

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
CRIMINAL ORIGINAL JURISDICTION
PRESENTATION FORM

Criminal Petition No.1231 of 2010

Combined with

Criminal Petition No.1232 of 2010

(u/s. 482 of the Code of Criminal Procedure, 1973)

Serial No.....

Advocate Sri	K.V.DHANANJAY, A.R.VIVEK AND VIVEKANAND GUPTA	RAMNAGAR District <u>Between</u> <i>Nithyananda Swami</i> And <i>State of Karnataka</i>
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K.V.DHANANJAY

A.R.VIVEK AND VIVEKANAND
GUPTA

Date: 19-Oct-2010

ADVOCATES FOR PETITIONER

Place: BANGALORE

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**LEGAL ARGUMENT / GROUNDS / WRITTEN
SUBMISSION ON BEHALF OF THE PETITIONER**

**The Bare Essentials of an FIR is lacking in the instant
case:**

1. Every complaint to a Police officer under Section 154 of the Criminal Procedure Code, 1973 (referred to hereinafter as Cr.PC) should disclose the commission of a cognizable offence. That is to say, the Police ought to be aware of the legal requisite of an offence. Only thereafter, is the police authorized to proceed to draw an FIR on the basis of a complaint under Section 154 of the Cr.PC.
2. In this case, what K.Lenin, (referred to hereinafter as 'Lenin') has clearly done is to make numerous allegations

against Nithyananda Swami in such a manner as to leave out the very facts constituting those offences and to leave out the very name and identity of the supposed victims. If Lenin's complaint is to be accepted as a valid standard for complaints made under Section 154 of Cr.PC, the constitutionally guaranteed liberty of a citizen could be wildly jeopardized the moment person 'A' expresses an opinion, whether properly founded or otherwise, to the detriment of 'B'. For instance, inspired by Lenin, any member of the public may proceed to a Police Station and claim that *"he has watched the affairs of a certain individual and that such individual has, in the opinion of the complainant committed one or more cognizable offences"*. For whatever reason that the Police have endorsed the complaint of Lenin, for the same set of reasons, the Police will be bound to entertain the complaint of such an individual and to register an FIR on the basis of sheer imagination and creativity.

3. Should the law relating to an FIR degenerate to such an extent that a Police Officer be made to register every complaint wherein an allegation is made that *"I believe and suspect that Mr. X has committed the offence of rape against an unknown & unidentifiable individual"*, the Criminal law in this country will have to be over-written in order to accommodate the kind of FIR registered in this case. Further, should it be legally possible to hold that any individual could implicate another by merely leveling an allegation before a Police Officer, the concept of liberty and of definite limits upon the power of the Police would be worth something only so long as an individual is not disliked by another member of his society. It would be hard

to imagine the possibility where an individual's success or activity would not be resented by some other individual in his society.

4. In this view of the matter, definite safeguards are incorporated into the making of a complaint under Section 154 of the Code of Criminal Procedure. Further, a number of judgments of various Courts have held that an FIR need not be encyclopedic. None of such judgments have departed from the well settled principle of law that every complaint on the basis of which an FIR is drawn should disclose the commission of a cognizable offence. As such, when a Court of law has previously held that an FIR need not be encyclopedic, it did not hold that an FIR need not even disclose the commission of a cognizable offence. Rather, such judgments merely state that *"while an FIR should disclose the commission of cognizable offence it need not contain every minor particular or detail in regard to such offences"*.
5. The Petitioner submits that, in this country, the Police has long been feared for their innumerable violation of basic human rights, for falsification of witnesses, for torture and deaths of individuals committed to their custody, for staging encounter shootings for the sole purpose of framing certain other individuals, for collaborating with rowdy elements and for engaging in criminal intimidation, corruption, manipulation and dishonesty. The liberty of an individual deserves to be protected from an overzealous executive. The Police are an important part of the executive machinery of our country. Because Article 14 of our Constitution guarantees equality before the law to every

citizen of India, existing protection to the citizenry against the Police machinery is required to be administered to the petitioner, Nithyananda Swami regardless of the perceived moral infraction on his part. As such, the fundamental requirement of Section 154 of the Criminal Procedure Code cannot be dispensed with under any circumstance. The law relating to the FIR cannot be selectively suppressed in case of the Petitioner, Nithyananda Swami.

6. Because criminal offences are committed by the thousands every day in this country, the Police cannot possibly investigate any offence unless they limit the scope of their investigation to a narrow range of individuals for any given offence. That is, the work of the Police requires them to collect evidence with which to seek conviction of an accused. As such the role of Police investigation should necessarily be limited to a narrow range of 'events' limited by date, time and place.
7. The complaint by Lenin is a brooding resentment of Nithyananda Swami. The said complaint is a general attack on the moral and social character of Nithyananda Swami and has no legal relevance whatsoever.
8. The complaint merely discloses the resentful opinion of Lenin and is in the nature of a '*letter to the Editor of a Newspaper*'. It is unfortunate that a bare opinion has been elevated to the status of a complaint under Section 154 of the Cr.PC.
9. As such, no investigation could possibly be conducted by the Police acting under the Cr.PC even if they were to

assume that the content of Lenin's complaint is the truth and nothing but the truth.

10. Lenin states in his complaint that, *"nobody ever told about the activities of Swami Nithyananda outside, fearing for their life keeping in view the money power, popularity and fame of Nithyananda Swami"*. Such a statement clearly shows the resentful & political nature of Lenin's comment. Lenin appears to be unaware of the fact that in independent India, no individual, however mighty, has been rendered immune from the operation of the laws in force. The Prime Minister of India, Chief Ministers of several States, Judges of the High Courts, Judges of the Supreme Court and foremost religious Practitioners have been prosecuted by the Police at the height of their fame by such office holders or subject to proceedings for violation of one or more laws. As such, the complaint of Lenin is merely of a political character. A recurring theme throughout the complaint of Lenin is that Nithyananda Swami is above the rule of law. Such a statement reflects the resentment and hatred shown by Lenin towards Nithyananda Swami. As such, the complaint by Lenin cannot be accorded any legal merit under Section 154 of Cr.PC. Therefore, the registration of an FIR by the Police by placing their faith in the political opinion of Lenin is bad under the law. Accordingly, the FIR deserves to be quashed forthwith.
11. In the penultimate paragraph of Lenin's complaint, it is stated that *"I pray that suitable action should be taken on Nithyananda Swami who is involved in bad practices, who has made many lakhs of devotees, thousands of followers*

and public to believe him but deceived them and I have resolved to complain to further save Hindu Dharma and prevent the Hindu and youths from taking bad path". Such a statement barely qualifies as a complaint about any offence under the law, much less a cognizable offence. If the Police were to treat such a statement as a valid complaint made under Section 154 of Cr.PC., the Police may then have to even entertain letters to newspaper Editors also as valid complaints.

12. The statement of Lenin elsewhere in his complaint states as under:-

"I was waiting for the time to show the outside world the lively scenes containing Nithyananda Swami and the Actress".

13. Upon a reading of the same, it becomes evident that Lenin wanted to tell the world that Nithyananda Swami engaged in sex with actress Ranjeeta. The desire of Lenin to inform the world that Nithyananda Swami is not a celibate is a private desire of Lenin and the law or Police cannot play any role in aiding Lenin to attain his private desire. As such, the desire of Lenin to tell the world that Nithyananda Swami is not a celibate is a desire that cannot be elevated to the status of a complaint under Section 154 of the Cr.PC.
14. By Lenin's own admission, after having allegedly recorded the video showing Nithyananda Swami having sex with a film actress in the month of December 2009, Lenin spent the next three months without furnishing the same to the

Police. It is amply clear that Lenin's motive in recording the video in December 2009 and releasing the same to the National media only on 04-Mar-2010 was actuated by criminal design and intent.

Basics of First Information Report not adhered to in this case:

15. In *Madam Mohan Singh v. State of Gujarat*, [Yet to be reported; Date of Decision: 17-Aug-2010; Case No: Criminal Appeal No.1291 of 2008], the Hon'ble Supreme Court allowed an appeal by an accused (in a FIR) and set aside an Order of the Gujarat High Court wherein the High Court had dismissed a petition filed under Section 482 of the Cr.PC. In the instant case, the deceased had declared in his suicide note that:

5. ...I am going to commit suicide due to his functioning style. Alone M.M. Singh, D.E.T. Microwave Project is responsible for my death. I pray humbly to the officers of the department that you should not cooperate as human being to defend M.M. Singh...

16. However, the Hon'ble Supreme Court, expressing regret for the tragedy that had occurred, quashed the FIR by holding that the said suicide note, though clear and direct, was inadequate to register an FIR for an offence under Section 306 of the IPC - abetment to a suicide.
17. This case is cited for the proposition that a court of law or the police is required to objectively assess the content of a complaint and not be swayed or unduly influenced by

emotional or social outrage over a tragic of uneventful episode.

18. The facts, as narrated by the Supreme Court were:

1. The accused who faces prosecution for offences under Section 306 and 294(b) of the Indian Penal Code (IPC) comes up before us being aggrieved by the High Court judgment by which his petition under Section 482 Cr.PC was dismissed. In that petition the accused/appellant had challenged the First Information Report (FIR) registered as C.R. No. 166 of 2008 at Naranpura Police Station.

2. The said FIR is a long document which has been filed by one Harshida Ben, widow of Deepakbhai Krishnalal Joshi. It is apparent from the said report that she was married to Deepakbhai Krishnalal Joshi serving in Ahmedabad Bharat Sanchar Nigam Ltd. as a driver in the Microwave Project Department. He had undergone a heart bypass surgery in the year 2002 and he was asked by the doctor to avoid lifting heavy weights. She further stated that the appellant, Madan Mohan Singh was working as a D.E.T. and her husband who was driving a Tata Sumo car was working under Madan Mohan Singh (accused herein). She then complained that Madan Mohan Singh used to tell his private errands to her husband and was harassing him. Though Madan Mohan Singh was transferred, yet he kept on continuously using her husband. In the year 2007, Madan Mohan Singh came back on transfer in the Microwave Project as D.E.T. It is alleged that on the day when Madan Mohan Singh joined, he told her husband to keep the keys of the vehicle on the table. However, according to her, her

husband did not listen to that and took back the key on account of which Madan Mohan Singh had become angry and had threatened her husband of suspending him. He also rebuked her husband that if he did not listen to him, he would create difficulties for her husband. Madan Mohan Singh said to her husband as how he is still alive inspite of the insults. It is then contended that on 21.2.2008, her husband left at 10'O Clock as per rules with tiffin but did not return back in the evening and, therefore, his search was taken by his son Jatin from his colleagues like Raji Saheb and his absence was reported to the police on 22.2.2008 and 23.2.2008. Ultimately, she came to know that her husband's body was lying in the dead condition in the vehicle No. GJ 1 G 3472 at Kiran Park opposite Gayatri Hospital, New Vadaj. She also suggested further that a telephone call had come from Gujarat High Court informing her that there was a Xerox copy of the suicide note. Lastly, it is stated that during the period between 2003 to 21.2.2008 the Head of the department D.E.T. Project was entrusting his house work to her husband but her husband had not done the work entrusted to him and, therefore, he had bias against her husband and insulted him in front of the staff several times and because of this her husband got depressed and committed suicide.

3. This First Information Report was filed and registered on 17.3.2008 i.e. after the 24 days of the death of her husband. It is this report which is challenged suggesting that even if the whole report is accepted as it is, it did not disclose any offence much less the offences under Sections 306 and 294, IPC. Since, the Gujarat High Court did not

agree and dismissed the petition; the appellant is before us now.

5. The further complaint in that so-called suicide note appears to be that the driver was not given a fixed vehicle though all the drivers were given fixed vehicles to drive. There is also a complaint against one Raghunathan suggesting that he misled the DGM and had given him a very bad vehicle to drive. By way of example, it was pointed out that the keys of the vehicle were taken in the absence of Incharge, M.K. Sovangya without giving any reasons verbally. Then he was not given any charge of the vehicle and running log book. Thirdly, he was sent the transfer order by post. The attendance of the office staff was not maintained and he was transferred and the vehicle was given to a regular labour. There is also a complaint about the salary of 15 days which was deducted by Madan Mohan Singh. A fair inquiry was sought for by the said driver. It was suggested that his retirement date was 25.12.2012 and salary should be recovered from Madan Mohan Singh as he had harassed him without giving any concrete reason. It is then suggested in the followings words:

I am going to commit suicide due to his functioning style. Alone M.M. Singh, D.E.T. Microwave Project is responsible for my death. I pray humbly to the officers of the department that you should not cooperate as human being to defend M.M. Singh. M.M. Singh has acted in breach of discipline disregarding the norms of discipline. I humbly request the Enquiry Officer that

my wife and son may not be harassed. My life has been ruined by M.M. Singh.

6. This huge note is addressed to inquiry officer, Chief General Manager and also to the Chief Justice. The biggest complaint against the accused is that he had changed the duty of this driver from one car to another though no other driver was ever transferred. Again and again, the deceased has insisted that the only person responsible for his suicide was Madan Mohan Singh.

19. The Petitioner submits that this decision is also cited for the proposition that justice in a given case may require a court of law to disregard even the honest belief of a victim. That is, even where a victim A believes that accused B is responsible for the misfortune of A, law enforcement demands an objective and verifiable foundation for an investigation to proceed - neither of which is available in the complaint of Lenin.

20. Agreeing with the argument of the Accused, the Supreme Court said:

8. It is on this that Shri Tulsi contended that all this is absolutely absurd. If a person writes a suicide note on 4.2.2008, he had no business to send the suicide note to High Court and keep a copy thereof in the house. Learned Senior Counsel said that even if all this is accepted as it is, there is nothing to suggest that the appellant has committed any offence or that any offence could be spelt out from the said suicide note or the FIR much less offence under Sections 306 and 294, IPC. We are convinced that there is

absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306, IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this. In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC. We are of the clear opinion that there is no question of there being any material for offence under

Section 306, IPC either in the FIR or in the so-called suicide note.

*9. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross- examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in *Netai Dutta v. State of West Bengal* [2005 (2) SCC 659], this Court had quashed the proceedings initiated against the accused.*

10. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are

allowed to continue on such basis, it will be difficult for every superior officer even to work.

11. It was tried to be contended by the learned Counsel appearing on behalf of the complainant that at this stage, we should not go into the merits of the FIR or the said suicide note. It is trite law now that where there is some material alleged in the FIR, then such FIR and the ensuing proceedings should not be quashed under Section 482 Cr.PC. It is for this reason that we very closely examined the FIR to see whether it amounts to a proper complaint for the offence under Sections 306 and 294(b) IPC. In so far as Section 294(b) IPC is concerned, we could not find a single word in the FIR or even in the so-called suicide note. In so far as Section 306 IPC is concerned, even at the cost of repetition, we may say that merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing the charge under Section 306 IPC. It will still fall short of a proper allegation. It would have to be objectively seen whether the allegations made could reasonably be viewed as proper allegations against the appellant/accused to the effect that he had intended or engineered the suicide of the concerned person by his acts, words etc. When we put the present FIR on this test, it falls short. We have already explained that the baseless and irrelevant allegations could not be used as a basis for prosecution for a serious offence under Section 306 IPC. Similarly, we have already considered Section 294(b) IPC also. We have not been able to find anything. Under such circumstances, where the FIR itself does not have any material or is not capable of being

viewed as having material for offence under Sections 306 and 294(b) IPC, as per the law laid down by this Court in State of Haryana and Ors. v. Bhajan Lal and Ors.[1992 Suppl. 1 SCC 335], it would be only proper to quash the FIR and the further proceedings.

12. For all these reasons, we are of the clear opinion that the High Court erred in not quashing the proceedings. Allowing this appeal, we set aside the order of the High Court and allowing the petition under Section 482 Cr.PC filed by the appellant/accused, the questioned proceedings are quashed.

21. In the case of *Bajinath Jha v. Sitaram* [2008 (8) SCC 77] the Hon'ble Supreme Court has decisively held that the failure of a complainant to disclose the actual time of the occurrence of an offence is fatal to the complainant's case. In the instant case, a person alleged that certain officers of the government had demanded illegal gratification from him. However in his complaint to the Judicial Magistrate, the complainant had not specified the actual date on which such illegal gratification was allegedly demanded. The Magistrate, however, took cognizance upon such complaint. The accused officers moved the High Court under Section 482 of Cr.PC. The High Court declined to intervene and dismissed the Section 482 petition of the officers concerned. Upon special leave, the Supreme Court disagreed with the High Court and quashed the proceedings before the Magistrate by holding that the failure of the complainant to disclose the date of the offence was fatal to the validity of the complaint. The Court held that the lack of a 'date' rendered the same as 'vague'.

The court held that no criminal prosecution could have been initiated on such vague assertions.

22. This case is cited for the proposition that, the scope of any investigation is limited to the commission of an act that qualifies as an 'offence' in the eyes of the law. As such, an investigation that seeks to ascertain '*whether the accused engaged in a specified conduct*' cannot lawfully commence unless the complainant has clearly specified the date, time and place in relation to his allegation. Seen against this proposition, the complaint by Lenin is fundamentally flawed as it fails to offer even the most basic information. As such, the registration of an FIR (and the commencement of an investigation thereafter) is legally infirm and deserves to be quashed forthwith. Specifically, the Supreme Court held:

7.*While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that*

initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is- made out even if the allegations are accepted in toto.

8. The backgrounds clearly show that the proceedings instituted were mala fide, based on vague assertions and were initiated with malafide intents and constitutes share abuse of process of law. No reason was shown before the High Court as to why the complainant chose not to proceed against one of the four persons initially named. The cases at hand fit in with category (7) of Bhajan Lal case.

9. The appeals are allowed and the proceedings in complaint case No. 40 of 1994 in the Court of Judicial Magistrate, First Class, Patna City stand quashed.

23. In the case of *Ashok Vishnu Davare v. State of Maharashtra* [2004 (9) SCC 431 : JT 2004 (2) SC 242], the Hon'ble Supreme court has held that, where a complainant fails to state certain critical facts in his complaint to the police, a subsequent recital to a Court ought not to be taken into consideration. In the said case, certain critical information was never disclosed in the complaint itself. The Supreme Court held that an accused cannot be convicted on the basis of testimony of a witness who had not alleged to such effect in his complaint to the police. In the instant case,

the Supreme Court held that there were substantial improvements in the version of a witness in relation to his allegation in the complaint. Accordingly, the Supreme Court reversed the Order of the Bombay High Court which had confirmed a conviction passed by the Sessions Court.

24. This case is cited for the proposition that a complaint lodged with the police is the earliest version of the prosecution and the legal validity of evidence uncovered in the course of an investigation is always allowed to be impeached in a Court of law with reference to the first statement of the complainant to the police. As such, any investigation carried on the basis of a complaint should hold a reasonable connection to the complaint. Where a complaint merely expresses an opinion and hearsay, no investigation could reasonably be undertaken by the Police as no investigation can proceed in the absence of a proper foundation to such investigation – a legally sufficient complaint.

25. Specifically, the Hon'ble Supreme Court noted and held:

5. We will now examine whether the prosecution in this case has established beyond all reasonable doubt that the appellant in any manner abetted the suicide of the deceased so as to make his act punishable under Section 306 and whether he had subjected the deceased to such a degree of cruelty or harassment to meet the monetary demand made by him as to hold him guilty of an offence punishable under Section 498A I.P.C.

7. So far as PW-2 is concerned, we notice that in his evidence before the court he did say that the appellant used

to make demand for money through the deceased which the deceased's family was meeting. He also says that 15 days prior to her death, deceased Jayashree had asked for Rs. 5,000 since her husband was demanding the same. He further states that since the family did not have sufficient money at that point of time, he promised to send the money 4 or 5 days later. He also says that on 7.5.1988 he sent Kiran son of the deceased who was left behind in their house by the deceased during her last visit with his nephew PW-6 to Konambe village and when PW-6 returned from the said village on 8.5.1988 in the afternoon PW-6 did tell him that the appellant had beaten the deceased. Therefore, it is clear this witness had the knowledge of the fact that the appellant was making the demand for money and about 15 days prior to the death of the deceased, she had come to her parental home and asked for the money which could not be paid and on the day of her death PW-6 had come to him and told him that the appellant had beaten the deceased. In spite of the same we find that in the complaint given by this witness to the Police on the very day of the death of the deceased, none of these facts has been mentioned. If really, these facts were known to PW-2, he would not have failed to mention these facts in his complaint. On the contrary in the complaint all that is stated is that two persons from the village Konambe had come to him in the afternoon of 8.5.1988 and told him that Jayashree had died. On hearing it he and his relatives went to Konambe and saw the dead body. The failure to mention any one of these facts which might have been the cause of his sister's suicide indicates that at that point of time when he gave the complaint he did not have any knowledge either of the demand for money or

of harassment meted out to his sister including the beating...

8. The next witness examined by the prosecution to establish its case of harassment and demand for money is PW-3 Sonabai, a resident of Chitegaon and a neighbour of PW-2. This witness does mention the fact that whenever the deceased visited Chitegaon she used to come to her house and used to complain that her husband was beating her. She also states that about eight days prior to the death of the deceased she had come to her and told her that deceased's father-in-law was demanding Rs. 5,000. From her evidence it is not clear when exactly the beating referred to in her evidence had taken place. Obviously, it cannot be the beating referred to by PW-6 because PW-6 had never met her and told her about it, therefore, if at all her evidence is true, it could be with reference to some beating earlier during the subsistence of 11 years' marriage between the appellant and the deceased. Therefore, this part of her evidence cannot be treated as the evidence indicating the harassment meted out to the deceased...

10. PW-5 is the wife of one of the brothers of the deceased who states in her evidence generally that the husband of the deceased was demanding money and her family was paying money from time to time. She also states that about 8 days prior to the incident in question deceased had come to their house and asked for Rs. 5,000 since the same was being demanded by her husband, but the money could not be given. She further states that on his return PW-6 did tell her that there was some dispute going on between the husband and the wife. She does not state that PW-6 told her

that he saw the appellant beating the deceased on 8.5.1988. In our considered opinion the statement of this witness in regard to harassment and the demand for money is too general in nature to base a conviction or to treat the same as corroborating any other acceptable evidence led by the prosecution.

11. PW-6 is the nephew of the deceased who according to the prosecution visited the house of the appellant on 7.5.1988 with a view to drop the appellant's son Kiran who was staying for a few days with his grand-parents at Konambe. According to this witness he stayed overnight in Konambe though not in the house of the appellant. He further states that he visited the farm-house of the appellant on 8.5.1988 when he saw the appellant beating the deceased. He further states that on his return he told his father and uncle about this incident of beating. But in his cross examination this is what the witness stated:

"...At that time, Jayashri was present out of the hut and our talk taken place out of the hut. The quarrel was going on between husband and wife before I reached there. I am unable to give reason for the quarrel. Accused Ashok had beaten her before I reached there. Accused again beat her in my presence. I did tell before police "accused Ashok beat his wife because I did not take money or there was a talk about money, between myself and Jayashri and he assured Jayashri that he would send the money and Jayashri replied I should send money immediately."

12. This part of the statement of PW-6 clearly shows that his evidence in regard to having seen the beating of the deceased by the appellant and the demand for money is an

improvement from his previous statement made to the Police. This coupled with the fact that in the complaint no such allegation has been made makes us feel that it is not safe to rely on the evidence of this witness.

15. From the above evidence, in our opinion, it is not possible to come to the conclusion that the prosecution has established its case beyond all reasonable doubt in regard to the charges alleged against the appellant. In our opinion, the courts below have not properly appreciated the evidence and failed to notice the glaring improvements made by the witnesses in their evidence given before the court. These improvements in our opinion materially affect the creditworthiness of the prosecution case hence it is not safe to base a conviction.

26. The registration of an F.I.R. is governed by Section 154 of Cr.PC and no compulsion is vested in a police officer to register an F.I.R. merely because a complaint alleges the commission of a cognizable offence and specifies no information or detail in that regard. A police officer is not powerless to make certain preliminary enquiries to ascertain whether the information sought to be lodged is credible or has substance to the same. The Hon'ble Delhi High Court in the case of *State v. Mohammed Iqbal Gazi* [2008 (154) DLT 481 – Criminal Miscellaneous No.3425 of 2005 & Criminal Miscellaneous No.5521 of 2005 : Date of Decision – 12-Sep-2008] has held that in a proceeding instituted on a complaint, exercise of the inherent power to quash the proceeding is called for in case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive.

27. This case is cited for the proposition that the satisfaction reached by a Police officer that a '*complaint discloses the element of a cognizable offence*' cannot be a subjective satisfaction at all. Regretfully, in relation to the complaint by Lenin, the satisfaction first reached by the Police in Tamil Nadu and thereafter, adopted by the Police in Karnataka is merely subjective. Every police officer vested with a duty to register a complaint received under Section 154 of the Cr.PC is required to undertake an objective assessment of the complaint and to '*apply his mind*' to the content of such complaint. A compulsion to register an FIR may be said to arise only after an objective reading of the complaint leads to a satisfaction that a cognizable offence has been made out from a proper reading of the complaint. The complaint by Lenin clearly merited a rejection by the Police. If only the complaint had been so rejected by the Police, the Petitioner respectfully submits that no judicial mind thereafter could have possibly accepted Lenin's complaint as '*disclosing the commission of any offence, much less, a cognizable offence*'.

28. In the said case, the Hon'ble Delhi High Court held:

32. *What does one mean by the expression: 'apply ones mind to a case'?*

33. *It means that the person required to apply his mind has to come to grips with the facts before him and has to bring into focus the law on the subject and applying the facts to the law, to arrive at a conclusion by a process of reasoning, evidencing that all relevant facts have been taken note of and properly analyzed in the light of the law applicable. A*

truncated and a gibberish reproduction of facts, excluding relevant facts from the focus of the mind, would result in a decision being taken which can be classified as a decision without the application of mind. Informed reasoning is the heart of the matter.

34. In the context of taking cognizance by a learned Magistrate, it would be relevant to note that cryptic information cannot ever be treated as a FIR for the reason the sine qua non of a FIR is an information which discloses the commission of a cognizable offence. In the decision reported as 1970 (2) SCC 113 Tapinder Singh v. State of Punjab and Anr., in para 4 it was observed: but prima facie this cryptic and anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as first information report. What is true for a FIR applies with equal rigour to an order passed under Section 156(3) of the Code.

35. In the decision reported as 84 (2000) DLT 199 (DB) Satish Kumar Goel v. State and Ors the Division Bench of this Court drew a clear distinction where the information laid was vague, indefinite or doubtful. Should an FIR be registered on such a complaint or should some inquiry proceed before the registration of an FIR. The Division Bench held:

“Thus, the legal position appears to be that where allegations made in the complaint lodged before the police clearly and specifically disclose commission of a cognizable offence, the office in charge of the concerned police station is duty bound to register an FIR. However, where the information recorded in the

complaint is uncertain, indistinct and not clearly expressed which creates a doubt as to whether the information laid before the incharge of the police station discloses commission of a cognizable offence therefrom, some inquiry should proceed before the registration of an FIR.”

36. In a decision pronounced on 12.10.2007 in Crl.App. No. 1432/2007 *Rajender Singh Katoch v. Chandigarh Administration & Anr.*, Hon'ble Supreme Court held:

“8. Although the officer in charge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made gives rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary inquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not.”

37. It is apparent that the principle that every information relatable to the commission of a cognizable offence must lead to the registration of a FIR has to be understood in its correct perspective, being that, if the information is *prima facie* credible; is definite and has a substance, the FIR must be registered. But where the information is vague and *prima facie* lacks credibility, a FIR need not be registered and some preliminary inquiry would be permissible to find out

whether the information sought to be lodged has any substance therein or not...

38. In the instant case it is of importance to note that along with his complaint, Mohd. Iqbal Ghazi had filed various documents and at serial No. 40 thereof was the death certificate dated 21.3.2003 issued by GTB Hospital pertaining to the death of Akbar. As noted in Para 1 above, the same evidenced that Akbar was admitted to the hospital on 19.3.2003 and was suffering from acute pulmonary-cum-respiratory disorder and was complaining of acute breathlessness. Past medical history of Akbar was recorded by noting that he was a non-smoker and an alcoholic. It recorded that Akbar remained an in-door patient till 21.3.2003 and expired on said day at about 1:40 PM. The cause of death recorded was chronic obstructive disease with enlarged heart and septicemia and low blood pressure. The same did not record any bodily injury, external or internal. Prima facie, the certificate evidences a natural death triggered by the wayward life of Akbar. Be that as it may, neither order passed, be it the order dated 5.11.2003 or the order impugned in the instant petitions, reveals that the learned Metropolitan Magistrate has considered the said death certificate. As noted above while directing investigation under Section 156(3) of the Code of Criminal Procedure it is the duty of a Magistrate to consider all the material before him to record a satisfaction whether a police investigation should be directed, and since the police cannot be directed to investigate a cognizable offence without registering a FIR, the learned Magistrate has to consider whether the information laid before him, prima facie discloses the commission of a cognizable offence...

29. In the case of *Chander Kant Lamba v. State* [169 (2010) DLT 143], the High Court of Delhi struck down proceedings which were initiated on the basis of vague and malafide considerations. The complainant, a lady, had alleged that her husband's sisters (accused) who were married prior to the marriage of the lady with the brother of the accused had committed acts of cruelty upon the complainant and had demanded dowry from the complainant. The High Court held that the allegation was not believable and that it was highly improbable.
30. This case is cited for the proposition that a Hon'ble High Court may, in exercise of its jurisdiction under Section 482 of the Cr.PC, consider the probability of occurrence of an offence as alleged by a complainant.
31. The Hon'ble Delhi High Court observed:

12. The main contention of the learned Senior counsel for the petitioners is that the learned MM has grossly erred and committed illegality by directing framing of charge against the present petitioners, who were admittedly, married much prior to the marriage of the complainant with the brother of the petitioners. It is contended that they were living in their matrimonial homes separately and peacefully. They had obviously no reason to make suggestions to the complainant to get the dowry from her parents or subject her to cruelty. The learned Senior counsel has referred to the authorities which were cited before the learned Magistrate in order to urge the point that invariably in a matrimonial dispute there is a tendency on the part of the complainant to enrope almost all the relatives once the relations get strained

between the parties and this is precisely what has been done in the instant case.

13. Secondly on merits also, it has been contended by the learned senior counsel that the allegations which are made against the present petitioners are too generic in nature which are highly improbable to be believed. No date, time or place has been given by the complainant in her complaint and moreover an impression is sought to be created as if all the petitioners had made the demand for dowry around the same time and simultaneously subjected her to cruelty.

14. The learned Counsel for the complainant has refuted the contention of the learned Senior counsel for the petitioners and contended that at the stage of framing of the charge only a prima facie case has to be made out and since the learned MM has formed an opinion that a prima facie case is made out against the present petitioners this revisionist Court should not sit as a Court of Appeal and substitute its own view in place of view expressed by the learned Magistrate.

26. Coming back to the facts of the present case, I feel that this is precisely what has happened in the instant case also that although the marriage had taken place in the month of June, 2000, but the relations got strained may be on account of alleged illegal demands having been made by the husband or the relatives who were ordinarily living with him in a joint family but certainly it is highly improbable to assume that the married sisters of the husband of the complainant who got married much prior to the marriage of the complainant and were living in their own matrimonial homes would come down simultaneously to the matrimonial

home of the complainant and subject her to demand of dowry and the consequent cruelty. Therefore, on this ground itself, I feel that the charge against the present petitioners is not prima facie made out nor is any 'grave suspicion' to have summoned such an offence available on record to put them to trial.

27. Even if it is assumed that the allegations as have been made by the complainant are true on its face value even then they do not fall within the mischief of Section 498A of the IPC. A perusal of the impugned order shows that the complainant had alleged against the petitioners that they planted false stories or that they took out money from the purse of the mother in law of the complainant and accused complainant probably of stealing of the said money or that the petitioners and her husband tied her twice in May in order to compel her to bring Rs. 5 lacs. So far as these two allegations are concerned, they do not fall within the mischief of cruelty as is enunciated in the explanation to Section 498A of IPC. So far as explanation 'a' is concerned, it is willful conduct of such a nature which is likely to drive a women to commit suicide or cause grave injury or danger to her life whether mentally or physically which will tantamount to cruelty and certainly this does not fall within the said parameters. In explanation 'b', there must be harassment of the women with a view to coerce her and her relations to unlawful demand and obviously a plain reading of explanation 'b' would show that there should be more than one act, only then it will constitute harassment while as in the instant case, there is no such allegations that there were series of action to which the complainant was subjected with a view to extract dowry either from her or her

parents or relations. On the contrary, the allegations made in the complaint are vague, unspecified and improbable as no date, time or place of any incident is given. The same would be the fate of the allegation that the petitioners along with the husband of the complainant had tied her in May, 2000 in order to compel her to bring Rs. 5 lacs from her father.

28. It is understandable or believable *prima facie* that her husband might have tied her subjecting her to cruelty with a view to demand dowry of Rs. 5 lacs but extending the said allegations qua the present petitioners who are admittedly married sisters living separately in their own matrimonial homes is absurd, unbelievable and not worthy of credence and accordingly on merits also, I feel that the trial Magistrate has fallen into a serious error which will result in great mis-carriage of justice by directing the petitioners to face the trial for an offence under Section 498A IPC.

29. I cannot refrain from mentioning that in a case of this nature, the Court has to be very sensitive and it should not get swayed by emotions which the complainant may be suffering from with a view to put persons or relatives who are totally unconnected with the incident to the facing of the trial in itself in present times is a great deal of punishment especially in the light of the fact that the same continues endlessly for years together on account of heavy load on the learned MM.

30. For the reasons mentioned above, I feel that the order dated 4.3.2008 passed by the learned Magistrate is not only improper, illegal but also incorrect on appreciation of facts as well as the application of law so as to warrant

framing of charge against the present petitioners for an offence Under Section 498A IPC.

32. The power of a High Court to render justice in exercise of the inherent power under Section 482 of the Cr.PC is wide enough to quash a proceeding irrespective of the stage of the investigation. An authoritative pronouncement by a Full Bench of the Punjab & Haryana High Court as early as in 1981 in the case of *Vinod Kumar Sethi v. State of Punjab* [AIR 1982 Punjab & Haryana 372] may be noted. The said case conclusively and decisively lead to rest, all doubts over the power of a High Court to quash an investigation itself in exercise of its inherent power to do justice to a party before it. The said decision has since been approved by the Hon'ble Supreme Court and has become the controlling legal authority in regard to the aforesaid proposition.
33. The Hon'ble Punjab and Haryana High Court observed and held:

5. It is the admitted position that in a number of these criminal miscellaneous petitions, the matter is as yet only at the investigative stage in pursuance of the registered first information reports and no final report under S. 173 of the Code of Criminal Procedure has been filed in any Court of law. In these cases a strenuous preliminary objection at the very threshold has been pressed on behalf of the respondent - State of Punjab. Mr. Mohinderjit Singh Sethi, the learned Addl. Advocate General took up the firm stand that the High Court had no jurisdiction to quash a first information report and to halt the investigation (pursuant

*thereto) in its tracks. In essence the contention was that till the stage of filing a challan in a Court of law is arrived, the arm of the law under S. 482 of the Code is not long enough to reach the statutory investigative right of the police. In nutshell the argument is that the inherent jurisdiction to quash arises only when the proceedings enter the precincts of the Court of law and not earlier. Particular reliance in this context was placed on the observations of the final Court in *Jehan Singh v/s. Delhi Administration* AIR 1974 SC 1146; *Kurukshetra University v. State of Haryana* AIR 1977 SC 2229 and *State of Bihar v. J. A. C. Saldanha* AIR 1980 SC 326.*

*6. There is no gainsaying the fact that the question raised by the learned Additional Advocate General is of obvious significance and not altogether free from difficulty because a penumbral area does seem to exist on the point. However, within this jurisdiction it would be unnecessary to examine the matter afresh on first principles because it is not altogether res Integra. The identical point had earlier arisen before a Division Bench to which I was a party in *Saral Beopar Association v. State of Haryana* 1970 Cri LJ 720, and the specific question for determination framed by me in the order of reference was in the following terms :--*

"Is the High Court under Section 561-A, Criminal Procedure Code, empowered in an appropriate case to interfere and quash criminal proceeding during the pendency of an investigation by the police and before a report under S. 173, Criminal Procedure Code, has been filed in a Court of competent jurisdiction?"

The Division bench after a broad conspectus of first principles, the relevant statute, and the precedent then existing rendered a somewhat halting answer to the issue in the following terms:-

*"*** In their view of the matter, the broad proposition that the Court can in no case interfere with the investigation of the case does not appear to be justified. On reference to the various provisions contained in the Code of Criminal Procedure relating to the investigation into criminal offences, it will be seen that the investigation is not entirely independent of the Court but is to some extent, though limited, under the supervision of Magistrate, who can be approached not only by the investigating officer but also by the accused to issue necessary process and pass orders in aid of proper and fair investigation of the case. There can, however, be no doubt that, as ruled by their Lordships of the Supreme Court and earlier by the Privy Council in Khawaja Nazir Ahmad's case (AIR 1945 PC 18) (supra), the power of investigation so far as it vests exclusively in the police or investigating agency is not to be interfered with by the Courts, and the investigating agency should be left to carry on investigation without any interference. This however, clearly postulates that the investigation so long as it is in accordance with the provisions of law cannot be interfered with and it does not give immunity to investigation which is not in consonance with the relevant provisions of law governing the particular case or is in breach of them."*

However, on the particular facts of the case it was held that the first information report did disclose a cognizable offence which the police was entitled to investigate and the relief of

quashing the investigation was consequently declined. It is thus plain that on the ratio of Saral Beopar Association's case (supra) there is no blanket bar against the quashing of proceeding at the investigative stage. Therefore the real question now is whether the aforesaid view has been eroded by the subsequent decisions or observations of the final Court.

7. Now primary reliance on behalf of the respondent - State was on Jehan Singh's case (AIR 1974 SC 1146) (supra) and in particular to the following observations in the penultimate paragraph thereof (para 17):--

"For the foregoing reasons, we would hold that the petitions under S. 561-A were liable to be dismissed as premature and incompetent. On this short ground, we would dismiss this appeal."

On the basis of the aforesaid observations it was sought to be contended that a claim for quashing before the charge sheet is filed under S. 173 of the Code of Criminal Procedure would be both incompetent and premature.

8. I am inclined to the view that the stand is not well-conceived. A closer analysis of the judgment in Jehan Singh's case would disclose that it does not lay down any absolute and inflexible bar against the quashing of a first information report prior to the filing of a charge-sheet. Were it to be so, then the only question calling for enquiry would be the factual one whether the charge-sheet had been filed in Court or not and nothing else. Far from doing so the Bench in Jehan Singh's case expressly noticed that the real issue was whether the allegations in the first information

*report, if assumed to be correct, did not constitute the offence of theft or its abetment. Their Lordships thereafter closely weighed the contents of the first information report and came to the conclusion that the facts therein, if accepted, would disclose the commission of a cognizable offence. It was after arriving at this finding that the Court refused to quash the proceedings and held the petition as premature and incompetent. Perhaps the aforequoted observations in the penultimate paragraph of the report, if read in total and abstruse isolation, can be twisted to mean as if an application for quashing the proceedings is either incompetent or premature till the challan is filed but as observed in *Quinn v. Leathem* (1901) AC 495 and approved in *State of Orissa v. Sudhansu Sekhar Misra* AIR 1968 SC 647, it is not a profitable task to extract a sentence here and there from a judgment and to build upon it. The true ratio of *Jehan Singh's* case, as I look at it is that in a case where the first information report does disclose a cognizable offence the Court would be extremely loth to interfere with the investigation pursuant thereto.*

9. What I have said above applies equally to the following observations in *Kurukshetra University v. State of Haryana* AIR 1977 SC 2229, on which heavy reliance was also sought to be placed on behalf of the respondent-State (para 2):

"It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under S. 482 of the Code of Criminal Procedure, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the

University and no proceeding at all was pending in any court in pursuance of the F. I. R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."

On the aforesaid premises the learned Additional Advocate General had canvassed that these observations spell out a total ban on the quashing of a police investigation till the matter reaches a Court of law. I, however, regret my inability to construe these observations in any such abstruse light. It is significant to recall that their Lordships in terms found that the first information report disclosed a cognizable offence and therefore, the police could not refuse to act on the complaint lodged by the University. Further the police had not even commenced investigation when the proceedings were quashed by the High Court. In fact the ultimate conclusion that the statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases in a context where the matter had as yet not reached the Court is indicative of the fact that the final Court did not totally and mathematically rule out quashing at the investigation stage.

10. Our attention was then drawn to the recent judgment in State of Bihar v. J. A. C. Saldanha AIR 1980 SC 326, wherein Desai, J., speaking for the Bench noticed the well-defined and well-demarcated function in the field of crime detection, and its subsequent adjudication, betwixt the police and the Magistrate. After referring to Khwaja Nazir Ahmad's case AIR 1945 PC 18 (supra), it was observed that

the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary. This judgment also nowhere lays down any absolute interdict against the wholesome and supervisory power of the judicial process over an investigation which may be wholly unwarranted in law and a clear abuse of process.

11. Before parting with the aforesaid precedent, it must be pointedly noticed that the common streak which runs through all of them is the approval or the affirmative of the much quoted passage of Lord Porter rendering the opinion of the Judicial Committee in Khwaja Nazir Ahmad's case (supra). What, however, seems to have been missed is the fact that the Privy Council spelt out no absolute rule of barring the jurisdiction of the High Court altogether at the investigative stage as is manifest from the notable exception carved out as under :--

".....No doubt, if no cognizable offence is disclosed and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation and for this reason Newsam, J, may well have decided rightly in AIR 1938 Mad 129. But that is not this case."

It deserves highlighting that in Khwaja Nazir Ahmad's case (supra), the first information report clearly spelt out an offence under S. 409, I.P.C. and possibly also one against S. 420, I.P.C. Clearly enough, the case was not one where the investigation did not raise a reasonable suspicion of the commission of cognizable offence. The case, In re: T. Tirumali Mudaliar AIR 1938 Madras 128, approvingly

referred to by their Lordship pertained to a private complaint filed in the court of a Magistrate and is thus not directly in aid of the point at issue. Nevertheless, Newsam, J. whilst quashing the complaint had observed as follows:--

"...Since prevention is always better than cure, the obligation to prevent specious and spiteful criminal prosecutions for action which, though strictly dishonorable, yet do not amount to crimes, is one that must never be shirked..."

12. From the analysis of the aforesaid precedents it would appear that the subsequent decisions of the final Court have not overridden the ratio in Saral Beopar Association's case 1970 Cri LJ 720 (Punjab) (supra). I am therefore, unable to find that either the statutory provisions or the binding precedents in any way place a blanket bar against the quashing of proceedings by the High Court in its inherent jurisdiction at the investigative stage or to place the later process beyond the pale of judicial scrutiny.

34. The ingredient of every offence is prescribed by the statute itself. As such, where the critical ingredient of an offence is not spelt out in the complaint itself, High courts have consistently struck down the very F.I.R. by holding that an investigation cannot begin until and unless the essential ingredients of an offence are spelt out in the complaint itself. As an instance, a decision of the Bombay High Court in the case of *Ravindra Ganesh Umale v. State of Maharashtra* [MANU-MH-580-2007] may be noted. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 renders as an offence certain actions committed against any member of a Scheduled caste or a

Scheduled tribe if and only if, the person committing the atrocity is not a member of any Scheduled caste or Scheduled tribe. In the instant case, the complainant alleged that a certain individual abused him in the public square saying “*You Chambardya and you will not be allowed live*”. The police registered an F.I.R. under Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. It was contended on behalf of the police that the task of determining the caste of the accused or even of the complainant is fairly simple and that the same could be detected in the course of the investigation. As such, the police had contended that the decision of the Supreme Court which had held that an ‘F.I.R. need not be encyclopedic’ was applicable to the instant case and that the investigation should be permitted to detect the missing particulars. Rejecting the said argument, the High Court held that the ratio of the Supreme Court decision was not that an investigation should begin even when a complaint does not lay down the legally critical detail.

35. This case is cited for the proposition that the argument of the Police that the FIR need not be encyclopedic is wholly misconstrued in relation to the facts of this case. The Hon’ble Bombay High Court held in this case that the Supreme Court had merely ruled that an F.I.R. need not itself act as a complete reference to all the evidence in support of the allegation in the complaint. In striking down the said F.I.R, the High Court observed and held that:

6. On this subject, this Court has rendered decision in the following cases.

*(1) Criminal Writ Petition No. 49/2001 at Aurangabad.
(Anant Vasantlal Sambre v. State of Maharashtra)*

(2) 2005 (4) MhLj 588 (Manohar s/o Martandrao Kulkarni and Anr.)

(3) 2006 ALL MR (Cri) 787 Madanlal Pardeshi v. State of Maharashtra)

(4) Bai @ Laxmibai w/o Nivratti Poul v. State of Maharashtra 2001 ALL MR (Cri.) 219. The Division Bench in Anant Vasantlal Sambre's case makes following observations

6. The report, which is filed by the petitioner at the police Station, mentions that the petition belongs to Hindu Khatik caste, which is a Scheduled caste. However, in the report, it is nowhere mentioned that the person against whom the complaint is made viz Shri Kailash Gorantyal, does not belong to Scheduled caste or Scheduled tribe. The opening words of Section 3 of the said Act are like this:

Whoever, not being a member of Scheduled caste or Scheduled Tribe....

7. Shri R.M.S.Khandeparkar, J. in Laxmibai's case observes thus-

8. However, there is considerable substance in the second ground of challenge by the learned Advocate for the applicants i.e. the F.I.R. nowhere discloses the caste of the complainant. Indeed, the perusal of the F.I.R. discloses that the complainant has nowhere

stated anything about his caste to which he belonged to. There is no doubt that the format under Section 154 of Cr.PC filled in by the Police authorities does disclose that the complainant is of Mahar caste. It is, however, not known as to from where this information was acquired by the police authorities to record the same in the format under Section 154 of Cr.PC. The format prescribed under Section 154 by itself does not provide for any need for the complainant to disclose his caste. At the same time, the statement lodged by the complainant also does not disclose the caste of the complainant. Once it is apparent on the face of the provisions contained in Section 3 as well as Section 7 of both the Statutes referred to above, that in order to constitute an offence on the part of the person to be an offence within the meaning of those sections, the insult or intimidation has to be addressed to a member of the Scheduled Castes. It is nobody's case that the complainant belongs to any Scheduled Tribes. In the absence of any such information, therefore, as rightly submitted by the learned Advocate for the applicants, there was absolutely no material before the police authorities to invoke powers under Chapter XII of the Cr.PC and to commence investigation considering the complaint to be a cognizable complaint.

9. The Apex Court in Manoj @ Bhau and Ors. v. State of Maharashtra 1687 (S.C.), has observed that F.I.R. is not an encyclopedia of events but at the same time it is held that what is required to be stated therein is basic prosecution case. Unless the F.I.R. discloses the basic requirement of law which can enable the Police

authorities to initiate investigation by considering the allegations to be in the nature of cognizable one, the applications are certainly justified in making grievance about initiation of the investigation on the basis of F.I.R. which does not disclose such information which can empower the police to investigate in terms of provisions contained in Chapter XII of Cr.PC The F.I.R. in the case in hand, being not disclosing the basic ingredients of Section 3 or 7 of the above Statutes, there was absolutely no case for the police authorities to initiate investigation under Chapter XII of Cr.PC

8. In Manohar Kulkarni's case 2005 ALL MR (Cri) 2602, the following observations are made

11. In my view, after the passing of the aforesaid two judgments, holding that there can be no registration of a crime under the Atrocities Act, or investigation as regards the said crime, if the caste of the complainant and/or the accused is not contained in the body of the F.I.R., all investigations and further court proceedings on the basis of such investigations, cannot be maintained in law. Such First Information Reports and Court proceedings on the basis of crimes registered on the basis of such First Information Reports will, therefore, have to be quashed and set aside.

10. The plain reading of the Section makes it clear that the offence alleged is a offence committed as against a member of a Scheduled Castes by the person who do not belong to members of a Scheduled Castes, then the F.I.R. must disclose that the offence committed by

the members, who do not belong to a Scheduled Castes and the offence is committed against a member of a Scheduled Caste. In the complaint of the matter in hand, the complainant/informant disclosed her caste and there is no dispute that she is a member of a Scheduled Caste. However, in the complaint, there is no whisper as regards the caste of the offenders including the present applicant saying that the offenders are not the members of a Scheduled castes, unless the specific allegations are set out in the complaint it cannot be presumed that the offenders were not the members of a Scheduled caste.

11. This Court in the case of Manohar s/o Martandrao Kulkarni and Anr. v. State of Maharashtra and Ors. reported in 2005 (4) Mh.L.J. : 2005 ALL MR (cri) 2602, took the view that where the caste of the complainant and/or the accused is not contained in the body of the F.I.R., there can be no registration of a crime under the Atrocities Act and all investigations and further court proceedings on the basis of such F.I.R., cannot be maintained in law. Such First Information Reports and Court proceedings on the basis of crimes registered on the basis of such First Information Reports will, therefore, have to be quashed and set aside. The present case is squarely covered by the said decision. In the present case, the F.I.R. does not disclose the offence under Section 3(1) (x) and 3(1) (xi) of the Atrocities Act, therefore, registration of the crime under the said Sections of the Atrocities Act is illegal and, therefore, to that extent, the said F.I.R. needs to be quashed...

12. This Court, therefore, in plethora of cases laid down a proposition that no offence could be registered, investigated under Section 3 of the Atrocities Act if caste of either is not mentioned in body of F.I.R.

13. In spite of so many decisions, the learned Counsel for respondent No. 2 contended that the law as laid down cannot be said to be correct. He contended that once a report is lodged, the police must be allowed to investigate into the crime and the court cannot stifle or gag the investigation. He contended that it is not necessary that minutest details should be given in F.I.R. It is enough if details disclose offence. He contended that the question as to whether the accused belongs to Scheduled caste or non-Scheduled Caste is a thing which can be taken care of during investigation.

14. It is for this reason, he contended that the Police machinery must be allowed to investigate into the crime. He submitted that it is the exclusive domain of the police machinery to determine if the offence is prima facie made out. It is also contended that, therefore, the Criminal Procedure Code has made provisions of two sections i.e. Section 169 and 173. If the police Officer himself finds that there is no reason to proceed, he can seek discharge under Section 169 or file B summary under Section 173 of Cr.PC or even a charge-sheet. He contends, therefore, that the court cannot usurp the power vested in the Investigating Officer or it cannot curtail his power. The contention of Shri Kaptan, learned Counsel, is not correct. If the information as given itself does not disclose any offence, the Police Officer cannot proceed to register the crime at all. What is necessary,

therefore, is that the information must be such that it should be intelligible. If the information as laid does not disclose the ingredients of offence, the Police Officer has no right to register an offence under that Section. The question of gagging or stifling would arise only when it is shown that all ingredients are disclosed and yet the Police Officer is not allowed to register the crime and proceed to investigate. Even the authorities which are cited on behalf of the petitioner clearly hold that if the caste of both complainant and accused is mentioned, there is no difficulty in registering the offence and proceed to investigate. It is because when caste is disclosed that the offence is made out. It is for this reason, the decisions have been quoting the very opening words of Section 3 of the Prevention of Atrocities Act which say that 'whoever not being a member of a Scheduled Caste or a Scheduled Tribe '. Thus whoever commits the offence must not be a member of the Scheduled Caste and the victim must also be alleged to be belonging to Scheduled Caste or a Scheduled Tribe. If caste of neither of the persons or anyone is not disclosed, *prima facie* it would not disclose an offence at all. It would however, be different if the police machinery defers registration of the crime under Section 3 till such time it collects the necessary material and then registers the offence. But on the basis of a report which does not contain caste both or either, it certainly cannot.

15. The learned Counsel for the respondent No. 2 had relied on a decision of the Supreme Court reported in 2006 (3) Crimes 203 (SC) (State of Karnataka and Anr. v. Pastor P. Raju). It is observed as follows

There is another aspect of the matter which deserves notice. The FIR in the case was lodged on 15.1.2005 and the petition under Section 482 Cr.PC was filed within 12 days on 27.1.2005 when the investigation had just commenced. The petition was allowed by the High Court on 23.2.2005 when the investigation was still under progress. No report as contemplated by Section 173 Cr.PC had been submitted by the in charge of the police station concerned to the Magistrate empowered to take cognizance of the offence. Section 482 Cr.PC saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any Court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence. This question has been examined in detail in Union of India v. Prakash P. Hinduja and Anr. 2003 CriLJ 3117, where after referring to King Emperor v. Khwaja Nazir Ahmad, H.N. Rishbud & Inder Singh v. The State of Delhi 1955 CriLJ 526, State of West Bengal v. S.N. Basak [1963] 2 SCR 52, Abhinandan Jha and Ors. v. Dinesh Mishra 1968 CriLJ 97 and State of Bihar and Anr. v. JAC Saldanha and Ors. 1980 CriLJ 98, it was observed as under in para 20 of the reports:

20. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which

would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police Station in court under Section 173(2) Cr.PC, this field being exclusively reserved for the investigating agency....

16. Power cannot be used to interfere with the statutory power of Police to investigate. In the cases as have been discussed above and cited by the petitioner, the court has held that if an offence itself is not disclosed when castes are not mentioned and when such offence is not disclosed registration of F.I.R. is not legal. Therefore, if F.I.R. does not disclose offence under the Act, the police have no right to register the F.I.R. and consequently to investigate. The investigation could not be stifled when the offence is disclosed and the ingredients of offence are made out in F.I.R. The ratio in Pester P.Raju's case can be applied when ingredients of offences are disclosed in F.I.R. and the F.I.R. is sought to be quashed. The Supreme Court does not say that even when no offence is disclosed in F.I.R. that must be investigated. Here, the ratio of this case cannot be applied to the facts of the present case. The petition, therefore, must be allowed and the F.I.R. to the extent of registration of crime under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act must be quashed. Order accordingly.

Mala fide nature of the complaint

36. It is respectfully submitted that Nithyananda Swami, in his status as a religious Practitioner, has received

unprecedented, unrivaled and unparalleled fame amongst his contemporaries. A selective, but a short list of the recognition accorded to Nithyananda Swami in his status as a religious practitioner is separately produced to this Hon'ble Court in a book form.

37. It is respectfully submitted that the accomplishment of Nithyananda Swami at the age of 32 years has come in for severe hatred and resentment from certain vested interests in India and abroad. Several individuals have made it a lifelong commitment of theirs to disrupt the growth and advancement of Nithyananda Swami. Because Nithyananda Swami preaches the path of self-reliance and self-sufficiency, the producers and marketers of a number of nonessential products have chosen to retaliate against Nithyananda Swami for reduced demand for their products by his devotees who run into several million across the world. Further, Nithyananda Swami preaches to his devotees, an equal respect for all religion and the same is severely objected to by religious zealous who wish to create hatred and enmity between the followers of different religions. Further, the fact that several Chief Ministers were publicly seen as devotees of Nithyananda Swami had led to an unfortunate situation where a number of politicians constantly asked Nithyananda Swami for political recommendations. A steadfast refusal by Nithyananda Swami to accede to the demand of such political class has given rise to severe resentment from certain political interests. As such, the complaint by Lenin is nothing but an act of vendetta against Nithyananda Swami for not adhering to the selfish and private demands of a few vested political interests.

38. It is further submitted, respectfully, that the massive audience to Nithyananda Swami had resulted in a situation where a number of leading television channels demanded exclusive right to telecast his preaching. A steadfast refusal by Nithyananda Swami to grant exclusive rights to any television channel had severely antagonized and enraged certain leading television channels to hatch a conspiracy against him and to reward conspiracies hatched by others against him.
39. The Hon'ble Supreme Court has often observed that a veiled attempt to implicate an individual entitles such individual to invoke Section 482 of the Code of Criminal Procedure, 1973 for the purpose of preserving his liberty. In the case of *State of Karnataka v. L. Muniswamy* [1977 (2) SCC 699], the Hon'ble Supreme Court held as under:

7. ...In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made

by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.

40. In *State of Maharashtra v. Arun Gulab Gawali* [Yet to be reported; Date of Decision: 27-Aug-2010; Case No: Criminal Appeal No 590 of 2007], the Hon'ble Supreme Court has ruled that the instances cited in the celebrated case of *State of Haryana v. Bhajan Lal* were merely illustrative and not exhaustive. The Supreme Court has held, in the said case that the power of a High Court to protect the liberty of a citizen, in exercise of its inherent power under Section 482 of the Code of Criminal Procedure, 1973 is not limited by illustrations in prior cases.

14. In State of Haryana & Ors. v. Ch. Bhajan Lal & Ors. [AIR 1992 SC 604], this Court laid down the similar guidelines for exercising the inherent power, giving types of cases where the Court may exercise its inherent power to quash the criminal proceedings. However, the types of cases mentioned therein do not constitute an exhaustive list, rather the cases are merely illustrative.

41. In the above case, the Supreme Court affirmed a decision of the Bombay High Court wherein the Bombay High Court had quashed all criminal proceedings against one Arun Gulab Gawai by taking note of the fact that the complainant before the Police had himself turned against

the Police and had consistently alleged, soon after the giving of the complaint, that the Police had coerced the complainant to make such a complaint.

42. It was argued before the Supreme Court that the offence of extortion involved in that case was of such public interest that investigation should not have been quashed by the High Court merely because the principal witness for the Police had himself turned against the Police. It was specifically argued before the Supreme Court that:

25...The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/Complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Sessions is empowered to discharge an accused under Section 227 Cr.PC even before initiating the trial. The accused can, therefore, move the Trial Court itself for such a relief and the Trial Court would be in a better position to analyse and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction under Section 482 Cr.PC for the quashing of a prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial. The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion.

A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is leveled against the police. If the prosecution is quashed, then neither the Trial Court nor the Investigating Agency has any opportunity to go into this question, which may require consideration. The State is the prosecutor and all prosecution is the social and legal responsibility of the State. An offence committed is a crime against a society and not against a victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.

43. However, the Supreme Court disagreed with the Government and dismissed the appeal filed by the Government. The above case is cited for the proposition that where the conduct of the Police in a given case leads to genuine or probable suspicion, the continuation of investigation itself could be quashed by a High Court in exercise of its inherent power under Section 482 of the Code of Criminal Procedure, 1973.

44. In *R.P. Kapur v. State of Punjab* [AIR 1960 (1) SC 866], the Hon'ble Supreme Court laid down the following grounds for the exercise by a High Court of its inherent power under Section 482 of the Code of Criminal Procedure, 1973:

(I) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process

of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(II) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(III) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(IV) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

45. In the case of *State of West Bengal v. Swapan Kumar Guha*, [1982 (1) Cri.LJ 819] the Hon'ble Supreme Court upheld the decision of the High Court of Calcutta which had quashed an FIR by "*directing the State Government and its concerned officers to forthwith recall, cancel and withdraw the First Information Report...and all proceedings taken on the basis thereof*". The High Court had further held that searches, seizures and arrests made in pursuance of the said F.I.R. were illegal and without jurisdiction. The High Court had also directed that the books, documents and moneys seized during the search be returned to the firm and its partners, including a sum of Rs. 52,11,930.
46. This case is cited for the proposition that a High Court in exercise of its inherent power, could be compelled, by the ends of justice, to enter into complex questions of law in

order to determine whether an allegation that may appear to be well founded on a plain reading of a statute could still survive when scrutinized in light of the true meaning and scope of the relevant statute. And that, when a complaint fails to survive an in-depth analysis of the statute, an investigation based on such a complaint deserves to be quashed.

3. The short question for consideration in these appeals by special leave is whether the F.I.R. lodged by the Commercial Tax Officer, Bureau of Investigation, against the firm and its partners discloses an offence under S.3 of "The Prize Chits and Money Circulation Schemes (Banning) Act", 43 of 1978. The Act, which was passed by the Parliament, came into force on Dec. 13, 1978 and the two years' period allowed by S.12 for winding up every kind of business relating to Prize Chits and Money Circulation Schemes expired on Dec. 12, 1980. The F.I.R., which was lodged the next day on Dec. 13, reads thus:

"To

The Deputy Superintendent of Police,

Bureau of Investigation,

10, Madan Street,

Calcutta-72.

Sir,

On a secret information that 'Sanchaita Investments' of 5-6, Fancy Lane, Calcutta, is carrying on business or promoting and/or conducting prize chit and/or money circulation scheme enrolling members of such chit and/or scheme, participating in those, and/or receiving and remitting monies in pursuance of such chits and/or scheme in violation of the provisions of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, inquiry was held secretly to verify correctness or otherwise of the aforesaid secret information. Enquiry reveals that the said Sanchaita Investments' is a partnership firm, partners being Shri Bihari Prasad Murarka, Shri Sambhu Mukherjee and Shri Swapan Kumar Guha and that it was floated in or around 1975. Enquiry further reveals that the said firm had been offering fabulous interest @ 48% per annum to its members until very recently.

The rate of interest has of late been reduced to 36% per annum. Such high rates of interest were and are being paid even though the loan certificate receipts show the rate of interest to be 12% only. Thus, the amount in excess of 12% so paid clearly shows that the 'Money Circulation Scheme' is being promoted and conducted for the making of quick and/or easy money. Prizes and/or gifts in cash were and are also awarded to agents, promoters and members too.

In view of the above, Sarvashri Bihari Prasad Murarka, Sambhu Mukherjee and Swapan Kumar Guha appear to have been carrying on business in the trade name of 'Sanchaita Investments' in prize chits and money circulation scheme in violation of S.3 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and are therefore,

punishable under S.4 of the said Act. Necessary action may therefore, be kindly taken against the aforesaid offenders along with other accomplices as provided in the law.

Yours faithfully,

Sd/-

Commercial Tax Officers,

Bureau of Investigation."

The issue before the Supreme Court was stated in the following words:

3. The short question for consideration in these appeals by special leave is whether the F.I.R. lodged by the Commercial Tax Officer, Bureau of Investigation, against the firm and its partners discloses an offence under Section 3 of "The Prize Chits and Money Circulation Schemes (Banning) Act", 43 of 1978. The Act, which was passed by the Parliament, came into force on December 13, 1978

47. Holding that "A First Information Report which does not allege or disclose that the essential requirements of the penal provision are *prima facie* satisfied, cannot form the foundation or constitute the starting point of a lawful investigation", the Hon'ble Supreme Court upheld the decision of the High Court to quash the FIR and to direct return of monies seized pursuant to investigation. The Hon'ble Supreme Court held that:

5. Since the sole question for consideration arising out of the F.I.R., as laid, is whether the accused are conducting a money circulation scheme, it is necessary to understand what is comprehended within the statutory meaning of that expression, S.2(c) of the Act provides:

"Money circulation scheme' means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions."

Grammar and punctuation are hapless victims of the pace of life and I prefer in this case not to go merely by the commas used in cl.(c) because, though they seem to me to have been placed both as a matter of convenience and of meaningfulness, yet, a more thoughtful use of commas and other gadgets of punctuation would have helped make the meaning of the clause clear beyond controversy. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. I therefore consider it more safe and satisfactory to discover the true meaning of cl.(c) by having regard to the substance of the matter as it emerges from the object and purpose of the Act, the context in which the expression is used and the consequences necessarily following upon the acceptance of any particular interpretation of the provision, the contravention of which is visited by penal consequences.

6. Commas or no commas, and howsoever thoughtfully one may place them if they are to be there, I find it impossible to take cl.(c) to mean that any and every activity "for the making of quick or easy money" is comprehended within its scope. For the matter of that, I cannot believe any law to ban every kind of activity for making quick or easy money, without more, on pain of penal consequences. It is far too vague and arbitrary to prescribe that "whosoever makes quick or easy money shall be liable to be punished with fine or imprisonment". For then, in the absence of any demarcation of legitimate money-making activities from those which fall within the ban, the question whether the penal provision is attracted in a given case will depend upon the will and temper, sweet or sour, of the magistracy. Besides, speaking of law and morals, it does not seem morally just or proper to say that no person shall make quick or easy money, especially quick. A person who makes, quick money may do so legitimately by the use of his wits and wisdom and no moral turpitude may attach to it. One need not travel afar to find speaking examples of this. Indeed, there are honourable men (and now women) in all professions recognised traditionally as noble, who make quite quick money by the use of their talents, acumen and experience acquired over the years by dint of hard work and industry. A lawyer who charges a thousand rupees for a Special Leave Petition lasting five minutes (that is as far as a Judge's imagination can go), a doctor who charges a couple of thousands for an operation of tonsillitis lasting ten minutes, an engineer, an architect, a chartered accountant and other professionals who charge likewise, cannot by any stretch of imagination be brought into the drag-net of cl.(c).

Similarly, there are many other vocations and business activities in which, of late, people have been notoriously making quick money as, for example, the builders and real estate brokers. I cannot accept that the provisions of cl.(c) are directed against any of these categories of persons. I do not suggest that law is powerless to reach easy or quick money and if it wills to reach it. it can find a way to do it. But the point of the matter is that it will verge upon the ludicrous to say that the weapon devised by law to ban the making of quick or easy money is the provision contained in S.2(c) of the "Prize Chits and Money Circulation Schemes (Banning) Act".

7. In order to give meaning and content to the definition of the expression 'money circulation scheme' which is contained in S.2(c) of the Act, one has, therefore, to look perforce to the adjectival clause which qualifies the words "for the making of quick or easy money". What is within the mischief of the Act is not "any scheme, by whatever name called, for the making of quick or easy money" simpliciter, but a scheme for the making of quick or easy money, "on any event or contingency relative or applicable to the enrolment of members into the scheme", (whether or not such money or thing is derived from the entrance money of the members of such scheme or their periodical subscriptions). Two conditions must, therefore, be satisfied before a person can be held guilty of an offence under S.4 read with Ss.3 and 2(c) of the Act. In the first place, it must be proved that he is promoting or conducting a scheme for the making of quick or easy money and secondly, the chance or opportunity of making quick or easy money must be shown to depend upon an event or contingency relative

or applicable to the enrolment of members into that scheme. The legislative draftsman could have thoughtfully foreseen and avoided all reasonable controversy over the meaning of the expression 'money circulation scheme' by shaping its definition in this form

'money circulation scheme' means any scheme, by whatever name called,

- (i) for the making of quick or easy money, or*
- (ii) for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions; I have reshaped the definition, in order to bring out its meaning clearly, without adding or deleting a single word or comma from the original text of S.2(c). The substance of the matter is really not in doubt : only the form of the definition is likely to create some doubt as to the meaning of the expression which is defined and, therefore, I have made a formal modification in the definition without doing violence to its language and indeed, without even so much as altering a comma.*

9. Numerous persons lend their hard earned monies in the hope of earning high returns. It is notorious that, eventually, quite a few of them lose both the principal and the interest, for no project can succeed against the basic laws of

economics. Sharp and wily promoters pay A's money to B and B's to C in order to finance interest at incredible rates; and eventually, when a high-risk investment made by them at the cost of the credulous lenders fails, the entire arrangement founders on the rock of foolish optimism. The promoters of course, have easy recourse to gadgets of the law of insolvency. It is difficult to hold that the lender, himself a victim of the machinations of the crafty promoter, is intended by the Act to be arraigned as an accused. I do not think that any civilised law can intend to add insult to injury.

10. The question as to whether the First Information Report prima facie discloses an offence under S.4 read with S.3 of the Act has to be decided in the light of these requirements of S.2(c) of the Act. I have already reproduced in extenso the F.I.R. lodged by the Commercial Tax Officer, Bureau of Investigation. Analysing it carefully, and even liberally, it makes the following allegations against the firm 'Sanchaita Investments' and its three partners :

(1) The firm had been offering fabulous interest @ 48% per annum to its members, which rate of interest was later reduced to 36% per annum;

(2) Such high rate of interest was being paid even though the loan certificate receipts show that interest was liable to be paid at the rate of 12% per annum only; and

(3) The fact that interest was paid in excess of 12% shows clearly that a 'Money Circulation Scheme' was being

promoted and conducted for the making of quick or easy money.

It seems to me impossible to hold on the basis of these allegations that any offence can be said to be made out prima facie under S.3 of the Act. In the first place the F.I.R. does not allege, directly or indirectly, that the firm was promoting or conducting a scheme for the making of quick or easy money, dependent on any event or contingency relative or applicable to the enrolment of members into the scheme. Secondly, the F.I.R. does not contain any allegation whatsoever that persons who advanced or deposited their monies with the firm were participants of a scheme for the making of quick or easy money, dependent upon any such event or contingency. The F.I.R. bears on its face the stamp of hurry and want of care. It seems to assume, what was argued before us by Shri Som Nath Chatterjee on behalf of the prosecution, that it is enough for the purposes of S.2(c) to show that the accused is promoting or conducting a scheme for the making of quick or easy money, an assumption which I have shown to be fallacious. An essential ingredient of S.2(c) is that the scheme for making quick or easy money must be dependent on any event or contingency relative or applicable to the enrolment of members into the scheme. A First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation.

13. It is clear from these averments that even at the stage when the State of West Bengal and its concerned officers submitted detailed affidavits to the High Court, there was

no clear basis for alleging and no material was disclosed to show that, prima facie, the firm was promoting or conducting a scheme for making quick or easy money which was dependent upon an event or contingency relative or applicable to the enrolment of members into that scheme. The burden of the State's song is that the scheme conducted by the accused generates black money and will paralyse the economy of the country. These are serious matters indeed and it is unquestionable that a private party cannot be permitted to issue bearer bonds by the back door. The fact that the accused are indulging in an economic activity which is highly detrimental to national interests is a matter which must engage the prompt and serious attention of the State and Central Governments. But the narrow question for our consideration is whether on the basis of the allegations made against the accused, there is reason to suspect that they are guilty of an offence under S.4 read with Ss.3 and 2(c) of the Act. The allegation which we have reproduced in cl.(ix) above from the affidavit of Arun Kanti Roy is the nearest that can be considered relevant for the purposes of S.2(c) of the Act. But even that allegation does not meet the requirement of that section since, what it says is that "the payment of quick and easy money by way of high rate of interest is dependent upon the period of investment and/or efflux of time which are very much relative and/or applicable to the membership of the depositors of the scheme to which the depositor agrees to subscribe". This is too tenuous to show that the scheme is dependent upon an event or contingency of the description mentioned in S.2(c), apart from the fact that the only participation which is alleged as against the depositors is that they become

members of the "investment scheme" by subscribing to it. There is no allegation even in any of the affidavits filed on behalf of the State of West Bengal and its concerned officers that the depositors and the promoters are animated by a community of interest in the matter of the scheme being dependent upon any event or contingency relative or applicable to the enrolment of members into it. That being an essential ingredient of the offence charged, it cannot be said in the absence of any allegation whatsoever in that behalf, that there is "reason to suspect" the commission of that offence within the meaning of S.159 of the Criminal P.C., so as to justify the investigation undertaken by the State authorities.

21. The position which emerges from these decisions and the other decisions which are discussed by Brother A.N. Sen is that the condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmed will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be

justified in quashing the investigation on the basis of the information as laid or received.

22. There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code. I may, in this behalf, usefully draw attention to the warning uttered by Mathew J. in his majority judgement in Prabhu Dayal Deorah v. The District Magistrate, Kamrup, (1974) 2 SCR 12 at pp. 22-23 : (AIR 1974 SC 183 at p. 199), to the following effect : "We say, and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. Observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law."

60. It is the contention of Mr. Sen that even if all these allegations which are there in the F.I.R. and also in the other materials which have been placed before the Court are accepted to be correct, the said allegations do not go to show that the firm is conducting a money circulation scheme and do not disclose any offence under the Act. Mr. Sen in

this connection has commented that though in the F.I.R. it has been alleged that the firm is carrying on business of promoting Prize Chits, no such case was sought to be made out before the learned Judge or before this Court and there are no allegations or materials to show that the firm is carrying on business of promoting prize chits; and the only case that has been sought to be made before the trial Court and also this Court is that the firm is carrying on business of conducting or promoting money circulation scheme ... there must be a scheme for the receipt of any money or valuable thing as the consideration for promise to pay money on any event or contingency relative or applicable to the enrolment of members into a scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or from... Mr. Sen submits that neither F.I.R. nor any of the other materials go to show that the business carried on by the firm is, in any way, in the nature of conducting or promoting a money circulation scheme. In this connection Mr. Sen has drawn our attention to the statement of objects for the passing of this enactment. Mr. Sen has further submitted that this enactment which is in the nature of penal one has to be construed in the event of doubt or ambiguity in a manner beneficial to the party against whom any accusation is made.

64. ... Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any

individual are sacred and sacrosanct and the Court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interest of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. The decisions on which Mr. Chatterjee has relied are based on this sound principle, and in all these cases, an offence had been disclosed. Relying on the well-settled and sound principle that the Court should not interfere with an investigation into an offence at the stage of investigation and should allow the investigation to be completed, this Court had made the observations in the said decisions which I have earlier quoted reiterating and reaffirming the sound principles of justice. The decisions relied on by Mr. Chatterjee, do not lay down, as it cannot possibly be laid down as a broad proposition of law that an investigation

must necessarily be permitted to continue and will not be prevented by the Court at the stage of investigation, even if no offence is disclosed. While adverting to this specific question as to whether an investigation can go on even if no offence is disclosed, the Judicial Committee in the case of King Emperor v. Khwaja Nizam Ahmed (AIR 1945 PC 18) (supra) and this Court in R.P. Kapur v. State of Punjab (AIR 1960 SC 866) (supra), Jehan Singh v. Delhi Administration (AIR 1974 SC 1146) (supra), S.N. Sharma v. Bipen Kumar Tiwari (AIR 1970 SC 786) (supra) have clearly laid down that no investigation can be permitted and have made the observations which I have earlier quoted and which were relied on by Mr. Sen. As I have earlier observed this proposition is not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed, cannot be put to any harassment by the process of investigation which is likely to put his personal liberty and also property which are considered sacred and sacrosanct into peril and jeopardy.

78. As I have earlier noticed the materials in the instant case do not disclose any element of chance in the matter of business carried on by the firm....

81. As no offence under the Act is at all disclosed, it will be manifestly unjust to allow the process of criminal code to be issued or continued against the firm and to allow any investigation which will be clearly without any authority.

83. I, therefore, hold that the proceedings against the firm and its partners arising out of the F.I.R. must be quashed as the F.I.R. and the other materials do not disclose any

offence under the Act and as such no investigation into the affairs of the firm under the Act can be permitted or allowed to be continued. I, accordingly, quash the proceedings against that firm and its partners and order that no investigation under the Act into affairs of the firm is to be carried on or continued.

48. In the case of *State of U.P v. R.K. Srivastava* [1989 (4) SCC 59], the Hon'ble Supreme Court has held that even where extensive detail is made available in a complaint, the lack of a specific allegation may render such complaint as 'invalid' in the eyes of the law.
49. Their case is cited for the proposition that even where a complaint is detailed and contains extensive information about the activity of the accused, a specific allegation ought to be present in the complaint so as to afford the registration of an FIR.
50. In the said case, the Hon'ble Supreme Court held:-

1...In quashing the proceedings in the exercise of its jurisdiction under Section 482 CrPC, the High Court took the view that allegations made in the first information report (FIR) did not constitute any offence. In order to appreciate the view of the High Court, it is necessary to refer to the FIR which reads as follows:

“An information has been received that Shri P.C.Saxena and Shri Ram Kumar Srivastava while posted and functioning as Accountant and Clerk-cum-Godown Keeper in the State Bank of India, Agriculture

Development Branch, Budaun, respectively entered into a criminal conspiracy with Shri Sarwant Singh and his wife Smt.Rajwant Kaur, Props. of M./s National Mill Store, Budaun, during the month of June 1982 to cheat the State Bank of India, Budaun, and in pursuance of the said criminal conspiracy an amount of Rs.54,600 was withdrawn on the basis of false credit entry made in the books of accounts of the Bank and connected credit and debit vouchers were also prepared and passed by the accused employees of the Bank and payment were made to the accused persons, namely, Shri Sarwant Singh and Smt.Rajwant Kaur who tendered cheque No.348459 dated May 2, 1982 for Rs.18,600, cheque No.348482 for Rs.19,200 (dated June 2, 1982) and cheque no.502206 dated June 2, 1982 for Rs.16,800 = Rs.54,600.

The above facts constitute offence punishable under Sections 120-B, 420, 468, 471 IPC and 5(2) read with 5(1)(d) of Prevention of Corruption Act, 1947.

A regular case is therefore registered and its investigation is entrusted to Shri V.P.Arya, Inspector of this establishment.

2. According to the FIR, as against three cheques of the aggregate amount of Rs.54,600, presumably of three different Banks, a credit entry was made in the accounts of M/s. National Mill Stores Co., Budaun, and M/s. New Manufacturing Co., Budaun, and their partners, Sardar Sarwant Singh and his wife Smt. Rajwant Kaur, in the State

Bank of India and the said sum of Rs.54,600 was allowed to be withdrawn by them by the respondent and the accused P.C. Saxena.

3. The allegations in the FIR appear to be vague and although it is alleged that the respondent and the accused P.C. Saxena made false credit entries in the books of accounts of the Bank and connected credit and debit vouchers were also prepared and passed by them, no particulars of the same have been given.

5. The question is whether the facts disclosed in the FIR constitute the offences with which the accused have been charged. It is manifestly clear from the allegations in the FIR that the respondent or the other accused had no intention whatsoever to make any wrongful gain or to make any wrongful loss to the Bank. They had accepted the said three cheques amounting to Rs.54,600 and sent the same for clearance after debiting the LOC account. The said cheques have been encashed and the money was received by the State Bank of India. It may be that there was some delay in crediting the LOC account or that the money against the three cheques were credited in the accounts of the said Shri Sarwant Singh and his wife, but the allegations made either in the FIR or in the charge-sheet do not show that the respondent and the said P.C. Saxena had acted dishonestly, that is to say, acted with a deliberate intention to cause wrongful gain or wrongful loss. In our opinion, the High Court has rightly held that the allegations made in the FIR do not constitute any offence of cheating, nor do they constitute any offence of forgery.

7. The High Court has quashed the proceedings only as against the respondent No. 1, R.K. Srivastava. In our opinion, when the allegations in the FIR are the same against all the accused persons, the entire proceedings as against all the accused persons including the said P.C. Saxena and the said Shri Satwant Singh should be quashed.

8. Accordingly, while we uphold the judgment of the High Court, we quash the entire criminal proceedings being Crime Case No. 40 of 1983 also as against the accused P.C. Saxena and Shri Sarwant Singh. The appeals are disposed of as above.

The significance of the ‘signature requirement’ under Section 154 of the Code of Criminal Procedure, 1973

51. Section 154 of the Code of Criminal Procedure, 1973 says:

154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informants and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer Subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

52. As may be seen from the above, Section 154 of the Cr.PC refers to 'information'. The word 'information' carries a definite legal meaning. Such meaning cannot be equated to a 'mere casual belief'.
53. Furthermore, it should be noted that section 154 specifically states that the provider of the information should place his signature against the information he provides to the police. In other words, section 154 provides that where information is submitted in writing to the police officer, the same shall be signed by the person giving such information. And, in the event that a person orally provides information to the police officer, the police officer is required to reduce it into writing and to obtain the signature of the person who provided such information.
54. From a careful perusal of the abovementioned requirement of law, it becomes amply clear that the person providing information ought to take legal responsibility for such information. In the very nature of such a requirement, it

must be stated that a person cannot take responsibility for submitting a 'rumor', 'gossip' or 'hearsay' to the police. Thus, on this consideration alone, the complaint by K. Lenin ought to have been rejected by the police. Given the very nature of his complaint, Lenin cannot legally take any responsibility for the content of his complaint – he has himself seen nothing. And, it is respectfully submitted that it would be absurd to say that Section 154 of the Cr.PC allows a person to submit a mere 'gossip' to the police and so long as he takes responsibility for conveying such a gossip – such an argument would be inherently absurd. As such, it is respectfully submitted, in view of the 'signature and responsibility' requirement of Section 154 of the Cr.PC, the police were under a duty to reject the 'gossip' brought forth to them by Lenin.

55. Further, should the information provided under Section 154 turn out be false to the knowledge of the police, the police ought to have recourse to the individual concerned and prosecute him under section 182 of the Indian Penal Code. In the instant case, should the police discover for themselves that the information provided by Lenin is false and frivolous, they may very well hit a roadblock if Lenin could claim that the Police had a duty to reject his complaint if the same was not in accordance with the law. And that the police were under a legal duty to make their own examination of the complaint before registering an F.I.R. against the accused.
56. The failure of the police to so reject has occasioned grave injustice to the petitioner. The petitioner was held in custody and thereafter, in a prison, for a period of 53 days.

Unexplained Delay in the lodging of the FIR

57. It is admitted by the Petitioner that the legislature has not prescribed any time limit for taking cognizable of criminal offences except to the extent expressly provided for in the relevant penal statute. However, it has been well established judicially that a delay in the lodging of an FIR needs to be satisfactorily explained to the police and thereafter, to a court of law.
58. Further, Section 154 of the Code mandates that information provided to a police officer shall be entered in a register maintained for such purpose. The manner of record keeping is to be determined by each State Government. In furtherance of the same, the Governments of the States of Tamil Nadu and Karnataka have prescribed the format for an F.I.R. The format prescribed by the Government of Tamil Nadu is such that a separate column is maintained for the purpose of identifying and recording reasons for delay.
59. It is noteworthy that, against the column where the 'reason for delay' appears, the Tamil Nadu police have deliberately drawn a 'blank'. Similarly, the Karnataka police have deliberately chosen to not fill in the said information. The police in both the States have deliberately chosen to not subject Lenin to the minimum process of the law. Specifically, the Police have chosen to not subject Lenin to the following critical questions:
 - a) *the reason for not reporting immediately to the police, the gossip he learnt about commission of various*

offences by Nithyananda Swami, the petitioner; a delay of several months and in some cases, even of several years could not have been explained by Lenin at all and the Police, mindful of the same, have deliberately not probed Lenin on the answer to the FIR question – ‘reason for delay’.

b) the reason for not immediately providing a copy to the Police of the video he allegedly shot inside the bedroom of Nithyananda Swami. A delay of several months in this regard could not have been explained at all by Lenin and the Police, mindful of the same, have deliberately not probed Lenin on the answer to the FIR question – ‘reason for delay’.

60. Accordingly, the Police have chosen to not subject Lenin to even the most minimum requirement of the law for the sole purpose of saving him from incriminating himself. Instead, the Police have shown extraordinary enthusiasm to prosecute the petitioner and the petitioner was arrested in no time and condemned to prison thereafter, for a period of 53 days. Accordingly, by abandoning their most minimum role mandated by Section 154 of the Cr.PC, the police have failed in the due discharge of their duty and their failure has easily allowed Lenin to fabricate fictitious accounts and to pass off the same as ‘credible’ in the eyes of the law – to the complete detriment of the petitioner.

61. The Hon’ble Supreme Court, in the case of *Rabindra Mahto v. State of Jharkhand* [2006 (10) SCC 432], has extensively dealt with the issue of a delay in the making of a complaint to the police. It is submitted that, by applying the

principles laid down and endorsed in the said judgment; the delay in the making of the complaint by Lenin to the police is legally bound to invite ‘grave suspicion’. By observing that a delay in the lodging of an F.I.R. often results in embellishment, the Hon’ble Supreme Court noted:-

16. *In Meharaj Singh [1994 (5) SCC 188 :1994 SCC (Cri) 1391] (supra), this Court in Para 12 has stated as under (SCC pp.195-96):*

“FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story...”

62. Accordingly, the delay by Lenin is wholly fatal to his credibility in the eyes of the law. As such, the FIR drawn by the Police by attaching unwarranted credibility to the words of Lenin is therefore bad in law and deserves to be quashed.

**IN RELATION TO OFFENCE UNDER SECTION 295A OF
THE INDIAN PENAL CODE:**

63. Chapter 15 of the Indian Penal Code deals with offences relating to religion. The said chapter consists of 5 distinct provisions. Section 295A of Indian Penal Code reads as under:

Section 295A: Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs: *Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

64. As may be seen from a plain reading of the above provision, the essential ingredients of an offence under Section 295A are as under:

- a) the offender should act with a deliberate and malicious intention and the complaint should so specify;
- b) the deliberate and malicious intention should be to outrage the religious feelings of a class of citizens of India;

- c) such deliberate and malicious intention should be in the form of words, spoken or written or by signs or visible representation or may take any other form;
- d) the offender should aim at insulting or should have actually insulted the religion or the religious beliefs of a class of citizens of India;

65. A close analysis of the above provision makes it amply clear that no individual could be accused under this provision unless and until a complaint offers specific information on the basis of which one could form a prima facie opinion that the accused has acted with a deliberate and malicious intention.

66. However the more important aspect of this provision should be clearly noted. This provision is specifically aimed at protecting the religious feelings of any class of citizens. As such, a person who wishes to invoke the provision of Section 295A should act in his capacity as a member of a religious group. Accordingly, a person who complains of an offence u/s 295A is imposed by law with the following burden:

- a) that such a person is acting as a member of a class of citizens which holds a certain religious belief;
- b) that the religious feeling of such a class of citizens is not ignorant, blind or oblivious to the religious beliefs of a different class of citizens of India. Because the Constitution of India guarantees the free exercise of religion under Article 25 to every citizen, it is imperative

for any given religious group to readily acknowledge the different or even diametrically opposite beliefs of another class of citizens of India. As such, the reference in Section 295A is a reference to a religious class which is fully aware of and tolerant of the religious beliefs and practices of other groups in India. Unless such a constitutional safeguard is interpreted into Section 295A, the said provision could simply operate as 'rogues charter' and allow every religious zealot to claim that the action of an individual who does not subscribe to such a zealot's belief is an insult to the zealot's religious commandment and seek that the dissenter should be punished u/s 295A - punishment for a term of upto 3 years in prison for refusal to abide by another's religious commandment.

67. In other words, Section 295A is not meant to confer upon any member of a religion, a licence to prosecute any person who does not subscribe to the religious beliefs of the first person. Unless Section 295A is interpreted in this manner, it could simply wreak havoc on the free exercise of religion in this country. No Muhammedan could ever slaughter a cow even as part of a religious offering, for the simple fear of insulting the religious sentiment and belief of Hindus who hold a cow in reverence or as a sacred object. Similarly, no Hindu could ever publicly worship any idol for the simple fear of offending Muhammedans who do not subscribe to any form of 'idolatry'.
68. As such, for the proper application of Section 295A of the Indian Penal Code, a complainant is expected to act as a member of a class and should possess definite knowledge

of the religious beliefs of such class and should further possess definite knowledge of the religious beliefs of other class of citizens. Only after demonstrating, a reasonable awareness of diversity of religious belief, can any member of a religious class claim that the religious belief of his class has been outraged by the definite act of a named individual. Moreover, it is incumbent upon the complainant to also specify that the act of the accused does not constitute a legitimate expression of the accused's religious belief.

69. When the complaint lodged by Lenin on 04-Mar-2010 and which is the subject matter of Criminal Petition No 1231 of 2010 is perused, nowhere does the complaint specify the answer to the following particulars:
 - a) What is the class of religion to which the complainant or whoever else whose religious belief is insulted, belongs to?
 - b) What is the essential religious belief of such a class and what is the particular or specific religious belief that is claimed to be offended?
 - c) Whether the complainant is sufficiently aware of the religious beliefs of other class of citizens of India? Is any indication made to such effect?
 - d) Whether, in light of the awareness of the diversity of religious beliefs, the complainant alleges that the act of the accused is not a free exercise of the accused's own religion?

- e) Whether the complainant alleges that the accused has engaged in the alleged act for the purpose of deliberately and maliciously outraging or insulting the religious beliefs of the class to which the complainant belongs?
- f) If the complainant has indeed alleged as in e) above, what factual material has he furnished to the police in this regard? Whether the place, date and time of the alleged occurrence of the offence has been indicated in the complaint?

70. More specifically, Lenin's complaint fails each and every one of the tests stated above:

- a) Lenin has nowhere stated as to what is the religion to which he belongs;
- b) There is no reference whatsoever in the complaint as to the *'precise language employed by Nithyananda Swami'* for the alleged purpose of *'offending the religious feeling of whatever class Lenin belongs to'*.
- c) Similarly, there is no reference whatsoever in the complaint as *'to the place where such an offence is alleged to have taken place.'* Nithyananda Swami is known to travel around the world and the place of occurrence of such an offence has been nowhere stated in the complaint. It is well settled that countries of the world differ in relation to the freedom of expression and in relation to religious toleration.
- d) Similarly, there is no reference whatsoever in the complaint as to *'the date and time of such an offence'*

and the mode in which such an offence was made. Nithyananda Swami has authored more than several hundred books and has spoken for more than 9000 recorded hours. The absence of '*a date and time*' in the complaint will therefore leave no scope for any investigation by the Police.

- e) Even should, for the sake of argument, it were to be assumed that, in view of the numerous references to the word 'Hindu' occurring in his complaint, Lenin is a Hindu, nowhere has Lenin stated as to what is it that he considers as the essential religious belief of Hindu religion. It should be noted that 'Hinduism', unlike every other religion known to mankind, has no founder or sole proponent. Hinduism is a diverse system of thought with beliefs spanning Monotheism, Polytheism, Panentheism, Monism, Atheism, Agnosticism among many others. And, the concept of God in Hinduism is complex and depends upon each particular tradition and philosophy. In short, Hinduism embraces a great diversity of beliefs and can be initially confusing to proponents of other religion who are generally accustomed to limited creeds and sects. As such, Lenin has identified no specific religious belief of a Hindu in his complaint that has been offended. Therefore, it is legally impossible for his complaint to claim that any specific act of Nithyananda Swami has insulted any religious belief of the Hindus or of any other religion, for that matter;
- f) Further, the complainant Lenin has not shown if he has even a minimal understanding of the diversity of

religious beliefs in this country. That is to say, Lenin appears to take objection to statements attributed to Nithyananda Swami wherein Nithyananda Swami is alleged to have said that *'he is an avatar of Lord Shiva and Parvathi or that he is the avatara purusha of Lord Krishna'*. Lenin has also attributed to Nithyananda Swami, a statement that *"I am an incarnation of God"*. From a bare reading of the complaint, it appears that Lenin has taken exception to statements that attribute or liken a human being to a God. In the light of such an objection, it becomes clear that Lenin does not possess even a minimal understanding of the Advaita philosophy within the Hindu religion.

71. The Advaita philosophy in the Hindu religion says *"isavasyan idam sarvam"*. When translated into English from Sanskrit, the said phrase means *"nothing that exists is separate from the one God because God is present everywhere"*.

Chapter 2, Verse 20 of the Bhagavath Geetha says

<i>"na jayathe mriyathe va kathachith nayam bhuthva bhavitha va na bhuya Ajo nithya shashwathohayam purano na hanyathe hanyamane sharere"</i>	Translation - "That supreme soul or paramathma or eshwara was never ever born, nor does it die. And since it is now, it does not mean that it will not be that soul is unborn, is always, forever and ancient also. As the (human) body is killed, it
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	is not killed.
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The Isavasya Upanishad proclaims:

<i>yastu sarvani bhutanyatmanyevanupasyati sarvabhutesu catmanam tato na vijugupsate</i>	Translation - The person who indeed clearly perceives all creatures and objects in the Athma (Soul) only, and in all creatures and objects the Athma (Soul), do not (cannot) wish or want concealment.
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The Shwethashwatharopanishad declares:

<i>swabhavameke kavayo vadanthi kalam thadhanye parimuhyamana: devasyaisha mahima thu loke yenedam bhramyade brahmachakram</i>	Translation: Many intelligent people say that the world happened due to the character or disposition of the Supreme Soul. Some say time is the reason. But none of those intelligent people do comprehend, they are all under illusion. The reason for the world and the rotation of the wheel of Brahma is the Glory of the Supreme Soul.
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<i>Sarvajeeve sarvasamsthe brihanthe asmin hamso bhramyathe brahmachakra prithagathmanam preritharam cha mathwa jushtasthathasthenamritha thwamethi</i>	Translation: This massive wheel of Brahma is pervaded by the Supreme Soul, the Immense One, which is the Cause of all, and the Life of all, and the Base of all. It assumes that It is separate for a while (as the various manifest beings) before being welcomed back by Itself to enjoy it's immortality.
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Rigveda - from Ithereya Upanishad says:

Prajnane prathishtitham prajnanethro loka: prajna prathishta prajnanam Brahma is the verse.	Translation: Prajnanam means inherent knowledge. It is the Soul Itself. Everything rests in prajnanam or inherent knowledge, prajananam is the whole world, prajnanam is Brahma.
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Samveda - Chandogya Upanishad says:

Tat Twam Asi	Translation: That Is You.
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Yajurveda from Brihadaranyaka upanishad says:

Aham Brahmasmi	Translation: I am Brahma.
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Atharvaveda- from Mandukya upanishad says:

Ayam Atma Brahma	Translation: This Atma is Brahma.
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72. Because Lenin has taken objection to the act of a Hindu proclaiming oneself to be Lord Bhramha or the incarnation of Puranik deities such as Lord Rama or Lord Krishna or the incarnation of Trimurthies like Lord Shiva, Lord Vishnu or Lord Brahma, Lenin has simply expressed an objection to the philosophy of Advaita itself. It is not open to Lenin or to any other person to legally object to the free practice of Advaita philosophy in the territory of India.
73. Because the police are rarely conversant with matters involving religious beliefs or with the higher concepts and doctrines prevalent in the Hindu religion, they have chosen to endorse and approve the ignorance of Lenin by proceeding to charge Nithyananda Swami u/s 295A of the Indian Penal Code.
74. If only one were to legally approve the mindset of Lenin and the attitude of the police, an FIR would have to be lodged against the greatest saints who have preached Advaita philosophy from time immemorial.

75. Further, even if Lenin meant in his complaint that "*an individual who calls himself an incarnation of the Lord should never be accused of any offence under the Indian Penal Code*", Lenin has none but himself to blame for leveling false accusation against Nithyananda Swami and for registering an FIR disclosing numerous offences under the Indian Penal Code.
76. It cannot be the cherished religious belief of any individual to expect that a certain person who calls himself an incarnate of the Lord can never commit any error, sin or crime. The petitioner Nithyananda Swami respectfully submits that he is wholly innocent of the accusation leveled against him by Lenin.
77. However, Section 295A does not authorize any person to hold a religious belief that an individual who preaches the Advaitic philosophy would never commit any error, sin, crime or be accused as having committed an error, sin or crime. Any such expectation is practically foolish and the law contained in Section 295A cannot be invoked for the protection of a foolish expectation. Such belief of Lenin is not and cannot be the religious belief of any class of citizens of India.
78. Therefore, the complaint by Lenin merely talks of his imprudent expectations and the police have demonstrated not even the slightest intelligence to distinguish between an individual's imprudent expectations and a protected religious belief.

79. As such, it becomes absolutely necessary for this Hon'ble court to quash the accusation under Section 295A in the FIR for the purpose of reliving Nithyananda Swami, the petitioner herein, of a completely perverse and laughable accusation.
80. Further, the scope for investigation by the police in respect of Section 295A, under these circumstances, is practically nonexistent. This is so because the police cannot exercise their power to investigate to probe a religious practitioner who subscribes to Advaita by intruding into his preaching and asking him whether he publicly uttered statements such as "*I am God*" or "*I am Incarnate of lord Shiva*". Even should the police satisfy themselves that such statements were publicly uttered by an accused, the utterance of such statements does not and cannot constitute injury or insult to the religious beliefs of any class of citizens of India, let alone that of Lenin. As such, the scope for investigation by the police in relation to Section 295A is simply nonexistent and therefore, the seeking of sanction by the police under the provisions of the Criminal Procedure Code from the State Government serves no lawful purpose howsoever.
81. Further, even if the State Government were to accord sanction to such a charge and that the matter were to proceed to a trial, the trial judge would have no basis whatsoever to conduct a trial let alone convict Nithyananda Swami u/s 295A. That is to say, the trial court cannot possibly adjudicate upon a charge that would read something like:

whether the religious class of which the complainant is a member holds any religious belief which would be outraged when any preacher of Advaita proclaims that he is the incarnation of Lord Krishna or Shiva and Parvathi and is thereafter accused of any error, sin or crime under the Penal laws in force in India?

82. Any trial court that proposes to adjudicate such an accusation would have to become an instrument of oppression, ridicule and farce. The work of a Trial Court, under such circumstances, would simply convert to 'a referendum on the 'Advaita philosophy'. To set up a trial to decide upon the legality of a well established Hindu doctrine is constitutionally impermissible in the territory of India.
83. For the prevention of such an eventuality, this Hon'ble court is required to exercise its inherent power u/s 482 of Criminal Procedure Code and to prevent a mockery and travesty of the criminal justice system.

In relation to offences under Section 376 of the Indian Penal Code, 1860:

84. In the complaint of Lenin, even the word 'rape' has not been used by Lenin. When such is the case, it is a mystery of sorts as to how Police have proceeded to accuse Nithyananda Swami of an offence of rape under Section 376 of the Indian Penal Code. The Petitioner respectfully submits that it is practically impossible to chance upon any judgment of a Court where an accused was tried, much less convicted, under circumstances where the FIR

by a third party neither alleged rape nor disclosed the name or identity of the victim of such rape. As such, it is respectfully submitted that the accusation of rape under Section 376 of IPC is an accusation merely imagined by the Police. As such, the registration of an FIR in such a manner is mala fide and is unsustainable under the law.

IN RELATION TO OFFENCE UNDER SECTION 377 OF THE INDIAN PENAL CODE, 1860.

85. Lenin in his complaint dated 04-Mar-2010 states that *"...Around 7 months back when Sri Vimalananda Swami of the ashram went to serve Nithyananda, he revealed with pain that Swami indulged in homosexuality with him. Developing depression due to this, he left the ashram."*
86. The above version has been believed by the Police and an FIR was drawn for an offence under Section 377 of the Indian Penal Code, 1860.
87. Section 377 of the Indian Penal Code says:

Section 377. Unnatural offences

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine.

Explanation. - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

88. To start with, the drawing of the FIR for an offence under Section 377 of the IPC is wholly illegal, under the circumstances, for the following reasons:
89. The Police were duty bound to note that Lenin had merely stated in his complaint, a conversation he had with Nithya Vimalananda. While Lenin is free to believe Nithya Vimalananda, the Police is not free to assume that Lenin's claim merits an FIR unless the Police probed Lenin to find out the basis on which Lenin believed the statement of Nithya Vimalananda.
90. The drawing of an FIR is not a mechanical exercise and the fact that the supposed victim in this case, Nithya Vimalananda himself did not appear before the Police, the Police were bound to treat Lenin's claim as a mere hearsay. Because there are definite consequences to the filing of an FIR, the Police are under a legal duty to ensure that the elements constituting a cognizable offence are clearly spelt out in a complaint. There is no such element here in relation to Section 377. What has been stated by Lenin is merely his belief in the statement made by Nithya Vimalananda. Moreover, whether such a meeting did ever occur between them is a matter that calls for the Police to put their faith and trust in Lenin's statement that such a meeting and conversation took place.
91. Further, 'around 7 months back' is legally incapable of giving rise to any power to the Police to register an FIR. Moreover, not merely is the complaint lacking information on the place, date and time of the alleged occurrence of sex between Nithyananda Swami and Nithya Vimalananda, the

complaint even omits to state the place and time where the supposed conversation between Lenin and Nithya Vimalananda took place.

92. Further, Lenin has nowhere stated in his complaint that Nithya Vimalananda is under any disability to complain against Nithyananda Swami to the police. In fact, the petitioner submits to this Court that, he has learnt that, Nithya Vimalananda is a graduate from a University in the United States. He holds a Master of Science (M.S.) degree in Computer Engineering. He is aged about 36 years. When such is the situation, the Police were bound to note, even with ordinary diligence that Lenin cannot be heard to complain on behalf of another individual who did not himself see any need to go to the police and who would have certainly seen it fit to go to the Police in the event that he was victimised or abused in any manner.
93. Therefore, the drawing of an FIR solely on the basis of hearsay, under such circumstances, is a complete abuse of the process of law.
94. Moreover, even as of this day, that is 21-Sep-2010, 200 days have elapsed since 04-Mar-2010 and Nithya Vimalananda has chosen to not come forward to support or endorse Lenin's statement to the Police - no Affidavit has been submitted by Nithya Vimalananda to the police in this regard notwithstanding that the time that is consumed in the making of such an affidavit is no more than a few hours and the Police have most vigorously pursued the case against Nithyananda Swami. No other arrest or prosecution has attracted more attention in

Karnataka in the recent times than that of Nithyananda Swami and the Police have spent considerable sum of money to invite 'victims' to come forward and to complain against Nithyananda Swami. In fact, the Karnataka Police have even put up a number of announcements on Facebook and have asked 'victims' of Nithyananda Swami to make complaints against him.

95. Because an FIR cannot be drawn on the basis of a mere hearsay as is the case at hand, and in view of the fact that even after 200 days since the making of the complaint, the Police have failed to secure any formal testimony from the 'supposed victim', the offence of Section 377 deserves to be deleted from the FIR.
96. The conferment of the power to the Police to continue an investigation on the basis of a mere hearsay is a definite abuse of the process of the law and the liberties of a citizen are bound to be unlawfully interfered with should the Police be permitted to draw an FIR merely on the basis of a hearsay. It would be difficult to imagine if the liberty of an individual would survive at all should the Police be authorised to draw an FIR on the basis of mere 'hearsay'.
97. Because the Police have been conferred with extensive powers to investigate any person accused of the commission of a cognizable offence and to secure the arrest of such a person, reasonable safeguards upon the drawing of an FIR have always been prescribed upon. In the instant case, the Police have chosen to disregard such safeguards and have clearly shown excessive faith in every imagination, belief and story put forth by Lenin.

Accordingly, the FIR deserves to be quashed in respect of the offence under Section 377 of the Indian Penal Code, 1860.

98. Further, even assuming that Nithya Vimalananda were to come forth and claim that he was subject to or engaged in homosexual activity with Nithyananda Swami, several aspects deserve to be noted:
99. More than 10 months have elapsed since Nithyananda Swami has had any proximity with his devotees - the criminal cases against Nithyananda Swami have resulted in Nithyananda Swami erecting a wall between himself and his devotees. Accordingly, any alleged homosexual activity between Nithyananda Swami and Nithya Vimalananda may only be alleged to have happened more than 10 months ago. The established law in relation to Section 377 greatly emphasises the production of medical evidence to prove a charge of homosexual act. Established medical literature on the topic recommends that an individual subject to a homosexual activity such as anal penetration ought to be medically examined within a few hours and within an outer limit of a 3 or 4 days for the purpose of procuring evidence thereof. In view of the circumstances of this case, the prospect for such medical examination is entirely ruled out. Accordingly, the only consequence of allowing an accusation under Section 377 to continue on the FIR would be to authorise the Police to keep a false charge alive indefinitely. Even if this vexatious allegation were to proceed to trial, the ends of justice would be subverted by allowing a trial to decide on a charge that

holds no possibility of belief, let alone a possibility of conviction¹.

100. Accordingly, for reasons stated above, the offence of Section 377 deserves to be struck off the FIR, to meet the ends of justice.

In relation to Section 420 of the Indian Penal Code, 1860:

101. In the case of *Hridaya Ranjan Pd Verma v. State of Bihar* [2000 Cri.L.J. 2983(1)], the Hon'ble Supreme Court has clarified that a mere proof of contractual or financial frustration cannot be taken to establish an offence of cheating in terms of the Section 420 of the Indian Penal Code, 1860.

102. Specifically the Hon'ble Supreme Court held:-

13. Cheating is defined in Section 415 of the Code as, "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do

¹ In a Charge of offence under Section 377, I.P.C., it is as a rule "unsafe to convict on the uncorroborated testimony of the person on whom the offence is said to have been committed unless for any special reasons that testimony is entitled to special weight." [Ganpat v. Emperor AIR 1918 Lahore 322 : 19 Criminal Law Journal 946]

"A charge under s 377 is one very easy to bring and very difficult to refute. Therefore the evidence in support of such a charge has to be very convincing."
[Emperor v. Sain Das AIR 1926 Lah 375 : 27 Criminal Law Journal 593]

"When sodomy is alleged stains of semen constitute important evidence. Great weight must therefore be attached to the Chemical Examiner's report."
[Devi Das v. Emperor AIR 1930 Lah 318 : 31 Criminal Law Journal 343]

or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat."

Explanation - A dishonest concealment of facts is a deception within the meaning of this section."

14. The section requires- (1) Deception of any person. (2) (a) Fraudulently or dishonestly inducing that person (i) to deliver any property to any person; or (ii) to consent that any person shall retain any property; or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

15. On a reading of the section it is manifest that in the definition there are set-forth two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set-forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the

offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had Fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

17. Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under Section 420, I.P.C. and its allied offences under Sections 418 and 423 has not been made out. So far as the offences under Sections 469, 504 and 120-B are concerned even the basic allegations making out a case there under are not contained in the complaint. That being the position the case comes within the first category of cases enumerated in State of Haryana v. BhajanLal (1992 AIR SCW 237: AIR 1992 SC 604: 1992 Cri LJ 527) (supra) and as such warrants interference by the Court. Reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of Intentional deception on the part of the accused right at the beginning of

the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the complaint. All that the respondent No. 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make the respondent No. 2 part with property is not alleged expressly or even impliedly in the complaint. Therefore, the core postulate of dishonest intention in order to deceive the complainant-respondent No. 2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be, in our considered view, an abuse of process of the Court. The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same.

18. Accordingly the appeals are allowed. The Judgment/Order dated 13-4-1999 of the Patna High Court in Criminal Misc. No. 22880/1998 and Criminal Misc. No. 24068 of 1998 is set aside and the proceeding in Criminal Case No.22/96 pending in the Court of Chief Judicial Magistrate, Siwan is quashed.

103. As such, in view of the fact that the complaint by Lenin thoroughly fails each and every test formulated in the decision of the Hon'ble Supreme Court cited above, the inclusion in the FIR of an offence under Section 420 of the IPC is wholly improper and deserves to be quashed, forthwith.

In relation to Section 506 of the Indian Penal Code, 1860

104. In the penultimate paragraph of his complaint, Lenin says *“I am giving this complaint to the Police Commissioner, Chennai opining that there is danger to my life from Nithyananda Swami and his followers”*. The Police have slapped an offence under Section 506 of the Indian Penal Code in relation to such a statement.

105. In relation to Section 506 of the Indian Penal Code, the following statement of Lenin should be noted:-

“During that time, I had been to Coimbatore with Nithyananda Swami for a Bhagwat Gita Satsang Programme held in Kovai during the last 18th February, 2010 and 19th February, 2010. We left for Salem from Kovai in a tempo traveler in the afternoon of 19th February, 2010. There were 15 followers with me and other followers came in five cars along with Nithyananda Swami. They looked at me with suspicious eyes and kept on asking unnecessary questions. I was afraid if anybody had told about the recording at that time. That evening at 4.00 we came to a place called Seerakapadi in Salem. The inauguration of a new ashrama was about to happen there. Many devotees had come to that place. In that place his Secretary Sri Nithya Brahmananda took me to the Caravan van of Sri Paramahansa Nithyananda Swami. Swami Nithyananda and his followers who were in the van threatened me and asked me if I had done any picturization and don’t suspect me unnecessarily. For that Swami Nithyananda threatened and said that if you don’t tell the

truth we shall strangulate and kill you in the van itself and went away from the programme. If I stay with them from then on I was afraid that they would kill me; so on the pretext of going to the Bathroom I came away by escaping in the crowd.”

106. On a bare reading of the above, none of the ingredients of Section 506 of the IPC are satisfied. First of all, Section 506 of the IPC cannot be invoked unless the result of criminal intimidation is such that the complainant is alarmed. Nowhere has Lenin stated in his complaint that he was in any way alarmed. The complaint of Lenin merely narrates the events that allegedly took place on 19-Feb-2010. There is no recitation whatsoever in the complaint that, as a result of such events, Lenin was in any way alarmed. As such, the most essential feature of Section 506 of IPC is lacking in the said complaint. The statement attributed to Nithyananda Swami is that *“if you do not tell the truth, we shall strangulate and kill you in the van itself”*. Nithyananda Swami completely denies the making of such a statement or authorizing the making of such statement by anyone else against Lenin. Having said so, it is respectfully submitted that even if the threatening words attributed to Nithyananda Swami were found to be true, an offence under Section 506 is wholly inapplicable to such a statement.
107. Section 506 requires the person who criminally intimidates another to intend that the result of such criminal intimidation shall be either (a) the person intimidated shall refrain from doing what he is legally entitled to do or that

(b) the person intimidated is compelled to do what he is legally not bound to do.

108. The application of the above two tests to the statement of Lenin clearly show that Section 506 of the IPC can never be made applicable to the facts of such a case. The threatening word attributed to Nithyananda Swami is that *“if you do not tell the truth, we shall strangle and kill you in the van itself”*. The truth as understood by Lenin is *“his act of secretly entering the bedroom of Nithyananda Swami and allegedly recording the sexual activities between Nithyananda Swami and Actress Ranjeeta in December, 2009”*.

109. Because Lenin does not allege anywhere in his complaint that Nithyananda Swami criminally intimidated him for the purpose of preventing Lenin from the exercise of any valid right vested in Lenin or for the purpose of compelling Lenin to do any act which Lenin was legally not bound to do, the registration of the FIR with the charge under Section 506 of IPC is wholly baseless, mala fide and without the authority of law.

110. As such, as understood by Lenin himself, the scope of the threat was to *“force Lenin to reveal the truth about his entering the bedroom of Nithyananda Swami”*. In order for Section 506 of IPC to be applicable for the facts of this case, the following absurd legal propositions would have to be accepted first:-

a) That Lenin had a legal right to commit a criminal trespass upon Nithyananda Swami’s bedroom and to

secretly film the activity in the bedroom of Nithyananda Swami. In other words, a person complaining of criminal intimidation would have a legal right to commit a criminal trespass upon the bedroom of another and to secretly record the activities of another in his bed room.

b) Thereafter, Lenin has a right to not disclose the act of such criminal trespass to any person including Nithyananda Swami. Implicit in such a right is an additional right that the act of criminal trespass by Lenin could not have been objected to by Nithyananda Swami even if Lenin had been caught red-handed in the bedroom of Nithyananda Swami.

111. Because the above two propositions are wholly absurd, the accusation by the Police under Section 506 of the IPC is therefore bad in law and the FIR deserves to be quashed forthwith.

112. Nothing would have been easier for Lenin than to falsely allege in his complaint that Nithyananda Swami threatened him with dire consequences for doing anything further with the video. The fact that Lenin has not even made an allegation to such effect is sufficient to strike out Section 506 from the said FIR.

113. Further, the act of Lenin in secretly proceeding to the bedroom of Nithyananda Swami and, in a clandestine manner, to record the private activity of Nithyananda Swami in his own bedroom constitutes an offence of criminal trespass punishable under Section 456 of the Indian Penal Code.

114. Further, as stated by Lenin himself, the allegation of such intimidation occurred in Salem District in the State of Tamil Nadu. As such, the jurisdiction of the Karnataka Police to investigate the same is wholly lacking. Moreover, an offence under Section 506 of the IPC is not cognizable under the Indian Penal Code. The Petitioner has not been made aware of any amendment passed by the Legislature of Karnataka in relation to an offence under Section 506 of IPC to make it cognizable. In this view of the matter, an offence under Section 506 which is not cognizable in nature cannot be made the subject of any FIR.
115. Further, the offence under Section 506 of the IPC is not cognizable in the State of Tamil Nadu either. The Police in the State of Tamil Nadu clearly knew about the same. As such, the inclusion of Section 506 in the FIR under such circumstances was clearly unlawful and was not authorized to the Tamil Nadu Police.
116. It must be further noted that Lenin chose not to approach the Police on the 19-Feb-2010 itself when he claims to have been intimidated. The city of Salem is well developed and has numerous police stations dotted across the main road. The fact that Lenin chose to not approach the Police for the next 12 days is itself an indication that Lenin himself did not take the alleged threat seriously. The law under Section 506 of IPC presupposes that an individual is alarmed by reason of criminal intimidation. An individual who is so alarmed could never wait for a period of 14 days to proceed to a Police Station which would generally be accessible within a 20 minutes' walk. As such, the claim of Lenin that he fears for his life is a mere afterthought and

made with the sole purpose of lending credibility to a groundless accusation in his complaint.

117. Further, it is respectfully submitted that all religious programmes conducted by or under the leadership of the Petitioner involve attendance by a few thousand devotees. As such, the presence of the police is always assured to such congregation. The possibility of any individual being alarmed at a threat allegedly delivered in the proximity of dozens of police at the venue is legally untenable.
118. Further, the Petitioner begs the leave of this Hon'ble court to tender numerous documents to establish that on 19-Feb-2010, when he is alleged by Lenin to have been present in Salem in Tamil Nadu, the petitioner was holding religious programmes in his Bidadi ashram at Tamil Nadu. As such, as a matter of fact, the claim of Lenin of having been criminally intimidated is false to the very core. Further, the Petitioner is in possession of the enrolment forms of hundreds of individuals and devotees who had participated at the said gathering in Bidadi on 19-Feb-2010. The Petitioner is greatly injured by the disinterest of the Police to ascertain from the Petitioner, the truth about the petitioner's presence in Salem, Tamil Nadu on 19-Feb-2010.
119. In the case of *Hajee Abdul Rehman v. Gulam Nabi*, [1964 (1) Cri.LJ 40], the Hon'ble High Court of Jammu and Kashmir has held that an offence under Section 506 of the IPC cannot be invoked where a person issues a threat to another for the purpose of deterring such person from

intruding into an area which the person issuing the threat believed to be his exclusive right of passage. The Court held:

"9. I would now come to the allegations with respect to offence Under Section 506 of the Indian Penal Code. Before an offence under this section is made out, it must be established that the accused had an intention to cause an alarm to the complainant. The evidence of P. W. Nos. 1, 2, 3, 4, 5, 6, 7, 8, g, 10 and n clearly establishes that when the complainant wanted the accused to open the door and asserted his right to do so it was then only that the threats were used. Thus the threats were given to the complainant not with an intention to alarm him but with a view to deterring him from interfering with what the accused believed to be his exclusive right of passage through the door in question. Thus the intention of the accused not being to alarm the complainant the essential ingredient of an offence under Section 506 I. P. C. is wholly wanting. Moreover, even on merits, it cannot be said that a prima facie case for framing charges under Section 506 I. P. C. is made out."

120. In *B.T.Sharma v. State of Manipur*[1967 Cri.LJ 1247], the Hon'ble High Court of Gauhati has held that, a person who complains of a threat without promptly proceeding to the Police to lodge a complaint but reflects for a considerable length of time before lodging such a complaint risks suspicion and doubt in relation to an offence under Section 506 of the IPC. The Court held:

"13. Finally the petitioners' counsel stated that the alleged incident was so very trivial that under Section 95 I.P.C. it could not be termed as an offence. Section 95 I.P.C. runs as follows:

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so light that no person of ordinary sense and temper would complain of such harm.

The alleged incident near the gate of the house of P.W. 1 must have been a trivial one. He too at first must have felt it as a trivial one. That was the reason why he filed the report before the police about 30 hours after the incident took place and after due deliberation by making some improvements in the case, so that it might appear to be a grave offence...."

121. In the case of *Amitabh Adhar v. N.C.T of Delhi* [2000 Cri.LJ 4772], the Delhi High Court has held that, a threat cannot be treated as an offence under Section 506 of the IPC merely by looking to the narration of a complainant in her complaint. In this case, an estranged wife complained to the police that she was threatened with dire consequences by the step-sister and the step-brother of her husband. Specifically, the complainant had alleged (in her complaint):'

4. "... That on so many occasions his step sister Ms. Bandana Vajpaye r/o 35 Hanuman Road, New Delhi had visited the home and also tortured and beaten me on the dowry issue and also taunted me that I would be thrown

out and her brother could be remarried and on this even my husband tried to kill me."

5. ... "That the step-brother of my husband Mr. Amitabh Adhar r/o 35 Hanuman Road, New Delhi had also threatened me to finish me in the event of not leaving the house."

122. Setting aside the charge framed against the step-sister and the step-brother of the husband under Section 506 of the IPC, the Hon'ble Delhi High Court held:

6...The averments made in the FIR and in the case diary statement of the complainant against the petitioners also do not satisfy the essential ingredients of the offences punishable under Section 506/509, IPC. The threats alleged to have been given to the complainant Ms. Bharti by the petitioners do not fall within the definition of criminal intimidation inasmuch as the complainant has nowhere stated that the threats given by the petitioners caused an alarm to her. It is well settled that mere threat is no offence....

10. ...It is well known that an estranged wife will go to any extent to rope in as many relations of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage. I am, therefore, of the view that the materials collected by the prosecuting agency do not give rise to any grave suspicion against the petitioners in respect of the offences alleged to have been committed by them under Section 498-A/406/506/509/34, IPC. The learned Metropolitan Magistrate has committed a manifest illegality

in framing the impugned charges against the petitioners. Consequently, the petitioners are entitled to be discharged.

123. In the case of *Kanshi Ram v. State*, [2000 (54) DRJ 112], the Hon'ble Delhi High Court has observed that a threat that does not lead to a retracement by the person threatened cannot invite a charge under Section 506 of the IPC.
124. This case is cited for the proposition that Lenin could not have complained of criminal intimidation so long as he did not identify the purpose of threat directed at him. As such, the subsequent conduct of Lenin in not promptly approaching the police may even be seen as an act of defiance on his part.
125. The facts of this case were that:

2. Petitioner is the President of the Bahujan Samaj Party (for short the BSP). In 1996, the Govt. had provided security cover to the petitioner and he was placed in "Z" category. Petitioner's official residence had a security picket at its entrance. On 25.10.96, Ms. Mayawati (since discharged) and other BSP leader's had assembled at the petitioner's residence to deliberate on the issue of Government formation in Uttar Pradesh. On that day, some 50/60 journalists, hoping to get a quote or a photograph of these leaders, had positioned themselves in front of the petitioner's residence. Petitioner's security personnel asked the media persons to leave the area and a heated verbal exchanged ensued. The petitioner then emerged from the house. As per prosecution case, the petitioner, having abused the media persons, exhorted his security personnel to thrash them. Thereafter,

the security personnel started hitting the journalists and the petitioner himself assaulted the complainant Israr Ahmed. The complainant Israr Ahmed lodged the FIR No. 248/96 at the P.S. Tughlak Road. Investigation pursuant thereto culminated in submission of a charge sheet under Sections 147/149/323/506/354 IPC against the petitioner and Ms. Mayawati...

126. Absolving the accused, the Hon'ble High Court held that:

10. So far as the offence under Section 506 IPC is concerned, the complainant Israr Ahmed stated in his case diary statement that at the relevant time the petitioner had exhorted his security personnel to thrash the journalists. According to Israr Ahmed, the exact words used by the petitioner were "Maro Salon Ko". Strangely enough, Israr Ahmed has nowhere stated in his statement that the alleged threat had caused an alarm to him. On the contrary the circumstances of the case clearly go to show that even after the alleged threat, the complainant or other media persons did not retrace their steps. It is well settled that mere threat is no offence. That being so the threat alleged to have been given by the petitioner does not fall within the mischief of Section 506 IPC. Consequently, no charge under Section 506 IPC can be framed against the petitioner on the basis of the said evidence.

127. In the case of *Ashok Kumar v. State of Haryana* [2003 (2) SCC 143], the Hon'ble supreme Court approved a finding by a trial court whereby the trial court had expressed its view that, under the circumstances of that case, a charge under Section 506 of the I.P.C would not lie even where the

accused *“came out from a room with a pistol and directed another person to get lost from that place failing which the accused would finish that person.”*

128. Specifically, the Hon’ble Supreme Court recorded and held that:

2. The Trial Court convicted each of the accused to undergo rigorous imprisonment for 11 years and to pay a fine of Rs.2,000/- under Section 376(2)(g) IPC and in default of payment of fine to undergo further imprisonment of one year. Both the accused filed appeals.

5. The Trial Court acquitted the accused with reference to the offence arising under Section 506 IPC. The finding in this regard is as follows:

“....To my mind the prosecution has failed to prove this charge because in his statement Ex. PW 6-A the complainant has stated that when he entered in the house of Ram Karnan, Ashok accused came out from a room with a pistol and directed him (PW-6) to get lost from that place failing which he would finish him. This version is supported by PW-6 in his on oath statement. Except this evidence, no other evidence has come on the record. Therefore from this evidence it is clear that the threat uttered by accused Ashok to PW-6 was a conditional threat and nothing was done by the accused Ashok, even the witness did not follow his directions. Thus the conditional threat was no threat in the eyes of law and if any law on this point is

required, then reference may be made to SitaRam v. State 1974 P.L.R. 421. Thus viewed from every angle, I have come to the conclusion that the prosecution has not been able to prove the second charge i.e. charge under Section 506 Indian Penal Code, against the accused persons.

9. The evidence of Ranbir (PW 4) and Rajbir (PW 6) before the Court that they found Anil Kumar to be in compromising position with Sudesh when the appellant walked in with a pistol and threatened to shoot them is not believed by the Trial Court. In fact, no pistol was recovered from him. He has been acquitted of that charge under Section 506 IPC and that part of the order has now become final since no appeal has been preferred against such acquittal.

WHEREFORE, THE PETITIONER RESPECTFULLY PRAYS THAT THIS HON'BLE COURT BE GRACIOUSLY BE PLEASED TO ALLOW THE AFORESAID PETITIONS – CRIMINAL PETITION NO.1231 OF 2010 AND 1232 OF 2010 TENDERED TO THIS HON'BLE COURT FOR ITS DUE CONSIDERATION, IN TERMS OF SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973.

K.V.DHANANJAY,
A.R.VIVEK AND
VIVEKANAND GUPTA

DATE: 19-Oct-2010

ADVOCATES FOR
PETITIONER

Place: BANGALORE

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

CRIMINAL ORIGINAL JURISDICTION

Criminal Petition No.1231 of 2010

Combined with

Criminal Petition No.1232 of 2010

(u/s. 482 of the Code of Criminal Procedure, 1973)

Between

Nithyananda Swami

Petitioner

AND

State of Karnataka

Respondent

VERIFYING AFFIDAVIT OF PETITIONER

I, Nithyananda Swami, Aged 33 years, S/o.Late Arunachalam and residing at Nithyananda Dhyanapeetam, Nithyanandapuri, Bidadi, Ramanagara District do hereby solemnly affirm and State on Oath:

1. That I am Petitioner in the above mentioned petition and as such, fully acquainted with the facts and circumstances of this case. Hence, I am competent to swear this Affidavit.
2. That I have read over the contents of the accompanying Objection – Page Nos. 1 to and I say that the same are true and correct to my knowledge, information, understanding and belief and are based on the records of the case.
3. That the Annexures to the petition are true copies of the respective originals.
4. That the contents of this Affidavit are true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at Bidadi on this
20th Day of Oct, 2010

Identified by Me:

Advocate

Place: Bidadi

Date: 20-Oct-2010

DEPONENT