

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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Sl.No.	Description of Paper Presented	Court Fee Affixed On the Paper
1	On Objection to Affidavit by PETITIONER	
2	On the Memo of Appeal	
3	On Vakalath	
4	On Certified Copies	
5	On I.A.No.....for	
6	On Process Fee	
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Petitioner

v.

State of Karnataka

Respondent

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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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**OBJECTION BY THE PETITIONER TO THE AFFIDAVIT
SUBMITTED BY THE RESPONDENT ON 23-SEP-2010**

The Petitioner most respectfully submits:

1. The Petitioner reaffirms all averments, statements and submission tendered by him in the aforementioned petition for the purpose of this objection.
2. The Petitioner submits, respectfully, that the entire content of the Affidavit submitted by the Respondent on 23-Sep-2010 (though, the date on page 6 of the Affidavit is wrongly stated as 23-Oct-2010.) is liable to be rejected by this Hon'ble Court for the following, amongst other, reasons:
3. The Affidavit merely assumes that the original complaint lodged by K.Lenin is valid in the eyes of the law. As such, the Respondent has merely chronicled 'more accusations' instead of stating the progress of the investigation in its

Affidavit. That is, the progress of the investigation continues to remain at the level of the accusation - 'he said so, she said so'.

4. In effect, the Affidavit is merely a statement on the 'progress of accusation' and not on 'progress in investigation'. The purpose of 'investigation' is to uncover evidence with which to sustain a lawful 'accusation' of commission of a cognizable offence. As such, the Affidavit tendered by the Respondent continues to talk of 'accusation' only and cannot be therefore, considered as compliance with the prior Orders of this Hon'ble Court.
5. For instance, para 4 says: *...Sri Nitya Vimalananda had sent an email on 17-07-2010 disclosing the fact that he was sexually abused by the Petitioner...*
6. The Petitioner submits that the above statement is a mere accusation and does not disclose the 'progress in investigation'. For the said Affidavit to be counted as a statement on the 'progress in investigation', a factual recitation of the date, time and place of the alleged commission of the sexual offence by the Petitioner ought to have been stated and the steps taken by the Police thereafter to uncover incriminating material or witnesses in this regard ought to have been stated. 'Sexual offence' is too generic an allegation to merit any attention by this Hon'ble Court. Because the Police have offered not the slightest information on their progress in the investigation other than to merely repeat groundless allegations already leveled against the Petitioner, the Affidavit submitted by the Police deserves to be rejected.

7. The Police have not even reproduced a copy of the supposed email exchange between Nithya Vimalananda and them. Moreover, there is not even the slightest reason to trust that, even if such an email correspondence could have transpired between the Police and the supposed victim, the email even originated from the individual who claims to be 'Nithya Vimalananda'. Since the Police have nowhere stated that they have established 'in-person' contact with 'Nithya Vimalananda', presuming that their contact with the said individual has been over phone and email only, the possibility of an impostor speaking to the Police cannot be countered by the Police to any reasonable extent.

8. It is submitted that the Police have shown extraordinary interest to prosecute the Petitioner and had, in pursuit thereof, widely advertised on the internet and on online networking sites such as 'Facebook'. A copy of an invitation by the Bangalore Police on Facebook asking people to complain against the petitioner herein, Nithyananda Swami, as uploaded at 6.20 pm on 12-Jun-2010 is produced herewith and marked as **Annexure A**.

9. The invitation by the CID says: *'Swami Nityananda got bail . In his complaint Shri Lenin accused the swami of rape, unnatural sex, criminal intimidation and hurting religious sentiments. Despite our best efforts, not a single "victim" has come to us stating that the swamiji had unnatural sex with him/her or raped her. We got some e mails from persons living abroad but they have not provided any evidence'*.

10. It is submitted that Facebook is the most popular networking site on the internet and has a user base exceeding 50 Crores. In India alone, Facebook counts more than 1.5 Crores active users. A factual statement in this regard, as published by Economic Times newspaper on 30-Sep-2010 at <http://economictimes.indiatimes.com/infotech/internet/Facebook-to-focus-on-mobile-users-to-expand-reach-in-India/articleshow/6660198.cms> is produced herewith and marked as **Annexure B**. In pertinent part, quoting the Facebook International Marketing Manager, the said newspaper says:

Hyderabad:...social networking site Facebook said it will tap into the country's huge mobile subscriber base to expand its presence.

The disparity between the population of the country and internet usage prompts Facebook, which has about 15 million active users in India and around 500 million users globally, to adopt different strategy for the country, Facebook International Marketing Manager (Global) Meenal Balar said here.

11. Technically, the invitation published by the CID (produced herewith as Annexure A) could be viewed by any person (amongst Facebook's 50 Crores users) from any part of the world.
12. The Petitioner submits that any person with a basic knowledge of a computer could create an email identity and a Facebook identity thereafter in a matter of a few

minutes. Further, any individual could create an email identity with the name 'Nithya Vimalananda' or 'Vinay Bharadwaj' and it is not an offence under the law of any country to create for oneself, an email name of one's choice.

13. As such, even an impostor could have been communicating with the Police and the Police have no basis to discount such a possibility at all, given the fact that the internet is too well known for rampant imposturing and even highly sophisticated entities such as Governments and Financial Institutions are frequently swindled online of billions of dollars by fraudsters.
14. The petitioner submits that no less than the Federal Bureau of Investigation (referred to hereinafter as 'FBI'), the central intelligence agency of the United States of America, has been concerned about fraudsters impersonating the Director of the FBI. In a press release dated 15-Jan-2008 warning general members of the public against relying upon such impersonators, the FBI states:

Have you received a suspicious e-mail from FBI Director Robert Mueller or another FBI official? If so, it is a fake. The FBI and the Internet Crime Complaint Center (IC3) have increasingly received reports of fraudulent schemes misrepresenting FBI agents, officials, and/or FBI Director Robert S. Mueller, III. The fraudulent e-mails give the appearance of legitimacy due to the usage of pictures of the FBI Director, seal, letterhead, and/or banners. The types of schemes utilizing the names of FBI agents, officials, or the

Director's name are typically lottery endorsements and inheritance notifications.

Other fraudulent schemes representing the FBI claim to be from our domestic as well as overseas offices. The schemes cover a range from threat and extortion e-mails, website monitoring containing malicious computer program attachments (malware), and online auction scams.

15. A copy of the aforesaid 'press release' published by the FBI at <http://www.fbi.gov/news/pressrel/press-releases/internet-alert-scammers-sending-fake-fbi-e-mails-seeking-personal-information> is produced herewith and marked as **Annexure C**.
16. As such, in light of the circumstances stated above, the recital by the Police of their interaction with persons on the internet can hardly be called as 'statement of progress in the investigation'.
17. Further, other statements made by the Police in their Affidavit are wholly lacking in merit and credibility. For instance:

Para 4...Further, the probable address of Smt Ma Nithyananda Gopika have been collected after searching through internet. I have written letters on 28-07-2010 to the said person to appear before me for recording her statement....
18. It is submitted that the statement by the Police that they have searched for the address of Ma Nithyananda Gopika

on the internet deserves to be wholly rejected in light of the considerations stated above.

19. The Petitioner submits that, at 8.17 pm on 19-Oct-2010, a search for 'Ma Nithyananda Gopika' on Google, the most popular search engine on the internet, produced 24,500 results. A copy of the search page is produced herewith and marked as **Annexure D**. It is submitted that the Police could not have reliably identified an individual by sorting through such maze of results. One result for 'Ma Nithyananda Gopika' leads to "<http://nithyananda-cult.blogspot.com/2010/07/god-frauds-missing-link-nithyananda.html>" where the owner of that website seeks monetary donations to 'prosecute Nithyananda Swami', the petitioner herein. Further, the said website also declares that all monies donated to it will be shared with Lenin Karuppan, the complainant against the Petitioner. Describing the complainant Lenin as Hanuman 3.0, the website says, in pertinent part:

*"TRUTH ABOUT THE CULT OF THE SO-CALLED SWAMI
'PARAMAHAMSA' NITHYANANDA: ORGANIZED FRAUD*

*THIS BLOG IS DEDICATED TO EXPOSING THE TRUTH
ABOUT PARAMAHAMSA NITHYANANDA, THE CULT OF
NITHYANANDA, AND ALL OF NITHYANANDA'S BRANCHES
INCLUDING THE LIFE BLISS FOUNDATION, THE
NITHYANANDA FOUNDATION, THE NITHYANANDA VEDIC
TEMPLE IN MONTCLAIR, CA, THE NITHYANANDA VEDIC
TEMPLES IN MILPITAS, CA, DELAWARE, OH, ST. LOUIS,
MO, PHOENIX, AZ, OKLAHOMA CITY, OK, SEATTLE, WA,*

THE HINDU UNIVERSITY OF AMERICA(HUA), & NITHYA YOGA."

"All donations go toward the legal defense and offense to STOP the unsavory and fraudulent practices of Nithyananda and his cult. And, yes, we will share your donation with our partner against Nithyananda's crimes, Sri Lenin Karuppan, better well known as Dharmananda, a.k.a. Hanuman 3.0. Thanks for your help!!!"

20. A copy of the aforesaid webpage, as it appeared at 2.13 pm on 17-Oct-2010, is produced herewith and marked as **Annexure E**. The Petitioner submits that the extent of resentment at his steady progress in the spiritual realm has led to such organised efforts to malign his character and reputation. The Petitioner is led to submit that the 'monies' collected by the aforesaid website for the purpose of 'prosecuting him' is a sham and is clearly directed to bring about more false charges against him.
21. Further, the same website also discloses a picture of 'Ma Nithyananda Gopika' holding a 'Crime Slate' apparently belonging to the 'New York City Police' with the caption 'Missing'. The said image, already contained in Annexure E, is separately produced herewith and marked as Annexure F. In pertinent part, the said website says:

If our readers have any information about Ma Nithyananda Gopika, a.k.a. Vidya Viswanathan, such as known addresses, phone numbers, current email addresses, and would like the CID Police Team to know this information so they can help track her down and then find out the Truth

about Nithyananda, then please send that information to the email address below:

Send leads to: whereisgopika@yahoo.com

22. It is submitted that when a sophisticated and organised global movement that seeks to 'prosecute Nithyananda Swami' to the fullest extent and so seeks donations from around the world has itself expressed its frustration in not being able to trace 'Ma Nithyananda Gopika', the claim of the Karnataka Police that they have established contact with such a person by tracing her on the internet itself is liable to be rejected.
23. It is therefore submitted that when an organised, resourceful and persistent effort has arisen on the internet to track and trace 'Ma Nithyananda Gopika', the claim of the Karnataka Police that they have already traced 'Ma Nithyananda Gopika' on the internet and that they have thereafter been communicating with such a person is not deserving of any consideration by this Hon'ble Court.
24. As such, in light of the fact that a very organised group exists to suppress the petitioner and to curtail his growth, the Affidavit of the Police stating in paras 4 and 5 is merely a statement of their unfounded trust in whoever has been communicating with them in the guise of being 'Nithya Vimalananda' and 'Ma Nithyananda Gopika'. As such, the Affidavit of the Police, in para 4 and 5 contains nothing but their own assumptions and are liable to be rejected. When no less than the Director of the FBI is widely impersonated on the internet, the Karnataka Police cannot be heard to

say that this Hon'ble Court should rule out the possibility of 'Nithya Vimalananda' or 'Ma Nithyananda Gopika' being impersonated on the internet. Also, in view of the malicious agenda against the Petitioner so openly expressed by countless websites on the internet, such a possibility is both real and imminent. Several hundred websites on the internet are solely aimed at spreading hatred for Nithyananda Swami, the petitioner herein.

25. In paragraph 5 of their Affidavit, the Police have made similar claims. It is said:

...I have contacted a person who was a devotee of the Petitioner Nithyananda Swamy and was regularly participating in various programmes organized by him. Statement has been given by this person on 16.08.2010 and 17.08.2010 about the manner in which the said person was sexually abused and raped by the Petitioner over a period of 4 years....

26. The aforesaid claim of the Police is liable to be rejected, amongst others, for the following reasons:

27. The Police have merely narrated an accusation and nothing more. Having recorded an accusation against the Petitioner, the refusal of the Police to disclose specific details of the accusation is sufficient to reject the entire accusation as motivated and as nothing but a falsehood.

28. Established law holds that a copy of the First Information Report recorded under Section 154 of the Code of Criminal Procedure Code, 1974 is required to be offered by the

Police to the accused, as a matter of law. Every accused is constitutionally entitled to know about the accusation against him. As laid down by the Hon'ble High Court of Gujarat in the case of Jayanthibhai Lalubhai Patel v. State of Gujarat [1992 Cri.LJ 2377], a 'First Information Report' is a public document and an accused holds a constitutional right, under Article 21, to inspect or access the same. The Court held:

3. Word "complaint" is defined in S. 2(d) of the Code which reads as under:

"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but does not include a police report.

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

Words "inquiry", "investigation" and "police report" are defined in S. 2(g), (h) and (r) respectively, which reads as under:

(g). "inquiry" means every inquiry, other than a trial conducted under this Code by a Magistrate or Court;

(h). "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police

officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf,

(r). "police report" means a report forwarded by a police officer to a Magistrate under sub-sec. (2) of S. 173;

So far as information to the police and their powers to investigate are concerned, the same are found in chapter XII.

Thus it is very clear that the information relating to the commission of a cognizable offence is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. That is known as FIR. Under S. 157 of the Code it becomes the duty of the investigating officer to send forthwith a report to a Magistrate empowered to take cognizance of such offence. So far as documents are concerned, word "documents" is defined as under in the Indian Evidence Act.

"Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Section 74 of the Indian Evidence Act refers to "Public documents", which reads as under:

The following documents are public documents:- (1). Documents forming the acts or records of the acts -

(i) of the sovereign authority,

(ii) of official bodies and Tribunals, and,

(iii) of public officers, legislative, Judicial and executive, of any part of India or of the Commonwealth, or of a foreign country.

(2) Public records kept in any State of private documents.

Section 76 pertains to certified copies of public documents, which reads as under:

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation: Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

It was submitted that when a police officer records the FIR as referred to in the Code and when a copy of the same is forwarded to the Magistrate under provisions of the Code, it becomes a public document as defined under Indian Evidence Act. Therefore a submission was made that certified copy of a public document should be made

available to a citizen on payment of legal fees as contemplated in S. 76 of the Indian Evidence Act.

4. Mr. Amin drew my attention to a reported judgment of Calcutta High Court in the case of Panchanan Mondal v. The State reported in 1971 Cri. LJ 875, wherein similar situation arose. There, an application for certified copy of the FIR was submitted before the Sub Divisional Magistrate who rejected the application and therefore petition was preferred by the accused. Considering the submissions, the Court directed that certified copy of the FIR be granted to the accused on payment of legal fees thereof. The Court held that FIR is a public document and the concerned party is entitled to certified copy thereof under Ss.74(1)(iii) and 76 of the Evidence Act read with Criminal rules and the orders of the High Court, Calcutta. In the instant case, no rules have been brought to the notice of this Court but suffice it to say that there exists a right of the accused to have a certified copy of the public document like FIR. If once it is held that a document is a public document and the accused has a right to inspect the same because there are allegations made against him, then certainly he is entitled to have inspection of the same and therefore certified copy ought to have been given on payment of legal fees. Learned Additional Public Prosecutor also could not deny the right of an applicant to have certified copy of the FIR. In the case referred to above, the Court also considered the ground of prejudice and held as under:

The question of prejudice of the accused on account of denial of the copy of the FIR at the earlier stage therefore assumes greater importance and on a proper consideration

thereof, I hold that it is expedient in the interest of justice that a certified copy of the first information report, which is a public document, should be granted to the accused on his payment of the legal fees therefor at any stage even earlier than the stage of S. 173(4) of the Code of Criminal Procedure. At the later stage, the accused will have the right to have a free copy but the same would not take away the right he already has in law to have, a certified copy of the first information report on payment of the legal fees"

It is to be noted that it was considered particularly in view of provisions contained in Art. 21 of Constitution of India. Denial of the same would be clearly against the principle of natural justice and violation of Art. 21 of Constitution of India. FIR is a document which is of considerable value to the accused because it shows on what materials the investigation commenced and what was the prosecution case in the first flux and in view of this, Mr. Amin's contention that he is entitled to have certified copy of the FIR requires to be accepted and the trial Court has seriously erred in not granting the applications.

5. When the FIR is forwarded to the Magistrate as contemplated in the Code, then it is certain that a regular endorsement is made in the public document, viz., general diary regarding , the case as contemplated u/ S. 154 of the Code. It also makes it clear that after registration the report has been forwarded u/ S. 157 of the Code and that would raise a legal presumption that there is an official act and the same has been duly performed. Therefore also it becomes a public document, viz. forwarding a report to the Court under the Code and therefore when a person against whom the

report is made asks for a copy, the same should be supplied to him without any hesitation on charging legal fees. Mr. Amin, learned advocate submitted that Karnataka High Court in the case of Channappa Andanappa Siddareddy v. State reported in 1980 Cri. LJ 1022 has held that at para 3 "the FIR being a record of the acts of the public officers prepared in discharge of official duty is a public document..... . and every officer having the custody of a public document, which any person has a right to inspect is bound to give such person on demand a copy of it on payment of the legal fees The accused having been produced before the Magistrate with the report of the police, the Taluka Executive Magistrate was legally bound to give the copy asked for by him. He had no authority to refuse it. The refusal, therefore, is illegal and reprehensible." Mr. Amin learned advocate therefore submitted that in view of this position of law, it is the duty of every public officer to supply certified copy of public documents on tendering legal fees.

6. From the aforesaid discussions, it clearly appears that whenever FIR is registered against the accused, a copy of it is forwarded to the Court under provisions of the Code; Thus it becomes a public document. Considering (1) the provisions of Art. 21 of the Constitution of India, (2) First Information Report is a public document in view of S. 74 of the Evidence Act; (3) Accused gets right as allegations are made against him under provisions of S. 76 of the Indian Evidence Act, and (4) FIR is a document to which S. 162 of the Code does not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution, as and when application is made by accused

for a certified copy of the complaint, the Court to which it is forwarded should give certified copy of the FIR, if the application and legal fees thereof have been tendered for the same in the Court of law. The application is therefore allowed. The trial is directed to supply certified copy of the FIR on payment of charges by the petitioner at the earlier.

Rule made absolute

29. From a plain reading of the above judgment that has since been referred to in countless other judgments, it becomes clear that the Petitioner is constitutionally entitled to learn about the accusation against him. The Police have merely stated an accusation in their Affidavit and the Petitioner is entitled to learn about the specific details of the accusation against him.
30. Further, it is respectfully submitted that the Police have failed to intelligently distinguish between an 'accusation' and 'evidence'. The purpose of every 'investigation' by the Police is to uncover, unearth or retrieve 'evidence' on the strength of which, the Police is expected to formally charge an accused with the commission of a cognizable offence.
31. While it is legally permissible for the Police to withhold 'any evidence' collected by them at the stage where 'investigation' is continuing and the accused has not been formally charged, it is legally not permissible for the police to shield from the accused, the very accusation which forms the foundation for their 'investigation'.

32. Further, the Police have merely disclosed the dates on which, the statement of the supposed victim has been recorded without identifying the place or manner in which such statements were recorded. It is not known whether the 'supposed victim' of rape visited Bangalore or whether the Police themselves proceeded to a place where the 'supposed victim' resides. Further, even assuming that the Police did proceed to a place outside Bangalore, it is not known whether such a place was within India or outside India. And, even if it should be assumed that the said statement was recorded outside India, it is not known whether the requirement of Section 166A of the Code of Criminal Procedure, 1973 that deals with 'letter rogatories' has been complied with. Further, it cannot be known from the Affidavit of the Police that they did establish an 'in-person' contact with the 'supposed victim'. Further, assuming that the Police did proceed to establish an electronic conference with the 'supposed victim', it is not known if the place from which the 'supposed victim' conferenced electronically was a place within India or outside India. As such, in view of the suppression by the Police of critical information in their Affidavit, the same deserves to be rejected by this Hon'ble Court on the ground of lack of essential and primary detail.
33. Further, the Petitioner respectfully submits that the conduct of the Police before this Hon'ble Court raises grave suspicion. In support of such an argument, the Petitioner respectfully submits that:

34. The Police have submitted that *'during further investigation conducted subsequent to 23.07.2010, certain new evidence has come to light... on 16.08.2010 and 17.08.2010...'*
35. Most surprisingly, the Police did not make the above admission on the following critical, but intervening dates:
36. The Police filed a Special Leave Petition (referred to hereinafter as 'SLP') on 31-Aug-2010 to the Hon'ble Supreme Court against the Order dated 23-Jul-2010 of this Hon'ble Court. The Petitioner learnt about the same and has thereafter filed a Caveat to the said Special Leave Petition. A copy of the Special Leave Petition so filed has been very belatedly served upon the counsel for the Petitioner at the Supreme Court.
37. Though the Police proceeded to file a Special Leave Petition on 31-Aug-2010 itself, there is not even the slightest whisper about their supposed 'recording that took place on 16-Aug-2010 and 17-Aug-2010' in their SLP. A copy of the 'Status report' of the said SLP as filed on 31-Aug-2010 and numbered as 'Special Leave Petition (Criminal) No.8026 of 2010' as displayed at Supremecourtfindia.nic.in is produced herewith (as on 19-Oct-2010) and marked as **Annexure G.**
38. The predominant and the only ground taken by the Police in their SLP is to the effect that the 'the Police are of the view that the High Court has fixed a deadline of 4 weeks from 23-Jul-2010 to complete their investigation and are therefore aggrieved by such order'.

39. The Petitioner, Nithyananda Swami, respectfully submits that there exists no basis whatsoever for the Police's perception that the Order dated 23-Jul-2010, places a fetter or limitation on their power to investigate. However, the Petitioner submits that it is thoroughly surprising to all concerned that *'even for the advancement of their own erroneous perception, the Police did not even utter one word in their SLP that they have finally recorded the statement of a victim on 16-Oct-2010 and 17-Oct-2010, allegedly of a rape committed, again, over a period of 4 years.'* A copy of the SLP so filed and provided to the Supreme Court counsel for Caveator Nithyananda Swami is produced herewith and marked as **Annexure H**.
40. The Petitioner, Nithyananda Swami submits that this Hon'ble Court is entitled to peruse the record generated by the Police on 31-Aug-2010 for the purpose of satisfying itself whether the statement of the Police about their alleged recording on 16-Aug-2010 and 17-Aug-2010 could be believed at all when such a recording finds no mention howsoever in an appeal for which it had the greatest use. That is, this Hon'ble Court is legally entitled to and bound to examine the veracity of the Police's claim particularly when they do not inform the Hon'ble Supreme Court in the SLP filed on 31-Aug-2010 that the High Court Order dated 23-Jul-2010 should be set aside, if for no other reason, than that the Police had made substantial progress in their investigation by finally recording a statement of a rape victim on 16-Aug-2010 and 17-Aug-2010 - simply because the claim of such a recording was the greatest ground the Police could have offered to the Supreme Court in support of their mistaken view that the Order dated 23-Jul-2010

passed by this Hon'ble Court imposed fetter upon their investigation.

41. Therefore, the claim of the Police that the statement of a victim came to be recorded on 16-Aug-2010 and 17-Aug-2010 is susceptible to grave doubt and suspicion.
42. The Petitioner submits that the Police have been freely proceeding with the investigation against the petitioner in the instant case without any fetter howsoever. The Petitioner further submits that, even on 13-Sep-2010 when this very case was heard by this Hon'ble Court, the Police did not claim, very surprisingly, that they had so recorded the statement of the rape victim on 16-Oct-2010 and 17-Oct-2010. The Petitioner respectfully submits that the fact that the Police did not even submit on 13-Sep-2010 that they had so recorded raises severe doubts about the entire episode narrated by them in their Affidavit.
43. The Petitioner submits that the Police did identify one particular newspaper and even before they eventually stated to this Hon'ble Court about the alleged recording, they proceeded to give such information to a leading English newspaper, Deccan Herald. On 19-Sep-2010, for the first time ever, the said paper, Deccan Herald carried an article titled 'TN Woman's plaint against godman' in its Bangalore edition. A copy of the said newspaper article is produced herewith and marked as **Annexure J**. Citing 'CID sources', for the first time ever, the said newspaper speaks of a 'complaint filed a few days back' 'alleging sexual abuse'. Most importantly, the Petitioner submits that the said newspaper submits two critical pieces of information:

44. The newspaper cites 'a woman hailing from Tamil Nadu'. Surprisingly, the Affidavit by the police is wholly silent on the place from which the victim hails. If only the Police had determined that the place from which the victim hails was so confidential so as to be suppressed in an Affidavit provided to this Hon'ble Court, the fact that a newspaper had already spoken about the place of such a woman a few days ago is highly relevant to and lends grave suspicion to the entire version of the police.
45. Further, assuming that the said newspaper accurately knew about the plans of the police, the disclosure by the newspaper that '*the second complaint, filed a few days back with CID sleuths*' assumes great significance. Because Deccan Herald appears to have established exclusive contact with the CID [the petitioner has most extensively verified and submits that, at the relevant time, no other newspaper reported on the incident forming the subject matter of the article by Deccan Herald], the fact that the paper says on 19-Sep-2010 that '*such complaint was filed a few days ago*' clearly points grave suspicion at the Affidavit of the police.
46. Further, the Petitioner submits that only during the hearing on 21-Sep-2010 before this Hon'ble Court did the Police make a claim orally to the Court, for the first time ever, that they had recorded the statement of a 'rape victim' on 16-Aug-2010 and 17-Aug-2010.
47. The Petitioner further submits that the Affidavit is wholly silent on whether the reference in para 5 to 'recording' is made under the authority of Section 161 of the Code of

Criminal Procedure, 1973. If so, the Petitioner respectfully submits that:

48. Section 161 of the Code of Criminal Procedure, 1973 (referred to hereinafter as 'Cr.PC') states as under:

161. Examination of witnesses by police.

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

49. The petitioner submits that the reference in the opening part of the provision to 'making an investigation' clearly reveals that a recording under 'Section 161' is for the purpose of furthering 'an investigation'. As such, if only the statement of the 'supposed victim' is treated to have been made under Section 161 of the Cr.PC, the validity of such a 161 Statement is simply contingent on the 'validity' of

the impugned FIR. As such, because the instant proceeding is brought to question the very legality of the 'FIR' registered against the petitioner, a statement in support of such a tainted FIR is placed on no greater pedestal.

50. Further, for the purpose of overcoming the doubts expressed by the Petitioner on the veracity of the Police's claim of having recorded statements on 16-Aug-2010 and 17-Aug-2010, the Police have produced confidentially to this Hon'ble Court, after 21-Sep-2010, an extract of their 'Case Diary' maintained for the purpose. The Petitioner submits that any such 'Case Diary' may at best serve a provisional satisfaction only and that the suspicion expressed in the paragraphs above are not dispelled merely by producing a 'Case Diary' to this Hon'ble Court.
51. However, as a matter of record, the Petitioner submits that any such 'case diary' is required to be maintained in terms of the 2008 amendment to the Code of Criminal Procedure, 1973. The Petitioner submits that the Parliament has itself seen it fit to be concerned about increasing incidence of the police manipulating their 'case diaries' and has, as an ameliorative measure, brought in a new requirement to check such manipulation. Prior to the passing of the 'Code of Criminal Procedure (Amendment) Act, 2008', Section 172 of the Cr.PC read as under:

172. Diary of proceeding in investigation.

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceeding in the

investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the court; but, if they, are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.

52. However, w.e.f., 31-Dec-2009, a new provision has been inserted to Section 172 by the passage of the 'Code of Criminal Procedure (Amendment) Act, 2008'¹. Section 15 of the said amendment act provides that:

15. Amendment of section 172. — In section 172 of the principal Act, after sub-section (1), the following sub-sections shall be inserted, namely:—

¹ The Act received the assent of the President on 7th January, 2009, Act Published in Gazette of India on 09-Jan-2009, Pt.II.S.1 Ext.P.1 (No.6).

“(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1B) The diary referred to in sub-section (1) shall be a volume and duly paginated.”

53. By a Notification numbered SO.3313(E), issued by the Ministry of Home Affairs on 30-Dec-2009 in the Official Gazette (Part II, Section 3, Sub-Section ii), the Central Government has specified 31-Dec-2009 as the date on which certain provisions (including Section 15 of the Amendment Act) have been declared to 'come into force'. A copy of the said Notification dated 30-Dec-2009 so issued by the Ministry of Home Affairs is produced herewith and marked as **Annexure K**.
54. It is therefore submitted that, as a matter of law, any 'case diary' maintained after 31-Dec-2009 is required to conform to the amended provision of Section 172 of the Cr.PC. Further, it is submitted that the Government of Karnataka, in order to popularise the aforesaid notification issued by the Central Government, has re-published the same in its own Official Gazette published on 08-Apr-2010 [Samputa 145 - Sanchike 14]. The said Notification is reproduced in Part 4 at page 54. In view of the voluminous nature of the said document, the production of the same is dispensed with due leave of this Hon'ble Court - though the Petitioner has furnished copies thereof to the Respondent.
55. Further, the Police have stated in para 5 of their Affidavit that *‘some former devotees have also been subjected to*

enquiry on 27.08.2010 and they have given details about the acts of fraud and deception committed by the Petitioner in the name of religion'. The lack of specificity coupled with the specific circumstances cited above render such statement as liable to be rejected by this Hon'ble Court.

56. Further, the Police have stated in para 5 of their Affidavit that '*...10 Non Disclosure Agreements signed by 5 devotees have also been seized on 27.08.2010. In these documents, consent of these persons was fraudulently taken by the Petitioner for Tantrik Sex and for being exposed to obscenity. These materials collected clearly show the acts of deception on the part of the Petitioner*'. The Petitioner submits, respectfully, that the aforesaid submission of the Police is wholly liable to be rejected by this Hon'ble Court. Because the Police have chosen to not even identify the victims and to state the manner in which such victims have been 'abused', the Petitioner is wholly bereft of all opportunity to respond to such accusation. The Petitioner submits, most respectfully, that he is wholly innocent of all claims and accusations levelled against him before this Hon'ble Court, whether by known or unknown individuals.
57. Specifically, the police have not even bothered to state how they are entitled to claim to this Hon'ble Court that the '*Petitioner has committed acts of fraud and deception*'. The words 'fraud' and 'deception' have a definite legal meaning and the Police is expected to be aware of the essential ingredients of an offence of 'fraud' or 'deception'. The Petitioner most respectfully submits that the Police have most casually asserted that '*the petitioner has committed acts of fraud and deception*'.

58. The Petitioner submits that, if only the Police had stated that, X, an individual has submitted to the Police certain materials on the basis of which the Police have come to a reasonable satisfaction that the Petitioner has engaged in actions A, B and C that are characterised as offences under provisions i, ii or iii of the Indian Penal Code, 1860 or another law, the averment in para 5 could have been considered as an Affidavit. Instead, the accusations against the Petitioner are merely wild suggestions offered to the Police by individuals with hatred and contempt for the Petitioner.
59. Further, the Petitioner respectfully submits he was not even aware of the existence of any of these Non-Disclosure Agreements until the later part of this year. The Petitioner learnt about the said Agreement from his administrative staff only in the later part of 2010. The Petitioner respectfully submits that none of the said Non-Disclosure Agreements even contain his signature. The Police have deliberately suppressed to this Hon'ble Court, the fact that none of those Non-Disclosure Agreements contain the signature of the Petitioner. However, should any of those Agreements contain a purported signature of the Petitioner, the Petitioner steadfastly disputes the same and seeks the leave of this Hon'ble Court to file a formal complaint of 'forgery' against the provider of such document to the police.
60. Further, the Petitioner respectfully submits that he learnt, in the later part of 2010 that the said Non-Disclosure Agreements were secured by the administrative staff of the Nithyananda Dhyanapeetam as a routine protection from

an increasing number of American citizens visiting the Petitioner - the administrative staff at Nithyananda Dhyanaapeetam were apprehensive about the threat of frivolous but punishing lawsuits from motivated or tutored American or western citizens or residents.

61. The Petitioner respectfully submits that the Police have made baseless inferences on the basis of documents that are already in the public domain. The Petitioner submits that the 'Non Disclosure Agreements' are not opposed to any law of India and were primarily drafted for the purpose of limiting the liability of the trusts and the petitioner in the event that a foreign citizen who is not introduced to the ways and means of worship adopted in Indian temples and to the naked pictures of goddess and idols that adorn some temples finds it distressful or offensive to discover such a tradition while participating in a sermon, discourse, tour or pilgrimage conducted by the Petitioner. The Petitioner most respectfully submits that he has never ever had or compelled any person howsoever to engage in sex as part of his religious instruction. As such, the claim of the Police that the Non Disclosure Agreements were designed to facilitate sex is a mere accusation wholly based on cautious language in the Non Disclosure Agreement. The Police have failed to note that, when a typical American lawyer is asked to draft a Non-Disclosure Agreement for the benefit of an Indian religious preacher, for use by citizens of the United States and the western world, any competent drafting would involve the identification of Hindu practices that are recognised in the western world as exotic or unusual. As such, the Non Disclosure Agreements merely disclose the mindset of an American

Lawyer who would take steps to limit the liability of his client in the event that the citizens of the United States find some Hindu practices as offensive. As such, the Non Disclosure Agreements represent nothing more than an overzealous drafting by an American lawyer for the benefit of an Indian religious practitioner for use by a citizen of the United States.

62. The Police have submitted in para 6 of their Affidavit that, *"the complainant Sri Lenin ...has produced a C.D. containing audio recording of the telephonic conversation and an e-mail message. In the said C.D., evidence is available that the Accused Petitioner had sought pardon from the Complainant and assured full protection and safety of the Complainant..."*. The Petitioner respectfully submits that the Police could speak of 'an evidence' only where the 'accusation' meets the legal criteria. As extensively submitted to this Hon'ble Court, Lenin has not even alleged any element of 'criminal intimidation' in his complaint in order to bring the alleged threat by the Petitioner within the fold of Section 506 of the Indian Penal Code, 1860. When such is the case, additional material can barely be called as 'evidence'.
63. The alleged act of the Petitioner in seeking pardon from the Accused does not help to prove, in any way, that the prior exchange of words between the Petitioner and Lenin rose to the level of 'criminal intimidation'. Whether there was 'criminal intimidation' of Lenin by virtue of words allegedly uttered by the Petitioner to Lenin on 19-Feb-2010 has to be solely determined with reference to the words and description occurring in Lenin's complaint dated 04-Mar-

2010. As extensively shown by the Petitioner, the alleged utterance by the Petitioner to Lenin to 'reveal the truth' can by no stretch of logic or legal reasoning be termed as 'criminal intimidation'. Further, whether the complainant was 'alarmed' by the utterances of the Petitioner is to be determined by the conduct of Lenin on 19-Feb-2010 and by his assertion in his complaint on 04-Mar-2010.

64. Further, the Petitioner respectfully submits that the content of the exchange of words has not been specified by the Police. Neither has the Police specified on the time when the said recording is alleged to have taken place. Moreover, the Petitioner is led to wonder on why, assuming that the exchange of words recorded by Lenin took place before 04-Mar-2010, a copy of the said recording was not disclosed to the Police on 04-Mar-2010 itself, along with his complaint. It is very much probable that, at the time that he lodged a complaint with the Police, Lenin assumed that the recording contained nothing worth sharing with the Police. Further, the fact that Lenin chose to record a phone conversation speaks to his anticipation and preparedness for an impending call and a desire to record the same. If anything, the law presumes that an individual subjected to a 'criminal intimidation' is alarmed and Lenin has clearly shown from his own conduct that he was anything but 'alarmed' - a state of anticipation and preparedness to record a phone conversation is attended with pre-meditation and attention, attributes that are not witnessed in a person legally seen to be 'alarmed' or 'anguished'. The malice of Lenin is clearly evident from the fact that he chose to not provide the said telephone recording to the Police earlier and the sole purpose of

providing the same now to the Police is to provide an air of 'authenticity' to some part of the FIR and to allow the Police to salvage and save the FIR that is being extensively shown to be groundless and illegal.

WHEREFORE THE PETITIONER HUMBLY SUBMITS THAT THIS HON'BLE COURT BE PLEASED TO REJECT THE AFFIDAVIT SO FILED BY THE RESPONDENT ON 23-SEP-2010 IN THE INTEREST OF JUSTICE.

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