this order. It is not clear as to who is Respondent No. 5, 6 or 7 as they are not been formally included in the party array and other than one written submission filed by the learned counsel there does not appear to be anything more available in the file. The case of the 5th Respondent is that he is left with only 2

years and 5 months of service and the 6th Respondent is left with only 5 years of service. So, they are naturally worried that their future may be jeopardized. Therefore we will handle this issue as well later on.

15. But, coming back to the issue at hand, as per Regulation 5 the committee has already prepared a list of select officers on 09.10.2017 but the case of the respondents is that in the interregnum, even though vigilance clearance is accorded to the applicant and he has been selected as No. 2 in the Select List on 09.10.2017, a charge sheet have been issued to him on 19.10.2017. The applicant claims that this is issued with a malafide intention of preventing career enhancement guaranteed to him under constitutional provisions for the reason that he did not agree to falsely implicate Shri B.S. Yeddyurappa, former Chief Minister of Karnataka.

16. The case of the State Government is that the applicant had given an Endorsement for dropping from preliminary notification amounting to about 80-90 issues one of which is produced and is extracted herein for easy elucidation :

*“GOVERNMENT OF KARNATAKA*

*No. NAE/400/BLAQ/2010,*

*Secretariat of the*

*Government of*

*Karnataka,*

*Vikasa Soudha, Bangalore,*

*Dated 26//06/2010*

*From:*

*Principal Secretary to the Government,*

*Department of Urban Development,*

*VikasaSoudha,*

*BANGALORE.*

*To:*

*Commissioner,*

*BANGALORE DEVELOPMENT AUTHORITY,*

*BANGALORE.*

*Sir,*

*Sub: Dropping lands 1Acre 23Guntaas in Sy No. 24, 2*

*Acre08Guntaaas in Sy No. 25/1, 1 Acres 38 Guntaas in Sy No. 25/2 23Guntas in Sy No. 29/1, A2cre 38 Gu in Sy No. 29/2, 2Acre 18Guntaas in Sy No.29/4-27Guntaas in Sy No. 30/1, 25Guntaas in Sy No.30/4, Byalkere village, HesargattaHobli, Bangalore North Taluq, Total 13Acres25.08Guntaas*

*With reference to the above subject, attention is drawn towards letter under reference.*

*I have been directed to inform that Government's approval has been given for dropping following lands from PRELIMINARY NOTIFICATION for DR. K. SHIVRAMAKARANTHA Layout, lands 1Acre 23 Guntaas in Sy No. 24, 2 Acre 08Guntaaas in Sy No. 25/1, 1 Acres 38 Guntaas in Sy No. 25/2 23Guntas in Sy No. 29/1, A2cre 38 Gu in Sy No. 29/2, 2Acre 18Guntaas in Sy No.29/4- 27 Guntaas in Sy No. 30/1, 25Guntaas in Sy No.30/4, Byalkere village, HesargattaHobli, Bangalore North Taluq, Total 13Acres25.08Guntaas.*

*Yours faithfully,*

*Sd. M.S. PREMACHANDRA*

*Under Secretary to the*

*Government,*

*Department of Urban*

*Development.*

17. By this the Government has informed the BDA Commissioner, who is the executive head of the BDA, that the Government had, under its powers, de-notified some of the lands in question. To the notification dated 26.06.2016, an Endorsement seems to be issued as follows :

*"No. BDA/SPLAQO/A2/55/2010-11*

*Office of the Special*

*Land Acquisition*

*Officer,*

*Bangalore Development*

*Authority,*

*BANGALORE*

*Dated 14/07/2010*

***ENDORSEMENT***.

*Sub: Request for N.O.C. Dropping from PRELIMINARY NOTIFICATION –NGALORE NORTH Taluq-Reg.*

*Ref: 1) Your Plea dated 02-07/2010,*

*2)Government's Letter No. NAE/400BLAQ/2010, Dt: 26/06/2010.*

*With regard to above subject and reference, on examining it is found that PRELIMINARY NOTIFICATION-dated 31/12/2008 ISSUED for the acquisition of- lands 1Acre 23Guntaas in Sy No. 24, 2 Acre 11Guntaaas in Sy No. 25/1, 1 Acres 38 Guntaas in Sy No. 25/2 23Guntas 2 Acres in in Sy No. 29/1, A2cre 38 Gu in Sy No. 29/2, 2Acre 18Guntaas in Sy No.29/4- 27 Guntaas in Sy No. 30/1, 25Guntaas in Sy No.30/3, Byalkere village, HesargattaHobli, Bangalore North Taluq, Total 13Acres 25.08Guntaas.*

*However as per Government's Letter dated 26-06-2010,*

*approval has been given for dropping following lands from PRELIMINARY NOTIFICATION for DR. K.SHIVRAMAKARANTHA Layout, lands 1Acre 23Guntaas in Sy No. 24, 2 Acre 208Guntaaas in Sy No. 25/1, 1 Acres 38 Guntaas in Sy No. 25/2 23Guntas in Sy No. 29/1, A2cre 38 Gu in Sy No. 29/2, 2Acre 18Guntaas in Sy No.29/4- 27 Guntaas in Sy No. 30/1, 25Guntaas in Sy No.30/4, Byalkere village, HesargattaHobli, Bangalore North Taluq, Total 13.*

*Above points are herewith informed to you.*

*[Draft approved by the Hon'ble Deputy Commissioner (LAQ)]*

*-Sd/ Special Land*

*Acquisition*

*Officer,*

*B.D.A.,*

*Bangalore,*

*Address:*

*V. RAGHU,*

*S/o. LATE VENKATASWAMAPPA,*

*M.S. Palya Farm House,*

*YelahankaHobli,*

*BANALORE NORTH TALUQ"*

It is this Endorsement now which forms the bone of contention between the parties.

**18. What is this Endorsement?**

We have gone carefully through the BDA Act as amended from time to time and also examined the Hon'ble High Court directives in this regard. The **Hon'ble High Court had held conclusively that the State Government has absolute power under Section 48 to release land from notification before the final notification and the taking possession of the land.** Therefore, going by the same, apparently the State Government has the power to de-notify the lands. At this juncture, Shri Ponnanna, learned Additional Advocate General, submits that this de-notification was done without adequate study and examination at various levels

and therefore may not be correct at all. ***But then we do not think that we should enter into that thicket at this moment as to whether the notification was correct or not forms part of the jurisdiction of another authority and we do not want to enter into it. But prima facie the Government has authority to de-notify.***

**19. Therefore, what is the effect of this de-notification?**

We had gone through the records placed before us and had come to a conclusion that several persons had raised objections apparently on the ground that they are resident in the property or is running an establishment which gives them their livelihood and some such similar reasons. ***Whether those reasons were adequate in itself to convey significance to their objection is to be decided by another authority. But prima facie since the Government has the power to do so under relevant***

***statutory formations, and Hon'ble High Court judgments we cannot go behind the decision taken by the Government and say that it may be incorrect.***

But if the decision taken is correct or at least passably correct in the sense that procedures have been observed it is a different story. Apparently after the preliminary survey and notification the BDA has to submit the records at several stages before the Government. Therefore it cannot be said that Government was unaware of the situation as to correctness or not of the objection raised by the private parties. At this stage, an objection was raised by the State Government counsel that these people had no right to complain. After having gone through the BDA Act and the explanation given to various features of it and several Hon'ble High Court judgments, we are of the view that in appropriate circumstances it is the right of the concerned persons who are affected to file objections and the ***Hon'ble High Court had clearly held that the Government has absolute power***

***under Section 48 to deal with any such objections.***

**20. Therefore who can raise an objection against such an objection and on what ground?**

Apparently an organization of public spirited person or persons had given a complaint against the former Chief Minister of Karnataka Shri B.S. Yeddyurappa to the effect that he had de-notified several properties from the notification and thereby obtained material benefit. The complaint of this group is produced. ***Apparently other than vague surmises in it, no mention is made of the quality and quantum of the material benefit received or to be received by Shri B.S. Yeddyurappa. Then the question would be, can vague allegations form part of legal firmament since it conveys no responsibility on the person who makes it?*** The learned counsel for the respondents submits that it is not the issue. He would say that the question is not

the correctness or not of the allegation. The question is only that an allegation had been made and, under the statutory process available to the Government, they had initiated proceedings against Shri B.S. Yeddyurappa and even though the applicant was not included in the first tranche of the issue he was later brought in. This issue of the matter also we will leave it for the time being but we will deal with the effect of it so far as it relates to service jurisprudence at a later stage.

**21. Therefore what is this Endorsement?**

The wordings convey a process that the Government of Karnataka in its wisdom had de-notified certain properties from acquisition by the BDA and the said factum of circumstance is conveyed by the applicant to the concerned person. It is to be noted in this connection that it is the BDA who has issued the preliminary notification. It is admitted that under Section 48 of the Act that Government has absolute power to de-notify a property from acquisition. Under the cumulative effect of Section 15,16,17, 18 and 19, certain procedures are prescribed. It is therefore to be noted in this connection that under the statute of the BDA it is the Commissioner

who is the Chief Executive Officer of the Authority. The de-notification order passed by the Government is conveyed by the Under Secretary to the Government to the Commissioner of the BDA and following the normal usual channels of governance it comes to the last man who is concerned who is none other than the applicant who issues an Endorsement to it.

**22. Therefore what is the role of the applicant?**

The role of the applicant is both positive and negative. Assume that the applicant decides “this notification is not correct” does he have the authority or jurisdiction to say so? Quite obviously, no. It is far beyond his parameters. The said notification would have come from the Commissioner to the Secretary and from him to the Deputy Commissioner and from him to the Land Acquisition Officer. ***The Land Acquisition Officer has no power to object to or reject the said de-notification order passed by the Government. Therefore what is the positive effect of it?***

***The applicant in the role of a postman had just conveyed that order. There is no contention on the part of the State Government that applicant was the decision taking authority. On our queries the State Government admits that the applicant may not have done anything more other than just pass on the message received from the State Government. With the assistance of both the counsel we have examined the wordings of the Endorsement also and have come to a definite conclusion that it does not convey anything else.***

**23. Therefore what is the involvement of the applicant in all these things, other than being a postman for the State Government?**

There is no definite answer forthcoming other than that the applicant may have colluded with the other accused in the matter for

some or the other benefit. Therefore we had asked as to whether if the applicant was not the beneficiary of such benefit would he or could he refuse to issue that Endorsement. The answer was not in the affirmative. ***All agree that the applicant could not have done anything when the Government issues that order and when it comes down the hierarchy the applicant has to issue the Endorsement at one time or other, that is it. Therefore there is no need for him to obtain any benefit to issue that Endorsement.***

**24. Therefore what is the soul and content of this Endorsement?**

This Endorsement is just a notification that the Government has taken a decision and it is being conveyed. Quite naturally the postman cannot have any intrinsic responsibility of the letter which he convey. The applicant therefore cannot be viewed as anything more than a postman therefore as there is no involvement of the applicant in the

whole issue as the decision is taken by an extraneous and external higher authority and passed on to the applicant for conveyance alone. ***Therefore there cannot be any juridical responsibility for the applicant in the said issue.***

25. At this point of time, the State Government counsel submits that under Section 34 of IPC the applicant is now bound together with all the other accused in the matter. The State Government admits that these people may have diminishing responsibility in the matter but yet they are all part of the same conspiracy. ***It is brought out at this juncture by the learned counsel for the applicant that in fact when the next Board met the authority decided to inform the Government that it is against this de-notification and informed that to the Government.*** Therefore, if the Board and the BDA had not agreed but also had protested against this de-notification what is the extent of involvement of officers of the BDA other than conveying the Government order? No

specific answer is forthcoming on this issue.

26. The learned counsel for the respondents would submit that in any case an FIR had been lodged against the applicant. The rule stipulate that whether any criminal proceeding or disciplinary proceedings are pending then the benefit of the selection may not visit the selectee. The learned counsel for the applicant would reply that in fact the officers of the Anti-Corruption Bureau of the Government of Karnataka had summoned him several times and it was his admitted case that he had in fact issued this Endorsement but then, as noted earlier, he was just conveying the decision of the Government and he has no part in the decision making process. **He would further say that in fact the concerned police officials had persuaded and compelled him to be a witness against Shri B.S. Yeddyurappa, the former Chief Minister of Karnataka and since, as according to the applicant, he could not falsely implicate another person these police officers had**

**threatened him that he will be included in the array of accused and even then when he persisted on his refusal they made him accused additionally.** He would say that thereupon he had filed a complaint to the all authorities including the Governor of Karnataka and thereafter this chargesheet was issued to him. ***He would say that it was issued with malafides as it was pursuant to his refusal to implicate someone falsely in a criminal proceeding.*** He would also say that some amongst the concerned accused including his next above superior had approached the Hon'ble High Court of Karnataka in Writ Petition No. 37544/2017 and the Hon'ble High Court had suspended even the investigation in the matter under Article 226 of Constitution of India which is a plenary provision which is akin to Section 482 of CrPC in its application. For easy elucidation we herewith extract the interim order passed by the Hon'ble High Court of Karnataka in Writ Petition No. 37544/2017 which was issued after hearing all sides so that the issue of criminality, culpability and mens rea can be better assessed:

***"AKJ:*** *W.P.No.37544/2017*

*22.09.2017* *a/w W.P.No.37702/2017*

***ORDER ON INTERIM PRAYER***

*The learned Advocates appearing for both parties in chorus submits that in both these petitions common questions of law would arise for consideration except in W.P.No.37702/2017 issue/questions regarding registration of successive FIRs is involved. Hence, they have sought leave of this Court to address their arguments in common and accordingly they have addressed their respective arguments. Hence, interim prayer sought for in both these writ petitions are being considered together and following common order is passed.*

*2. Writ petitioner in these petitions is seeking for quashing of the complaint dated 06.06.2007 filed before first respondent by second respondent and for quashing of FIRs registered in*

*Crime Nos.34/2017 and 36/2017 by the first respondent under Sections 7, 8, 13(1)(c)& (d) r/w Section 13(2) of Prevention of Corruption Act, 1988(hereinafter referred to as **'PC Act'** for the sake of brevity)and Sections 406, 420 and 120B of IPC.*

*3. Second respondent herein lodged a complaint dated 06.06.2017 - Annexure-A on 07.06.2017 before the Additional Director General of Police of Anti Corruption Bureau (for short referred to as **'ACB'** hereinafter) against petitioner alleging that appropriate Government had proposed to acquire 3546 acres and 12 guntas of land for formation of Dr.K.Shivaramakaranth Layout (for short referred as **'Layout'** for sake of brevity) at Bangalore comprising 17 villages and had issued a preliminary notification on 30.11.2008. It is further alleged in the said complaint that during 2008 to 2010 petitioner, who was the then Chief Minister of State of Karnataka, had ordered for deleting/dropping of 257 acres lands at the behest of owners of the land though the Commissioner – Bangalore*

*Development Authority (**'BDA'** for short) had indicated that lands proposed to be deleted is at the centre of proposed layout and same cannot be dropped from the acquisition. It is further alleged thereunder that petitioner had received monetary consideration from the land owners for passing said orders and by misusing his Office petitioner had deleted/dropped the lands causing financial loss to the public exchequer and in the process got pecuniary benefit unto himself. Hence, alleging that petitioner and the owners of the lands so deleted, by criminal conspiracy have amassed money in the process of such deleting of lands. Hence, he sought for action being taken against those persons who are guilty of the said acts.*

*4. Based on the said complaint a preliminary enquiry was conducted and report dated 10.08.2017 -Annexure-C was submitted by the Deputy Superintendent of Police and based on the said report FIR inCr.No.34/2017 came to be registered by first respondent. Subsequently, based on same*

*complaint and on receipt of further enquiry report dated 17.08.2017 - Annexure-C another FIR came to be registered in Cr.No.36/2017against the petitioner and five (5) others for the offences punishable under Sections 7, 8, 13(1)(c) and (d) r/w Section 13(2) of Prevention of Corruption Act, 1988 (for short 'Act') and Sections 406, 420 and 120B of IPC.*

*5. Pursuant to same, respondent has issued notice dated 17.08.2017 - Annexure-C calling upon the petitioner to appear before the Investigating Agency (IA) in connection with the said case. Reply has been submitted by the petitioner on 17.08.2017 - Annexure-D seeking for copies of the documents to enable him to effectively take part in the investigation.*

*6. Hence, questioning the complaint, registration of FIRs and further proceedings thereto initiated by the first respondent and for quashing of the same as already noticed hereinabove, petitioner is before this Court. In aid of main relief the interim*

*prayer for stay of investigation and all further proceedings pursuant to same has been sought for.*

*7. I have heard the arguments of Sri.C.V.Nagesh, learned Senior Counsel appearing on behalf of Sri.Sandeep Patil for petitioner, Sri.Ravivarma Kumar, learned Senior Counsel appearing on behalf of Sri.B.N.Jagadeesh, Special Public Prosecutor for first respondent and Sri.Ramesh Chandra, learned counsel appearing for second respondent. I have perused the records.*

***CONTENTIONS RAISED ON BEHALF OF PETITIONER**:*

*8. It is the contention of Sri.C.V.Nagesh, learned Senior Counsel appearing on behalf of Sri Sandeep Patil, for petitioner that Scheme for development of layout inlands in question had lapsed and this Court had allowed the writ petitions filed by the owners of the lands, on the ground that even after lapse of five*

*(5) years from the date of preliminary notification, final notification has not been issued. Hence, he contends there is no criminality which could be alleged against the petitioner for having issued directions to drop the acquisition proceedings or ordering for deletion of the lands from final notification. He would further submit that on the basis of note put up by the Officials certain lands for which request had been received came to be dropped / deleted from the acquisition and even the said recommendation or order passed by the petitioner had not been acted upon by the BDA. He would contend that even otherwise the acquisition proceedings initiated by issuance of preliminary notification having not resulted in issuance of final notification, there was no acquisition proceedings of the lands and as such the alleged loss to the exchequer did not arise. The order passed by the petitioner as such cannot be termed or construed as having resulted in issuance of order/s deleting/dropping of the lands causing loss to the public exchequer. He would submit that even otherwise, the order or proposal forwarded by the*

*petitioner having not been accepted by the BDA in its meeting held on various dates, there is no order passed by the petitioner in effect has not been implemented.*

*8.1) He would further contend that lands which were the subject matter of acquisition on being questioned, it came to be held by this Court in several judgments that such acquisition is bad in law and as such the original owners retained their lands on account of lapse of the acquisition proceedings and as such, it did not result in any loss being caused to the public exchequer and as such, criminal proceedings could not have been initiated against the petitioner. He would submit that BDA in its meeting held on different dates even according to reports of the prosecution, it resolved to continue the acquisition proceedings despite the order/communication issued by the petitioner and this would only suggest that order passed by petitioner had been ignored by BDA and thereby it did not result in any pecuniary loss either to the State or BDA.*

*8.2) He would also submit that a reading of complaint in toto does not make out any criminal act on the part of the petitioner nor it would disclose there being any cognizable offence. He would also contend that no satisfaction is recorded by the Station House Officer, which is a condition precedent for registration of the FIR as held by the Apex Court in the case of* ***STATE OF HARYANAAND OTHERS vs. BHAJAN LAL AND OTHERS*** ***reported in(1992) Supp. (1) SCC 335.***

*8.3) He would contend that first respondent claims to have received the complaint on 07.06.2017 and if the reading of the complaint discloses cognizable offence under Section 154 of Cr.P.C., registration of FIR is mandatory as per the dicta laid down by the Apex Court in* ***LALITAKUMARI VS. GOVERNMENT OF UTTAR PRADESH ANDOTHERS*** *reported in* ***(2014) 2 SCC 1*** *and draws the attention of the Court to paragraphs 120.2 and 120.3 to contend that in cases where such cognizable offence is*

*made out from the reading of the complaint, there would be no necessity for any preliminary enquiry. He would submit that in view of complaint not disclosing any cognizable offence, a preliminary enquiry was ordered or resolved to be held in order to ascertain whether there is any cognizable offence or not and conducting of such preliminary enquiry was not for the purposes of ascertaining the truthfulness or otherwise of the allegations made in the complaint. He further submits that the Station House Officer gets clothed with such power to make such preliminary enquiry by virtue of direction issued by the Hon'ble Apex Court in [1]**LALITAKUMARI's** case and said Officer is bound under Article 141 of the Constitution of India and contends this exercise of undertaking such preliminary enquiry is only for the limited purpose of finding out whether it*

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*1 (2014)2 SCC 1*

*would disclose commission of a cognizable offence or not. If*

*such preliminary enquiry is held to be time bound as per paragraph 120.7 and if there is any delay, same should be specified in the Station House Diary/General Diary explaining the cause for such delay to ensure it protects the right of accused and said time frame which had been initially fixed by Apex Court as seven (7) days and later on extended by fifteen (15) days and in exceptional cases by giving adequate reasons six (6) weeks, had been breached in the instant case and as such, he contends it amounts to abuse of process of law. He would also contend that as per the directions issued in* ***LALITA KUMARI****'s case at paragraph 120.3, even the preliminary enquiry not disclosing commission of a cognizable offence, the accused has a right of being informed within seven (7) days about the outcome of such enquiry, since the enquiry cannot goon endlessly. He submits that in the instant case such endorsement having not been issued nor preliminary enquiry being completed within six (6) weeks, enquiry cannot be further stretched and no material is placed by prosecution explaining the*

*cause for delay and even one which is sought to be explained is without any basis.*

*8.4) Sri C.V.Nagesh, learned Senior Counsel would further elaborate his submission by contending that procedure that is prescribed in a warrant case is the trial commences after the plea is recorded. After charge is framed in a warrant case, till the time of recording of plea, it is an enquiry and not trial. He would submit that Apex Court in catena of judgments has held 'trial commences only after framing of charge' and as such, he contends that dicta laid down by the Apex Court in the case of* ***SRISIRAJIN BASHA vs B.S.YEDIYURAPPA*** *reported in* ***ILR2011 KAR 5115*** *would not be applicable or alternatively he would contend that dicta of the Apex Court in the case of* ***SATYA NARAYANA SHARMA vs STATE OF RAJASTHAN*** *reported in* ***(2001) 8 SCC 607****, which has been referred to by first respondent-prosecution would clearly indicate that it is not referred to the proceedings anterior to trial. Even otherwise,*

*proceedings are said to have commenced the moment Court takes cognizance and the next step is to issue summons and hence, he contends contend that said two judgments would not come in the way of this Court considering the prayer of the petitioner for grant of interim stay.*

*8.5) He would submit that ingredient of Section13(1)(d) is conspicuously absent by a reading of complaint and submits that registering a case for an offence of cheating there has to be an element of deception or fraudulently/dishonestly inducing another person to deliver the property and in the complaint in question there is no such material to attract the penal provision of Section120 of IPC. He would also submit that Section 406 of IPC and Section 13(1)(c) of Prevention of Corruption Act, 1988,is not attracted, since requirement for the said provisions to be invoked is 'entrustment of property' or 'dominion over property'. He would also contend that Section 120B of IPC is not attracted, since it mandates meeting of minds a prerequisite, which is also*

*not present in the instant case*

*8.6) He would reiterate the grounds urged in the writ petitions and contends that with the sole intention of harassing the petitioner to bring disrepute to him and there being an intent on the part of present political dispensation in the State to pressurize the investigation agencies and to register FIRs by falsely implicating petitioner and with an oblique motive. He contends that entire exercise is tainted with malafide, which requires to be nipped at the bud without giving any leverage or handle for the respondent and vested interest to use the criminal lprocess to malign and harass the petitioner, who is a law abiding citizen.*

*8.7) He would also contend that Hon'ble Apex Court is in fact examining the question of law as to whether a public servant can be arraigned as an accused in the absence of a dishonest intent are culpable guilty mind and other related questions arising*

*thereunder and as such he submits that case of the petitioner has to be examined under similar circumstances, since same and similar grounds are urged by the petitioner as well as respondent-prosecution and Apex Court in the case of* ***DR.MANMOHANSINGH vs. CBI*** *in* ***(Crl.M.P.Nos.5056-5057/2015 and connected matters)*** *by order dated 01.04.2015 has stayed the proceedings before the criminal Court and prays for similar interim order being passed in the instant case.*

*8.8) He would further contend that even after ten(10) years of the preliminary notification and after seven (7)years of the communication to delete/drop certain land shaving been issued by the petitioner nothing has moved further by initiating the acquisition proceedings or in other words, acquisition proceedings initiated had lapsed on account of orders passed by this Court in the writ petitions which is already been referred and contends that for Section 13(1)(d) of the PC Act being attracted the beneficiary has to "obtain" or "demand" or "request" for a*

*favour, which is not present in the allegations made in the complaint and as such order passed by the petitioner would not come within the four corners of Section 13(1)(d)of PC Act. In support of his submission he has relied upon the judgment of Apex Court in the case of* ***A. SUBAIR vs. STATE OF KERALA*** *reported in* ***(2009) 6 SCC 587****. He would also contend that allegations made in the complaint do not attract provisions of Sections 7 or 8 of PC Act, since no basic material is available in this regard.*

*8.9) He would submit that there is a delay in registration of FIRs, inasmuch as, complaint dated06.06.2017 came to be lodged by the second respondent and first FIR in Cr.No.34/2017 was registered on10.08.2017 and second FIR in Cr.No.36/2017 was registered on 17.08.2017 and as such, it is contrary to the dicta laid down by the Apex Court in the case of* ***LALITAKUMARI VS. GOVERNMENT OF UTTAR PRADESH ANDOTHERS*** *reported in* ***(2014) 2 SCC 1.***

*8.10) He would also contend that registration of second FIR in Cr.No.36/2017 is based on the same complaint dated 10.06.2017 - Annexure-A and in order to file repetitive and successive cases against the petitioner a*

*further report dated 17.08.2017 - Annexure-C came to be obtained by the first respondent, which is contrary to the dicta laid down by the Apex Court in the case of* ***T.T.ANTONY vs. STATE OF KERALA*** *reported in* ***(2001) Crl. LJ 3329*** *and contends that even subsequent complaints, if received by Station House Office, it would be a statement under Section 162 Cr.P.C. and it would not empower the Station House Officer or the authorities to register the successive FIRs. Hence, by relying upon the following judgments he prays for grant of interim prayer:*

1) ***(2009) 6 SCC 587***

A SUBAIR vs STATE OF KERALA

2) **(2014) 2 SCC 1**

LALITHA KUMARI vs. GOVT. OF UTTAR PRADESH AND OTHERS

3) **(2015) 9 SCC 96**

ROBERT JOHN D'SOUZA & OTHERS vs STEPHEN V.GOMES AND ANOTHER

4) **W.P.NOS.45085-86/2012 & CONNECTED COMMON ORDER DATED 28.01.2013**

5) **(1992) SUPP (1) SCC 335**

STATE OF HARYANA AND OTHERS vs. BHAJANLAL

6) ***(1991) 1 SCC 391***

*S.L.CHOPRA AND OTHERS vs. STATE OF HARYANA AND OTHERS*

7) ***(2003) 4 SCC 675***

*B.S.JOSHI AND OTHERS vs. STATE OF HARYANA AND ANOTHER*

8) ***2017 SCC ONLINE SC 316***

*VINEET KUMAR AND OTHERS vs. STATE OF UP AND ANOTHER*

9) ***(2017) SCC ONLINE SC 636***

*LOVELY SALHOTRA AND ANOTHER vs. STATE NCT OF DELHI AND ANOTHER*

10) ***2017 SCC ONLINE SC 450 = (2017)7 SCC 760***

*MAHENDRA SINGH DHONI vs.*

*YERRAGUNTLA SHYAMSUNDAR*

11) ***(2001) 8 SCC 607***

*SATYA NARAYANA SHARMA vs STATE OF RAJASTHAN*

12) ***(2014) 3 SCC 92***

*HARDEEP SINGH vs. STATE OF PUNJAB AND OTHERS*

13) ***(2010) 12 SCC 254***

*BABUBHAI vs. STATE OF GUJARAT AND OTHERS*

14) ***2017 SCC ONLINE SC 766***

*GIRISH KUMAR SUNEJA vs. CBI*

15) ***(2009) 15 SCC 705***

*SHANTI SPORTS CLUB AND ANOTHER*

*vs. UNION OF INDIA*

16) ***CRL.P.NO.511/2011 DD - 24.08.2012***

17) ***(2016) 12 SCC 273***

*A. SIVAPRAKASH vs. STATE OF KERALA*

18) ***(2001) 6 SCC 491***

*P.C.JOSHI vs STATE OF U.P. & OTHERS*

19) ***CRL.P.NO.7274/2012 & CONTD. - DD - 18.12.2015***

20) ***(1976) 4 SCC 213***

*THE STATE OF UTTAR PRADESH vs*

*LALAI SINGH YADAV*

***CONTENTIONS RAISED ON BEHALF OF RESPONDENTNO.1:***

*9. Per contra, Sri.Ravivarma Kumar, learned Senior Counsel appearing for first respondent would oppose the grant of interim prayer contending that Apex Court in the case of* ***SATYA NARAYAN SHARMA vs. STATE OF RAJASTHAN*** *reported* ***2001(8) SCC 607*** *has categorically held that Section 19(3)(c) is an absolute bar for grant of stay of further proceedings and as such, he submits that petitioner is not entitled for interim relief sought for. He would contend that writ petitions are itself not maintainable, since prayer sought for issuance of certiorari is to quash the complaint and FIRs and no statutory authority can be restrained from discharging its duty ordained under the statute.*

*9.1) He would also contend that at the time of registration of*

*FIR it is the prima facie material which would be looked into and investigation would be commenced on the basis of information furnished by the complainant and at that stage, defence of accused would not be examined and even such prayer is made, the Courts would not exercise the extraordinary jurisdiction and contends that allegations made in the complaint cannot be held as absurd not warranting investigation, particularly when the details of all the files have been furnished by the complainant as is referred to in the complaint itself. As such, it cannot be gainsaid by the petitioner that on the basis of allegations found in the complaint in question no prudent person can arrive at a just conclusion that there is no sufficient ground for proceeding to investigate. He would also submit that allegations made in the complaint would disclose cognizable offences justifying an investigation by the respondent and respondent has only registered FIR and has commenced the investigation and as such, investigation should not be interdicted by the constitutional Court, since*

*stay of investigation may result in valuable material evidence disappearing.*

*9.2) He would submit that petitioner has admitted the fact that he had ordered for deleting/dropping the lands measuring 257 acres 17 guntas in his writ petition itself and when the petitioner proclaims that himself to be the Chief Ministerial candidate for the next dispensation and also admit at the undisputed point of time, he being the Chief Minister of the State and being the head of the State, he is expected to lead the whole State even in the manner in the matter of integrity since the top man if being corrupt, the lower rank officials would consider it as a licence to be corrupt and it is in this spirit he contents that allegations made in the complaint will have to be examined. He relies upon the judgment of Apex Court in the case of* ***STATE OF M.P. vs RAM SINGH*** *reported* ***in (2000) 5 SCC 88*** *for the proposition as to how the provisions of the Act is to be construed, considered and interpreted and to buttress his arguments that*

*second FIR is also maintainable.*

*9.3) He would submit that under Section 17 of the Bangalore Development Authority Act, 1976, a development scheme is prepared and published in the Official Gazette as required under sub-section (3) and consideration of the objections/representations, if any, the authority would submit the scheme to the Government for sanction after making such modifications and thereafter the appropriate Government would sanction the scheme so proposed and as such the role of the Government would step in only at that stage and earlier to the same, Government has no role whatsoever. He would submit that only when vesting of the lands takes place under Section36(3) of the BDA Act, the power of the Government would be available to transfer the land under Section 37 and this is the only power that is available to the Government. He would contend that the Chief Minister has absolutely no role under the scheme of BDA Act to deal with the deleting/dropping of any land*

*and after initial notification was issued, objections were received and was being considered by BDA. He would draw the attention of the Court that at that point of time i.e., 23.04.2010 the petitioner had directly received applications from the landowners for deleting/dropping the lands included in the preliminary notification, which application/s is also bereft of material particulars and it resulted in orders being passed by the petitioner for deleting/dropping the lands insofar as 20 applicants are concerned. He would submit that after the orders of deleting/dropping the lands came to be passed by the petitioner who was the then Chief Minister, BDA has issued endorsement dated 20.08.2011intimating the land owners of their lands having been deleted from the acquisition.*

*9.4) He submits that after petitioner laid down his Office on 27.07.2011/31.07.2011 and was succeeded by Sri.D.V.Sadananda Gowda and on account of he having faced the wrath of the house, who gave an assurance to the house of*

*Legislators that he would get the issue relating to deleting/dropping of the lands investigated by CID and had passed an order on 03.04.2012, which fact though within the knowledge of the petitioner had been suppressed by the him in the petition, this would acquire significance since the decision to prosecute the petitioner is by none else than the then Chief Minister Sri. Sadananda Gowda. He would submit that since he was not successful in getting the order issued for investigation being taken up by CID, he had to pay the penalty of relinquishment of his Office on11.07.2012 and thereafter matter for investigation by CID was never taken up and it rested therein.*

*9.5) He would draw the attention of the Court toAnnexure-R1, an application made by one of the applicants purportedly seeking deletion of land from acquisition to contend that it is not dated nor signed by the applicant but by a Power of Attorney holder, which was forwarded by the Secretariat of the then Chief Minister (petitioner) to the Urban Development Secretary and he*

*in turn writes to Bangalore Development Authority Commissioner, who had intimated that said lands are in the centre of the proposed layout and no notification under Section 16(2) of the Act has been issued. He would submit that though officials have made notes appraising the petitioner of the legal position and communicated the same to the office of the Chief Minister, yet petitioner ordered for deleting the lands from acquisition. He contends that there is no executive order passed by the Government for deleting the lands. Hence, he contends that the petitioner had dictated the officials to delete the lands from acquisition by usurping the authority, which is not available to him and the endorsement issued to the landowners is based on the communication from the Office of Urban Development Authority and contrary to the provisions of the BDA Act. He would contend that pursuant to the endorsement issued by the BDA to the land owners, subsequent events have taken place namely, lands have got converted to non-agricultural purposes and same had been sold to third parties.*

*9.6) He would contend that the successor in office of the Chief Minister Sri.Jagadeesh Shettar ordered for an enquiry by an Officer of the cadre of Additional Chief Secretary and the enquiry came to be held as perAnnexure-R11 which would disclose that the officials took steps to delete the lands pursuant to the direction issued by the then Chief Minister and incidentally said report does not make any reference to the order made by the then Chief Minister (Sri.Sadananada Gowda) or the competency of the then Chief Minister (Sri.B.S.Yediyurappa) to pass such orders deleting/dropping the lands. He contends that by the said report the orders passed by the Chief Minister -petitioner is not disturbed and there is not even a whisper in the said report about the direction issued by the petitioner.*

*9.7). He would elaborate his submission to contend that BDA has power to drop/delete the lands from acquisition after considering the representations, if any, and in the instant case,*

*the power available to the Government under Section 18 of the Act did not arise and it was aborted because of the action of the petitioner in directing deletion of 257 acres of land by the petitioner and446 acres by the committee for denotification because of the objection by the land owners. He would submit that the manner in which the process of deleting the lands measuring 257 acres has taken place would clearly suggest that there is conspiracy and as such, the whole project had got aborted or had resulted in frustration, which is solely because of orders issued by the petitioner.*

*9.8) He would also submit that interestingly petitioner has not even whispered in his writ petition that he is innocent of the allegations made in the complaint, but on the other hand, there is a categorical assertion or admission on his part that he issued orders for deleting/dropping of the lands and more importantly, he submits that petitioner does not plead failure of justice caused to the petitioner on*

*account of registration of the second FIR, which is a conditional precedent for considering his prayer for quashing of the same. He would contend that even admitting for the sake of argument the alleged violations attributed to the Station House Officer are true, petitioner has not stated that there is any violation of justice or violation of rules and more importantly for the purposes of granting interim prayer. Since petitioner has not stated that he would be prejudice dif investigation is taken up, petitioner is not entitled for the interim relief, particularly when there is not even a plea of prejudice being caused having been raised in the writ petitions and as such, the petitioner is not entitled for stay in view of the embargo placed in Section 19(3)(c) of the Pay Commission Act.*

*9.9) He would submit that interim prayer will have to be in aid of the main relief or incidental to the main relief and in the instant case, petitioner is seeking for quashing of the complaint which is lodged/filed by a private individual and as such, no writ*

*would lie to quash a complaint. Hence, he submits that interim relief cannot be held as incidental to the main relief.*

*9.10) Insofar as second prayer is concerned which relates to quashing of FIR, he submits that registration of FIR being mandatory and statutory duty ordained on the part of investigating agency, writ cannot be issued not to perform a statutory duty and relies upon the judgment in the case of* ***KING EMPEROR vs KHWAJA NAZIR AHAMED*** *reported in* ***AIR 1945 PRIVY COUNCIL 18*** *and as such on receipt of the complaint lodged by second respondent, first respondent had no option but to register the FIR. In support of his submission, he has also relied upon the judgment of Apex Court in the case of* ***STATE OF PUNJAB vs DHARAM SINGH*** *reported in* ***1987 Supp. SCC 89*** *and the judgment of this Court in the case of* ***CHANDRASHEKARAN M.R. vs STATE OF KARNATAKA*** *reported in* ***1978(2) KAR.L.J. 273.***

*9.11) In reply to the arguments of petitioner's counsel with regard to irregularity in the matter of investigation, he would contend that investigation is an area entirely reserved for the investigating agency and there is no intervention of the Court provided under the Code of Criminal Procedure and by referring to Section 460of Cr.P.C., he would contend that any irregularities enumerated thereunder has been held as not vitiating the proceedings and the irregularities which vitiates the proceedings which is expressly provided in clauses (a) to (q)of Section 461 is not attracted to the facts on hand or same having not been pressed into service by the petitioner's counsel. He would submit that in substance, case of the petitioner would not attract Chapter XXXV of Cr.P.C. except the accused being able to establish after trial that finding or sentence by reason of error, omission or irregularity in any sanction for prosecution had resulted in failure of justice as provided under Section 465 Cr.P.C., petitioner cannot be heard to contend that his right is prejudiced in the instant case on account of investigation being*

*taken up by first respondent. Elaborating his submission in this regard, he would contend that Section482 Cr.P.C. can only be invoked in respect of proceedings before a Court of law and not relating to aspects relating to investigation. He submits that the legislature has ensured that there would be no judicial interference or intervention with regard to the investigation aspect since all that the investigating agency does is to only collect evidence or material and place it before the Court for being proved in accordance with law. In support of this proposition, he has relied upon judgment of the Apex Court in* ***NIRANJANSINGH & OTHERS vs STATE OF UTTAR PRADESH*** *reported in* ***AIR 1957 SC 142****,* ***SATYA NARAYANASHARMA's*** *case referred to supra,* ***STATE OF M.P. vs AWADH KISHORE GUPTA*** *reported in* ***(2004)1 SCC 691*** *and* ***SRI SIRAJIN BASHA vs B.S.YEDIYURAPPA*** *reported in* ***ILR 2011 KAR. 5115****.*

*9.12) He would submit that exception to Section 19(3)of the*

*PC Act is in the nature of non-obstante clause of Section 19(3)(b) and failure of justice is not a ground to overcome the bar contained in Section 19(3)(c) and even otherwise, in the instant case, there is no plea of failure of justice and even if pleaded, Section 19(3)(c) is a clear bar. He would submit that if subsequent stage cannot be interrupted by stay by virtue of embargo placed in Section 19(3)(c), it applies even to earlier stages namely, enquiry, trial or proceedings.*

*9.13) He would contend that Section 27 of the Bangalore Development Authority Act would disclose that scheme would lapse after 5 years from the date of issuance of notification under Section19(1) and this would also not be applicable to the proceedings which has been thwarted under Section 17and be that as it may, the very act of the petitioner has led to non completion of the project and orders deleting/dropping of the lands from acquisition proceedings passed by this Court are all prospective in nature*

*and it would not wipe out the criminal acts committed by the petitioner in deleting/dropping the lands in respect of those 257 acres 17 guntas.*

*9.14) In reply to the arguments of Sri C.V .Nagesh, learned Senior counsel appearing for petitioner wherein* [2]***LALIT KUMARI's*** *case has been referred to, he would contend that it was in the background of the facts obtained therein and the whole issue was as to how to protect the victim against arbitrary rejection of her complaint and submits that the whole judgment when read in its entirety would clearly suggest that there is no escape for the investigating agency but to register the case when a complaint is filed relating to cognizable offence and as such, registration of the complaint would be the commencement of cause of action to proceed. He would submit that the dicta laid down in paragraph 120.4 in* [3]***LALITA KUMARI's*** *case would indicate the action to be taken against erring officers in not registering the*

*complaint and it would have no bearing whatsoever on the crime committed and which would continue which enables the investigating agency to investigate into cognizable offence. He would submit that the only aspect which will have to be considered by the Court is with regard to delay and if the delay has been explained as to the circumstances under which action could not be taken, that would be sufficient to proceed and such delay cannot stifle the investigation and submits that that is what the Hon'ble Apex Court has explained in the said judgment. In support of this proposition, he has relied upon judgment of this Court in the case of* ***DR.Y MANJUNATH vs STATE OF KARNATAKA (2016) SCC ONLINE kar.4704).***

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[2] *(2014)2 SCC 1*

[3] *(2014)2 SCC 1*

*9.15) On facts, he would submit that the preamble of the complaint dated 06.06.2017 - Annexure-A would disclose the background on which complaint was being made and specific*

*reference of 21 cases where denotification has taken place along with the details of the file numbers has been furnished including the total area being 257 acres and this assertion by the second respondent that the complaint has not been denied by the petitioner in the writ petition and also the assertion made by the BDA that the lands so dropped are all in the center of the layout is also not disputed by the petitioner and as such, the ingredients of Section 7 and 13(1)(d) of the Pay Commission Act are attracted and the expression "**obtains**" found in these two Sections means "demand and acceptance" and by referring to the dictionary meaning of the word/expression 'ಪಡೆದು is derivative of the expression 'ಪಡೆ namely, "obtain, to get, incur, to undergo". He submits that language used in the complaint - Annexure-A is 'obtained' and thereby the allegation relating to petitioner having received money from the owners of the land for deleting/dropping being found is sufficient to constitute a cognizable offence for registration of FIR and on account of the words "demand" not being found would not result in the*

*complaint being thrown out at the threshold. He submits that even criminal conspiracy can be found in the complaint made and therefore, entire reading of the complaint would disclose the offences under Sections 7,13(1)(c) and (d) of PC Act and thus, the information provided contains all the necessary ingredients disclosing the offence.*

*9.16) He would also rely upon the enquiry report by reading the same in extenso and contends that same would disclose that allegations made in the complaint are true and the details indicated thereunder would disclose that the petitioner had ordered for deletion of the land of the applicant and had passed an order on 23.04.2010 on which date the land did not stand in the name of the applicant. He would also elaborate his contention by submitting that accused No.5 - Mr. Sudhir Harisingh who was the then Additional Chief Secretary, Urban Development Department was also the Chairman of the Committee for denotifying the lands and the committee so*

*constituted of which accused No.5 was the Chairman was very well aware as to the manner in which denotification has been done and yet had suppressed these facts before the petitioner. Hence, he submits that there is an element of criminal conspiracy clearly present.*

*9.17) By referring to the complaint dated 06.06.2017-Annexure-A as well as the report dated 10.8.2017 and17.08.2017 he would contend that it would disclose the offences committed by the petitioner and submits that 20such instances are reflected in the complaint itself, and each offence is distinct and separate. He would rely upon the following judgments to contend that requisites for registering the case are spelled out therein:*

*(1) 2003)6 SCC 175 - paragraph 20*

*(2) (1999)3 SCC 259 - paragraph 8*

*(3) (2013)11 SCC 559 - paragraphs 7 to 14*

*9.18) He contends that [4]**T.T.ANTONY's** case referred to by the petitioner's counsel would not be applicable to the facts on hand and it was a stray offence committed and in the instant case, the second respondent does not complain of one offence but complains of 20 different and distinct offences which relates to 20 different lands and as such filing of successive FIRs is maintainable. He submits that If the incident is separate and distinct, successive FIRs can be filed and simultaneous investigation of 20 cases would not be possible and as and when situation arises it would be investigated and FIRs would be filed and if on such investigation it is found that denotification or dropping of the lands had been done illegally by petitioner.*

*9.19) By referring to the original records in respect ofAnnexure-R5 filed along with statement of objections he would contend that the prayer for deleting the lands from acquisition did not commence from BDA but on the other hand, it commenced*

*from the office of the Chief Minister and it is the petitioner who was then Chief Minister who had passed the order indicating therein that on the recommendation of the Urban Development Department, such order has been passed, though such recommendation in fact was not there. He would also submit that copy of the endorsements issued to the land owners being intimated about dropping/deleting their lands from the acquisition, having also been communicated to the office of Chief Minister,*

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*[4] (2001) Crl.LJ 3329*

*would prima facie disclose that there is conspiracy. He would also rely upon the allegations made in the complaint and findings of the preliminary enquiry report for the purpose of unearthing conspiracy through investigation. He submits that thorough investigation has been made and relies upon the following judgments:*

*(1) (2017)2 SCC 779 - paragraphs 13 & 23*

*(2) (2000)3 SCC 761 - paragraph 8*

*(3) AIR 1980 SC 439 - paragraphs 14 & 19*

*Hence, he contends that on whatsoever ground, petitioner is not entitled for the interim relief sought for.*

***CONTENTIONS RAISED ON BEHALF OF RESPONDENTNO.2:***

*10. Sri Ramesh Chandra, learned Advocate appearing for second respondent - complainant by supporting the arguments advanced on behalf of first respondent would contend that petitioner at no point of time has contended that complaint lodged against the petitioner is an outcome of malafide act or contents of the complaint being vexatious or false. On the other hand, petitioner at paragraph 8 of the petition*

*admits that he ordered for deleting/dropping the lands and claims to be an administrative order. He submits that non-denial of the averments made in the complaint amounts to admission and second respondent having laid foundation in his complaint by furnishing the details of the lands which came to be dropped or deleted from acquisition by the petitioner when he was the Chief Minister and documents relating to such deletion/dropping having been furnished by second respondent, details of files with copies have also been furnished. The act of the petitioner in dropping/deleting the lands is colourable exercise of power. He would rely upon the judgment of this Court reported in* ***B.SAMPATH KUMAR vs STATE OFKARNATAKA*** *reported in* ***2015 Crl.L.J 3726*** *at paragraph36 & 52 to contend that as to whether the action of petitioner in deleting/dropping the lands is or was an administrative order is an issue which has to be investigated and only after the investigating agency comes to the conclusion that there was no malafides in passing the said administrative order, the*

*investigating agency may file a 'B' report. He would submit that complainant has set the criminal law into motion and the complaint so lodged would meet the criteria prescribed in Section 2(d) of Cr.P.C and based on the said complaint, FIR is now registered which itself would indicate that there was sufficient and factual foundation laid by the complainant in his complaint, disclosing cognizable offence. He would further submit that on account of such acts of the petitioner, the scheme got lapsed and State was not able to continue the scheme. He would also submit that second respondent -complainant after coming to know of these facts had obtained the details of such lands deleting/dropping such lands from acquisition by applying under the Right to Information Act and having obtained the same, has furnished the documents in support of the allegations and the exercise of the power by the petitioner would amount to gross criminal misconduct. He would also submit that as a matter of routine, Court should not quash the FIR. Hence, he prays for rejecting the interim order sought*

*for.*

***REPLY ARGUMENTS BY SRI CV.NAGESH, LEARNEDSENIOR COUNSEL APPEARING ON BEHALF OFPETITIONER:***

*11. Learned Senior Counsel appearing for petitioner submits that with regard to matters pending before Hon'ble Apex Court are the matters which relate to pending matters before respective Special Courts in State of Karnataka and an order came to be passed on 29.08.2017by Apex Court to list those matters before Hon'ble Chief Justice of India for constitution of appropriate Bench and in the said petitions, appellant/petitioner therein who is a Minister of the present Cabinet, is also a party and submits that matter would come up before Hon'ble Apex Court shortly and prays for similar interim order as has been passed in* [5]***Dr.MANMOHAN SINGH*** *be passed in the present petitions also.*

*He would also submit that reply arguments would beconfined by him to four categories namely,*

*(a) Maintainability of the petitions;*

*(b) Jurisdiction of this Court to grant interim order of stay of investigation and Section 19(3)(c) of PC Act not being a bar;*

*(c) Question of registration of FIR under Section 154 Cr.P.C. and investigation under Section 156 Cr.P.C. vis-à-vis judgment of Hon'ble Apex Court in* [6]***LALITA KUMARI's*** *case; and*

*(d) What constitutes an offence? Whether order passed by the petitioner on the administrative side constitutes an offence under the provisions of the PC Act or under the provisions of Cr.P.C.*

*He would submit that issuance of writ of certiorari sought for by petitioner is not only for quashing of the complaint dated 06.06.2017 but also to quash the FIR registered by first respondent and these are the basic prayers.*

*11.1) He draws the attention of the Court to the provisions*

*of Section 154 Cr.P.C. as well as Section 2(d) of Cr.P.C. and contends that these provisions would clearly indicate that complaint in question is not a complaint as indicated under Section 2(d) Cr.P.C. and there is no provision under Section 154 Cr.P.C. regarding filing of a complaint and it is only an information under Section 154Cr.P.C is given to police. He submits that printed form prescribed by the appropriate Government under Section154 Cr.P.C., in column No.9, gist of the complaint lodged by second respondent before first respondent has been extracted and this being part and parcel of FIR, petitioner has sought for quashing of the same. He submits that complaint by itself has no legal entity or separate entity or no legs to stand and complaint and FIR are inseparable. Hence, he contends that writ petition is maintainable.*

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*Crl.M.P.Nos.5056-5057/2015*

*6*

*(2014)2 SCC 1*

*11.2) By relying upon [7]**BHAJAN LAL's** case, he would contend that illustrations-1 to 3 and 5 to 7 would be squarely applicable to the facts on hand and contends that all the ingredients indicated in these illustrations are attracted to the complaint in question. He would contend that what needs to be seen in the present case is not only allegations made by the informant (second respondent)who filed complaint before police but also the result of preliminary enquiry which the investigator has made and submits that in view of the law laid down in [8]**LALITAKUMARI's** case in the matters relating to corruption cases, when complaint does not disclose commission of cognizable offence, a policeman before whom complaint is made gets clothed with jurisdiction to hold preliminary enquiry to find out as to whether there is commission of a cognizable offence or not. He submits that complaint is not filed by the police*

*before Court but by an individual i.e., second respondent before the police namely first respondent and it is the basis on which the investigating officer would collect the material during the course of preliminary enquiry so as to find out as to whether it discloses commission of a cognizable offence or not. In support of his submissions, he has relied upon the following judgments:*

*(i) AIR 2003 SC 1386*

*(ii) 2017 SCC ONLINE SC 316*

*(iii) AIR 2017 SC 2595*

*He contends that dicta laid down by the Hon'ble Apex Court in* [9]***BHAJAN LAL's*** *case has been consistently followed by the Hon'ble Apex Court in all subsequent judgments and to sum up, he would submit that this Court has jurisdiction not only to entertain the writ petitions under Articles 226 & 227 of the Constitution of India to quash the complaint and FIR and further proceedings pursuant to registration of crime, this Court can also*

*exercise jurisdiction under Section 482 Cr.P.C.*

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*[7] (1992) Supp.(1) SCC 335*

*[8] (2014)2 SCC 1*

*[9] (1992) Supp.(1) SCC 335*

*11.3) On the second issue with regard to prohibition contained in Section 19(3)(c) of the PC Act, he submits that Chapter V where Section 19 is found would squarely disclose that it is the protection given to a public servant against false, frivolous and vexatious complaints and sanctioning authority who is the disciplinary authority if satisfied that it is a false and frivolous complaint, can refuse to accord sanction to prosecute the public servant and thus, it would amount to filtering the result of investigation by throwing out the material so collected.*

*He would submit that Section 197 Cr.P.C. also gives protection to a public servant when offence under Section19 of the PC Act is said to have been committed and when two provisions are read together, the question would crop up as to when Section 19 of the PC Act would come into operation and contends that Section 19 comes into operation only after investigator places all the material before appropriate authority about result of such investigation and seeks for sanction of the prosecution of a public servant. In other words, provisions that are contained in Chapter V of the Act can be pressed into service is virtually a prohibition imposed on the Court but not upon the investigator just like Section 468 Cr.P.C., no Court shall take cognizance of the offence if there is prohibition imposed upon the Court and not upon anybody else. Hence, he submits that operation of Chapter V can be made use of by the accused as well as by the prosecution only after completion of the investigation and after result of investigation is made known to the Court. He submits that prohibition contained*

*in Section 19(3)(c) of the PC Act would only operate or can be made use of on completion of investigation and result of investigation is made known to the Court in the form of final report filed under Section 173(2) Cr.P.C.*

*11.4) He would contend that investigation is not a 'proceeding' as indicated under Section 19(3)(c) of the Pay Commission Act and draws the attention of the Court to the definition clause of the word "investigation" as defined under Section2(h) of Cr.P.C. and submits that proceedings that has been drawn by the first respondent is not under the PC Act but it is under Cr.P.C. namely, investigator would collect the evidence and contends that proceedings under the Act is drawn only by a Code and by reading judgment in* [10]***SATYANARAYANA SHARMA's*** *case by referring to paragraphs 5,6, 10, 12, 17 & 47, he submits that when a second look is taken to the said dicta laid down by the Hon'ble Apex Court, it would clearly disclose that it is a trial and all proceedings incidental to the same, which would*

*cloth the jurisdiction of the Court to refuse to stay the trial or proceedings incidental thereto.*

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*[10] (2001)8 SCC 607*

*11.5) He submits that proceedings before trial Court are two fold namely, proceedings would commence in a Court of law; and secondly it would start on filing of a final report under Section 173(2) Cr.P.C. He would also rely upon the judgment of Division Bench of this Court in [11]**SIRAJIN BASHA's** case to contend that it has been explained in paragraph 25 as to what proceedings would mean and such proceedings is said to have been commenced only after taking cognizance of the offence. He contends that from the stage of cognizance of the offence till the time of framing of charge, it would come within the ambit of enquiry. He would further submit that between the time of taking cognizance and framing of charge, Court may dismiss the complaint, Court may issue summons, Court may even order further investigation. All these are done by*

*the Court in the proceedings within the ambit of enquiry. However, between the time of taking cognizance and framing of charge, what has been done in the form of proceeding is enquiry. Enquiry is the first stage and no sooner charge is framed, matter is posted for trial and prior to enquiry and in between taking cognizance and enquiry, it is the stage of investigation. He submits, at first investigation takes place, then enquiry and proceedings prior to taking cognizance being investigation, it would not be amenable to Section 19(3)(c) of the PC Act. He has relied upon judgment of the Hon'ble Apex Court in* ***HARDIPSINGH vs STATE OF PUNJAB*** *reported in* ***(2014)3 SCC 92*** *by referring to paragraph 39.*

*11.6) He submits that the word 'trial' cannot be restricted to the proceedings which the Court would draw subsequent to framing of charge and it takes in its compass an enquiry or proceedings that the Court would be drawing up from the stage of taking cognizance till stage of framing of charge and these*

*stages would include in the phraseology "proceedings".*

*11.7) He would further contend that this Court has got jurisdiction to step in at the stage where investigation is going on and investigating agency cannot be permitted to conduct investigation in a biased manner where non-interference of the Court would ultimately results in failure of justice and in such circumstances, Court has to interfere, by relying upon judgment of the Hon'ble Apex Court in [12]**GIRISH KUMAR SUNEJA's** case referred to supra. He submits that Chapter V of the PC Act comes into operation only on completion of investigation and result of investigation is made known to Court and this Court would not examine as to whether to take cognizance or not is proper, sanction is there or not, being proper. He submits next stage of enquiry would be trial. He would submit that possibility of a public servant being harassed by registration of criminal case, then*

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[11] *ILR 2011 KAR 5115*

[12] *2017 SCC ONLINE SC 766*

*investigation and then final report having been visualized by Parliament, Chapter V has been introduced by incorporating Section 19to the Act to act as a check and before the stage of framing charge, under Section 19 , public servant gets protection at four different stages and has sought to explain said stages and contends that Section 19 would step in only after report is being filed under Section 173(2) CrP.C. prior to that, investigation carried out would not fall within the four corners of the 'proceedings' indicated under Section 19. He would also rely upon judgment of the Hon'ble Apex Court in* ***GIRISH KUMAR SUNEJA vs. CBI*** *reported in* ***2017 SCC ONLINE 766.***

*11.8) On merits, he would submit that complaint in question*

*when read in its entirety would suggest as though allegation having been made in respect of 21 incidents. The enquiry officer, namely, first respondent seems to have taken up only one file amongst others as though by lottery. He submits that another presumption can be drawn in this regard namely, on account of only one file having been taken up, it would suggest or indicate that there is no offence made out in respect of other files and no reasons are forthcoming as to why a particular file has been taken up and this would only indicate, with an intent to malign, to spite the petitioner, pick and choose method has been adopted. He would submit that in the normal course, he would expect the investigating agency to take up one file after another namely, item No.1 and thereafter item No.2and no reasons are forthcoming as to how he took up itemNo.11 and this would only exhibit malice on the part of first respondent. He would submit that in spite of grounds urged by the petitioner in this regard, there has been no denial or no explanation is forthcoming in the statement of objections.*

*11.9) He would further contend that the fact that there was no cognizable offence made out from the reading of the complaint is evident from the fact that first respondent chose to hold a preliminary enquiry in order to ascertain as to whether there is commission of cognizable offence or not. If the complaint and documents indicated that there was cognizable offence, then, mandatorily, as per the dicta laid down by catena of judgments, only option that was left to the Station House Officer was to register the complaint and not postpone the same. Hence, he contends that very fact that authority - first respondent decided to hold a preliminary enquiry and even after having made enquiry and submitting a report on 10.08.2017 not disclosing any cognizable offence having been committed by the petitioner or no other material having been collected and placed as evident from the report and as such, only inference which has to be drawn is that there is no cognizable offence committed by the petitioner. As such, he submits that a reading of the*

*complaint does not disclose any cognizable offence.*

*11.10) He further submits that complainant has lodged only one complaint as per Annexure-A dated06.06.2017 and he has not appeared before first respondent on any subsequent date or has lodged any fresh complaint on 17.08.2017 which enabled the investigator to register a second FIR. He submits that once preliminary enquiry was held on the basis of said complaint and a report was submitted on 10.08.2017,matter ends there since there would be due compliance of Section 154 Cr.P.C. He submits that if first respondent was satisfied about there being cognizable offence on the basis of the report dated 10.08.2017, he would have registered the same and left at it and not proceeded to file successive FIRs and contends that it is not the mandate of Section 154 Cr.P.C. He would submit that learned Senior Counsel appearing for first respondent made a hue and cry with regard to identity of Smt. Asha Paradeshi, applicant who had sought for deleting her land from acquisition t contend that*

*records made available before this Court would clearly disclose that she was not the owner of the land and even in the preliminary report dated 10.08.2017this fact is indicated and if khata has not been transferred in her favour it would not wipe out her right, title or interest over the said property. To substantiate this claim, he would draw the attention of this Court to the judgment of this Court whereunder she had also challenged acquisition of her land and the very fact that she has challenged the acquisition proceedings would indicate or suggest that her land according to the prosecution has been deleted which continued in the acquisition process and it is because of this precise reason, she has approached this Court and sought for deleting lands in question. Apart from these facts, the very fact that final notification has not yet been issued pursuant to preliminary notification itself would indicate that scheme had lapsed and same cannot be attributed to the petitioner. He would submit that if the order passed by the petitioner deleting or dropping very acquisition is based on the*

*reports said to be contained in the note sheet -Annexure-R5, as on that date, the Board members had already ordered for deletion of 446 acres of land which was proposed for formation of layout and contends that meetings held by the Board members of BDA and their resolutions would clearly indicate that order passed by the petitioner for deleting or dropping proceedings was not accepted and Board had proceeded to include the said lands also in the acquisition proceedings and petitioner having laid down his office on 28.07.2011/30.11.2011,nothing had happened and final notification had not been issued and the present dispensation also did not take steps to notify the lands by issuing final notification. He would rely upon the enquiry report of Additional Chief Secretary filed along with statement of objections - Annexure-R11 to contend that it would clearly disclose that orders passed by the petitioner has not been acted upon and direction has been given to include said lands which petitioner also had ordered for being deleted, which would indicate that*

*there is no compliance of the order passed by the petitioner and BDA has continued with the acquisition proceedings. He would also contend that if order passed by the petitioner pursuant to which BDA has issued an endorsement indicating the land owners that their lands had already been deleted/dropped from acquisition, there was no need or necessity for them to approach this Court challenging acquisition proceedings and the fact that Smt. Asha Paradeshi approached this Court would clearly indicate that she was very well aware that order passed by the petitioner had not been given effect to and as such, she had approached this Court for issuance of a writ of certiorari.*

*11.11) He would also submit that present dispensation did not issue final notification or in other words, has ordered for dropping or deleting another 1300acres of land and relies upon the documents produced along with the memo dated 13.09.2017 (which has been seriously opposed by the learned Senior counsel appearing for first respondent and same would be adjudicated by me during the course of this order). He*

*submits said 1300acres of land has been conveniently left out and what was proposed to be acquired for the said layout was 3500 acres out of which petitioner has ordered for deleting/dropping257 acres and still acquiring authority was left with 3243acres which they could have formed layout our of said lands and this is also evident from the report - Annexure-R11 and the reason assigned for deleting 1300 acres of land is opposed to* ***ASHWATHANARAYANA's*** *case (W.P.No.9640/2014) which was disposed of on 26.11.2014.Present Government assumed office on 13.05.2013 and till November, 2014, the date on which order in* ***ASHWATHANARAYANA's*** *case came to be passed, there was no impediment to proceed with acquisition proceedings and they had one year 6 months time to complete the acquisition proceedings for formation of layout, passing of the award, taking possession and issuance of Section 16(2) notification and yet they did not chose to adopt such course to continue acquisition, but denotified 1300 acres of land. Hence,*

*he contends that action of the petitioner in issuing communication to the acquiring authority not to include 257 acres of land for formation of layout in question had not resulted in any loss to the exchequer or petitioner having gained any undue advantage unto himself.*

*11.12) He submits that there has been abandonment of the scheme on account of actions of the present Government and as such, no fault can be laid at the doors of the petitioner. He submits that petitioner is not responsible for abandoning this project and the allegations made against the petitioner in the complaint as well as in the enquiry report that conduct of petitioner in issuing direction to authority to delete 257 acres of land has not come in the way of formation of layout in question and as such neither the Government has suffered any loss on account of scheme having not been implemented or there has been no loss to the State or public exchequer. By relying upon the judgment of the Apex Court in the case of*

***SHANTI SPORTS CLUB AND ANOTHER vs. UNION OFINDIA***

*reported in* ***(2009) 15 SCC 705****, he submits that:*

*(i) an order which came to be passed has not been acted upon; and*

*(ii) when it is not been acted upon, first respondent cannot attribute any offence against the petitioner.*

*11.13) He contends that order which has not been acted upon neither resulting in loss or gain, such order passed by the petitioner is an administrative order and has no legal sanctity. He submits that in view of the law laid down by the Apex Court in the case of* ***A.SHIVAPRAKASH vs. STATE OF KERALA*** *reported in*

***AIR 2016 SC 2287*** *(Re. Paragraph 19) the essential or basic material which the prosecution will have to prima facie establish is to how, when, where and in what manner the money was given and as such, contention raised by the learned Senior Counsel appearing for first respondent about the petitioner having obtained money by relying upon the Kannada Dictionary meaning of word "ಪಡೆದು would pale to insignificance.*

*11.14) He would also rely upon the G.O. dated14.03.2016 issued by the appropriate Government in general and particularly referring to clause (v) he submits that before initiation of any proceedings against a public servant the prior approval is to be obtained and in the instant case, no such approval is obtained and as such in view of that also prosecution has to fail. He would also refer to the judgment of Apex Court in the case of* ***THE STATE OF UTTAR PRADESH vs. LALAI SINGH YADAV*** *reported in* ***(1976) 4 SCC 213*** *(Re. Paragraph 8).*

*12. Sri. Ravivarma Kumar, learned Senior Counsel appearing for first respondent has fairly submitted before this Court that though there is no reply to reply arguments, he sought leave of the Court to make further submissions on account of certain documents having been placed by the petitioner and the judgments which were not initially relied upon having been pressed into service. He has been permitted to address the arguments and accordingly he has addressed further arguments and contends that clause (v) of said G.O. dated 14.03.2016would indicate that sanction would have to be taken before initiation of investigation and submits that sanction as is referable in the instant case is Section 17 of the PC Act, which relates to the persons who are empowered to investigate and contends that only in respect of where the provisions of Section 13(1)(e) is pressed into service by prosecution, sanction is required to be obtained and in the instant case, same is not pressed against petitioner and as such, it would not be applicable at all.*

*12.1) He would further contend that even otherwise there is no provision for issuing notification prescribing the powers under the PC Act and it is in this background, the provisions or clauses in the G.O. dated 14.03.2016 will have to be looked into. He fairly conceded that notification dated 14.03.2016 is not issued under any exercise of power under any statute, not under PC Act and not under Cr.P.C., but is issued in exercise of power vested under Article 162 of Constitution of India. Hence, he contends that clause (v) of the said order is not justiciable provision, which can be pressed into service and contends that it will not give protection to the petitioner against investigation that is initiated against him. Relying upon judgment of the Apex Court in the case of* ***G.J.FERNANDEZ vs STATE OFMYSORE*** *reported in* ***AIR 1967 SC 1753*** *by referring to paragraph 13 followed by this Court in the case of* ***GOKULA EDUCATION FOUNDATION (REGD.) & OTHERSvs. STATE OF KARNATAKA AND OTHERS*** *reported in* ***(1977) 2 KLJ 293****, he would submit that a*

*public servant against whom prosecution is launched, sanction or approval is required to be obtained as per the Act or even the said circular would not relate to the past public servant and the offences alleged against the petitioner is time specific and incident related and contends if the offender has gone out of office, which he has abused, he cannot seek protection under Section 19 of the PC Act. He would submit that even a person who is retired from the post or transferred or promoted to the post otherwise to the post, which he was holding at the time of commission of offence, he would not be eligible even to urge clause (v) of G.O. dated 14.03.2016 that it would be applicable to him.*

*12.2) He would contend that former public servant would not be entitled to take umbrage under the said clause, and relies upon the judgments of the Apex Court in the cases of* ***PRAKASH SINGH BADAL vs. STATE OFPUNJAB AND OTHERS*** *reported in* ***(2007) 1 SCC 1, ABHAY SINGH CHAUTALA vs. CENTRAL***

***BUREUAU OF INVESTIGATION*** *reported in* ***(2011) 7 SCC 141, L.NARYANASWAMY vs. STATE OF KARNATAKA ANDOTHERS*** *reported in* ***(2016) 9 SCC 598*** *and contends if the offence alleged against the petitioner who was the then Chief Minister holding office till the year 2011 and now he not being the Chief Minister, protection is no longer available to him, since he ceased to be a public servant. He would submit that illustration 6 of* [13]***BHAJAN LAL's*** *case would not be applicable, since there is no bar either engrafted under Cr.P.C. or*

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[13] *(1992) Supp (1) SCC 335*

*under PC Act, and on account of petitioner ceasing to be the Chief Minister from 31.07.2011 he would not be entitled to any protection. He would also submit that accused No.2 ceased to hold the post of Deputy Commissioner - BDA on 19.09.2011 and retired in April' 2012. Accused No.3 ceased to hold the office*

*from January' 2012 and retired from service in May'2013 and accused No.4 ceased to hold the office on13.12.2012 and accused No.5 ceased to hold the office from February' 2012 and retired from service during January' 2013. Hence, none of the accused persons as on the date when case is registered against them were public servants. Therefore, he contends protection which is available to the public servant holding office under clause(v) of the G.O. dated 14.03.2016, as on the date of registration of FIRs cannot be extended to the present petitioner or other accused persons.*

*12.3) He would submit that in* [14]***LALITA KUMARI's*** *case the aspect which came to be dealt with would disclose that if the prosecution is able to explain the delay that would suffice and nothing as indicated in the said judgment that either crime committed by the accused persons would stand wiped out or proceedings will have to be quashed and this aspect being silent, the petitioner cannot be heard to contend that judgment has to*

*be read as though it is a Parliamentary Legislation or State Legislation and the judgment when read as a whole, it would clearly indicate that consequences flowing therefrom has been indicated in paragraph 120.4 namely, the erring officers are required to be proceeded with and this would not render the proceedings itself bad or illegal and as such, he prays for rejection of the interim prayer sought for.*

*12.4) He would draw the attention of the Court to the observation made by the Hon'ble Apex Court in the case of* ***SATYA NARAYANA SHARMA vs. STATE OF RAJASTHAN*** *reported in* ***(2001) 8 SCC 607*** *where his Lordship Justice K.T.Thomas has observed that Section 19(3)(c) ought to have been placed as a distinct and separate section and as such, he prays for same being read as an independent section.*

*12.5) He would submit that judgment of* ***HAMEEDALI vs. SRI. KABBALEGOWD AAND ANOTHER*** *in*

***Crl.P.No.7274/2012 & connected matters*** *relied upon by petitioner would not come to their rescue and that was the case where complaint came to be filed before the jurisdictional Magistrate under Section 200 of Cr.P.C. after obtaining the sanction and that was the subject matter for consideration by this Court on entirely different perspective and as such, it would not come to the rescue of the petitioner. On these grounds, he seeks for rejection of interim prayer.*

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*[14] (2014)2 SCC 1*

*13. Having heard the learned Advocates appearing for parties and on perusal of pleadings and Station House Diary made available by the learned counsel appearing for first respondent*

*this Court is of the considered view that following points would arise for consideration:*

***(1) Whether petitioner is entitled to invoke jurisdiction of this Court under Articles 226 & 227 of Constitution of India and Section 482 Cr.P.C to seek for quashing of the complaint, FIRs registered and consequential investigation initiated by first respondent under the provisions of Prevention of Corruption Act, 1988 read with provisions of Indian Penal Code?***

***(2) Whether bar or embargo found***

***in Section 19(3)(c) of PC Act***

***would also extend for***

***entertaining a prayer to grant***

***interim stay of investigation?***

***(3) Whether based on single***

***complaint dated 06.06.2017 -***

***Annexure-A, first respondent is***

***empowered to file successive***

***FIRs against petitioner?***

***OR***

***Whether complaint dated***

***06.06.2017 - Annexure-A would***

***disclose same offence/s or***

***distinct offence/s? and, if so,***

***what are consequences which***

***flow from it?***

***(4) Whether interim stay as sought***

***for by the petitioner deserves***

***to be granted or refused?"***

*14. Before proceeding to delve upon the points formulated herein above, this Court is of the considered view that it would be apt and necessary to state the factual matrix which has led to registration of two FIRs against petitioner and also facts in brief leading to filing of these two writ petitions.*

***BRIEF BACKGROUND /FACTUAL MATRIX:***

*15. Petitioner was sworn in as Chief Minister of Karnataka on 30.05.2008. Bangalore Development Authority - BDA issued a notification under Section 17 of Bangalore Development*

*Authority Act, 1976 on 30.12.2008 for acquisition of land measuring 3546 acres 12 guntas for formation of a layout known and to be called as* ***"Dr.Shivarama Karanth Layout"****. Several representations from different land owners is said to have been received by the petitioner and his office requesting for deleting/dropping of their lands from acquisition proceedings. Between the years 2009 and 2010, petitioner passed order/s for dropping/deleting different portions of lands from acquisition for said layout in all measuring 257 acres 17 guntas.*

*15.1) Insofar as these two (2) writ petitions are concerned, petitioner has passed order/s for deleting lands in survey numbers bearing Sy.No.109 measuring 3 acres 6 guntas situated at Avalahalli Village, Yelahanka Hobli, Bangalore North Taluk and Sy.No.22/2 measuring 18 guntas together with Sy.No.24/1 measuring 1 acre 8 guntas situated at Somashetty Village, Yeshwanthpura Hobli, Bangalore South Taluk on 23.04.2010 and 04.05.2010 respectively - Annexure-R5 in both writ petitions.*

*16. Petitioner resigned as Chief Minister of Karnataka on 27.07.2011/01.08.2011. Sri. D.V.Sadananda Gowda took oath as Chief Minister of Karnataka on 04.08.2011 and he stepped down from said post on 11.07.2012. Later Sri. Jagadish Shettar took over as Chief Minister of Karnataka on 12.07.2012 and continued in said post till 08.05.2013. New Government with present dispensation took oath of office on 13.05.2013.*

*17. The then Chief Minister - Sri.D.V. Sadananda Gowda issued a Note on 03.04.2012 to the Principal Secretary Urban Development Department to pass necessary orders for entrusting the matter relating to deletion of certain lands from acquisition in respect of Layout in question. However, said investigation did not take place for reasons best known. Subsequently, after Sri.Jagadish Shettar took over as Chief Minister on 14.09.2012, he ordered for an enquiry being conducted by Addl. Chief Secretary and Development Commissioner. Said official conducted an enquiry and submitted his final report on 05.11.2013 - Annexure-R-11.*

*18. In the meanwhile, the Committee constituted by BDA for considering the requests/applications received from other land owners for deleting/dropping their lands also from acquisition came to be considered and it was resolved by the said committee to drop or delete 446 acres 07 guntas of land relating to the layout in question or in other words, said extent of land was ordered to be not included in the Final Notification.*

*19. In its meeting held on 13.03.2012 it was resolved by the BDA to inform the Government to take appropriate decision with regard to 257 Acres of land which had been ordered by petitioner to be deleted from acquisition, since it was felt by BDA that it would not be feasible for deleting said lands and as such, BDA resolved to approve the proposed layout formation in an extent of 2810 Acres 28 Guntas. Subsequently, in its meeting held on 22.05.2012 BDA resolved to continue with the acquisition including an extent of 153 Acres 17½ Guntas (which was part and parcel of 257 acres 17 guntas ordered by petitioner for dropping from acquisition) so as to maintain contiguity in*

*formation of the layout in question.*

*20. It is also not in dispute that one of the land owners whose land had been included in the preliminary notification dated 30.12.2008 issued under Section 17 of the BDA Act, had approached this Court in W.P.No.38110/2013 for quashing of said notification. Subsequently, few other land owners had also approached this Court by filing Writ Petitions in W.P.Nos.9640/2014 and connected matters. This Court by a common order dated 26.11.2014-Annexure-H quashed the Notification Dated 30.12.2008 as having lapsed. Said Order came to be affirmed by Division Bench of this Court in W.A.No:5098/2016 on 28.04.2017-Annexure-L. Likewise, similar orders also came to be passed in several writ petitions i.e., W.P.No.12908/2015 and connected matters disposed of on 2.9.2015-Annexure-J and W.P. No:43052/2015 on 21.01.2016 -Annexure-K..*

*21. When the matter stood thereat, second respondent herein*

*filed a complaint on 06.06.2017 - Annexure-A (in both the writ petitions) before Additional Director General of Police, ACB, alleging that petitioner had ordered deleting/dropping of 257 acres 17 guntas of land which had been proposed to be acquired from being included in the final notification and it was alleged that said order had caused financial loss to the public exchequer and in the process petitioner had made wrongful gain unto himself. Hence, second respondent sought for suitable action being taken against petitioner. In the light of said complaint, a preliminary enquiry came to be conducted by first respondent and reports dated 10.08.2017 and 17.08.2017 - Annexure-B (in both the writ petitions) came to be placed before appropriate authority, on the basis of which FIRs in Crime Nos.34/2017 and 36/2017 came to be registered on 10.08.2017 and 17.08.2017 respectively.*

*22. Hence, petitioner is before this Court for quashing of the above referred complaint, consequential registration of FIRs and all proceedings pursuant thereto. In aid of main relief, petitioner*

*has sought for stay of investigation and all further proceedings pursuant to registration of FIRs.*

***RE: POINT NOS: 1 & 2***

*23. In the course of adjudication of these two (2) points, facts are likely to overlap with each other and as such, they are taken up together for consideration and answered.*

*24. In the light of Sri Ravivarma Kumar, learned Senior Counsel appearing for first respondent at the threshold having raised a plea or objection with regard to this Court entertaining these writ petitions under Articles 226 and 227 of the Constitution of India contending interalia that no writ can be issued against second respondent who is a private citizen and first respondent - authority cannot be prevented from discharging its duty ordained under Act and also referring to Section 19(3)(c) of the PC Act, 1988 to contend constitutional Courts should not exercise its extraordinary jurisdiction to stay the proceedings initiated*

*under PC Act on any ground whatsoever by relying upon the judgments in the cases of* [15]***KING EMPEROR vs KHWAJA NAZIR AHMAD, STATE OF PUNJAB vs DHARAM SINGH & OTHERS*** *reported in* ***(1987) Supp. SCC 89, CHANDRASHEKHARAN M.R. vs STATE OF KARNATAKA*** *reported in* ***(1978) 2 KAR.L.J. 273,*** [16]***SATYA NARAYAN SHARMA,*** [17]***GIRISH KUMAR SUNEJA and*** [18]***RAM SINGH*** *referred to herein supra, this Court is of the considered view that it would be apt and appropriate to deal with said contention at the first instance.*

*25. There cannot be any dispute to the proposition that statutory authorities are required to discharge their duties as ordained under the statute. When a complaint is lodged by a citizen before police, they are bound to register the same if it discloses cognizable offences and on registering said complaint they are required to proceed to investigate. Non-registration of a complaint would amount to abdicating from discharging their statutory duties and once complaint is registered police will have*

*to investigate. It is a statutory right given to the police to investigate the circumstances of an alleged cognizable offences having been committed by an accused,. Such investigation has to proceed without any let or hindrance. The judiciary would be slow in interfering with the investigating authorities.*

*The Privy Council in [19]**KING EMPEROR's** case has held to the following effect:*

> *"In their Lordships' opinion, however, the more serious aspect of the case is to be found in the resultant interference by the court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to*

*investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not*

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*[15] AIR 1945 PC 18*

*[16] AIR 2001 SC 2856*

*[17] 2017 SCC ONLINE SC 766*

*[18] (2000)5 SCC 88*

*[19] AIR 1945 PC 18*

*overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an*

*appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus."*

*26. The jurisdiction conferred on the High Court under Article 226 & 227 of the Constitution of India is part of inviolable basic structure of the Constitution of India. However, this Court exercising extraordinary jurisdiction will have due regard to the legislative intent as evidenced in an enactment, which would be the subject matter of said proceedings. There cannot be any dispute to the proposition that no enactment can take away or abridge the constitutional power vested in the High court under Article 226 & 227 of the Constitution of India since judicial review is an integral part of constitutional scheme.*

*27. Nine Hon'ble Judges of Constitutional Bench of Apex Court in the case of* ***MAFATLAL INDUSTRIES LIMITED vs UNION OF INDIA*** *reported in* ***(1997) 5 SCC 536*** *has held that jurisdiction of High Court under Article 226 of Constitution of India cannot be*

*circumscribed by the provisions of any enactment. It was held:*

*"(i) Where a refund of tax/duty is claiming on the ground that it has been collected from the petitioner/plaintiff - whether before the commencement of the Central Excise and Customs Laws (Amendment) Act, 1991 or thereafter - by misinterpreting or misapplying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or by misinterpreting or misapplying any of the rules, regulations or Notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 - and of this Court under Article 32 - cannot be circumscribed by the provisions of the said enactments,*

*they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The Writ Petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it."*

*28. Hon'ble Apex Court in* [20]***BHAJAN LAL's*** *case while examining under what circumstances and in which category of cases relating to criminal proceedings can be quashed either in exercise of extraordinary powers vested in the High Court under Articles 226 of the Constitution of India or in exercise of inherent powers of the High Court under Section 482 of the Code of Criminal Procedure and after referring to plethora of case laws have illustratively indicated the categories of cases where such*

*power could be exercised by the High Court. It was held:*

*"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first*

*information report of the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

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*[20] (1992) Supp.(1) SCC 335*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is a express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings*

*and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*28.1) However, a note of caution has also been sounded by the Hon'ble Apex Court in the aforesaid judgment to the effect that power of quashing criminal proceedings should be used sparingly and with circumspection and in the rarest of rare cases. It came to be held by the Hon'ble Apex Court in* [21]***BHAJAN LAL's*** *case as under:*

*"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuiness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent*

*powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

*29. Hon'ble Apex Court in the case of **GIRISH KUMAR SUNEJA vs C.B.I. (CRL.APPEAL NO.1137/2017 DISPOSED OF ON 13.07.2017)** reported in **(2017) SCC ONLINE 766** has observed that jurisdiction of High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed, yet extraordinary situations would arise where it would be advisable for a High Court to decline to interfere and while examining as to whether accused can approach High Court for grant of bail under Article 226 of the Constitution of India arising out of an offence under the TADA Act and referring to its earlier case in **KARTAR SINGH vs STATE OF PUNJAB** reported in **(1994) 3 SCC 569**, it came to be held that High Court would interfere, if at all, only in extreme and rare cases and further held that judicial discipline and comity of courts require that High Courts should refrain from exercising its jurisdiction in entertaining bail applications. Thus, power vested under Articles 226 & 227 of Constitution of India*

*should be*

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[21] *1992 Supp(1) SCC 335*

*exercised sparingly and that too, in rarest of rare cases and in appropriate cases as also in extreme circumstances if non-exercise may lead to miscarriage in administration of justice or it would be an abuse of process of law or it may lead to failure of justice. This Court in exercise of jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to do complete and substantial justice. The public law remedy given by the Article 226 is to issue not only the prerogative writs but also any order or direction to enforce any of the fundamental rights and "for any other purpose". Every action of the State or its instrumentality, which is illegal, in contravention of prescribed procedure, unreasonable, irrational or malafide is always open to judicial review. Power of judicial review under Article 226 would be on the correctness of the decision making process and not on*

*the correctness of the decision itself.*

*30. In the light of the authoritative pronouncement of the Hon'ble Apex Court in the case of* [22]***BHAJAN LAL*** *and other case laws referred to herein above, this Court is of the considered view, that power of judicial review in criminal matters is very much available to this Court and as such, judicial review can be undertaken by this Court either to prevent abuse of process of law or to secure the ends of justice. However, Such exercise of power to quash the investigation or FIR would be sparingly used and to uphold the rule of the law or where failure to exercise such power may result in miscarriage in the administration of justice and thereby resulting in right of a party being jeopardized. To put it differently, this Court would exercise its extraordinary jurisdiction only in exceptional circumstances and such exceptional circumstances should have obtained in a given case. There cannot be any straight jacket formula or any precise set of norms can be prescribed. In fact, Hon'ble Apex Court in BHAJAN LAL's case referred to supra has indicated illustratively, types of*

*cases in which extraordinary jurisdiction can be exercised. Thus, in the facts of each case, this Court will have to examine as to whether it would stand the test prescribed in* [23]***BHAJAN LAL's*** *case and if the answer is in the affirmative, it would pass the test or to put it differently, it can be safely concluded that petition would be maintainable and if the answer is in the negative, it has to be held that such petition would not stand the test of law and consequently writ petition will have to be dismissed.*

*31. These writ petitions have been filed invoking Articles 226 and 227 of the Constitution of India and Section 482 Cr.P.C. Petitioner in these petitions as already noticed herein above, has raised several contentions relating to there being no cognizable offence committed by the petitioner having been made out and also contending that by a*

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[22]*(1992) Supp.(1) SCC 335*

[23] *(1992)Supp(1) SCC 335*

*mere reading of the complaint, ingredients of the offences alleged to have been committed by the petitioner is not to be found and same cannot be discerned from the allegations made in the complaint itself. It is also contended that act of the petitioner in deleting or dropping certain lands from acquisition or ordering said lands should not to be included in the final notification is an administrative order which order/direction issued by the petitioner was also not accepted by the acquiring authority namely, BDA, and as such there was no cognizable offence committed by the petitioner even as on the date of filing of the complaint. It is further alleged that entire acquisition proceedings having lapsed both under the provisions of the BDA Act as well as on account of the orders having been passed by this Court and State Government having not notified the lands for being acquired by issuance of final notification and acquisition proceedings having not been taken to its logical end, there has been no loss to the public exchequer. These aspects are required to be examined by this Court from material records and*

*on the basis of allegations made in the complaint and FIR-material to find out as to whether plea raised by the petitioner is to be accepted or rejected.*

*32. It is not in dispute that in the instant case orders came to be passed by the petitioner on 23.04.2010 and 04.05.2010 (Annexure-R5 in both petitions) to delete/drop the lands described in the respective FIRs from being included in the final notification and allegation is also made by second respondent to the said effect in his complaint. Based on said allegations, preliminary enquiry was conducted and reports dated 10.08.2017 and 17.08.2017 have been prepared and respective FIRs are registered based on said preliminary enquiry reports. In order to examine as to whether contentions raised by the petitioner would fall in any of the parameters indicated by the Hon'ble Apex Court in [24]**BHAJAN LAL's** case, this Court will have to exercise jurisdiction vested under Article 226 of Constitution of India or Section 482of Cr.P.C., For undertaking such exercise, this Court will have to necessarily examine the complaint in question,*

*preliminary enquiry reports as well as other FIR-material on which reliance is placed by the prosecution. Thus, in order to take cognizance of said facts extraordinary jurisdiction vested on this Court will have to be exercised. In the event of this Court were to accept the plea or contention put forth by first respondent, at the most, prayer sought for by petitioner can be refused or rejected and consequently, this Court can refuse to exercise extraordinary jurisdiction. However, in the event of this Court were to accept the contentions raised by the petitioner and arrive at a conclusion that it merits acceptance, then, respondent cannot be heard to contend that petitioner should not be allowed to invoke extraordinary jurisdiction of this Court, inasmuch as, if it is*

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[24] *(1992)Supp(1) SCC 335*

*found on facts petitioner's plea is to be accepted either*

*primafacie or in its entirety or in toto, or in part then necessarily continuation of proceedings against petitioner may result in abuse of process of law or continuation thereof may be prejudicial to the rights of petitioner. Thus, in such a situation if petition is thrown out at the initial stage, it may lead to injustice being caused to petitioner.*

*33. PC Act is a social legislation enacted to prevent the bribery and corruption and curb illegal activities of public servants and it has been held by the Hon'ble Supreme Court time and again that to curb the menace of corruption and bribery, said Act has to be construed liberally so as to advance its object. In the case of* ***STATE OF M.P. vs RAM SINGH*** *reported in* ***(2000) 5 SCC 88*** *it came to be held:*

> *"8. Corruption in a civilized society is a disease like cancer, which if not detected in time, is sure to maliganise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if*

*not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio- political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence- shaking of the socio- economic-political system in an otherwise healthy, wealthy, effective and vibrating society.*

*10. The Act was intended to make effective provisions for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation intended to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. Dealing with the object underlying the Act this Court in R.S.*

*Nayak vs. A.R. Antulay held: (SCC p.200, para 18)*

*"18. The 1947 Act was enacted, as its long title shows, to make more effect provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to*

*remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where tow views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act; namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it."*

*11. Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it."*

*34. In order to examine the contention raised by Sri Ravivarma*

*Kumar, learned Senior Counsel appearing for first respondent, this court is of the considered view that it would be apt and necessary to extract Section 19(3)(c), which has been pressed into service and it reads as under:*

***"19. Previous sanction necessary for prosecution:-***

*(1) xxx*

*(2) xxx*

*(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -*

*(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;*

*(b) no court shall stay the proceedings under this Act*

*on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;*

*(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal other proceedings."*

*35. The above said provision was the subject matter of interpretation by the Hon'ble Apex Court in the matter of* ***SATYA NARAYAN SHARMA vs STATE OF RAJASTHAN*** *reported in* ***AIR 2001 SC 2856*** *and it came to be held that in cases under Prevention of Corruption Act, there can be no stay of trials. It was also held that in appropriate cases proceedings under Section 482 Cr.P.C. can be adopted and even in such cases, it came to be held that there can be no stay of trials.*

*Hon'ble Apex Court held:*

*"24. There is another reason also why the submission that, Section 19 of the Prevention of Corruption Act would not apply to the inherent jurisdiction of the High Court, cannot be accepted. Section 482 of the Criminal Procedure Code starts with the words "Notwithstanding anything contained in the Code". Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the cases of Madhu Limaye vs. The State of Maharashtra reported in 1977 (4) S.C.C.551; (AIR 1978 SC 47); (1978) 3 CRI.L.J. 165), Janata Dal vs. H.S. Chowdhary & others, reported in 1992 (4) S.C.C. 305;*

*(1993 AIR SCW 248; AIR 1993 SC 892; (1993) CRI.L.J. 600) and Indra Sawhney vs. Union of India and others reported in 2000 (1) S.C.C. 168; (1999 AIR SCW 4661; AIR 2000 SC 498; 2000 LAB.I.C. 277), the inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law.*

*25. We see no substance in the submission that Section 19 would not apply to a High Court, Section 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the power of revision and/or the inherent jurisdiction can only be exercised by the High Court.*

*26. Thus in cases under the Prevention of Corruption Act there can be no stay of trials. We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However,*

*even if petition under Section 482, Criminal Procedure Code is entertained there can be no stay of trials under the said Act. It is then for the party to convince the concerned Court to expedite the hearing of that petition. However merely because the concerned Court is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily."*

*(emphasis supplied)*

*36. In the aforesaid judgment namely, [25]**SATYA NARAYAN SHARMA's** case the Hon'ble Apex Court was dealing with the statutory powers as contained in Section 482 Cr.P.C. or revisional power available under Section 397 Cr.P.C. to stay trials being tried under PC Act. It came to be noticed by the Hon'ble Apex Court in **SATYA NARAYANA SHARMA's** case that trial Court had taken cognizance of the offence alleged against the accused (Satya Narayan Sharma) for the offences punishable under Sections 420, 467, 468 & 471 of IPC and*

*Section 5(2) of the PC Act (Old Act) and accused therein had filed a Crl. Misc. Petition before the High Court under Section 482 Cr.P.C. for quashing of the order passed by trial Court taking cognizance of the offences alleged against him and High Court had granted stay of the trial and there being no progress in the Crl. Misc. Petition, it was being adjourned from time to time. In this background, it has been held by the Hon'ble Apex Court, that accused by said method had successfully delayed the trial. It was also noticed by Hon'ble Apex Court that ultimately, Crl.Misc. Petition had been dismissed by the High Court, which was also carried by accused in Crl. Appeal before the Apex Court. Thus, Hon'ble Apex Court while dismissing the appeal filed by the appellant - accused therein held that what position was prevailing in* [26]***SATYA NARAYAN SHARMA****'s case was happening in large number of criminal cases across the counrty. It was observed by the Hon'ble Apex Court that while public servants are sought to be prosecuted under the PC Act, by filing revision petitions under Section 397 Cr.P.C or by filing petitions*

*under Section 482 Cr.P.C., stay of trial was obtained and they were successfully managing to delay the trial. Hon'ble Apex Court has also observed that order of stay were granted by the Courts without considering and/or in contravention of Section 19(3)(c) of the PC Act.*

*37. However, it requires to be noticed that their Lordships in* [27]***SATYA NARAYAN SHARMA's*** *case have not considered or examined or answered or have expressed any view with regard to scope and power available to the High Court under Article 226 or 227 of the Constitution of India namely, the extraordinary jurisdiction vested in the High Court to stay the proceedings under PC Act, nor their Lordships have held that in light of the provisions contained in Section 19(3), High Court has no power under Article 226 of the Constitution of India to stay the proceedings under the PC Act.*

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[25] *(2001)8 SCC 607*

[26] *(2001)8 SCC 607*

[27] *(2001)8 SCC 607*

*38. Section 19 is found in Chapter V of the PC Act. Said Section is captioned under the heading "Sanction for Prosecution and other Miscellaneous Provisions". In fact, the Hon'ble Apex Court in* ***SATYA NARAYAN SHARMA****'s referred to supra case has observed to the following effect:*

> *"It would have been more advisable if the prohibition contained in sub-section (3) had been included in a separate Section by providing a separate, distinct title".*

*Section 19(3)(c) of PC Act has been pressed into service by the first respondent to contend that there is absolute bar for this Court to consider the prayer for grant of stay of the proceedings under the Act including investigation and in support of said contention, Sri Ravivarma Kumar, learned Senior counsel has yet again relied upon the judgment of the Hon'ble Apex Court in the case of* [28]***SATYA NARAYAN SHARMA*** *and judgment of Division Bench of this Court in the case of*

[29]***SIRAJIN BASHA*** *(to which Justice Aravind Kumar was a member).*

*39. Hon'ble Apex Court in* ***SATYA NARAYAN SHARMA****'s case while examining the said provision had noticed the statement of objects and reasons of the enactment and it came to be held by the Hon'ble Apex Court that "****there can be no stay of trials****" and it was further held that it does not mean that proceedings under Section 482 Cr.P.C. cannot be adapted and in appropriate cases proceedings under Section 482Cr.P.C. can be entertained but and there can be no stay of trials. It was held to the following effect:*

> *"17. Thus, in cases under the Prevention of Corruption Act, there can be no stay of trials. We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However, even if petition under Section 482 of the Criminal*

*Procedure Code is entertained, there can be no stay of trials under the said act. It is then for the party to convince the court concerned to expedite the hearing of that petition. however, merely because the court concerned is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily."*

*The concurring judgment which came to be rendered by his Lordship Justice K.T.Thomas it was held that several High Courts were overlooking the bar imposed under Section 19(3) (c)and are "granting stay of proceedings involving offences under the Act pending before the Courts of Special Judges".*

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*[28] (2001)8 SCC 607*

*[29] ILR 2011 KAR 5115*

*40. A bare reading of clause (c) of sub-section (3) of Section 19 of the PC Act would indicate that no Court shall stay the proceedings under the Act on any ground including on*

*the grounds indicated under clauses (a) and (b) of sub-section (3) of Section 19 unless a failure of justice has occasioned.. Thus, plain reading of clause (a) of sub-section (3) of Section 19 would indicate that no finding, sentence or order passed by Special Judge can be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of or any error, omission or irregularity in the sanction issued under Section 19(1) unless such Court forms an opinion that failure of justice has occasioned on account of it. Said embargo or bar is extended under clause (b) even for stay of the proceedings. A bare reading of clause (c) would disclose that no Court can stay the proceedings under the Act on any other ground and no Court should exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. Thus, clause (c) of sub-section (3) of Section 19 consists of two parts. Namely, first part would disclose that no Court should stay the proceedings under the said Act on any other ground, namely, other than the grounds*

*mentioned in clauses (a) & (b). Further feter is placed on the Court under clause (c) that even in exercise of the power of revision in relation to any interlocutory order passed in an inquiry, trial, appeal or other proceedings, no Court can grant stay of the proceedings. In view of the fact that powers of revision is not being exercised in these two petitions, second part of clause (c) may not have much relevance for the purpose of adjudication in these writ petitions. Even otherwise, bone of contention between parties in these petitions relates to the term or expression "proceedings" occurring in Section 19(3)(c) of the PC Act. On the one hand, first respondent has sought to contend that expression "**proceedings**" occurring in clause (c) would prohibit this Court from granting stay of the investigation also. On the other hand, petitioner has been contending that said bar contained under clause (c) is not relatable to proceedings, prior to the Court taking cognizance or in other words, it would not be applicable to the stage of investigation.*

*41. Thus, the expression "**proceedings**" occurring in Section 19(3)(c) would acquire significance and it will have to be examined as to whether "**the stage of investigation**" should also be construed as "proceeding" or in other words the pre-cognizance stage would also be within the sweep of expression "**proceedings**" occurring in Section 19(3)(c) or not and thereby hold or arrive at a conclusion that bar or embargo contained in Section 19(3)(c) would be attracted or not? This requires to be adjudicated and answered in the light of rival contentions raised as already noticed hereinabove.*

*42. The Division Bench of this Court in [30]**SIRAJIN BASHA's***

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[30] *ILR 2011 KAR 5115*

*case (to which **Justice Aravind Kumar** is a member) had examined the word "**proceedings**" occurring or found in Section 19(3)(c) of the PC Act and held, the proceedings commences the*

*moment Court takes cognizance and next step is to issue summons. It was explained that expression **'trial'** occurring in Section 19(3)(c) as:*

> *"25. No doubt in para 26 of the judgment in **SATYANARAYANA**'s case, xxx statutory provision. The word used in Section 19(c) is no order of stay shall be passed in a "proceedings". **The proceedings commence the moment the Court take cognizance**, the next step is issue of summons. What they meant by the word 'trial' in para 26, is the proceedings under the Act and therefore, we do not see any merit in the said submission."*
>
> *(emphasis supplied)*

*43. A perusal of said judgment and the facts which had obtained in the said case when perused it would indicate that Special Court had taken cognizance of the offences alleged against the accused persons therein and the order passed by the*

*Special Court taking cognizance passed by the Special Court had been challenged by accused persons in Criminal Petition Nos.2083/2011 c/w 2161-2164/2011 and said criminal petitions had been dismissed by this Court on 21.07.2011 itself. It was also noticed by the Division Bench that order passed by the Governor sanctioning prosecution and the consequential proceedings commenced pursuant to such sanction was already under challenge in the writ petitions, which came to be referred to the Hon'ble Chief Justice for said writ petitions being considered by a Bench consisting of larger number of Judges than one and the prayer made before the Division Bench to suspend the proceedings before the Special Court, till the disposal of writ petitions had been denied and on the same day, i.e., on 08.08.2011 Special Court had passed an order issuing summons to the accused persons therein. It was this order dated 08.08.2011 issuing summons to the accused therein which came to be challenged before the learned Single Judge in W.P.Nos.32101-103/2011 and W.P.Nos.37573/2011. In the said*

*writ petitions though petitioners have sought for quashing of the private complaint as well as quashing of the order taking cognizance, a memo came to be filed before the learned Single Judge to restrict the prayer in writ petitions to quash the order dated 08.08.2011 taking cognizance. Based on the said memo, learned Single Judge of this Court granted an interim order on 30.09.2011 staying operation of the order dated 08.08.2011, by which order, summons had been issued to the accused persons.*

*44. In aforestated circumstances, it came to be held by the Division Bench that validity of sanction and validity of the private complaint was not the subject matter before the learned Single Judge and it was the subject matter of consideration before the Division Bench and as such, noticing that learned Single Judge had not found any error in the order passed issuing summons to the accused and it merely stated that 'ingredients of offences alleged are woefully lacking' would not be sufficient to find fault with the order passed by the Special Court. Hence, it came to be*

*held by the Division Bench that as a rule, the High Court should not interfere with the proceedings before the trial Court at the interlocutory stage in the light of bar under Section 19(3)(c) of the PC Act. It was further held by the Division Bench that, if it has to interfere, it should be by way of exception and the Court owes a duty to set out reasons as to why it has exercised its power and how it constitutes an exception to the general rule. On account of these aspects lacking in the order passed by the learned Single Judge, Division Bench in* [31]***SIRAJIN BASHA's*** *case had held after noticing that stage before trial Court was issuance of summons to the accused after taking cognizance or in other words, trial having commenced order of stay could not have .been passed on account of bar contained in Section 19(3)(c) of PC Act. However, in the instant case, trial has not yet commenced and jurisdictional Court is yet to take cognizance.*

*In the light of the aforestated facts, incidental question which would arise for consideration by this Court is:*

*"what would be the significance of the expression "**investigation**?"*

*45. The expression "**investigation**" is defined under Section 2(h) of Cr.P.C as under:*

*"investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."*

*46. An investigation carried out by a police officer by virtue of registration of FIR under PC Act cannot be termed or construed as an investigation conducted or carried out under the said Act, inasmuch as, said Act does not throw any light as to the mode, manner and method in which such investigation is to be conducted or carried out in respect of cases registered under said Act. However, an investigation conducted or carried out under the PC Act would be an investigation as prescribed under the Code of Criminal Procedure. Investigation refers to*

*collection of evidence, recording of the statements of witnesses, search and other incidental matters.*

*47. The basis for registration of FIR under Section 154 Cr.P.C. being very important document and it is the first information which*

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*[31]ILR 2011 KAR 5115*

*sets the machinery of criminal law into motion and marks the commencement of investigation which ends with the formation of an opinion either under Section 169 or 170 of Cr.P.C, as the case may be, and forwarding of report to the Court what is known and called as 'police report' under Section 173 Cr.P.C. The concept of 'fair investigation' and 'fair trial' are concomitant to preservation of fundamental right of the accused as enshrined under Article 21 of the Constitution of India. Thus, an onerous responsibility also rests with the investigating agency and on the Courts, to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law.*

*Thus, great responsibility lies on the investigating agency not to conduct an investigation in tainted and unfair manner.*

*48. The **expression "investigate"** has been defined in Corpus Juris Secundum to the following effect:*

> *"**INVESTIGATE**": To ascertain by careful research; to examine; to follow up; to inquire into systematically; to scrutinize; to pursue; to search out; to find out by careful inquisition; to inquire and examine into with care and accuracy; to search into; to follow up step by step by patient inquiry or observation; to trace or track mentally.*

*49. The Hon'ble Apex Court in the case of **BABUBHAI vs STATE OF GUJARAT AND OTHERS** reported in **(2010)12 SCC 254** has held, not only fair trial but also fair investigation is part of constitutional right guaranteed under Articles 20 and 21 of the Constitution of India. It has been held that investigation must be fair, transparent and judicious, as it is the minimum requirement of rule of law. It is further held that investigation into a criminal*

*offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of accused that investigation was unfair and carried out with an ulterior motive. By delving upon these aspects, it came to be held:*

> *"32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real*

*unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar AIR 1974 SC 1822; and Mahmood Vs. State of U.P. AIR 1976 SC 69).*

*45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in tainted and biased manner. Where non- interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation."*

*50. Keeping the aforestated proposition of law in mind, when Section 19 of PC Act is examined, it would disclose:*

*(a) on completion of investigation a report is prepared and placed by the investigating agency before the appropriate authority for granting sanction;*

*(b) after investigator places his report before the appropriate authority, same would be evaluated by such appropriate authority and it may accord or refuse sanction to prosecute a public servant;*

*To put it differently, Chapter - V of the PC Act would come into operation or play only on completion of investigation and result of such investigation is made known to the appropriate authority which accords sanction and on such material being placed before Court namely, material collected during investigation or in other words, the Special Court would take cognizance of the offences on being satisfied that previous sanction has been granted by the appropriate Government. Thus, appropriate Government viz., disciplinary authority at the first instance would apply its mind to the relevant material gathered during the course*

*of investigation to arrive at a conclusion as to whether sanction should be granted or refused. In the absence of previous sanction the Court would not be required to take cognizance of the offence at all. However, even in the absence of such previous sanction, if cognizance is taken by a Special Court, aggrieved person would be empowered to approach this Court and establish that on account of such sanction not having been granted and proceedings having been proceeded it has resulted in failure of justice.*

*52. Even at the time of framing of the charge, Special Court would apply its mind to find out as to whether the material placed before it is sufficient to frame charge or discharge the accused. After the Court has proceeded to frame charge and has proceed to conduct trial, same cannot be stalled in view of express bar contained under Section 19(3)(c) of the PC Act. This would be the scheme of Section 19(3) of the Act.*

*53. Sri Ravivarma Kumar, learned Sr.counsel appearing for*

*first respondent by relying upon the Full Bench judgment of the High Court of Rajasthan in the case of* ***STATE OF RAJASTHAN vs SANTOSH YADAV*** *reported in* ***2005 SCC ONLINE RAJ 317****) has contended that embargo placed under Section 19(3)(c) of the PC Act not only refers to trial but also all proceedings even prior to it which also includes investigation.*

*54. A perusal of said judgment would disclose that question which came up for consideration before Full Bench was relating to production warrant being issued requiring the attendance of a prisoner lodged in a judicial custody in one case for the purposes of investigation in another case and in this background the expression 'other proceeding' and 'for the purpose of any proceeding' occurring in Section 267(1) and (1)(a) Cr.P.C. would include 'investigation' as defined under Section 2(h) Cr.P.C. or not came up for adjudication and in that context, after considering the definition of the expression 'proceeding', found in definition clause i.e., Section 2(h), Full Bench held said expression used in Section 267(1) and (1)(a) of Cr.P.Cwould*

*include "investigation" as defined under Section 2(h) of Cr.P.C. It was held:*

> *"28. A bare reading of Section 2(h) Cr.P.C would show that "all the proceedings" conducted by a police officer for collecting evidence come under the definition of "investigation". The words "all the proceedings" referred in Sec.2(h) in our considered opinion would also include the expression used in the words "other proceeding under this Code" (Sec. 267(1), "for the purpose of any proceedings against him" (Sec.267 (1)(a) and "for the purpose of such proceeding" (last portion of Sec.267(1). In order to further the ends of justice wider meaning is required to be given to the word "proceeding" used in Sec. 267 Cr.P.C had the Legislature intended to give restrictive meaning to the words "other proceeding unde rthe Code" (sec. 267(1), they would not have used the expression "for the purpose of any proceedings against him" in Sec. 267 (1) (a).*

*31. In view of what we have discussed herein above we answer the question referred to us as under:-*

> *"The Police can seek permission to remove an accused from judicial custody to police custody for completion of investigation in another case and for this purpose production warrant under Section 267 Cr.P.C. can be issued. The expression "other proceeding" used in Sec. 267(1) and "for the purpose of any proceedings" occurring in Sec. 267 (1)(a) would include "investigation" as defined under Section 2(h)Cr.P.C."*

*55. In the instant case, this Court is concerned with the expression "**proceedings**" as occurring in Section 19 of the Act and it has been held hereinabove that it would commence before the Court of law only when a final report by the police officer is placed before such Court on completion of such investigation and the jurisdictional Court taking cognizance of the offences*

*alleged against accused and when charge is framed.*

*56. Proceedings from the stage of taking cognizance till framing of charge would be "**inquiry**". After framing of the charge, the trial would commence. The expression "**inquiry**" has been defined under Section 2(g) of Code and it reads as under:*

> *"**inquiry**" means every enquiry other than a trial, conducted under this Code by a Magistrate or Court.*

*57. This expression was the subject matter of consideration by the Apex Court in the case of **HARDIPSINGH vs STATE OF PUNJAB** reported in **(2014) 3 SCC 92** and it came to be held that the stage of inquiry commences, insofar as the Court is concerned, with the filing of the charge sheet. It has been further held that expression "**inquiry**" occurring in Section 319 Cr.P.C. is not an inquiry relating to investigation of the case by the investigating agency but it is an inquiry by the Court namely, stage between taking cognizance of the offence till framing of the charge by the Court. It came to be further held as*

*follows:*

*"38. In view of the above, the law can be summarized to the effect that as "trial" means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the "trial" commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken."*

*39. Section 2(g) Cr.PC and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under Cr.PC by the Magistrate or the court. The word "inquiry" is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the*

*court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial."*

*58. It is not the case of first respondent that on the basis of a private complaint lodged by the second respondent, jurisdictional Court had referred such complaint under Section 156(3)Cr.P.C for investigation by the first respondent. The complaint in question dated 06.06.2017 - Annexure-A is not a private complaint under Section 200 Cr.P.C and there is no dispute on this issue. The learned Senior Counsel appearing for first respondent would also fairly admit this fact.*

*59. The word "**complaint**" is not defined under the PC Act. However, it finds a place in Section 2(d) of Cr.PC and it reads as under:*

*"(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action*

*under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.*

*Explanation:- A report made by a police officer in a case which discloses, afterinvestigation, the commission of a non- cognizable offence shall be deemed to be a complaint and the police officer by whom such report is made shall be deemed to be the complainant;"*

*Thus, only in the event of report made by a police officer after investigation disclosing the commission of a cognizable offence, it would be deemed to be a complaint and the police officer who makes such report would be deemed to be complainant.*

*60. In the light of aforestated analysis, when the facts on hand are examined, it would disclose that second respondent on 06.06.2017 - Annexure-A lodged a complaint with the Additional Director General of Police, Anti Corruption Bureau, Bengaluru*

*and it was on the basis of the said information, first respondent is said to have collected the details by making enquiries and it resulted in submission of reports dated 10.08.2017/17.08.2017 - Annexure-C in the respective petitions. Based on the said reports, FIRs - Annexure-B in both the petitions came to be registered against petitioner and perusal of the same would disclose that it is theinformation which had been received by second respondent from first respondent, it came to be treated by the first respondent as information which led to conducting preliminary enquiry and registration of FIRs and said information provided by second respondent is relatable to the expression "information" as indicated in Section 154 Cr.P.C. Hence, information given by second respondent to first respondent on 06.06.2017 (Annexure-A) would form part and parcel of FIR. In that view of the matter, the contention raised by the learned Senior counsel appearing for first respondent that writ would not lie to quash the complaint cannot be accepted and it stands rejected.*

*61. The Hon'ble Apex Court in [32]**BHAJAN LAL's** case while indicating the circumstances under which the extraordinary power under Article 226 of the Constitution of India or inherent powers under Section 482 of the Code can be exercised has by way of illustration indicated list of cases, and it came to be held that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any cognizable offence or make out a case against the accused, then, it calls for interference at the initial stage itself. Likewise, if the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any cognizable offence and make out a case against the accused, even in such circumstances, continuation of proceedings has to be construed as abuse of process of law. That apart, if the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no person of ordinary prudence can ever reach a just conclusion*

*that there is sufficient ground for proceedings against the accused, even in such circumstances also, continuation of the proceedings would be uncalled for. It has been further held that in the event of there being an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted), then continuation of said proceedings would be uncalled for and that apart, if the aggrieved party being able to redress his grievance by other alternate mode available under the Code or the concerned Act, even then continuation of proceedings would not be in the interest of justice. Last but not the least, the Hon'ble Apex Court in* [33]***BHAJAN LAL'****s case has held that where criminal proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, in such circumstances, the exercise of jurisdiction under Articles 226 & 227 of the Constitution of India read with Section 482Cr.P.C. would be called for.*

*62. In the light of aforestated position of law stated by Hon'ble Apex Court by laying down contours for exercise of extraordinary jurisdiction, the allegations made in the complaint as well as the preliminary reports prepared based on such complaint will have to be necessarily examined by this Court for the purposes of ascertaining as to whether it would disclose the commission of any offence or make out a case against accused even if they are taken at face value or to ascertain as to whether uncontroverted allegations made in the FIR or complaint and material collected in support of the same do not disclose commission of any offence or the allegations made in the FIR or complaint when read in a purposeful manner by a prudent person it would not lead to a conclusion that there is sufficient ground to proceed against the accused.*

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[32] *1992 Supp (1) SCC 335*

[33] *1992 Supp (1) SCC 335*

*63. As noticed herein above, their Lordships have held that though it would not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae or to give an exhaustive list of myriad kinds of cases where extraordinary power under Article 226 or the inherent powers under Section 482 of the Code can be exercised. The illustrations/kinds of cases indicated in paragraph 102 could be used as yardstick by this Court to find out as to whether at the initial stage itself, complaint in question is to be thrown out or nipped at the bud or such contention is to be rejected. To put it differently, this Court would be clothed with the jurisdiction both under Article 226 of the Constitution of India and under Section 482 of Code to examine as to whether facts obtained in the present case would fall within the contours laid down by the Hon'ble Apex Court in [34]**BHAJAN LAL's** case or not. That apart, as discussed herein above, it has to be held that Section 19(3)(c) of the PC Act becomes operative post cognizance stage only. In other words, Section 19(3)(c) would*

*come into operation only after investigation is completed and report is filed and charge is framed, by virtue of which trial would commence. Hence, this Court is of the considered view that bar or embargo found in Section 19(3)(c) of the PC Act would be attracted or applicable only in respect of the cases falling under post cognizance category.*

*64. The Hon'ble Apex Court in the case of **B.S.JOSHI & OTHERS vs STATE OF HARYANA & ANOTHER** reported in **(2003) 4 SCC 675** has held that **MADHU LIMAYE vs. STATE OF MAHARASHTRA** reported in **(1977)4 SCC 551** does not lay down general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India vide paragraph 8. Time and again, Hon'ble Apex Court has held to prevent the abuse of the process of any Court or otherwise to secure the ends of justice, the inherent powers can be exercised and without burdening this order with the catena of judgments, few of the recent origin are noted*

*herein below which supports the above proposition of law. They are:*

*(1) (2017) SCC Online SC 316 - paragraph 40 VINEET KUMAR & OTHERS vs STATE OF U.P.)*

*(2) (2017) SCC Online SC 450 - paragraph - 14 MAHENDRASINGH DHONI vs YERRAGUNTLA SHYAMSUNDAR*

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*[34] 1992 Supp (1) SCC 335*

*65. Hence, as already noticed herein above, judicial review being inviolable basic structure of the Constitution of India, this Court is of the considered view that petitions filed by petitioner invoking Articles 226 & 227 of the Constitution of India read with Section 482 Cr.P.C. are maintainable and requires to be*

*examined. Inthat view of the matter, it cannot be held that this Court while exercising jurisdiction under Articles 226 & 227 of Constitution of India would be precluded from considering the prayer for stay of the proceedings on the premise that Section 19(3)(c) of PC Act would be attracted. Said contention raised by the learned Sr.counsel appearing for first respondent is considered and stands rejected for the reasons aforestated and point Nos.(1) and (2) are answered in favour of petitioner.*

***RE: POINT NO.(3):***

*66. W.P.No.37702/2017 has been filed by the petitioner as already noticed hereinabove for quashing of the complaint dated 06.06.2017 - Annexure-A (which complaint is also the subject matter of W.P.No.37544/2017) and the consequential registration of FIR in Crime No.36/2017 - Annexure-B, contending interalia that second FIR cannot be registered on the basis of same complaint and same is filed with an intent to harass the petitioner and to entangle him in several criminal proceedings. In this*

*petition (W.P.No.37702/2017) the main plank of petitioner's argument is that on the basis of the complaint dated 06.06.2017 - Annexure-A, FIR in Cr.No.34/2017 has already been registered on 10.08.2017 against petitioner for the offences punishable under Sections 406, 420, 120B IPC and Sections 7, 8, 13(1)(c)&(d) and Section 13(2) of Prevention of Corruption Act and as such, for the same offence second FIR registered in Cr.No.36/2017 is not maintainable and it is not legally permissible. Learned counsel for the petitioner has placed heavy reliance on the judgment of Apex Court in* [35]***T.T.ANTONY's*** *case.*

*67. As already noticed hereinabove an FIR registered under Section 154 Cr.P.C. is a very important and also a crucial document and it is the first information of a cognizable offence recorded by an Officer in-charge of a Police Station in the Station House Diary. Said information sets the machinery of criminal law into motion and thereby commencement of investigation would take place and on completion of the same, the investigating agency would form an opinion and forwards the report*

*under Section 173(2) of Cr.P.C. to the Court. It is quite possible that more than one piece of information is given to the Police Officer in respect of the same incident involving one or more cognizable offences. In such circumstances, the police officer need not enter each piece of information in the Station House*

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*[35] 2001 Crl.L.J. 3329*

*Dairy and recording gist of it would suffice. All other information given orally and in writing after the commencement of the investigation into the facts mentioned in the first information report will be the statements falling under Section 162 Cr.P.C. There cannot be any dispute with regard to the said proposition of law.*

*68. Be that as it may. In case of subsequent FIR being registered relating to same incident, a duty is cast on the Court to examine the facts and circumstances giving rise registration of*

*both the FIRs and to find out whether both the FIRs relate to the same incident in respect of the same occurrence of crime or it relates to the incidents, which are two or more parts of the same incident/transaction. If the information is in respect of the same incident, the second FIR would be liable to be quashed. However, if the information furnished in the second FIR is entirely a different and distinct incident or it relates to different incidents / crimes, then second FIR would stand the test of law. Thus, the word* ***'same'*** *would acquire significance or in other words, the exercise that the Court will have to undertake is to apply* ***'test of sameness'*** *to find out whether two FIRs registered relates to same incident or not.*

*69. The expression* ***'same'*** *has been defined in Black's Law Dictionary Fifth (V) Edition to the following effect:*

***(V) edition:***

*"**Same**. Identical, equal, equivalent. The word "same", however, does not always means "identical." It frequently*

*means of the kind of species, not the specific thing. When preceded by the definite article, means the one just referred to.*

*Two offenses are "the same" under the double jeopardy clause of the Federal Constitution unless each requires proof of an additional fact that the other does not. Ex parte Joseph, Tex.Cr.App., 558 S.W.2d 891, 893. See also Jeopardy; same offense."*

*In IX Edition of Black's Law Dictionary, the expression "**same**" is defined as under:*

*"**Same**: The very thing just mentioned or described; it or them [two days after receiving the goods, Mr. Siviglio returned same."*

*This expression "same conduct test" has also been defined in Black's Law Dictionary IX Edition and it reads as under:*

*"(b) **Same-conduct test**: Criminal law. A test for determining whether a later change arising out of a single*

*incident is barred by the Double Jeopardy Clause; specif., an analysis of whether the later charge requires the state to prove the same conduct that it was required to prove in a previous trial against the same defendant. The Supreme Court abandoned the Blockburger test and adopted the same- conduct test in 1990 (Grady v. Corbin, 495 U.S. 508, 110 S.Ct.2084), but overruled that decision and revived Blockbuster three years later (U.S. v. Dixon, 509 U.S. 688, 113 S.Ct.2849 (1993)). Cf. BLOCKBURGER TEST; SAME-TRANSACTION TEST. [Cases: DOUBLE JEOPARDY --132.1]"*

*70. A test for determining whether a later charge arising out of a single incident is barred by the Double Jeopardy Clause, came up for consideration before the Court of Appeals in the case* ***U.S. v. DIXON*** *reported in* ***(1993) SCC Online US 107, 509 U.S. 688 (1993)****, and it came to be held:*

*"In both the multiple punishment and multiple prosecution*

*contexts, this Court has concluded that where the two offenses for which the defendant is punished or tried cannot survive the "same-elements" test, the double jeopardy bar applies. The same-elements test, sometimes referred to as the "Blockburger" test, inquires whether such offense contains an element not contained in the other; if not, they are the "same offence" and double jeopardy bars additional punishment and successive prosecution. In a case such a Yancy, for example, in which the contempt prosecution was for disruption of judicial business, the same-elements test would not bar subsequent prosecution for the criminal assault that was part of the disruption, because the contempt offense did not require the element of criminal conduct, and the criminal offense did not require the element of disrupting judicial business."*

*It was further held as under:*

*"We have concluded, however, that Grady must be*

*overruled. Unlike Blockburger analysis, whose definition of what prevents two crimes from being the "same offence," U.S. Const., Amdt. 5, has deep historical roots and has been accepted in numerous precedents of this Court, Grady lacks constitutional roots. The "same-conduct" rule it announced it wholly inconsistent with earlier Supreme Court precedent and with the clear common-law understanding of double jeopardy. See. E.g., Gavieres v. United States, 220 U.S., at 345 (in subsequent prosecution, "while it is true that the conduct of the accused was one and the same, two offenses resulted, each of which had an element not embraced in the other").*

*In Ninth (IX) Edition of Black's Law Dictionary the Blockburger test, which came to be enunciated by the Court of Appeals - USA, it has been defined as under:*

*"**Blockburger test**. Criminal law. A test, for double - jeopardy purposes, of whether a defendant can be*

*punished separately for convictions on two charges or prosecuted later on a different charge after being convicted or acquitted on a charge involving the same incident: a comparison of two charges to see if each contains atleast one element that the other does not. Although the test is frequently called the same-evidence test, that term is misleading since the analysis involves the elements of the charged offenses rather than the facts of the incident. Blockburger v. U.S., 284 U.S. 299, 304, 52 S.Ct. 180, 192 (1932). - Also termed same - elements test; actual - evidence test. Cf. SAME - CONDUCT TEST;*

*SAME - TRANSACTION TEST. (Cases: Double Jeopardy 135, 136.)*

*71. It is well settled principle of law that there cannot be two FIRs registered for the same offence. However, where the incident is separate, offences are different or where the subsequent crime is of such magnitude that it does not fall within*

*the ambit and scope of FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language employed in Section 154 of the Code.*

*72. The Hon'ble Apex Court in the case of **ANJU CHAUDHARY vs STATE OF UTTAR PRADESH AND ANOTHER** reported in **(2013) 6 SCC 384** has held that safeguard so provided under Section 154 of Cr.P.C. can be safely deduced from the principle akin to double jeopardy, rule of fair investigation, to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered.*

*In the very same judgment the Hon'ble Apex Court at paragraph 15 has held that it has to be examined on merits of each case whether subsequently registered FIR is a second FIR about the same incident or offence or it is based upon distinct and different facts or whether its' scope of enquiry is different or*

*not. It will not be appropriate for the Court to lay down any one straight jacket formula uniformly applicable to all the cases. It has been held that it will always be a mixed question of law and facts depending upon the merits of a given case. It has been held:*

*"14. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced to writing by the officer in-charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes acognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate*

*to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the Investigating Agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of*

*competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, reexamination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the Police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, re-investigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would*

*be opposed to the scheme of the Code and more particularly Section 167(2) of the Code."*

*73. It has been further noticed by the Apex Court in [36]**ANJU CHAUDHARY's** case referred to supra that Court in order to examine the impact of one or more FIRs has to rationalize the facts and circumstances of each case by applying the test of **'sameness'** to find out whether both the FIRs relate to*

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*[36] (2013)6 SCC 384*

*same incident and to the same occurrence or in regard to incidents which are two or more transaction or based on distinct and different facts or whether its scope of enquiry is different or not. It has been further held:*

*"15. It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon*

*distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the Court to lay down one straightjacket formula uniformly applicable to all cases. This will always be a mixed question of law and facts depending upon the merits of a given case."*

*Thus, where two or more FIRs would surface it has to be examined would whether it relates to the same incident or not and it is always a mixed question of law and facts, which may obtain in each case independently.*

*74. Thus, the word "**incident**" would acquire significance and same has been defined in Corpus Juris Secundum to the following effect:*

*"**INCIDENT**: The term is used both substantively and adjectively of a thing which either usually or naturally and inseparably depends on, appertains to, or follows another which is more worthy. Used substantively, it has been*

*defined as a thing necessarily depending upon, appertaining to, or following another that is more worthy or principal; something necessarily appertaining to or depending on another, which is termed the principal; and, used adjectively, as meaning apt to occur, befalling, liable to happen; hence, naturally happening or appertaining; dependent on, or appertaining to, another thing (the principal); directly and immediately pertinent to, or involved in, something else, although not an essential part of it. The noun is sometimes used interchangeably with "circumstances", and has been distinguished from "accident"."*

*75. The Hon'ble Apex Court in the case of* ***STATE OF BIHAR vs. MURAD ALI KHAN AND OTHERS*** *reported in* ***AIR 1989 SC 1 (AIR 1988 SC 1)*** *while examining as to whether offence envisaged by Section 9(1) r/w Section 2(16) and Section 50(1) of Wild Life Protection Act, 1972, in its ingredients and contents, is not the same or substantially the same as Section*

*429of the Indian Penal Code has explained what constitutes same offence and held:*

*"Distinct statutory provisions will be treated as involving separate offenses for double jeopardy purposes only if "each provision requires proof of an additional fact which the other does not" (Blockburger v. United States, (1931) 284 US 299. 304). Where the same evidence suffices to prove both crimes, they are the same for double jeopardy purposes, and the clause forbids successive trials and cumulative punishments for the two crimes. The offences must be joined in one indictment and tried together unless the defendant requests that they be tried separately. (Jeffers v. United States, (1977) 432 U.S. 137)."*

*[See "Double Jeopardy" in the Encyclopedia of Crime and Justice vol. 2. (p. 630) 1983 Edn. by Sanford H. Kadish: The Free Press, Collier Mac Millan Publishers, London]*

*The expressions "the same offence", "substantially*

*the same offence'" "in effect the same offence" or "practically the same", have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of "same offence". Friedland in "Double Jeopardy'" [Oxford 1969] says at page 108:*

*"The trouble with this approach is that it is vague and hazy and conceals the thought processes of the Court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for future decisions. A more serious consequence is the fact that a decision in one case that two offences are 'substantially the same' may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible.....*

*8. In order that the prohibition is attracted the same act must constitute an offence under more than one Act. If*

*there two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred. In Leo Roy Frey v. The Superintendent, District Jail, Amritsar, 1958 SCR 822: (AIR 1858 SC 119) the question arose whether a crime and the offence of conspiracy to commit it are different offences. This Court said (at P. 121 of AIR):*

*"The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences."*

*In State of Madhya Pradesh v. Veereshwar Rao Angnihotry, 1957 SCR 868: (AIR 1957 SC 592) the*

*accused was tried by the special judge for offences under sec. 409 IPC, and Sec. 5(2) of the Prevention of Corruption Act, 1947. While convicting him under Sec.409, IPC, the Special Judge held that the accused could not be tried under Sec. 5(2) of the Prevention of Corruption Act, 1947, as there was a breach of the requirement of law that the investigation be by a police officer not below a particular rank. In appeal, the High Court set aside even the conviction under Sec. 409, IPC, applying the doctrine of autrefois acquit holding that the Special Judge's finding on the charge under Sec. 5(2) amounted to an acquittal and that punishment as a charge under Sec. 409, would be impermissible. This court following the pronouncement in Omprakash Gupta v. State of U.P., 1957 SCR 423: (AIR 1957 SC 458) held that the two offences were distinct and separate offences.*

*In The State of Bombay v. S.L. Apte & Anr., 11961] 3 SCR 107: (AIR 1961 SC 578), the question that fell for*

*consideration was that in view of earlier conviction and sentence under Sec. 409, IPC a subsequent prosecution for an offence under Sec. 105 of Insurance Act, 1935, was barred by Sec. 26 of the General Clauses Act and Art. 20(2) of the Constitution. This Court observed:*

*"To operate as a bar the second prosecution and the consequential punishment thereunder, must be for 'the same offence'. The crucial requirement therefore for attracting the Article is that the offences are the same, i.e., they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out .. "*

*" ....Though section 26 in its opening words refer to*

*'the act or omission constituting an offence under two or more enactments', the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to 'shall not be liable to be punished twice for the same offence'. If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked .....*

*The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time constitute an offence under any other law."*

*76. Thus, it would emerge from the above case laws that the prohibition to register two (2) FIRs to come into play, the alleged act must constitute an offence more than one. If the*

*offences are the same, the bar would operate and if the offences are distinct, then, notwithstanding the allegations of facts in two (2) complaints might be substantially similar, then the bar would not operate. However, if one complaint were to disclose distinct criminal acts and is relatable to separate transactions, even in such circumstances the bar would not operate.*

*77. In the above stated background, when facts on hand are examined it would disclose that complaint which came to be lodged by second respondent with the first respondent is dated 06.06.2017, based on which FIR in Cr.No.34/2017 came to be registered on 10.08.2017 (which is the subject matter of W.P.No.37544/2017). However, second FIR in Cr.No.36/2017 came to be registered on the basis of a report dated 17.08.2017. The basis of such report is the same complaint dated 06.06.2017. In other words, basis for both the reports is one complaint i.e., dated 06.06.2017. The complaint dated 06.06.2017 does not specify or indicate that orders passed by the petitioner for deleting/dropping the lands from being included*

*in the final notification is passed under different set of circumstances. On the other hand, a plain reading of said complaint would disclose that petitioner herein had passed the orders in respect of different survey numbers for deleting/dropping acquisition proceedings and as such, it is alleged by the informant/complainant that by virtue of such orders having been passed by the petitioner, it has resulted in loss to the public exchequer and gain to the petitioner. . The alleged order/s passed by the petitioner for deleting/dropping the lands from being acquired or being included in the final notification, relates to one layout namely Dr.Shivaramakarantha Layout. The entire act of such order being passed is attributable to the petitioner, who is alleged to have conspired with accused Nos.2 to 5. It is not a separate, independent or distinct transaction/s, but the entire area of 257 acres 17 guntas land which is said to have been ordered to be dropped/deleted by the first petitioner relates to one layout and the averments or the allegations made in the complaint would disclose, by such act of*

*deleting/dropping lands from acquisition, it has been alleged that it has resulted in loss to the public exchequer. Hence, it cannot be gainsaid by the first respondent - prosecution that allegations made in the complaint form distinct incidents or it is not part of same transaction so as to give rise for filing of successive or repetitive FIRs in respect of each file. It is not the case of prosecution that complainant has not disclosed in his complaint about such order/s having been passed by the petitioner for deleting or dropping the lands from acquisition. In fact, learned Senior Counsel appearing for first respondent has fairly submitted before this Court that complainant had annexed or appended all the copies of documents referred to in his complaint as annexures and based on said documents preliminary enquiry was taken up.*

*78. The Hon'ble Apex Court in the case of **T.T.ANTONY vs STATE OF KERALA & OTHERS** reported in **(2001) 6 SCC 181** has held that scheme of Code of Criminal Procedure is that an officer in-charge of a police station has to commence the*

*investigation as provided under Section 156 and 157 of Cr.P.C. on the basis of entry of first information report and on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of evidence collected, he has to form an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forward the report to the concerned Magistrate under Section 173(2)Cr.P.C.. It has been further held that even after filing of such a report, if the investigating officer comes into possession of further information or material, he need not register a fresh FIR and he would be empowered to make further investigation, normally with the leave of the Court and where during his further investigation he collects further evidence, orally and documentary, he is obliged to forward the same to the Court with one or more further reports and this is the import of Section 173(8) of Cr.P.C. It has been held as follows:*

> *"19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first*

*information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2)CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC."*

*Thus, it follows from the above the scheme of Sections 154, 155, 156, 157, 162, 169, 170 and 173 Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirement of Section 154 of*

*Cr.P.C. Thus, there can be no second FIR if it relates to same incident.*

*79. Keeping aforestated analysis in mind, when facts on hand are examined, it would disclose that second FIR i.e., in Crime No.36/2017, in Column No.9 it discloses the contents of FIR, as complaint dated 06.06.2017 is attached or appended to or in other words, the complaint which originated on 06.06.2017 resulting in filing of FIR in Cr.No.34/2017 is the basis on which second FIR is also filed. However, it is stated that subsequent to the filing of the FIR in Cr.No.34/2017 further material has been collected and information so collected led to filing of the report dated 17.08.2017, which is also appended as Annexure-C and perusal of same would disclose that it relates to same layout and petitioner is the same person, who is said to have passed the order/s for deleting/dropping the lands from acquisition. As such, on account of different orders having been passed by the petitioner in respect of lands belonging to the erstwhile land owners, it cannot be construed or held that it relates to a*

*separate and distinct incident than the one alleged in complaint dated 06.06.2017 which had resulted in registration of Cr.No.34/2017. As such, this court is of the considered view that on the basis of material placed before this Court, at this stage, it cannot be held or construed that offence alleged in Cr.No.36/2017 is a separate or distinct offence than what has been alleged in Cr.No.34/2017.*

*80. It would be appropriate to note at this juncture itself that learned Senior Counsel appearing for first respondent at the commencement of his arguments has specifically stated that statement of objections filed and the arguments advanced by him is for the limited purposes for opposing grant of interim prayer only, and as such he has also sought leave of the Court for filing additional statement of objections. Hence, at this stage, this Court is of the considered view that on the basis of material placed by the learned counsel appearing for first respondent it cannot be held that second FIR registered against the petitioner can be construed as separate, distinct or independent offence.*

*81. In that view of the matter, point No.3 formulated hereinabove requires to be held against first respondent by concluding that complaint dated 06.06.2017*

*- Annexure-A in W.P.No.37544/2017 would not disclose a distinct or separate offences and it is the same offences as alleged in Cr.No.34/2017, which is the subject matter ofW.P.No.37544/2017. In other words, the incidents/acts alleged to have been committed by petitioner cannot be held or construed as separate or distinct acts. Hence, filing of successive FIRs is impermissible.*

***RE: POINT NO.4:***

*82. Now turning my attention to the core issue namely, as to whether all further proceedings pursuant to complaint dated 06.06.2017 - Annexure-A, which has resulted in registration of Cr.Nos.34/2017 and 36/2017 including investigation, is to be stayed or not, is being examined.*

*83. A bare reading of Section 154(1) of Cr.P.C. would*

*indicate that a Police Officer cannot refuse to record an information relating to commission of a cognizable offence and cannot refuse to register a case on the ground that he/she are not satisfied with the reasonableness or credibility of the information so furnished, when such information discloses commission of a cognizable offence. Thus, it manifests that on information furnished disclosing commission of a cognizable offence and same is brought to the notice of an Officer in-charge of a Police Station, said Police Officer has no other option except to enter the substance of such information in the prescribed form namely, to register an FIR on the basis of information so received/furnished.*

*84. The Hon'ble Apex Court in the case of [37]**LALITA KUMARI's** case has held that registration of FIR is mandatory under Section 154 of Cr.P.C., if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation. It is further held that it is a general rule and it must be strictly complied with. It came to be held as under:*

*"93. The object sought to be achieved by registering the earliest information as FIR is inter alia two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment, etc. later."*

*It is further held that registration of complaint when lodged alleging a cognizable offence would ensure transparency in the criminal justice delivery system. It is held by Hon'ble Apex Court:*

*"96. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice-delivery system but also to ensure "judicial oversight". Section 157(1) deploys the word "forthwith". Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence*

*is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary."*

*It has also been held that it is the general rule to register a complaint when filed alleging commission of a cognizable offence and said mandate of law must be strictly complied with and reading of Section 154 of Cr.P.C. in any other form would not only be detrimental to the scheme of Code and society as a whole. It is held by the Apex Court:*

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*[37] (2014)2 SCC 1*

*"104. Burking of crime leads to dilution of the rule of law in the short run; and also has a very negative impact on the rule of law in the long run since people stop having respect for the rule of law. Thus, it is seen that such a large number of FIRs are not registered every year, which is a clear violation of the rights of the victims of such a large*

*number of crimes.*

*105. Therefore, reading Section 154 in any other form would not only be detrimental to the scheme of the Code but also to the society as a whole. It is thus seen that this Court has repeatedly held in various decided cases that registration of FIR is mandatory if the information given to the police under Section 154 of the Code discloses the commission of a cognizable offence."*

*It has been further held where information so received does not disclose commission of a cognizable offence, then registration of FIR need not be undertaken immediately and police would be empowered to conduct a sort of preliminary verification or enquiry for the limited purpose of ascertaining whether said information discloses commission of cognizable offence/s or not. As to what type of cases preliminary enquiry is to be conducted would depend upon the facts and circumstances of each case and by way of illustration, it has been held by the*

*Hon'ble Apex Court in paragraph 120.6 that preliminary enquiry can be made in the following category of cases:*

*(a) Matrimonial disputes/family disputes*

*(b) Commercial offences*

*(c) Medical negligence cases*

*(d) Corruption cases*

*(e) Cases where there is abnormal delay/laches in launching criminal prosecution, for example, over three months' delay in reporting the matter without satisfactorily explaining the reasons for delay."*

*The types of cases indicated therein are only illustrative in nature and not exhaustive as held by Apex Court.*

*85. As noticed herein above, preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not and it would depend on facts and circumstances of each case. As held by the Apex Court 'corruption cases' are also indicated as a category of cases where preliminary enquiry can*

*be conducted.*

*86. Thus, it would emerge from the above, if the information given to the police discloses commission of cognizable offence/s, no other option is available except registering the FIR or in other words, registration of an FIR is a rule and to put it differently, registration of an FIR is mandatory. On the other hand, if no cognizable offence is made out in the information furnished or given, then there would be no need to register the FIR immediately and police would be empowered to conduct a preliminary enquiry to ascertain as to whether cognizable offence/s has been committed or not.*

*87. Information relating to preliminary enquiry being conducted is to be reflected in the Station House Diary and necessarily all further proceedings pursuant thereto. Once the preliminary enquiry is conducted and information is gathered, which may disclose there is a cognizable offence, the next immediate step which the Police Officer has to undertake is to*

*register the case without any delay. Only on registration of the case, the authorised or empowered Officer would get the power to investigate the crime as otherwise not.*

*88. Complaint in question i.e., dated 06.06.2017 - Annexure-A came to be lodged by the second respondent before Additional Director General of Police - ACB on 07.06.2017 and it was forwarded to Superintendent of Police on the same day, who in turn referred it to Deputy Superintendent of Police - ACB, which came to registered as complaint No.484/2017. The complainant - second respondent had furnished all the relevant documents along with his complaint as has been stated by Sri. Ramesh Chandra, learned counsel appearing for second respondent during the course of his arguments and all the documents were available with the Deputy Superintendent of Police - ACB on which they rely upon to sustain the initiation of proceedings. For reasons best known and obviously in the light of law laid down by Apex Court in* ***LALITA KUMARI's*** *case, first respondent seems to have made up its mind to conduct a*

*preliminary enquiry and as such, has proceeded to conduct such preliminary enquiry and after conducting such preliminary enquiry, a report has been submitted on 10.08.2017. In other words, the enquiry has proceeded from 08.06.2017 upto 10.08.2017. On receiving saidreport, Superintendent of Police -ACB has directed Deputy Superintendent of Police to register the case and accordingly, FIR in Cr.No.34/2017 came to be registered on 10.08.2017 against petitioner and four (4) others.*

*89. Thus, it could be seen that from the date of filing of the complaint till submission of the report, the time consumed is 9 weeks i.e., from 08.06.2017 to 09.08.2017. Station House Diary for the period between 20.04.2017 to 04.08.2017 has been made available by learned SPP which has been perused by this Court and it requires to be noted at this juncture itself that no entries are found on 07.06.2017 and 08.06.2017 about receipt of the complaint in question which is referred to herein above by the Station House Officer. However, an entry has been made on 09.06.2017 indicating thereunder that a reminder has been*

*issued by the IGP - ACB forwarding said complaint with enclosures lodged by second respondent. Subsequently, two entries are found in the Station House Diary i.e., 19.06.2017 & 18.07.2017 about preliminary enquiry having been conducted. Subsequent thereto, there are no entries with regard to any sort of collection of material during the course of such preliminary enquiry conducted. FIR in Crime No.34/2017 has been registered on 10.08.2017 (in W.P.No.37544/2017) which relates to Sy.No.109/1 measuring 3 acres 6 guntas and Crime No.36/2017 came to be registered on 17.08.2017 (in W.P.No.37702/2017) which relates to Sy.Nos.22(2) and 24(1). Thus, from above facts, following aspects would emerge:*

*(a) there is no entry in the Station House Diary immediately on receipt of the complaint;*

*(b) second respondent - complainant has furnished all the details regarding deleting or dropping of lands of 257 acres and 17 guntas from acquisition by the petitioner in his*

*complaint;*

*(c) Preliminary enquiry have been conducted on 19.06.2017 and again after a gap of one month on 18.07.2017.*

*(d) No reasons are forthcoming for delay in not registering the FIR either at the first instance on 08.06.2017 or immediately thereafter on 19.06.2017 or on 18.07.2017.*

*90. The Hon'ble Apex Court in* [38]***LALITA KUMARI's*** *case had initially fixed outer limit of 7 days as the time limit for investigating agency to conduct preliminary enquiry. Hon'ble Apex Court had held:*

***"While ensuring and protecting the rights of the accused and the complaint****, a preliminary enquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided,.* ***The fact of such delay and the causes of it must be reflected in***

***the General Diary entry."***

*(emphasis supplied)*

*Subsequently by order dated 05.04.2014 said period of seven days was modified to 15 days and in exceptional cases six weeks. However, it has been specifically made clear by the Hon'ble Apex Court that preliminary enquiry should be time bound and only in exceptional cases, said period should not exceed 15 days so fixed, and it came to be increased up to six weeks and has held adequate reasons will have to be assigned if it exceeds 15 days and before six weeks would lapse. In other words, period of seven days fixed earlier was extended up to 15 days and held that in exceptional cases, six weeks time is provided and cause for such delay was required to be explained in General Diary. It is in this background, this Court has looked into the Station House Diary to unearth or discern as to whether there are any reasons forthcoming or not.*

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[38] *(2014)2 SCC 1*

*91. It requires to be noticed at the cost of repetition that Hon'ble Apex Court has categorically held that preliminary enquiry should be time bound and generally it should not exceed 15 days and in exceptional cases by giving adequate reasons, six weeks and cause for such delay must be reflected in the Station House Diary.*

*92. Though Sri Ravivarma Kumar, learned Advocate appearing for first respondent has vehemently contended that judgment of Hon'ble Apex Court in* [39]***LALITA KUMARI's*** *case need not be read as a parliamentary legislation or legislative legislation, particularly in the background of said judgment not disclosing as to the consequences which would flow from non-compliance of the directions so issued and also on the ground that Hon'ble Apex Court itself at paragraph 120.4 has indicated the consequences that would flow in the event of non-*

*registration of FIR namely, it has been held that action can be taken against such erring officers for delaying registration of FIR and as such registration of FIRs against petitioner need not be quashed, since the crime committed or criminal act of the petitioner would not be wiped out, when considered in the background of authoritative pronouncement of law in* [40]***LALIT KUMARI's*** *case by the Hon'ble Apex Court, this Court is unable to accept contention so raised by the learned Senior Counsel appearing for first respondent for reasons more than one. As noticed by their lordships in* ***LALITA KUMARI's*** *case time bound enquiry is to be made not only to protect the interest of the prosecution but also to protect the interest of the accused, inasmuch as, reading of paragraph 120.2 would clarify the said position, whereunder it has been held that if the information received does not disclose a cognizable offence but indicates the necessity for conducting an enquiry, preliminary enquiry can be conducted only to ascertain whether commission of cognizable offence is made out or not. It has been held at paragraph 120.3*

*that if the preliminary enquiry ends in closing the complaint a copy of entry of such closure must be supplied to the first informant forthwith and not later than one week. In other words, complainant also cannot be left in the lurch, since he may pursue his grievance before appropriate forum. Under the guise of conducting a preliminary enquiry, roving enquiry cannot be held that too, without explaining the cause for inordinate delay, and as such delay in conducting preliminary enquiry would definitely prejudice the rights of an accused.*

*93. In that view of the matter, this Court is of the considered view that by no stretch of imagination, it can be construed that direction issued by the Hon'ble Apex Court would enable the police to postpone the registration of FIR on the pretext of conducting a roving enquiry or enquiry being conducted at snail's pace, by taking umbrage*

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[39] *(2014)2 SCC 1*

[40] *(2014)2 SCC 1*

*under the guise of collecting material like documents or eliciting information or such enquiries being conducted for days/weeks/months to come and without explaining cause for such delay. It is because of this precise reason, Hon'ble Apex Court has categorically held that there should be no delay in not registering the FIR within 15 days or within six weeks with adequate reasons from the date of information so received.*

*94. As noticed hereinabove the cause for delay has neither been explained in the statement of objections filed by first respondent nor Station House Diary would disclose the cause for such delay. In other words, the delay has remained unexplained at this stage. Thus, incidental question which would arise for consideration, in this background is:*

*(i) Whether preliminary enquiry conducted and consequential registration of FIR has caused prejudice to the interest of petitioner in any manner? And if so,*

*consequences flowing therefrom..*

*Thus, if preliminary enquiry has proceeded beyond the period fixed by the Apex Court in [41]**LALITA KUMARI's** case and reports would emerge from such delayed preliminary enquiry, which has resulted in registration of FIRs based on such preliminary reports, then it will have to be necessarily examined by this Court as to whether such investigation has given scope for accused alleging that such enquiry was biased or such enquiry is malafide or tainted or otherwise. Any investigation that may be conducted by the authorities should be with fairness, irrespective of the person against whom such investigation is being conducted. However, a vitiated investigation is the precursor for miscarriage of administration of criminal justice. Hon'ble Apex Court in the case of **BABUBHAI vs. STATE OF GUJARAT AND OTHERS** reported in **(2010) 12 SCC 254** has held that the Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to his*

*genuineness. He is not expected to boost the prosecution case with such evidence as may enable the Court to record a conviction but his endeavour should be to bring out the real unvarnished truth. It was further held:*

> *"32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The*

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*[41] (2014)2 SCC 1*

*Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its*

*genuineness. The Investigating Officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar AIR 1974 SC 1822; and Mahmood Vs. State of U.P. AIR 1976 SC 69)."*

*95. Investigating agencies are the guardians of the liberty of innocent citizens. Therefore, a heavy responsibility devolves upon them, that innocent persons are not charged on an irresponsible and false implication. There cannot be any kind of interference or influence on the investigating agency and no one should be put through the harassment of a criminal trial unless there are good and substantial reasons/cause for holding enquiry. At the cost of repetition it requires to be noticed that fair investigation is also a part of constitutional right guaranteed under Articles 20 and 21 of constitution of India and in* [42]***BABUBHAI's*** *case referred to hereinabove, it was emphasised*

*by their lordships to the following effect:*

> *"44. The charge -sheets filed by the investigating agency in both the cases are against the same set of accused. A charge- sheet is the outcome of an investigation. If the investigation has not been conducted fairly, we are of the view that such vitiated investigation cannot give rise to a valid charge-sheet. Such investigation would ultimately prove to be a precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjectures as the whole truth would not come before it. It will be difficult for the court to determine how the incident took place wherein three persons died and so many persons including the complainant and the accused got injured."*

*96. It has been the contention of learned counsel appearing for the petitioner that even such delayed enquiry which has resulted in reports dated 10.08.2017 and 17.08.2017*

*would disclose that they are based on the allegations made in the complaint dated 06.06.2017 and neither the allegations made in the complaint nor the said reports would disclose commission of a cognizable offences by the petitioner and as such, registration of FIR has resulted in prejudice to the petitioner's right. It has also been contended that entire allegations made in the complaint when read as a whole, does not disclose the*

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*[42] (2010)12 SCC 254*

*commission of a cognizable offence and yet FIR has been registered with the sole intention of harassing the petitioner and to bring disrepute to him and as such, if investigation is allowed to continue, it will not only result in failure of justice but would also cause extreme prejudice, hardship and injury to the petitioner.*

*97. The phrases like "failure of justice" and "prejudicial to the interest of the petitioner" are the off- quoted phrases while*

*seeking reliefs. However, it can be noticed at this stage itself that even if there are any procedural irregularities that could not have resulted in failure of justice or it can be held that it has caused prejudice to the right of the accused. Records must speak for themselves about such prejudice having occasioned. In that view of the matter, there is onerous responsibility on the Court to have a closer look at the facts obtained in each case, to ascertain or discern as to whether there has been real failure of justice or proceedings have been initiated to the prejudice of petitioner/accused or said contention is only a camouflage.*

*98. The Hon'ble Apex Court in the case of* [43]***GIRISH KUMAR SUNEJA's*** *case reported in has held that error, omission or irregularity in the grant of sanction, if any, has to be raised at the first stage and even otherwise, that would not be sufficient to conclude that there was failure of justice and it was held that it differs from case to case. It came to be held:*

*"75. In Central Bureau of Investigation v. V.K. Sehgal (1999) 8 SCC 501, it was held that for determining*

*whether the absence of or any error, omission or irregularity in the grant of sanction has occasioned or resulted in a failure of justice, the court has a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if it had been raised at the trial and early enough, it would not be sufficient to conclude that there was a failure of justice. Whether in fact and in law there was a failure of justice would differ from case to case but it was made clear that if such an objection was not raised in the trial, it certainly cannot be raised in appeal or in revision. It was explained that a trial involves judicial scrutiny of the entire material before the Special Judge. Therefore, if on a judicial scrutiny of the evidence on record the Special Judge comes to a conclusion that there was sufficient reason to convict the accused person, the absence or error or omission or irregularity would actually become a surplusage. The necessity of a sanction is only as a filter to safeguard public servants from frivolous*

*or mala fide or vindictive prosecution. However, after judicial scrutiny is complete and a conviction is made out through the filtration process, the issue of a sanction really would become inconsequential. It was held in paragraphs 10 and 11 of the Report as under:*

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*[43] (2017) SCC Online 766*

> *"A court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid sub-section (2) enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is*

*hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court.....*

*In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide orvindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could*

*be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Code of Criminal Procedure."*

*It is further held that such allegations cannot be equated with miscarriage of justice or violation of law or irregularity in procedure and it should be much more. It has been further held:*

*"85. An allegation of 'failure of justice' is a very strong allegation and use of an equally strong expression and cannot be equated with a miscarriage of justice or a violation of law or an irregularity in procedure - it is much more. If the expression is to be understood as in common parlance, the result would be that seldom would a trial reach a conclusion since an irregularity could take place at any stage, inadmissible evidence could be erroneously admitted, an adjournment wrongly declined etc. To conclude, therefore, Section 19(3)(c) of the PC Act must be given a very restricted interpretation and we cannot accept*

*the over-broad interpretation canvassed by learned counsel for the appellants."*

*99. In the light of the aforestated position of law and analysis thereof, it will have to be examined as to how the failure of justice as alleged by petitioner if any has occasioned in the instant case and if so the consequences flowing there from. As already noticed hereinabove there has been delay in registering the FIR. For a period of nine (9) weeks from 07.06.2017 date of receipt of complaint till 10.08.2017/17.08.2017 - date of completion of preliminary inquiry, first respondent under the guise of collecting the material seems to have conducted a preliminary enquiry which in fact is collecting the documents or the records from the office of BDA as well as Department of Urban Development, which records/documents were already available with first respondent, inasmuch as, complainant himself had appended all the records along with the complaint. It is because of this precise reason in paragraph 23 of the statement of objections first respondent has obviously contended that*

*complaint itself discloses and makes allegations of the commission of offence under the PC Act by the petitioner. In other words, if there was no necessity or need for any further preliminary enquiry being conducted even according to the first respondent, as held by Apex Court in* [44]***LALITA KUMARI's*** *case once the allegations made in the complaint disclosing commission of cognizable offence, the Station House Officer had no other option except to register the complaint forthwith. Non registration of complaint would amount to abdication of duty. However, if in the opinion of such officer there was need or necessity for conducting the preliminary enquiry it can be undertaken by him, in order to ascertain as to whether there is commission of cognizable offence or not. To put it differently, first respondent would not be undertaking the exercise of ascertaining truthfulness or otherwise allegations made in the complaint and it is not the scope of such preliminary enquiry. If the allegations made in the complaint discloses commission of cognizable offence, they are bound to register the FIR. However,*

*in the instant case said exercise had not been undertaken since it is admitted that first respondent had undertaken to conduct a preliminary enquiry. In other words, the first respondent itself was not sure or satisfied from the allegations made in the complaint that it discloses commission of a cognizable offences by the petitioner. In the alternate, if contention of the first respondent is to be accepted namely that allegations made in the complaint itself would disclose commission of cognizable offence which has also been reiterated in the statement of objections at paragraphs 13, 15, and 23, then there was no necessity for conducting any preliminary enquiry or there was no impediment for registration of FIR at the first instance itself. However, this was not done and no reasons are forthcoming in the statement of objections in this regard. This is the first stage which would create a suspicion about the mode, manner and method in which the proceedings seems to have taken off. After undertaking*

[44] *(2014)2 SCC 1*

*such an exercise, as already noticed hereinabove preliminary inquiry has proceeded at a slow pace and station house diary discloses that there were only two enquiries having been made, which has been correspondingly referred to in the reports dated 10.08.2017 and 17.08.2017, and when they are perused together, it would clearly disclose that said material was already available with the complainant namely, the documents which the officer seems to have collected from the statutory authorities during the course of preliminary enquiry. In other words, there was nothing more or additional documents which came into his possession so as to prima facie arrive at a conclusion that such enquiry was in fact a preliminary enquiry "in real nature" and by virtue of such preliminary enquiry conducted, it had resulted in collection of material disclosing commission of cognizable offences by petitioner.*

*100. The delay which has occasioned in the instant case as already noticed hereinabove is commencing from the date of*

*filing of the complaint to the date of filing of the FIR i.e., 07.06.2017 to 10.08.2017 is nine (9) weeks. Though Sri.Ravivarma Kumar, learned Senior Counsel appearing for first respondent has made a valiant attempt to buttress his arguments that such irregularity would not vitiate the investigation and at the most, erring officers can be proceeded with, same cannot be accepted for reasons more than one; as already noticed hereinabove it is the valuable right of the accused to have a fair investigation and if the investigation is proceeded in a suspicious manner, as noticed hereinabove, it would give a right to accused to attack such investigation as being tainted.*

*101. That apart, procedural irregularity not vitiating the trial is sought to be staved off by the learned Senior Counsel appearing for first respondent by relying upon Sections 461 and 465of Cr.P.C. Said provisions at this stage cannot be pressed into serve, for the following reasons:*

*(a) Proceedings prior to pre-cognizance stage would not*

*fall within the expression "proceedings" as indicated in Section 19(3)(c);*

*(b) Section 465 of Cr.P.C. would come into play only after trial has been concluded and the judgment has been rendered by the jurisdictional Court.*

*102. Thus, it would take me to the next issue as to what would constitute an offence and it has to be examined as to whether FIR material would disclose commission of a cognizable offence by petitioner?*

*103. Again at the cost of repetition, it has to be noticed that if allegations made in the complaint disclosing commission of a cognizable offence then duty is ordained on the Station House Officer to register the FIR forthwith.*

*104. Sri.Ramesh Chandra, learned counsel appearing for second respondent has also vehemently contended that all necessary particulars with supporting documents were annexed along with complaint dated 06.06.2017 and allegations made in*

*the complaint itself would disclose commission of cognizable offences. In fact, first respondent has also contended that allegations made in the complaint would disclose the illegalities committed by the petitioner, which in fact is commission of cognizable offences. Both respondents are at ad-idem on the issue of relevant documents having been furnished along with the complaint itself and same being available even as on 06.06.2017 i.e., date of complaint. As already noticed hereinabove, paragraphs 13 to 15 of the statement of objections filed by first respondent would clearly disclose the assertion is made by the first respondent to the effect that allegations made in the complaint would itself disclose commission of cognizable offences. Yet, first respondent, for reasons best known has proceeded to hold a preliminary enquiry and no reasons are forthcoming as to why such enquiry was sought to be held or in other words, it is to be necessarily inferred that the allegations made in the complaint did not prima facie disclose commission of the cognizable offences or in other words, there was no material*

*available before first respondent with regard to prima facie satisfaction of commission of cognizable offences. First respondent seems to have been under the impression that it would be able to unearth fresh material to establish that there was commission of offence and for said purposes had decided to hold preliminary enquiry. However, reports of the first respondent namely report dated 10.08.2017 and 17.08.2017 does not disclose about any such material having been unearthed during said inquiry nor the Station House Diary records would disclose about any such material having been gathered.*

*105. As rightly contended by the Sri.C.V.Nagesh, learned Senior Counsel appearing for petitioner the complaint allegations would disclose that petitioner had allegedly passed order/s for deleting 257 acres 17 guntas of land and file Nos. relating to said lands have also been indicated in the said complaint. The details of the files are indicated in paragraph No.2 of the complaint at Sl.Nos.1 to 21. In the normal course of human conduct, Station House Officer or the Officer who is supposed to have registered*

*the complaint or Officer, who had proposed to hold a preliminary enquiry, would not have undertaken the exercise of pick and choose method and would normally proceed with the first file as alleged in the complaint. In other words, if any details are forthcoming in the complaint with reference to any particular incident or particular file or particular circumstance, the human mind works or takes its gaze on that such first incident or first file as referred to in the complaint. The complaint in question, which has been produced at Annexure-A in both the writ petitions, would disclose that second respondent - complainant has clearly furnished details of 21 files from Sl.Nos.1 to 21 in which petitioner is said to have passed order/s for dropping/deleting the lands from acquisition. However, first respondent has ignored Sl.Nos.1 to 10 files and also 12 to 21. He has concentrated or pinned his gaze on the file at Sl.No.11. No reasons are forthcoming from FIR-material as to why he had chosen that particular file by ignoring all other files. The suspicious circumstances surrounding such conduct has neither been*

*explained nor FIR - material made available by the learned counsel appearing for first respondent would disclose the reason for such method having been adopted. This is the second stage of suspicion, which would create in the mind of the Court as to the reason, purpose and intent with which said file has been picked up by first respondent to hold preliminary enquiry.*

*106. Thus, under the premise of conducting a preliminary enquiry, first respondent has proceeded to examine the file found at Sl.No.11 in the complaint. As already noticed hereinabove, Station House Diary would disclose that on two (2) dates i.e., 19.06.2017 and 18.07.2017 few documents are said to have been collected by the Officer of the first respondent during the course of preliminary enquiry. Assuming for a moment that contention of petitioner is to be brushed aside on all counts and contention of first respondent is to be accepted namely, the allegations made in the complaint disclosed commission of cognizable offence or the material collected during such preliminary inquiry disclosed commission of a cognizable*

*offence, it cannot be gainsaid by the first respondent that even after 19.06.2017 or 18.07.2017 further material was found which disclosed there was commission of cognizable offence for it to postpone registration of FIR till 10.08.2017 or 17.08.2017. To put it differently, if on 19.06.2017 or 18.07.2017 the material collected in preliminary enquiry disclosed about commission of cognizable offence/s, atleast on that date first respondent could have registered the FIR. However, it did not choose to do so. No explanation or reasons have been assigned or forthcoming either from the statement of objections filed opposing the interim prayer or from the material produced by first respondent before this Court. This is the third stage at which it would give rise to suspicion about the manner in which first respondent has proceeded to deal with second respondent's complaint dated 06.06.2017.*

*107. It is not in dispute that complaint in question came to be filed by the second respondent before first respondent on 06.06.2017. As already noticed hereinabove, first respondent*

*has proceeded to hold a preliminary enquiry. During the course of preliminary enquiry on 19.06.2017 and 18.07.2017 documents / correspondence / communications between the Department of Urban Development and BDA is said to have been collected, which documents had already been annexed to the complaint by the second respondent. First FIR came to be registered in Cr.No.34/2017 on 10.08.2017 and second FIR came to be registered in Cr.No.36/2017 on 17.08.2017. No reasons are forthcoming as to why FIRs were not registered immediately after the so called documents having been collected during the course of preliminary enquiry on 19.07.2017 or immediately thereafter. It is not the case of first respondent that just prior to the registration of two (2) respective FIRs they had collated or collected the material, which had disclosed the commission of cognizable offence and on such they could not register the FIRs. Thus, the needle of suspicion points to the first respondent about these lapses, which has remained unexplained. This is the fourth stage, which creates suspicion on the first respondent with*

*regard to the manner in which it has proceeded to enquire into the allegations made in the complaint dated 06.06.2017. Hence, at this stage, this Court is of the considered view that from the FIR records plea raised by the petitioner with regard to first respondent proceeding with the enquiry creating doubt or has acted in a prejudicial manner, deserves to be accepted.*

*108. Now delving upon the allegations made in the complaint which resulted in preliminary inquiry being held and consequential reports dated 10.08.2017 and 17.08.2017 came into existence, which had led to registration of two (2) FIRs in Crime Nos.34/2017 & 36/2017 when read together it would disclose that for the offences punishable under Sections 406, 420and 120B of IPC and Sections 7, 8, 13(1)(c) & (d) and Section 13(2) of PC Act, respective FIRs came to be registered against the petitioner.*

*109. For criminal breach of trust and cheating the essential ingredients are entrustment, inducing of delivery of property and*

*deception respectively. The Hon'ble Apex Court in the case of* ***ROBERT JOHN D'SOUZA & OTHERS vs STEPHEN V.GOMES AND ANOTHER*** *reported in* ***(2015) 9 SCC 96*** *has held that in the absence of complaint averments not disclosing these ingredients, said provisions would not be attracted. In this background, when the allegations made in the complaint are examined it would disclose that complainant - second respondent has alleged that BDA had issued a notification under Section 17 of BDA Act on 30.12.2008 and property though not vested in the State, petitioner had passed order/s for deleting or dropping lands measuring 257 acres 17 guntas from acquisition proceedings. As such, prima facie at this stage, on the basis of material placed by the first respondent or the allegations made in the complaint it would not disclose the offences under Sections 406, 409and 420 of IPC.*

*110. Section 7 of PC Act would disclose that demand for illegal gratification is an offence and taking illegal gratification is an offence. Hon'ble Apex Court in* ***C.M.SHARMA vs. STATE OF***

***ANDHRA PRADESH*** *reported in* ***(2010)12 JT SC 546*** *has held demand for illegal gratification is sine qua non for the ingredients of said section being attracted. A plain reading of the complaint does would not disclose that either there was a demand made by the petitioner seeking illegal gratification or such gratification having been offered by the beneficiary.*

*111. A bare reading of Section 8 of the PC Act would disclose whoever accept or attempts to obtain from any person for himself or for any other persons any gratification whatever as a motive or reward for inducing, by corrupt or illegal means any public servant to do or forbear to do any official act, or show favour or disfavour in exercise of official functions or attempt to render service or disservice to any person with Government and its instrumentalities is an offence punishable under the said section. It is not necessary that the person who received the gratification should have succeeded in inducing the public servant. It is not even necessary, that the recipient of the gratification should, in fact, have attempted to induce the public*

*servant. However, it would be necessary that accused should have had the animus or intent at the time he received gratification as a motive or reward. In this background, when the complaint dated 06.06.2017 if read, it would disclose that second respondent - complainant has alleged as follows:*

**"ಈ ಮೇಲ್ಕಂಡಪ್ರ ಕ್ರಿಯೆಯಲ್ಲಿ ಆ ಸಮಯದ ಮುಖ್ಯಮಂತ್ರಿ ಬಿ.ಎಸ. ಯಡಿಯೂರಪ್ಪ ನವರು ಹಣವನ್ನು ಪಡೆದು ಭೂಮಾಲೀಕರ ಪರವಾಗಿ ನಿಂತು, ತನ್ನ ಬಳಿ ಇಲ್ಲದ ಅಧಿಕಾರವನ್ನು ದುರುಪಯೋಗಮಾಡಿರುತ್ತಾರೆ ಆಗ ಈ ಭೂಮಿಯನ್ನು ಸ್ವಾಧೀನ ಪ್ರಕ್ರಿಯೆಯಿಂದ ಯಡಿಯೂರಪ್ಪನವರು ಕೈ ಬಿಡಬೇಕು ಎಂಬ ಆದೇಶ ಹೊರಡಿಸಿದರು ಈ ಪ್ರಕ್ರಿಯೆಯಿಂದ ಯಡಿಯೂರಪ್ಪನವರಿಗೆ ಅಗಾಧ ಲಾಭ ಹಾಗೂ ರಾಜ್ಯದ ಬೊಕ್ಕಸಕ್ಕೆ ಅಗಾಧ ನಷ್ಟ ಆಗಿರುತ್ತದೆ ಇದರಿಂದ ಶಿವರಾಮ ಕಾರಂತರ ಬಡಾವಣೆಯ ಕೆಲಸವನ್ನು ಸಂಪೂರ್ಣವಾಗಿ ಕೈಬಿಡಬೇಕಾಯಿತು**

**ಸ್ವಾಧೀನ ಪ್ರಕ್ರಿಯೆಯಿಂದ ಕೈಬಿಟ್ಟ ಭೂಮಿಯೂ ಅಂದಾಜು *257* ಎಕರೆ ಅದರ ಅಂದಿನ ಮೌಲ್ಯ *200* ಕೋಟಿ ರೂಪಾಯಿಗಳು ಇಂದಿನ ಬೆಲೆ ಅದಕ್ಕಿಂತ ಕಡಿಮೆ ಎಂದರೂ *4* ಪಟ್ಟು ಹೆಚ್ಚಾಗಿರುತ್ತದೆ**

**ಭೂಮಾಲೀಕರ ಹಿತ ಕಾಪಾಡಿರುವುದು ಲೋಕ ಕಲ್ಯಾಣ ಕಾರ್ಯಕ್ಕೆ ಅಲ್ಲ ಬದಲಾಗಿ ತನ್ನ ಸ್ವ ಕಲ್ಯಾಣಕ್ಕಾಗಿ ಅಧಿಕಾರ ಇಲ್ಲದೆ ಇರುವಾಗ ಅದರ ದುರುಪಯೋಗ ಮಾಡಿಕೊಂಡುಕೋಟಿಗಟ್ಟಲೆ ಹಣವನ್ನು ಯಡಿಯೂರಪ್ಪನವರುಪಡೆದಿರುತ್ತಾರೆ"**

*112. Though at the first blush it would indicate the receipt of gratification as a motive or reward for the purposes of inducing the public servant by corrupt or illegal means, this Court being conscious of the fact that opinion cannot be expressed at this stage, since it is likely to prejudice not only the right of the prosecution but also the right of accused, it would suffice to state that in the event of acquisition proceedings relating to the layout in question had proceeded to its logical end, contention of prosecution to press Section 8 of PC Act into service would have been available. However, on account of preliminary notification having not been taken to its logical end by issuing final notification, this Court is of the view that plea of prosecution to proceed against petitioner under this Section cannot be held as tenable.*

*113. Section 13(1)(c) of PC Act would disclose that a public servant is said to have committed the offence of criminal misconduct:*

*(i) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do;*

*114. A plain reading of the complaint prima facie does not disclose such entrustment of property or consequential misuse of said property by the petitioner. Plain meaning which can be attached to Section 13(1)(d) by reading said provision it would disclose that under three (3) contingencies as indicated in sub-clause (i) to (iii) a public servant is said to have committed an offence of criminal misconduct and it reads as under:*

***"13. Criminal misconduct by a public servant.***

*(1) xxx*

*(a) xxx*

*(b) xxx*

*(c) xxx*

*(d) if he,-*

*(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*

*(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*

*(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or*

*(e) xxx"*

*Dishonest intention is essence of offence under this Section. The proof of a demand or a request of a valuable thing or pecuniary advantage from the public servant is a pre-requisite*

*under Section 13(1)(d) of the Act and in the absence of proof of demand or request from public servant said provision would not be attracted. This view of fortified by the law laid down by the Apex Court in the case of* ***A.SUBAIR VS. STATE OF KARNATAKA*** *reported in* ***(2009) 6 SCC 587*** *whereunder the word "obtain" which word was sought to be dissected by learned Advocates appearing for both parties has been considered by the Hon'ble Apex Court and held:*

> *"14. Insofar as Section 13(1)(d) of the Act is concerned, its essential ingredients are:*
>
> > *(i) that he should have been a public servant;*
> >
> > *(ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant, and*
> >
> > *(iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person."*

*15. In C.K. Damodaran Nair v. Government of India, this Court had an occasion to consider the word "obtained" used in Section 5(1)(d) of the Prevention of Corruption Act, 1947 (now Section 13(1)(d) of Act, 1988), and it was held: (SCC p.483, para 12)*

*"12. The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) -- and not under Section 5(1)(c), (d) or (e) of the Act. "Obtain" means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that*

*context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either "acceptance" or "obtainment"."*

*The legal position is no more res integra that primary requisite of an offence under Section 13(1)(d) of the Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1)(d)cannot be held to be established."*

*115. Even if Section 13(1)(d)(ii) of the PC Act is considered as having been pressed into service by first respondent, it can be noticed that said provision stipulates that a public servant is said to commit the offence of criminal misconduct if by using position*

*as a public servant, has misused his position or by misusing that position, he has obtained for himself or for any other person any valuable thing or pecuniary advantage.*

*Hon'ble Apex Court in the case of* [45]***A SHIVAPRAKASH*** *has held that misuse of official position in issuing certificate, by itself would not lead to the fact that there was a criminal misconduct by accused by abusing his position as a public servant. It has been further held that even when codal violations are established or it was established that there were irregularities committed by allotting or awarding work in violation of circulars that by itself would not prove that a criminal case was made out. It came to be held by the Hon'ble Apex Court as under:*

> *"20. In C. Chenga Reddy & Ors. v. State of A.P., (1996) 10 SCC 193, this Court held that even when codal violations were established and it was also proved that there were irregularities committed by allotting/ awarding the work in violation of circulars, that by itself was not sufficient to*

*prove that a criminal case was made out. The Court went on to hold:*

> *"22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence. In Abdulla Mohammed Pagarkar v. State (Union Territory of Goa, Daman and Diu), (1980) 3*

*SCC 110, under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, withoutconclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and the High Court to the requirements of proof in relation to a criminal charge was not proper."*

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[45] *(2016)12 SCC 2730*

*116. Hon'ble Apex Court while examining as to the effect of notings recorded by a Minister in the file in the case of **SHANTI SPORTS CLUB AND ANOTHER vs UNION OF INDIA** reported in (2009) 15 SCC 705, has held:*

*"52. As a result of the above discussion, we hold that the notings recorded in the official files by the officers of the Government at different levels and even the Ministers do not become decision of the Government unless the same is sanctified and acted upon by issuing an order in the name of the President or Governor, as the case may be, authenticated in the manner provided in Articles 77(2) and 166(2) and is communicated to the affected persons. The notings and/or decisions recorded in the file do not confer any right or adversely affect the right of any person and the same can neither be challenged in a court nor made basis for seeking relief. Even if the competent authority records noting in the file, which indicates that some decision has been taken by the concerned authority, the same can*

*always be reviewed by the same authority or reversed or overturned or overruled by higher functionary/authority in the Government."*

*117. Keeping the aforestated position of law as enunciated by the Hon'ble Apex Court in mind, when the facts on hand are examined it would disclose that petitioner on receipt of representations/applications /requests for deletion of the lands from acquisition proceedings, had received the reports from the beneficiary of acquisition namely, BDA through Urban Development Department. As already noticed hereinabove, petitioner passed the order for deleting/dropping of lands measuring 257 acres 17 guntas from the acquisition. However, this was not acted upon by BDA as is evident from two (2) resolutions of BDA dated 13.03.2012 and 22.05.2012. In other words, same has been ignored and it has also resolved to continue to acquire the said lands. It is for this precise reason*

*one of the applicants namely, land which is the subject matter in FIR registered as Cr.No.34/2017, had approached this Court for quashing of the preliminary notification dated 30.12.2008 issued by the BDA and same had been quashed. Thus, order passed by the petitioner would not part-take the character of Government order as contemplated under Article 166(1) of the Constitution of India.*

*118. Learned Senior counsel appearing for petitioner by filing memos on 31.08.2017, 13.09.2017 & 14.09.2017 has sought to rely upon the documents appended to the said memos. Simultaneously, Sri Ravivarma Kumar, learned Senior counsel has placed on record a sealed cover said to be containing progress report of the investigation and has requested the Court to look into the said file also and has also elaborately advanced arguments to contend there is need for allegations made in the complaint being investigated. On the one hand, Sri C.V.Nagesh, learned Senior counsel appearing for petitioner has contended that Government of Karnataka with present dispensation*

*has also denotified 1300 acres of land and in order to substantiate his claim, he has tried to rely upon the documents appended to the memos referred to above. Said documents produced by the petitioner has been seriously opposed by first respondent by filing objections to the same on 28.09.2017 namely, objections to the memos dated 13.09.2017 & 14.09.2017. However, no objections have been filed with regard to resolution of the BDA produced along with the memo dated 31.08.2017.*

*119. Be that as it may. This Court while examining a plea for grant of interim prayer namely, to stay the investigation pursuant to registration of FIRs, which is in aid of the main relief namely to quash the FIRs and all consequential proceedings thereto would not examine any document/s produced by either of the parties, since it would be alien to these proceedings. It is only the allegations made in the FIR, which can be examined. This view is also fortified by law laid down by the Hon'ble Apex Court in the case of* ***M.L. BHATT vs. M.K. PANDITA AND ORS****.*

*reported in **(2002)3 JT page 89** whereunder it has been held:*

> *"On examining the impugned judgment, we have no manner of doubt that the High Court exceeded its jurisdiction and the parameters prescribed in a catena of decisions where a Court could be justified in quashing the FIR. At this stage, the High Court would be entitled to only examine the allegations made in the FIR and would not be entitled to appreciate by way of shifting the materials collected in course of investigation including the statement recorded under section 161 of the Code of Criminal Procedure."*

*Hence, documents relied upon by both parties are not delved upon. The only observations which can be made by this Court at this juncture on these rival contentions is that even if a wrong or illegality or criminal act has been allegedly committed by one, it would not give licence to another to continue to perpetrate such illegality. As such, Article 14 of the Constitution of India cannot*

*be held as applicable since it mandates positive concept and not negative concept. As such, acts of granting certain benefits by **'X'** illegally or in an irregular manner to third parties would not cloth **'Y'** to contend that he would also be entitled to continue to do so. The principle of "two - wrongs" will not make one "right" would apply.*

*120. Learned Senior counsel appearing for first respondent has also contended that beneficiary of one such order of deleting/dropping the lands from being included in final notification which came to be passed by the petitioner on 23.04.2010 relates to Sy.No.109 and it is said to be owned by Smt.Asha Paradeshi and he has contended that she is a non-existent person and unknown and all the documents relating to said property are created and as such it raises suspicion and in that view of the matter, first respondent should be permitted to investigate these facts. Though at first blush, said argument looks attractive, a closer look at FIR and the material in support of it would disclose it other way, inasmuch as, report dated*

*10.08.2017 - Annexure-C itself would disclose that there were two sale deeds dated 28.10.2005 and 07.11.2005 disclosing that said Smt.Asha Paradeshi is the owner of said lands having right, title and interest over said lands.*

*121. Learned Senior counsel appearing for first respondent has also produced along with the statement of objections the note sheet prepared by the Urban Development Authority which resulted in petitioner passing an order for deleting or dropping lands in question from acquisition, to contend nowhere officials of Urban Development Department have recommended for deleting or dropping of the lands in question from acquisition and as such, deleting or dropping of the lands from acquisition allegedly on the strength of such recommendation is false and illegal. However, note sheet which is produced at Annexure-R5 when perused would disclose that Secretary of Urban Development Department has clearly indicated that there is no final notification issued and possession of land has not been obtained and notification under Section 16(2) had not been*

*issued and with this noting, file is placed before the Deputy Secretary and subsequently before Additional Chief Secretary, Government of Karnataka, Urban Development Department and on their approval, petitioner has passed the order as under:*

**" ಭೂಸ್ವಾಧೀನದಿಂದಕೈಬಿಡಲು**

**ಆದೇಶಿಸಿದೆ**

**ಸಹಿ/-**

**(ಬಿ ಎಸ ಯಡಿಯೂರಪ್ಪ)**

**ಮುಖ್ಯಮಂತ್ರಿ"**

*Petitioner has not recorded a finding that on the basis of such recommendation made by Urban Development Department, he has ordered for deleting or dropping acquisition proceedings. This order of deleting or dropping of the lands from acquisition or in other words, not being included in the final notification to be issued under Section 19 was the subject matter of examination or scrutiny by the Board of BDA and in the meetings held on*

*13.03.2012 and 22.05.2012 said recommendation or order passed by the petitioner was not accepted as already noticed herein above. In fact, in the resolution of the Board of BDA passed on 22.05.2012 it has been resolved to proceed with the acquisition to an extent of 153 acres 17 ½ guntas which is part and parcel of 257 acres 17 guntas. In other words, orders passed by the petitioner has not been accepted by BDA or in other words, it has been ignored. These two resolutions which were produced by the learned counsel for petitioner came to be opposed by learned Senior Counsel for first respondent contending same should not be looked into by this Court. However, same cannot be accepted inasmuch as, as already noted herein above, this Court would not examine any other material except FIR/complaint as well as preliminary enquiry reports which is the basis on which FIR came to be registered and in this background, it can be noticed that there is reference to these two BDA resolutions in the report of Sri. Umesh, Additional Chief Secretary which has been produced at*

*Annexure-R11 and this report has also been referred to in the preliminary enquiry report vide paragraph 25 and 27(3). It is in this background, these two resolutions have been looked into by this Court. In fact, in Annexure-R11 - report which came to be submitted by the Additional Chief Secretary, at paragraph 4 there is clear reference to these two resolutions passed by the BDA. This would only indicate that order passed by the petitioner has been completely ignored or in other words, said order was not been given effect to by the BDA.*

*122. It is further noticed that preliminary notification came to be issued on 31.12.2008 under Section 17 of the BDA Act and said scheme was required to be implemented within five years from the date of publication in the Official Gazette and the declaration under Section 19(1) of the BDA Act ought to have been issued. In the event of authority-BDA failing to implement the scheme substantially, it would lapse as indicated under Section 27 of the Act and Section 36 of the BDA Act would disclose that scheme would become inoperative. At this juncture,*

*it would be appropriate to note that lands which were the subject matter of proposed acquisition under Section 17 notification was the subject matter of challenge before this Court in different writ petitions. Earliest of such writ petition came to be filed on 23.08.2013 in W.P.No.38110/2013. This writ petition was tagged along with other batch of writ petitions filed by other land owners in W.P.No.9640/2014 and connected matters. A co- ordinate Bench of this Court allowed said writ petitions on 26.11.2014 - Annexure-H and it is worthwhile to note the reasons assigned by this Court for quashing the preliminary notification. It was held:*

> *"9. As already noticed,* ***xxxxx*** *decision therein is awaited. Even if the said explanation is noticed, from the date of the notification issued on 30.12.2008, about four years had lapsed even as on the date of the first Government Order dated 24.11.2012 and as on this day nearly six years has lapsed. If that be the position,* ***the explanation as put forth for the long delay cannot be accepted at this stage since the deletion of 237.20 acres at the first***

***instance based on the Government Order would have no relevance whatsoever for the proceedings to be held by the respondents through their Land Acquisition Officer in respect of the remaining extent***. *In fact, the contention as put forth in W.P.No.9637/2014 indicating that a notice dated 03.05.2014 has been issued to the land owner therein would betray the first log of its contention as would only indicate that the Government order or the enquiry was not an impediment for the BDA. It could have proceeded in respect of the other lands notwithstanding the fact that the Government had initiated an enquiry since a notice has been issued presently despite the pending enquiry. I am of the said opinion for the reason that the respondents would contend that even as on today, the Government has not passed any orders pursuant to the enquiry initiated. If that be so, the explanation as put forth in the other petitions that they could not proceed with the acquisition due to that*

*impediment, cannot be accepted."*

*(emphasis supplied)*

*123. On the findings above referred to and amongst other reasons assigned, notification dated 30.12.2008 gazetted on 31.12.2008 was held as having lapsed and writ petitions came to be allowed by co-ordinate Bench of this Court. Yet another co-ordinate Bench of this Court in W.P.No.12908/2015 and connected matters by order dated 02.09.2015 - Annexure-J and order dated 21.01.2016 passed in W.P.No.43502/2015 - Annexure-K held that scheme for formation of "Dr.Shivaram Karantha layout" had lapsed. In fact, Division Bench of this Court in W.A.No.5098/2016 has dismissed the writ appeal filed by BDA and has affirmed the order dated 26.11.2014 passed by the learned Single Judge in W.P.No.9640/2014 by order dated 28.04.2017 - Annexure-L. In other words, lapsing of scheme has stood fortified by the orders of this Court. Thus, loss to the public*

*exchequer as sought to be contended in the complaint, primafacie, looks to be far from truth or in other words, said fact is conspicuously absent.*

*124. When final notification under Section 19 of BDA has not been issued or in other words, scheme itself having not been taken to its logical conclusion, pecuniary loss caused to public exchequer would not arise. Petitioner herein laid down the office of Chief Minister he was holding on 27.07.2011/31.07.2011 and present dispensation came to power on 13.05.2013. As noticed herein above, preliminary notification is dated 30.12.2008 and final notification Section 19(1) of BDA Act was not issued, which otherwise could have been issued atleast before 31.12.2013 and in the absence of such final notification being issued by BDA, after approval of the Government under Section 18 of the BDA Act, it cannot be construed that preliminary notification dated 30.12.2008 was alive and intact. In other words, in the absence of such final notification being issued, scheme stood lapsed and loss to the public exchequer at this stage, primafacie, would not*

*arise. Had it been the case of first respondent that finalnotification had been issued and acquisition proceedings had continued by issuing final notification in respect of remaining lands and on account of the earlier act of the petitioner in ordering for deleting or dropping of certain lands from acquisition proceedings it had resulted in loss to the public exchequer, then, contours of the present case would have been entirely different and this Court would have examined the prayer of first respondent to permit them to investigate the matter by examining said prayer in such perspective as the circumstances would have warranted. To put it differently, had it been the case of the first respondent that acquisition proceedings had resulted in issuance of final notification and on account of order passed by the petitioner deleting or dropping the lands from acquisition, it had resulted in public at large being deprived of the sites, that would have been formed in the said layout in the area or lands so dropped from acquisition by petitioner, then also contours of the prosecution case would have been different and this Court would*

*have considered the plea of first respondent in said perspective. In the absence of such scenario, it is too hard to accept at this stage that scheme had lapsed at the instance of petitioner or entire fault for lapsing of the scheme has to be laid at the doors of the petitioner. Said contention deserves to be considered for the purposes of rejection and accordingly it is hereby rejected.*

*125. In fact, co-ordinate Benches of this Court as already noticed herein above, has held that preliminary notification had stood lapsed, as such, it cannot be held at this stage that on account of the lands measuring 257 acres 17 guntas having been ordered to be deleted or dropped by the petitioner itself is a ground for the scheme having been lapsed. In fact, orders passed in the writ petitions by the co-ordinate Benches of this Court when perused, would disclose that BDA itself has admitted in those proceedings that at the behest of land owners, another chunk of 446 acres have also been deleted. If so, it would be too hard for first respondent to contend that there was mens rea on the part of the petitioner or such mens rea is attributable to the*

*petitioner in passing administrative order/s which resulted in causing loss to the public exchequer or wrongful gain unto himself. Said propositions though being too attractive, is being considered for the purposes of outright rejection in the light of aforestated facts. Accordingly, it is hereby rejected.*

*126. It cannot go unnoticed, that issue relating to; whether a public servant can be arraigned as accused in the absence of any dishonest intent or culpable guilty of mind is under consideration by the Hon'ble Apex Court in the case* ***of DR.MANMOHAN SINGH vs. CBI in SLP (Crl.)... Crl.M.P.Nos.5056-5057/2015*** *and Hon'ble Apex Court has stayed the orders passed by the Special Courts taking cognizance and issuing summons to the petitioners therein by granting leave, which issue is also urged by petitioner in these petitions. Hence, this Court is of the considered view that orders passed by the Apex Court in* ***DR.MANMOHAN SINGH's*** *case would have bearing and impact on the grounds urged in these petitions also.*

*127. In the background of the facts and circumstances indicated herein above, this Court is of the considered view that if first respondent is allowed to continue the investigation, it would cause prejudice to the petitioner. As such, interim prayer sought for by the petitioner deserves to be granted and accordingly the interim prayer sought for in both the writ petitions are hereby granted.*

***Sd/-***

***JUDGE"***

27. In fact, the applicant would further contend that following this he had also approached the Hon'ble High Court of Karnataka with a similar application and in his case also an order was passed which we extract below:

*"FORM III – A*

*IN THE HIGH COURT OF KARNATAKA AT BENGALURU*

*WRIT PETITION NOS 55638 / 2017 (GM-RES)*

*& 56033-56034/2017*

*[Notice under Rule 13 (a) proviso]*

*Petitioner*

*1 SRI H BASAVARAJENDRA S/O SRI B.HONNAPPA, DEPUTY SECRETARY, INDUSTRIES & COMMERCE DEPARTMENT, GOVERNMENT OF KARNATAKA AND RESIDING AT NO. 382 13TH MAIN, RMV EXTENSION SADASHIVANAGAR BENGALURU 560 080*

*By MS MAYA HOLLA*

*Vs*

*Respondents*

1 *STATE OF KARNATAKA*

*BY ANTI-CORRUPTION BUREAU*

*BANGALORE CITY POLICE STATION*

*BANGALORE 560 001*

*2 Dr. D. AIYAPPA S/O RAMANNA DHORE*

*JANASAMANYARA VEDIKE, NO. 46, 3RD MAIN ROAD,*

*VYALIKAVAL, BANGALORE 560 003.*

*Whereas, a Writ Petition filed by the above named petitioner under Article 226 & 227 of the Constitution of India R/s Sec 482 of CrPC, as in the copy annexed hereunto, has been registered by this court.*

*Notice is hereby given to you to appear in this court in person or through an Advocate duly instructed or through some one authorised by law to act for you in this case, at 10.30 AM in the forenoon within 10 days of the service of this notice to show cause why rule nisi should not be issued.*

*If you fail so to appear on the said date or any subsequent date to which the matter may be posted as directed by the court, without any further notice, the petition will be dealt with, heard and decided on merits in your absence.*

*INTERIM ORDER*

*Pending issue of Rule nisi in the aforesaid Writ Petition it is hereby ordered by this Court on*

*Thursday THE 14th DAY of December 2017*

*By Hon'ble Mr. Justice K.N. PHANEENDRA*

*as follows: -*

*Heard the learned counsel for the petitioner. Perused the records.*

*Sri Jagadeesh B.N., SPP takes notice for respondent No.1.*

*Issue notice to respondent No.2.*

*Issue stay as sought for till further orders.*

*List this case after vacation alongwith Writ Petition No. 37544/2017*

*Sd/-*

*JUDGE*

*COPY*

*[M.V. SUSHEELA]*

*ASSISTANT REGISTRAR*

*Note: - As an interim relief, it is prayed to stay the FIRs registered in Crime No. 34/2017 and 36/2017 (Annexures-B & H) and investigations in furtherance thereof.*

*Assistant Registrar"*

***Therefore apparently the criminal case against the applicant may not have any justifiable existence as of now and as the charge sheet in the DE is just a reflection of the FIR, it may not have any independent standing.***

28. The learned counsel for the State Government submits that they are moving the Hon'ble Apex Court against this and therefore we had waited for some more time to see whether any definite pronouncement comes from the Hon'ble Apex Court and therefore had delayed the issuance of the order so that we can accommodate the wisdom of the Hon'ble Apex Court as well. But till now all that the State Government could tell us is that they had in fact filed a motion before the Hon'ble Apex Court and notice had been issued in the case relating to Shri B.S. Yeddyurappa.

29. Therefore we have to consider at this stage as to what are the reasons and reasonings which would weigh on both sides. It is admitted by all that the chargesheet is a derivation of the FIR and nothing more is ascribed to it or is attributable to it. The charge seems to be that, going by the FIR and the connected papers, the applicant had issued an Endorsement clearing certain property from notification and thereby had caused loss to the BDA, the Government and the people of Karnataka.

**30. We will therefore examine what is lost to the people of Karnataka first of all and then to the Government and the BDA.**

Even though it was not the avowed purpose of creation of BDA from its earliest days onwards, the BDA had taken lead in creating residential layouts. The BDA Act would stipulate that 30% of the allotment shall be for the weaker sections and thereafter for certain functional groups as government servants, ex-servicemen etc., therefore the fundamental practice of this developmental exercise is to **combine development along with the championship of the denied and the deprived.** Since it required a factual elucidation which could not be provided by the learned counsels the author of the judgment had taken it upon themselves to visit several parts of this new schemes in Koramangala, Indiranagar and Jayanagar. The tenemented apartments of the needy and the denied could not be found anywhere, at least abutting the main roads. What

could be found is glittering commercial establishments and malls and mansions and palaces of the super rich. Was that the intention behind this acquisition, to provide palatial abodes to the super rich so that the tenements and slums can be pulled down to make way for this. Going through the preamble of the Act and the structure of the Act, it does not seem to be so. And who had benefitted from these exercises of the BDA? Certainly not the poor and the needy. While it cannot be denied that some of them may be there but not in such large volumes so as to justify this exercise. It is to be remembered that this acquisition is made under a coercive process without the consent of the original land owner. Therefore it has to be held that a taint is attached to the establishment of all these layout by the BDA. ***Therefore if such a scheme did not materialise, at least in a portion of the land which is earmarked for it, what is the loss that can be ascribed to the people of Karnataka? If we look deeply into it, we will find that this benefit***

***and loss are only in the realm of imagination and nothing more.*** It is correct that big roads will be built, huge commercial enterprises will be built, may be big Hospitals are also built and to benefit whom? ***Not the common man of Karnataka but the rich and the happy.*** Therefore what is the loss that be suffered by the common man of Karnataka if the scheme is scrapped. The answer would be virtually nothing. All these development process for the well-being of the society seems that some may be perceived as being economical with truth.

**31. <u>What is the loss that will accrue to the Government and the BDA if we have to see that they are inseparable part of each other?</u>**

The BDA is not a profit making enterprise. The money it raises through its efforts are supposed to be ploughed back into the stream of governance in one way or other. At least it professes that it is deriving

some profit only because of the formation of a layout. So if a layout is proposed and do not materialise in one portion of the land then it is equally true that its expenditure is also nil because it is not developing that portion of the land. **Therefore, without any doubt, there cannot be any loss sustained by the BDA or the Government even if a development plan is scrapped other than that of initial survey.**

At this point of time the learned counsel for the respondents would submit that in fact the BDA had invested tons of money in the survey work. Yes they are right. **Before commencing such a survey, the number of people who are to be affected by this, the quantum of their tears and blood and toil ought to have been assessed by the BDA but then it is said that this is also a decision of the political**

**executive who decided that there must be such a developmental activity.** If such authority had commenced such a developmental activity without considering the pros and cons of the issue and would suffer a loss, the loss only be ascribed to the people in control at that point of time and on nobody else. We do not know who initiated this proposal. We do not want to know also. Other than a proposition that for survey amounts of money would have been spent and that at least must be considered a loss is a fallacious statement especially since more than 3000 acres of land were notified and out of which BDA themselves had by their resolution, apparently, de-notified about 400 acres of land and about 250 acres was de-notified by Shri B.S. Yeddyurappa. Therefore even if the cost of survey has to be borne by somebody else other than the BDA, there still remain 2500 acres to be developed.

**32. <u>Therefore what happened after that?</u>**

Both sides agree that thereafter through several judgments the Hon'ble High Court of Karnataka stepped in and had quashed the

scheme as the scheme could not commence within the period of 5 years of the preliminary notification. Therefore, whose fault is this? If the scheme had been well thought out in the initial stage itself, then there would not have been any reason for its failure. So, if at all there is any failure, on whose shoulders it is attributable? Without any doubt on the Government and its various agencies only who were in charge at that point of time.

**33. Therefore under this factual matrix what is the role of the applicant?**

It cannot be said that applicant had caused any loss to the Government or to the people of Karnataka**. It cannot be said that any loss at all was caused to anybody as the property do not belong either to the Government or the BDA.** The property in fact belonged to private persons whose property was being sought to be acquired and which they had fought tooth and nail. This proposition of loss would tantamount to a nefarious

conclusion. Therefore we can only hold that there cannot be an issue of loss for anybody in this matter.

**34. <u>Therefore what about the FIR and the DE charge?</u>**

Even according to Section 34 of IPC unless a person had a tangible role to play either in the planning or in the execution of a criminal infraction there cannot be any justification for him to be in the party of accused. At this point of time, ***we are not dealing with the intervention of the Hon'ble High Court at all as that we will leave it to the Hon'ble High Court and later on to the Hon'ble Apex Court but prima facie it cannot be said even by a stretch of imagination that the applicant had any mens rea in the matter. Quite obviously he had not caused any loss to anybody. Quite obviously he was just passing or conveying an***

***order passed by the Government as a subordinate officer. How can criminal infraction be attributable to this action of a government servant? If this is to be accepted as beholden principle, no government servant can ever be safe. Coming back to the DE charges against the applicant, it is again a reflection of the FIR and nothing more.*** As the applicant is a KAS officer, we need not look into the charges at all. It is outside our purview but tangentially we must look into it. With the assistance of the learned counsel, we had gone carefully though the charges. In fact, the learned counsel for the respondent had produced a table pithily describing the infractions of the applicant. Even after examination jointly it **did not reveal any infraction that can be a misconduct against the applicant as the entire role of the**

**applicant is limited to just conveyance of the order of the Government. If conveying an order is to be an infraction, even the Peon who put a seal on the tapal cover will be held responsible.**

35. Therefore the grounds raised by the applicant that it is because of malafides against him that this FIR was hoisted on him and the charge was issued against him, after his selection was over an integrity certificate is issued **must be viewed with some credibility**. The Hon'ble Apex Court of India in the case ***Union of India Vs Tejindra*** reported in 1991 4 SCC 129 had held that ***"the mere pendency of a disciplinary proceeding at any stage is not sufficient in not considering an employee's case for promotion or to withhold his promotion. Therefore the mere pendency as such of the disciplinary***

***proceedings is not sufficient in itself to deny him his right which follow from an understanding of Article 37 of the Constitution of India."***

36. At this point of time, it was stipulated on the part of the State Government that if at a later stage applicant is held to be cleared of all blemish then the benefits can be extended to him. Following the decision of the Hon'ble Apex Court in ***Ram Vs. State of Uttar Pradesh*** reported in AIR 1991 SC 1818 which says **"where a person entitled to promotion under a statutory rule was unlawfully denied consideration he would be entitled to be considered for promotion with a retrospective effect and his seniority would also be refixed on that basis. In such case those who would be affected by such order cannot complain of**

**discrimination, but a Court may issue suitable direction to avoid hardship to them."** A decision of the Hon'ble Apex Court in ***Ramaual Vs. State of Himachal Pradesh*** reported in (1991) Supp 1 SCC 198 where the Hon'ble Apex Court held that **"where a person entitled to promotion under statutory rule was unlawfully denied consideration, he would be entitled to be considered for promotion with retrospective effect and his seniority will also be refixed on that basis."** But then the Hon'ble Apex Court in ***Union of India and Another vs. Hemraj Singh Chauhan & Others*** which is reported in AIR 2010 SC 1682 had held that ***promotion under Article 14 and 16 of the Constitution of India is virtually part of fundamental right of employees***. We may therefore with some profit extract this order of the Hon'ble Apex Court for an easy elucidation:

*"2. In SLP (C) Nos.6758-6759/2009, Union of India and the Secretary, Union Public Service Commission are in appeal impugning the judgment and order dated 14.11.2008 delivered by the Delhi High Court on the writ petition filed by Hemraj Singh Chauhan and Ramnawal Singh, the respondents herein.*

*3. The respondents are members of the State Civil Service (S.C.S.) of the State of Uttar Pradesh and according to them completed eight years of service on 23.07.85 and 4.6.86 respectively. The contention of the respondents is that in terms of Regulation 5(3) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, a member of the S.C.S., who has attained the age of 54 years on the 1st day of January of the year in which the Committee meets, shall be considered by the Committee, provided he was eligible for such consideration on the 1st day of the year or of any of the years immediately preceding the year in which such meeting is held, but could not be considered as no meeting of the Committee was held during such preceding year or years.*

*4. Those regulations have been framed in exercise of power under Sub-Rule 1 of Rule 8 of Indian Administrative Service Recruitment Rules, 1954 and in consultation with the State Government and the Union Public Service Commission.*

*5. Regulation 5 (1) of the said Regulation provides that such Committee shall ordinarily meet every year and prepare a list of such members of the S.C.S. as are held to be suitable for promotion to the service. The number of members of the said civil services to be included in this list shall be determined by the Central Government in consultation with the State Government concerned but shall not exceed the number of substantive vacancies in the year in which such meeting is held.*

*6. It may be mentioned in this connection that as a result of bifurcation of the State of Uttar Pradesh as a result of creation of the State of Uttaranchal in terms of the State Reorganization Act, namely Uttar Pradesh State Reorganization Act 2000, two notifications were issued on 21.10.2000. The first was issued*

*under Section 3(1) of the All India Services Act, 1951 read with Section 72 (2) and (3) of the Reorganization Act and Rule 4 (2) of the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1956 (hereinafter referred to as the "Cadre Rule").*

*7. Thus, the Central Government constituted for the State of Uttaranchal an Indian Administrative Service Cadre with effect from 1.11.2000. On 21.10.2000 another notification was issued fixing the cadre strength of State of Uttar Pradesh thereby determining the number of senior posts in the State of Uttar Pradesh as 253.*

*8. The case of the appellants is that the next cadre review for the State of Uttar Pradesh fell due on 30th April, 2003. To that effect a letter dated 23.1.2003 was written by the Additional Secretary in the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India to the Chief Secretary, Government of Uttar Pradesh.*

*9. The further case of the appellants is that several reminders were sent on 5th March, 3rd September, 17th September and 8th December, 2003 but unfortunately the Government of Uttar Pradesh did not respond. Then a further reminder was sent by the Government of India stating therein that four requests were made for the cadre review of the I.A.S. cadre of Uttar Pradesh but no response was received from the Government of Uttar Pradesh. In the said letter the Government of India wanted suitable direction from the concerned officials so that they can furnish the cadre review proposal by 28.2.04. Unfortunately, there was no response and thereafter subsequent reminders were also sent by the Government of India on 14th/17th June, 2004 and 8th October, 2004.*

*10. Ultimately, a proposal was received from the Government of Uttar Pradesh only in the month of January 2005 and immediately preliminary meeting was fixed on 21st February, 2005. Thereafter, a cadre review meeting was held under the Chairmanship of the Cabinet Secretary on 20th April, 2005 and*

*the Minutes duly signed by the Chief Secretary, Government of Uttar Pradesh were received by the appellants on 27th June, 2005. After approval was given to the said Minutes, notification was issued on 25th August, 2005 re- fixing the cadre strength in the State of Uttar Pradesh.*

*11. Challenging the said notification, the respondents herein approached Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as C.A.T.) by filing two O.As, namely, O.A. No.1097/2006 and O.A. No.1137/2006 praying for quashing of the said notification. The respondents also prayed for setting aside the order dated 1.2.2006 whereby vacancies were increased as a result of the said cadre review adding to the then existing vacancies for the year 2006.*

*12. In those O.As the substance of the contention of the respondents was that the last cadre review of the I.A.S. in Uttar Pradesh cadre was conducted in 1998 and the next cadre review was therefore due in April 2003. As such it was contended that*

*the cadre review which was conducted in August 2005 should have been given effect from April 2003 so that the respondents could be considered for promotion against the promotion quota.*

*13. The stand of the State of Uttar Pradesh before C.A.T. was that with the issuance of notification issued by the Department of Personnel and Training on 21.10.2000 bifurcating cadre of undivided Uttar Pradesh to I.A.S. Uttar Pradesh and I.A.S. Uttaranchal upon the Uttar Pradesh Reorganization Act, cadre review has already taken place and as such the next review was due in 2005 only.*

*14. The stand of the appellants both before the C.A.T. and before the High Court was that the cadre review was due in 2003. However, the C.A.T. after hearing the parties upheld the contention of the State of Uttar Pradesh and held that the cadre review carried out in 2005 cannot be given retrospective effect. The Tribunal dismissed O.A. No.1097/06 and partially allowed O.A. No.1137/06, inter alia, directing the respondents to convene*

*the meeting of D.P.C. Selection Committee to fill- up the posts which were not filled up in the year 2001, 2002 and 2004 and to consider all eligible S.C.S. Officers in the zone of consideration including the officers who were put in the select list of those years but could not be appointed in the absence of integrity certificate.*

*15. However, the respondents being aggrieved by the judgment of the C.A.T. filed a writ petition before the Hon'ble High Court on 18.12.2006 contending therein that the cadre review of the I.A.S. of Uttar Pradesh cadre was due in 2003 and was delayed by the State of Uttar Pradesh as a result of which some of the S.C.S. Officers were deprived of their promotion to the I.A.S. Their specific stand in the writ petition was if the increased vacancies were available in 2004 as a result of the cadre review in 2003, they could have been promoted to I.A.S.*

*16. However, before the High Court the stand of the Central Government was that the cadre review of the I.A.S. of*

*Uttar Pradesh was due in 2003 but unfortunately it was held in 2005 when State of Uttar Pradesh had sent its proposal. Such review was made effective from 25.8.2005 when the revised cadre strength of the I.A.S. cadre of Uttar Pradesh was notified in the official Gazette in terms of the statutory provisions. The further stand of the appellants was that the cadre review undertaken in 2005 cannot be given retrospective effect.*

*17. However, before the High Court the stand of the Uttar Pradesh Government was slightly changed and it filed a `better affidavit' and took the stand that they have no objection to any direction for exercise of cadre review to be undertaken with reference of the vacancy position as on 1.1.2004*

*18. The High Court after hearing the parties was pleased to set aside the judgment of C.A.T. dated 15.12.2006 and the notifications dated 1.2.2006 and 25.8.2005 were set aside. The State Government and the Central Government were directed that the cadre review exercise should be undertaken as if it was*

*taking place on 30th April, 2003 with reference to the vacancy position as on 1st January, 2004.*

*19. In order to resolve the controversy in this case, the relevant statutory provisions may be noted. The respondents being S.C.S. Officers, are seeking promotion to I.A.S. in terms of Rule 4(1)(b) of the relevant recruitment rules. Rule 4(1)(b) of the Indian Administrative Service (Recruitment) Rules, 1954 is set out:-*

*"4. Method of recruitment of the Service*

(1) *xxx xxxx*

*xxxxxx*

*(b) By promotion of a substantive member of a State Civil Service;"*

*20. In tune with the said method of recruitment, substantive provisions have been made under Rule 8 for recruitment by promotion. Rule 8(1) of the Recruitment Rules in this connection is set out below:-*

*"8. Recruitment by promotion or selection for appointment to State and Joint Cadre:-*

*(1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of a State Civil Service."*

*21. Under Rule 9, the number of persons to be recruited under Rule 8 has been specified, but in this case we are not concerned with that controversy.*

*22. The other regulation which is relevant in this case is Rule 5 of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as, `the said regulation'). These regulations have been referred to in the*

*earlier part of the judgment. Rule 5(3) of the said regulation, relevant for the purpose of this case, is set out below:-*

*"5 (3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year in which it meets:*

*Provided that a member of the State Civil Service whose name appears in the Select List prepared for the earlier year before the date of the meeting of the Committee and who has not been appointed to the Service only because he was included provisionally in that Select List shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile attained the age of fifty four years:*

*Provided further that a member of the State Civil Service who has attained the age of fifty-four years on the first day of January of the year in which the Committee meets shall be considered by the Committee, if he was eligible for consideration*

*on the first day of January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years."*

*23. Another regulation relevant in this connection is Indian Administrative Service (Cadre) Rules, 1954 (hereinafter referred to as, `the Cadre Rules')*

*24. Under Rule 4 of the said Cadre Rules, the strength and composition of the Cadres constituted under Rule 3 shall be determined by regulation made by the Central Government in consultation with the State Government and until such regulations are made, shall be as in force immediately before the commencement of those rules.*

*25. Rule 4(2) has come up for interpretation in this case and to appreciate its true contents, the said Rule 4(2) is set out below:-*

*"(2) The Central Government shall ordinarily at the interval*

*of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit.Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time:*

*Provided further that State Government concerned may add for a period not exceeding two years and with the approval of the Central Government for a further period not exceeding three years, to a Sate or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts."*

*26. The main controversy in this case is, whether re-examination on the strength and composition of cadre in the State of Uttar Pradesh had taken place in accordance with the mandate of Rule 4 sub-rule (2).*

*27. It appears clearly that the authorities who are under a*

*statutory mandate to re-examine the strength and composition of cadre are the Central Government and the concerned State Government. It can be noted in this connection that word `ordinarily' in Rule 4(2) has come byway of amendment with effect from 1.3.1995 along with said amendment has also come the amendment of 5 years, previously it was 3 years.*

*28. From the admitted facts of this case, it is clear that Central Government had always thought that cadre review in terms of Rule 4(2) of the cadre Rules was due in 2003. In several letters written by the Central Government, it has been repeatedly urged that the cadre review of I.A.S. cadre of Uttar Pradesh is due on 30th April, 2003. The letter dated 23/24 January, 2003 written to that effect on behalf of the appellant to the Chief Secretary, Government of Uttar Pradesh, Lucknow is set out below:-*

*"Dear Shri Bagga,*

*The cadre review of IAS cadre of Uttar Pradesh is due on*

*30.04.2003. The Supreme Court in 613/1994 (TANSOA vs. Union of India) has stated that the Central Government has the primary responsibility of making cadre reviews and to consider whether it is necessary or not to encadre long existing ex-cadre posts. Delay in conducting the cadre review results in avoidable litigation as officers of the State Civil Service approach the Courts that the delay has stalled their promotional avenues. It is important that the cadre reviews are held on time.*

*2. I shall, therefore, be grateful if you could look into the matter personally and instruct the concerned officials to sponsor the review proposals in the prescribed proforma, after taking into consideration the requirement of the State Government by 28th February, 2003 to this Department for processing the case further.With regards"*

*29. In various subsequent letters, namely dated 5th March, 2003, 3rd September, 2003, 17th September, 2003, 8th December, 2003, the Central Government reiterated its stand that cadre*

*review has to be done by 2003. Admittedly, the Central Government took the aforesaid stand in view of the law laid down by this Court in the case of T.N.Administrative Service Officers Association and another v. Union of India and others, reported in (2000) 5 SCC 728 : (AIR 2000 SC 1898 : 2000 AIR SCW 1506).*

*30. It cannot be disputed that the Central Government took the aforesaid stand in view of its statutory responsibility of initiating cadre review as a cadre controlling authority. In fact in the letter dated 29th August, 2005 by Neera Yadav, on behalf of the State of Uttar Pradesh, it has been categorically admitted in paragraph 3 of the said letter that the previous cadre review was done in 1998. The stand is as follows:-*

*"Thus, the cadre review for alteration was to be done under Rule 4(2) of the Indian Administrative Service Cadre Rules, 1954 as on 30.04.2003. The Department of Personal & Training, through D.O.*

*letter No.11031/5/2003- AIS-II dated 23.01.2003 requested that State Government to sponsor the review proposal on the prescribed proforma as cadre review as cadre review of Indian Administrative Service, Uttar Pradesh cadre was due on 30.04.2003."*

*31. In the affidavit of the appellant, filed before Central Administrative Tribunal, the following stand has been categorically taken:-"It is submitted that the last cadre strength of the IAS cadre of unified cadre of Uttar Pradesh was notified on 30.04.1998. Therefore, as per Rule 4(2) of the IAS (Cadre) Rules, 1954, the next review was due on 30.4.2003."*

*32. It was also stated that the reference by the State Government to order dated 23.9.2000 was not one of cadre review. It was a reference of the State Government in connection with the bifurcation of Uttar Pradesh and Uttaranchal, pursuant to Uttar Pradesh Reorganization Act, 2000. It was admitted that the I.A.S cadre of Uttaranchal was constituted later i.e. on*

*21.10.2000.*

*33. In so far as the State of U.P. was concerned, the State filed an application for a `better affidavit' before the High Court and in paragraphs 4 and 5 of the said application the State Government reiterated the reasons for filing a `better affidavit'. In those paragraphs, the stand of the Central Government was reiterated, namely, that the last cadre review was done in 1998 and the subsequent cadre review under Rule 4(2) of the Cadre Rules was due on 30.04.2003. In the `better affidavit', which was filed on behalf of the State of Uttar Pradesh before the High Court, in paragraph 8, the stand taken is as follows:-*

*"..In this view of the matter, since the last "Quinquenial Cadre Review" of the IAS Cadre was held on 30.4.1998, the next "Quinquenial Cadre Review" of the IAS cadre became due on 30.4.2003 as stated by the Cadre Controlling Authority in para 9 of its counter affidavit."*

*34. It is thus clear that both the authorities under Rule 4(2)*

*of the Cadre Rules accepted on principle that cadre review in Uttar Pradesh was due in 2003.*

*35. Appearing for the appellants the learned counsel urged that the judgment of the High Court in so far as it seeks to give a retrospective effect to the cadre review is bad inasmuch as the stand of the appellants is that the Notification dated 25.8.2005 makes it explicitly clear that the same comes into force on the date of its publication in the Official Gazette. Relying on the said Notification, it has been urged that since the same has been made explicitly prospective and especially when the Rule in question, namely, Rule 4(2) of the Cadre Rules is expressly prospective in nature, the cadre review exercise cannot be made retrospective. This seems to be the only bone of contention on the part of the appellants.*

*36. However, from the discussion made hereinbefore, the following things are clear:*

*(a) Both the appellants and the State Government in*

*accordance with their stand in the subsequent affidavit accepted that Cadre Review in the State of U.P. was made in 1998 and the next Cadre Review in that State was due in 2003;*

*(b) Neither the appellants nor the State Government has given any plausible explanation justifying the delay in Cadre review;*

*(c) From the materials on record it is clear that the appellant as the Cadre Controlling authority repeatedly urged the State Government to initiate the review by several letters referred to hereinabove;*

*(d) The only reason for the delay in review, in our opinion, is that there was total in-action on the part of the U.P. Government and lackadaisical attitude in discharging its statutory responsibility.*

*37. The Court must keep in mind the Constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State*

*Government are to act as model employers, which is consistent with their role in a Welfare State.*

*38. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16virtually flows from guarantee of equality under Article 14 of the Constitution.*

*39. In The Manager, Government Branch Press and Anr. vs. D.B. Belliappa - (1979) 1 SCC 477 : (AIR 1979 SC 429), a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomized under Articles 14 and 16 is "fairness founded on reason" (See para 24 page 486).*

*40. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central*

*Government, certainly the unreasonable in-action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.*

*41. Learned counsel for the appellants has also urged that the statutory mandate of a cadre review exercise every five years is qualified by the expression `ordinarily'. So if it has not been done within five years that does not amount to a failure of exercise of a statutory duty on the part of the authority contemplated under the Rule.*

*42. This Court is not very much impressed with the aforesaid contention. The word `ordinarily' must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used. In the case*

*in hand the word `ordinarily' has been used in the context of promotional opportunities of the Officers concerned. In such a situation the word `ordinarily' has to be construed in order to fulfill the statutory intent for which it has been used.*

*43. The word `ordinarily', of course, means that it does not promote a cast iron rule, it is flexible (See JasbhaiMotibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and Others - (1976) 1 SCC 671, at page 682 (para 35) : (AIR 1976 SC 378). It excludes something which is extraordinary or special [Eicher Tractors Limited, Haryana vs. Commissioner of Customs, Mumbai - (2001) 1 SCC 315 : (AIR 2001 SC 196 : 2000 AIR SCW 4080), at page 319 (para 6)]. The word `ordinarily' would convey the idea of something which is done `normally' [Krishan Gopal vs. Shri Prakashchandra and others - (1974) 1 SCC 128, at page 134 (para 12)] : (AIR 1974 SC 200) and `generally' subject to special provision [Mohan Baitha and others vs. State of Bihar and another - (2001) 4 SCC 350 at page 354] : (AIR 2001 SC 1490)*

*44. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely, lethargy, in-action, an absence of a sense of responsibility cannot fall within category of just exceptions.*

*45. In the facts of this case neither the appellants nor the State of U.P. has justified its action of not undertaking the exercise within the statutory time frame on any acceptable ground. Therefore, the delayed exercise cannot be justified within the meaning of `ordinarily' in the facts of this case. In the facts of the case, therefore, the Court holds that there was failure on the part of the authorities in carrying out the timely exercise of cadre review.*

*46. In a somewhat similar situation, this Court in Union of India and Ors. vs. VipinchandraHiralal Shah - (1996) 6 SCC 721,*

*while construing Regulation 5 of the I.A.S. (Appointment by Promotion) Regulations, 1955 held that the insertion of the word `ordinarily' does not alter the intendment underlying the provision. This Court in that case was considering the provision of Clause (1) of Regulation 5 of the IPS (Appointment by Promotion) Regulations along with other provisions of Regulation 5. The interpretation which this Court gave to the aforesaid two Regulations was that the Selection Committee shall meet at an interval not exceeding one year and prepare a list of members who are eligible for promotion under the list. The Court held that this was mandatory in nature.*

*47. It was urged before this Court that the insertion of the word `ordinarily' will make a difference. Repelling the said contention, this Court held that the word `ordinarily' does not alter the underlying intendment of the provision. This Court made it clear that unless there is a very good reason for not doing so, the Selection Committee shall meet every year for making the selection. In doing so, the Court relied on its previous decision*

*in Syed Khalid Rizvi vs. Union of India - 1993 Supp. (3) SCC 575. In that case the Court was considering Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 which also contained the word `ordinarily'. In that context the word `ordinarily' has been construed as:*

*".....since preparation of the select list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers, the preparation of the select list must be construed to be mandatory. The Committee should, therefore, meet every year and prepare the select list and be reviewed and revised from time to time as exigencies demand."*

*48. The same logic applies in the case of cadre review exercise also.*

*49. Therefore, this Court accepts the arguments of the learned counsel for the appellants that Rule 4(2) cannot be construed to have any retrospective operation and it will operate*

*prospectively. But in the facts and circumstances of the case, the Court can, especially having regard to its power under Article 142 of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees. The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.*

*50. With the aforesaid modification/direction, the appeals filed by the Union of India are disposed of. There shall be no order as to costs."*

***Order accordingly."***

37. But in this case the applicant was already considered and his integrity certificate had been issued and he is placed as 2nd in the Select List. The only question which may arise is only whether his selection which is already done on 19.10.2017 can now be set aside by the State Government relying upon the FIR and the charge sheet?

***40. The State Government cannot cancel/diminish the Selection of the applicant for the following reasons.***

***Pilate's Wife's Dream***

***Surely some oracle has been with me,***
***The gods have chosen me to reveal their plan,***
***To warn an unjust judge of destiny:***
***I, slumbering, heard and saw; awake I know,***
***Christ's coming death, and Pilate's life of woe.***
***I do not weep for Pilate–who could prove***
***Regret for him whose cold and crushing sway***
***No prayer can soften, no appeal can move;***

Factually it appears that the applicant was not involved in the FIR in the initial stage. He came into the scene only later and the wordings of the Annexure A1 complaint also not sufficient enough to include the applicant as one of the co-conspirators. Therefore, it can be only presumed that after the investigation had commenced only the applicant was sought to be in the party array of accused. Therefore, we had granted an opportunity to State Government to say what this new finding is so as to give raise to the situation whereby the applicant also can be roped in as an accused. This would have meant some special and specific act of the applicant whereby it was to be seen what exactly the applicant had done to attract this felicity. But apparently the State Government has not chosen to expand its version other than producing a tabular format of infraction and that once the FIR is registered it is the complete responsibility and power of the investigating authority.

41. But then no infraction alleged against the Government officer cannot be prima facie taken up under Article 301 to 311 of the

Constitution of India unless specific and significant matters lies against him in respect of official acts. We have therefore asked several times to provide these details but all these were singularly lacking. Therefore, the allegations of malafides of the applicant contains some credibility especially since as a custodian of significant records the best notes/records are in the possession of the State Government. But then the State Government have also taken a stand which will be able to divert the investigation, but then before even an FIR is registered against the Government officer for doing nothing other than his avowed and stated work can an action to be taken against him? The settled law of the land that there must be a contribution from him to carry such an action. If the State Government do not want to divulge the significant contribution of the applicant towards specific culpability and want to hide it inside its breast, it may not be amenable to evidentiary process and deny to the custodian of investigation process the need to divulge the prima facie burden before even the commencement of the investigation as Section 190 to 200 of the CRPC denotes specific investigation and not in the whims and fancies of any authority or

police officer. Therefore, for even the registration of an FIR there must be sufficient reason to guarantee such registration. Unless a prima facie case has to be established at that point of time it will be a nullity. The Hon'ble Apex Court held in **Mahabir Auto Stores and others Vs. Indian Oil Corporation and others reported in AIR 1990 SC 1031** "The frame of Government to enter into the business lie subject to the condition of fair play as well as public interest". Therefore non unveilment of reasons, lack of fair play and the public interest which lies in opening an issue after delay of more than seven years have now combined together to substantiate the allegation of malafides as pointed out by the applicant. Needless to say, even the Government may not be liable to the torts of its employees committed in the course of sovereign of functions. The denotification is a sovereign function, therefore, the following cases are significant in this regard.

1) Steel Navigation Company Vs. Secretary of State – (1861) 5 Bombay Harappa

2) State of Rajasthan Vs. Vidyawathi and another

AIR 1962 SC 933

3) Shyam Sunder and others Vs. The State of Rajasthan

AIR 1974 SC 890

4) Kasturi Lal Ralia Ram Jai Vs. The State of Uttar Pradesh

AIR 1965 SC 1039

5) UOI Vs. Sura Bai

AIR 1969 Bombay 13

All these relates to acts committed by public servants in the course of Sovereign jurisdiction. The applicant was acting as an agent of Government in just conveying an order of the Government to a private party who is the actual complainant. **The BDA Act stipulates that no challenge would lie against any action of its servants done in good faith.** Therefore, we had repeatedly asked the State Government whether or not the applicant could have refused to give that endorsement and they are fair enough to counsel that he could not have refused. But they held that still that endorsement can be held to be incorrect for the reason that the order

passed by the former Chief Minister, Shri Yedyurappa lacks jurisdictional support and it was not made on the basis of any study conducted by the Government. But then there upon we asked the State Government whether there is any way for the applicant to know that there might have been lacunae in the direction issued by the Government. The answer to this is in the negative. Therefore what is the infraction alleged against the applicant which has its basis on legal firmament?

42. ***It appears that the charge against the applicant might be condensed in one word that he may have conveyed an order which is either illegal or incorrect. It appears that the Government has no view that the applicant had an opportunity to discern whether this order was incorrect or illegal.*** Therefore in this circumstances how is one to view the FIR alleged against him, even if we forget the order of the Hon'ble High Court, can a charge be

laid against any Government Officer on the basis of an FIR alleged against him on the vague premises and without any prima facie reason, nexus and juncture in the alleged case is the question before us. We have already found that the State Government's power under Section 48 denotification to issue a notification is obsolete as held by the Hon'ble High court. We have already found that the State Government's conveyed this decision to the Commissioner of BDA and that governance hierarchy was brought out till the last step of the staircase and as directed by all the superiors issued the endorsement citing the Government order. **We have already found that the applicant had no place at all in the decision making process culminating in that endorsement.** Therefore even if the decision making process is wrong and illegal the role of the applicant being limited to giving endorsement cannot be said to be in any way transgressing limits on a Government servant. In fact administrative orders has been compelling him to obey the orders of his superiors forth with and the dates of order of Government shows

that mind had been applied in the process before the endorsement was issued.

43. But forget all these for the time being. Even if criminal charge or disciplinary proceeding is pending against the applicant, what is the effect? In **UOI vs. Tejindra reported in 1991 4 SCC 129**, the Hon'ble Apex court held *"the mere pendency of the disciplinary proceeding at any stage is not sufficient for not considering an employee's case for promotion".*

44. the Hon'ble Apex Court in **Ram Vs. State of Uttar Pradesh reported in AIR 1991 SC 1818** held *"where a person entitled for a promotion under statutory rule was unlawfully denied consideration, he would be entitled to be considered for promotion with the retrospective effect and his seniority would also refixed on that basis. In such a case those who would be affected by such order cannot complain of discrimination".* This was reiterated by Hon'ble Apex Court in Ramaual Vs. State of Himachal Pradesh reported in AIR 1991 SC 1171.

45. Therefore on a cumulative conspectus the following points

seems to be established.

1) As held by the Hon'ble High Court, the power of the State Government under Section 48 of the BDA Act is obsolete.

2) Like any policy pronouncements, there can be diversions from this also but without defeating legitimate expectations of the concerned.

3) It has to be non arbitrary and reasonable.

4) In any case there is no loss for either the Government or the BDA as the land belongs to the owners. Unless it is fully vested in them, no right is created in favour of either the BDA or the Government.

5) In any case, a dead horse is being beaten, the Hon'ble High Court, in many a judgment, had already quashed the scheme.

6) In the nature of circumstances no FIR or disciplinary enquiry charge would lie against the applicant.

7) The applicant is entitled for continuation of his rights following his selection on 9.10.2017

46. Therefore, it is hereby declared that the applicant is eligible to be promoted into the Indian Administrative Service vide his selection on 09.10.2017.

47. Therefore second respondent, UPSC is directed to proceed with the publication of the select list as per Regulation-7 of Indian Administrative Services (Appointment by Promotion) Regulation, 1955 without taking into account the Articles of Charge dated 19.10.2017 and complete the process as expeditiously as possible.

48. OA, therefore allowed. No costs.

**(PRASANNA KUMAR PRADHAN)**
**ADMINISTRATIVE MEMBER**

**(DR. K.B. SURESH)**
**JUDICIAL MEMBER**

/ksk/

**Annexures referred to by the applicant in OA No. 170/00623/2017**

**Annexure A1**: Copy of the first information dated 06.06.2017 given by Jana Samanare Vedike.

**Annexure A2:** Copy of the FIR in Crime No. 34/2017 dated 10.08.2017.

**Annexure A3**: Copy of the Preliminary inquiry Report dated 10.08.29127 in Crime No. 10.08.2017

**Annexure A4:** Copy of the report submitted by the ACB Police, Bengaluru dated 17.08.2017 with a request to array the applicant herein as additional accused.

**Annexure A5:** Copy of the representation given by the applicant on 19.08.2017 to the Chief Secretary, Govt of Karnataka

**Annexure A6:** Copy of the representation given by the applicant on 19.08.2017 to the Director General of Police.

**Annexure A7:** Copy of the FIR in Crime No. 36/2017 registered by the ACB Police dated 17.08.2017

**Annexure A8:** Copy of the preliminary enquiry dated 17.08.2017 conducted by the ACB Police

**Annexure A9:** Copy of the administrative Note dated 13.09.2017.

**Annexure A10:** Copy of the reply given by the applicant dated 09.10.2017

**Annexure A11:** Copy of the Articles of Charge dated 19.10.2017 issued by the respondent/State.

**Annexure A12:** Copy of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955.

**Annexure A13:** Copies of the application filed by the applicant dated 21.10.2017 to the respondent/State under the provisions of Right to Information Act, 2005.

**Annexures with reply statement of Respondent No. 3 & 4**

**Annexure-A :** A copy of the FIR along with enclosures

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