

Sajjan Kumar Vs. Cbi

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Court : Delhi

Decided On : Jul-16-2013

Judge : Suresh Kait

Appellant : Sajjan Kumar

Respondent : Cbi

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:

24. h May, 2013 Judgment delivered on:16th July, 2013 CRL.REV.P. 438/2010 & CRL. M.A. 13980/2010 SAJJAN KUMAR Petitioner Through: Mr. Amerinder Saran, Sr. Advocate with Mr.A.K.Sharma, Mr. Apoorv Sharma, Mr. Anuj Sharma, Advocates and Mr. R.M.Tatia, Advocates. Versus CBI Respondent Through: Mr.D.P.Singh, Special PP with Ms. Tarannum Cheema, Advocate. Mr. H.S. Phoolka, Sr. Advocate with Mr. Virender Verma, Mr. Gursimran Singh and Mrs. Kamna Vohra, Advocates for Intervenor. AND + CRL.REV.P. 439/2010 & CRL. M.A. 13984/2010 VED PRAKASH PIAL @ VEDU PARDHAN & ANR. Petitioners Through: Mr.A.K.Sharma, Mr. Apoorv Sharma, Mr. Anuj Sharma, Mr. Vineet Malhotra and Mr. R.M. Tatia, Advocates. Versus CBI Respondent Through: Mr.D.P.Singh, Special PP with Ms. Tarannum Cheema, Advocate. Mr. H.S. Phoolka, Sr. Advocate with Mr. Virender Verma, Mr. Gursimran Singh and Mrs. Kamna Vohra, Advocates for Intervenor. Crl. Rev.P. 438/2010, Crl.Rev.P.

439/2010, W.P.(Crl.)205/2010 AND + W.P.(CRL) 205/2010 & Crl. M.A. No. 1779/2010 BRAHMANAND GUPTA & ANR Petitioners Through: Mr.A.K.Sharma, Mr. Apoorv Sharma and Mr. Anuj Sharma, Advocates. Mr. Vineet Malhotra and Mr. R.M. Tatia, Advocates. Versus CBI AND + Respondent Through: Mr.D.P.Singh, Special PP with Ms. Tarannum Cheema, Advocate. Mr. H.S. Phoolka, Sr. Advocate with Mr. Virender Verma, Mr. Gursimran Singh and Mrs. Kamna Vohra, Advocates for Intervenor. CRL.REV.P. 113/2011 & CRL. M.A. 3018-19/2011 SHEELA KAUR Petitioner Through: Mr. H.S. Phoolka, Sr. Advocate with Mr. Virender Verma, Mr. Gursimran Singh and Mrs. Kamna Vohra, Advocates Versus CBI & ORS Respondents Through: Mr.D.P.Singh, Special PP with Ms. Tarannum Cheema, Advocate. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

1. Vide the petitions being Crl. Rev. P. 438/2010 and 439/2010, petitioners have challenged the Order on Charge dated 01.07.2010 whereby the Id. Trial Court was of the opinion that in view of the statement of witnesses and documents relied upon by the prosecution, there are sufficient grounds for presuming that incident dated 01.11.1984 resulted on account of provocative speeches made by petitioner Sajjan Kumar to the mob gathered in Sultanpuri area and he instigated the mob and other accused persons, who were members of unlawful assembly, resulting into robbery, burning properties and killing members of Sikh community including Surjeet Singh.

2. Accordingly, the trial court opined that there are sufficient grounds for framing charge against petitioner / accused Sajjan Kumar for offences punishable under Section 109, read with Sections 147,148,149,153A,302,436 and 295 of the Indian Penal Code, 1860 and substantive offences thereof. Remaining accused persons are liable to be charged for the offences punishable under Sections 147/148/149/153A/302/436 and 295 of the Indian Penal Code, 1860.

3. Consequently, charges were framed against the petitioner Sajjan Kumar vide order dated 07.07.2010 as under: That you Sajjan Kumar, on 1st day of November, 1984, and thereafter, in and around the area of Crl. Rev.P. 438/2010,

Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 Sultanpuri, that is, Block A,B, C, E & F, and within the jurisdiction of PS-Sultanpuri, being a principal offender, abetted and instigated your co-accused persons, namely, Ved Prakash Pial @ Veedu Pradhan, peeru @ Periya Sansi @ Peera Ram @ Peeriya Gujrati, Khushal Singh @ Munna and Brahmanand Gupta @ Gupta Telwala, along with other known and unknown persons, including police personnel, to do or caused to be done illegal acts, to wit to be the member of an unlawful assembly, armed with deadly weapons, that is, guns, iron rods, dandas, sword, kerosene oil, etc., in prosecution of common object of every member of such assembly to use force or violence, to loot damage, burn the properties of Sikhs, to kill the members of Sikhs Communities residing in that area, in the wake of assassination of Smt. Indira Gandhi, the then Prime Minister of India, and instigating the members of unlawful assembly, intentionally aiding by your acts and illegal omission and in pursuance of engaging the members of unlawful assembly in a conspiracy for commission of offences under Section 147, 148, 149, 153-A, 295, 302, 436 Indian Penal Code, 1860 and the said offences were committed in consequence of your abetment and thereby you committed offences punishable under Section 109 read with Section 147, 148, 149, 153-A, 295, 302, 436 Indian Penal Code, 1860. Secondly, that you Sajjan Kumar on the aforesaid date and place, delivered fiery / provocative speeches, that is, Sare sardaron ko maro, ye sardar ka ghar hai, inhe bhi maro, sardaron ne meri maa maar di hai, inko maar do-kaat do etc. to the mob gathered in that area and instigated and promoted violent enmity against Sikh community and disturbed harmony between the two religious groups / communities of the locality, in retaliation to the assassination of Smt. Indira Gandhi, the then Prime Minister of India and you promoted the feeling of enmity between the members of Non-Sikh and members of Sikh community, which was an act prejudicial to the act of maintenance of harmony and to create feelings of enmity, hatred, ill-will between different groups and communities and which disturbed public tranquillity and thereby committed an offence punishable under Section 153A of the Indian Penal Code, 1860 and within the cognizance of this court. The charge framed against the other accused persons/petitioner vide order dated 07.07.2010 is as under: I, Ms. Sunita Gupta, District Judge-VII/NE-cumAdditional Sessions Judge, Karkardooma Courts, Delhi,

do hereby charge you:1. Ved Prakash Pial @ Veedu Pradhan s/o Mange Ram

2. Peeru @ Peeriya Sansi @ Peera Ram @ Peeriya Gujrati s/o Bela Ram

3. Khushal Singh @ Munna s/o Lal Chand

4. Brahmanand Gupta @ Gupta Telwala s/o Mool Chand as follows: That you all on 1st day of November, 1984, and thereafter, in and around the area of Sultan Puri, that is, Block no. A, B, C, E and F, and within the jurisdiction of PS Sultan Puri, agreed among yourself namely Ved Prakash Pial @ Veedu Prardhan, Peeru @ Periya Sansi @ Peera Ram @ Peeriya Gujrati, Khushal Singh @ Munna and Brahmand Gupta @ Gupta Telwala, along with your co-accused Sajjan Kumar and other known and unknown persons including police personnels and agreed to do or cause to be done illegal acts, to wit to be the member of an unlawful assembly, armed with deadly weapons, in prosecution of common object of every member of such Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 assembly, to use force or violence, to loot, damage, burn, the properties of Sikhs, to kill the members of Sikhs communities, residing in that area, in the wake of assassination of Smt. Indira Gandhi, the then Prime Minister of India, and these acts were committed in consequence of abetment and conspiracy by your coaccused namely Sajjan Kumar thereby you all committed an offence punishable under Section 109 read with Section 147, 148, 149, 153-A, 295, 302 & 436 IPC and within the cognizance of this court. Secondly, on the aforesaid date and place, you all namely Ved Prakash Pial @ Veedu Pradhan, Peeru @ Periya Sansi @ Peera Ram @ Peeriya Gujrati, Khushal Singh @ Munna and Brahmand Gupta @ Gupta Telwala, along with other known and unknown persons, including police personnels, being members of unlawful assembly, armed with deadly weapons, that is, guns, iron rods, dandas, swords, kerosene oil, etc., with a common object of looting, damaging, burning the properties of Sikhs, to kill the members of Sikh community residing in that area, in retaliation to the assassination of Smt. Indira Gandhi, the then Prime Minister of India, and in prosecution of aforesaid common object, you all committed the offence of rioting and that you all thereby committed offence punishable under Section 147 of the IPC and within cognizance of this court. Thirdly, on the aforesaid date and place, you all namely Ved Prakash Pial @

Veedu Pradhan, Peeru @ Periya Sansi @ Peera Ram @ Peeriya Gujrati, Khushal Singh @ Munna and Brahmand Gupta @ Gupta Telwala, along with other known and unknown persons, including police personnels, were members of an unlawful assembly and did, in prosecution of the common object of such assembly, namely looting, damaging, burning the properties of Sikhs, to kill the members of Sikh community residing in that area, in Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 retaliation to the assassination of Smt. Indira Gandhi, the then Prime Minister of India, committed the offence of rioting with deadly weapons, that is, guns, iron rods, dandas, swords, kerosene oil, etc. likely to cause death and thereby committed the offence punishable under Section 148 of the IPC and within cognizance of this court. Fourthly, on the aforesaid date and place, you all namely Ved Prakash Pial @ Veedu Pradhan, Peeru @ Periya Sansi @ Peera Ram @ Peeriya Gujrati, Khushal Singh @ Munna and Brahmand Gupta @ Gupta Telwala, along with other known and unknown persons including police personnels, were members of unlawful assembly, armed with deadly weapons, that is, guns, iron rods, dandas, swords, kerosene oil, etc. with a common object to loot, damage, burn the properties of Sikhs, to kill the members of Sikh community residing in that area in retaliation to the assassination of Smt. Indira Gandhi, the then Prime Minister of India, used criminal force and violence and thereby committed the offence punishable under Section 149 of the IPC and within cognizance of this court. Fifthly, on the aforesaid date and place, you all namely Ved Prakash Pial @ Veedu Pradhan, Peeru @ Periya Sansi @ Peera Ram @ Peeriya Gujrati, Khushal Singh @ Munna and Brahmand Gupta @ Gupta Telwala, alongwith other known and unknown persons including police personnels in prosecutions of common object, you all being the members of unlawful assembly, committed mischief by setting on fire a place of worship, that is the Gurudwara of Budh Vihar and houses of Sikhs communities used as human dwelling or as a place for custody of property and thereby committed an offence punishable under Section 436 read with Section 149 of IPC and within cognizance of this court. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 Sixthly, on the aforesaid date and place, you all namely Ved Prakash Pial @ Veedu Pradhan, Peeru @ Periya Sansi @ Peera Ram @ Peeriya Gujrati, Khushal Singh @ Munna and Brahmand Gupta @ Gupta Telwala, alongwith other known and unknown persons including police

personnels, in furtherance of your common object destroyed/damaged/defiled a place of worship to wit Gurudwara of Budh Vihar in Block-C Sultanpuri, Delhi held sacred by Sikh Community, with the intention of destruction and thereby insulting their religion and that you all thereby committed an offence punishable u/s 295 r/w Section 149 of the IPC and within cognizance of this court. Seventhly, on the aforesaid date and place, you all namely Ved Prakash Pial @ Veedu Pradhan, Peeru @ Periyal Sansi @ Peera Ram @ Peeriya Gujrati, Khushal Singh @ Munna and Brahmand Gupta @ Gupta Telwala, alongwith other known and unknown persons, including police personnels, were members of unlawful assembly, armed with deadly weapons, that is, guns, iron rods, dandas, swords, kerosene oil, etc. and you all in furtherance of your common object committed the murder of Surjeet Singh s/o Iqbal and thereby committed an offence punishable u/s 302 r/w Section 149 of the IPC and within cognizance of this court.

4. Thus, both the orders, i.e., dated 01.07.2010 and 07.07.2010 are under challenge in both the petitions mentioned above. Since the challenge in both the petitions is the same impugned orders, therefore, this Court has decided to dispose of both these petitions by way of common judgment.

5. Vide W.P.(Crl.) 205/2010, the petitioners seek quashing of the order dated 01.02.2010 passed by Id. ACMM, Karkardooma Court, Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 Delhi whereby issued summons for appearance in RC7(S)/05/SCBII/N.D., RC8(S)/05/SCB-II/ND and RC 25(S)/05/SCU-I. Issue raised in this petition is same as in above petitions, therefore, this petition is also being decided along with other petitions mentioned above.

6. Complainant Sheela Kaur has also filed separate Crl. Rev. P. 113/2011 seeking direction for trial court to frame charges against the accused persons under Section 120B Indian Penal Code, 1860 in addition to charges framed as mentioned above. Therefore, this petition is being decided along with the petitions mentioned above.

7. The case in hand has a painful history that on 31.10.1984, Late Prime Minister Mrs. Indira Gandhi was assassinated by her bodyguards at her residence in New

Delhi, which led to riots in various parts of Delhi involving looting, arson and murders of persons belonging to particular religion (Sikh).

8. On the basis of DD No.14A dated 01.11.1984, case FIR No. 250/84 was registered with Police Station Sultan Puri, Delhi on 01.11.1984 for the riots which took place in Sultan Puri area, Delhi. The police filed four charge-sheets including one supplementary charge-sheet for trial. Result of all the charge-sheets are as under: Sr. No. Charge Sheet No./ Title 1. Judgment Dated First chargesheet State Acquittal st dated 1 November, Vs.Suresh dated 1984 Chand & ors. 23.12.2002 CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 & CrI. Rev.P.113/2011 Name of Court Smt. Manju Goel, Id. ASJ Patiala House Page 9 o

2. Second chargesheet State Vs.Gopi Acquittal dated 1st November, & ors. date

30. 09.1993 3. Third chargesheet State dated 1st November, Vs.Tribhuvan 1984 Nath @ date of purchase is a matter of record. Pradhan & ors. Fourth chargesheet State Vs. st dated 1 November, Dayanand & 1984 ors.

4. 9. Conviction dated 30.03.1991 Acquittal dated 24.04.1997 Courts, New Delhi Shri S.S. Bal, Id. ASJ, Patiala House Courts, New Delhi Shri J.B.Goel, Id. ASJ, Patiala House Courts, New Delhi Shri S.S. Bal, Id. ASJ, Patiala House Courts, New Delhi Charges of killing in RC 7 (S)/2005/SCB-II/DLI (FIR No. 250/84) is as under: i. Basant Singh, S/o Shri Gulshan Singh, R/o A-1/178, Sultan Puri, Delhi. ii. Balbir Singh , S/o, Shri Basant Singh, R/o A-4/176177, Sultan Puri, Delhi iii. Balihar Singh, S/o, Shri Basant Singh, R/o A-4/176, Sultan Puri, Delhi CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 iv. v. Mohan Singh, S/o, Shri Sewa Singh, R/o C-3/245, Sultan Puri, Delhi vi.

10. Hoshiar Singh, S/o, Shri Sewa Singh, R/o C-3/245, Sultan Puri, Delhi Ranjit Singh, S/i, Shri Tota Singh, R/o, C-4/31, Sultan Puri, Delhi. Mr. Amerinder Saran, Id. Senior Advocate, appearing on behalf of the petitioner/accused Sajjan Kumar submitted that first chargesheet, i.e., State vs. Suresh Chand etc. was qua the killing of 49 persons whereas second chargesheet was relating to the killing of 7 persons in C-Block, Sultanpuri area. What the CBI had done is that it has picked up 3 killed persons namely Vasant Singh, Balbir Singh and Balihar Singh from the

list of 49 deceased persons in chargesheet no. 1 and further those 3 deceased persons namely Mohan Singh, Hoshiar Singh and Ranjeet Singh from the chargesheet no. 2 and has made the killing of above said six persons as the subject matter of the present RC. CBI has not assigned any reason, why it has chosen the killing of six persons only, from the two chargesheets decided by the concerned competent courts of Smt. Manju Goel and Sh. S.S. Bal, the then Id. Additional Sessions Judges, Delhi, for retrial with the same witnesses, which were earlier examined before the trial court. It is submitted that neither there is any fresh evidence nor any new victim.

11. Sh. Joginder Singh filed an affidavit before Sh. L.N. Jain and A.K. Banerjee Committee constituted on 23.07.1987 alleging the killing of his cousin Surjeet Singh by some assailants named in that CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 affidavit. On the basis of the said affidavit FIR no. 347/1991 dated 13.12.1991 was registered.

12. Basis of FIR no. 307/1994, PS-Sultanpuri, Delhi was the affidavit of one Smt. Anek Kaur filed before Justice Ranganath Mishra Commission constituted on 09.09.1985 regarding the killing of her husband Vakil Singh. This affidavit was accepted by Lt. Governor and consequently on 14.06.1994, above-said FIR no. 307/1994 was registered.

13. CBI had clubbed two cases bearing FIR no. 347/1991 and 307/1994, registered at Police Station Sultanpuri dated 13.12.1991 and 14.06.1994 respectively. Aforesaid two cases were sent for closure before the concerned competent court and the closure report was accepted. Accordingly, the cases were consigned to the record room as Untraced vide order dated 28.02.2004 and 15.01.1999 respectively.

14. The aforesaid orders were passed by the Id. Trial Court because the complainant Smt. Anek Kaur did not support the contents of the affidavit filed by her before the Justice Ranganath Mishra Commission, on the basis of which above said case was registered. Rather, she disowned the affidavit. Taking into consideration the facts and circumstances of the case, statement of the witnesses placed on record as well as the contents of the affidavit filed by Smt. Anek Kaur

and her statements in the Court, Sh. B.S. Chumbak, the then Id. MM, Delhi deemed it a fit case to be consigned Untraced. It was also observed by Id. Trial Court that Smt. Anek Kaur had also been examined during the investigation of FIR no. 268/1984, which covers the offences CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 alleged in the affidavit of Smt. Anek Kaur and there too she did not support the version of the prosecution.

15. Thereafter, Ministry of Home Affairs, Govt. of India while exercising its power conferred under Section 3 of the Commission of Enquiry Act, vide Notification no. 441(E) dated 08.05.2000, appointed Justice Nanavati Commission of Enquiry (1984 Anti Sikh Riots) to enquire into 1984 anti sikh riots incident.

16. Accordingly, Justice Nanavati Commission had submitted its report to the Government of India on 09.02.2005. The said Commission recommended to the Government to examine only those cases, where the witnesses have said against accused Sajjan Kumar specifically, yet no chargesheets were filed against him.

17. The Commission further recommended that the cases which were closed as untraced and still deserved to be re-examined including FIR no. 250/1984, FIR no. 347/1991 and FIR no. 307/1994 registered at Police Station-Sultan Puri, Delhi.

18. Accordingly, after considering the findings, the Ministry of Home Affairs, directed the Central Bureau of Investigation to investigate and re-investigate the above said cases, thus, CBI registered the cases mentioned above.

19. Id. Sr. Advocate further submitted, Id. concerned Trial Court had accepted the final report under Section 173 of Cr.P.C in case FIR no. 347/1991 which was registered on the basis of the affidavit filed by CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 one Sh. Joginder Singh before Jain-Banerjee Committee. The Joint Secretary (Ministry of Home), Delhi Administration had recommended for registration of said case because Sh. Joginder Singh and Smt. Rajwant Kaur, brother and wife respectively of deceased Surjeet Singh appeared before the Committee. However, during the course of investigation, statement of Sh. Joginder Singh was recorded under Section 164 Cr.P.C. by Sh. Om Prakash, the then Id. MM on 22.08.1992, whereby he totally disowned the affidavit and

denied having seen any incident of killing of his brother. Both the complainants, namely Sh. Joginder Singh and Smt. Rajwant Kaur, brother and wife of deceased Surjeet Singh were also summoned and examined by the Court on 15.03.1995 and 31.05.2003 respectively. Both of them denied any such incident as alleged in the affidavit having taken place.

20. Mr. Saran, further submitted that in view of the above, final untraced report was accepted and case file was consigned to record by the Court of Sh. S.P. Singh, the then Id. MM vide order dated 28.02.2004.

21. However, Justice Nanavati Commission submitted its report to the Govt. of India on 09.02.2005, wherein it observed that there is a credible material against petitioner Sajjan Kumar, no useful purpose can now be served by directing registration of those cases where the witnesses complaining about the same were examined before the Court and yet other accused persons were acquitted by the Court. The Commission, therefore, recommend to the Govt. of India to examine Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 only those cases wherein the complainants have specifically accused Sajjan Kumar. Further recommended, those two charge-sheets were filed against him and the cases were terminated as untraced and if there is justification for the same, action may be taken as is permitted by the law.

22. Ld. Sr. Counsel pointed out that in the present case, Justice Nanavati had wrongly observed that case FIR no. 250/1984, PSSultanpuri was consigned untraced and this fact was admitted by CBI in Para IV of the charge-sheet.

23. In the month of August, 2005, the Government filed Memorandum of Action Taken Report of Justice G.T. Nanavati Commission, wherein it was categorically stated that the petitioner Sajjan Kumar was not named as accused in this case nor any fresh material / evidence was produced before Justice Nanavati Commission against petitioner / accused Sajjan Kumar in connection with the incident of riots covered under FIR no. 250/1984, PS-Sultanpuri, FIR no. 347/1991, PS-Sultanpuri and FIR No. 307/1994, PS-Sultanpuri, Delhi. It was also categorically stated before the Parliament that no fresh affidavit was filed before Justice Nanavati Commission in connection with this incident against Sajjan Kumar nor any new or

additional evidence was there against him nor there was any justification to re-open this case.

24. However, in pursuance of discussion held in Lok Sabha and Rajya Sabha on 10.08.2005 to 11.08.2005, Ministry of Home Affairs, Govt. of India entrusted the case to CBI on 24.10.2005 vide DO Letter Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 No. U.13018/5/2005/Delhi-I for conducting further investigation / reinvestigation as per the recommendation of Justice Nanavati Commission.

25. In pursuance thereof, CBI re-registered the case FIR no. 250/1984, PS-Sultanpuri as RC-7(S)/2005/SCB-II-Delhi.

26. Thereafter on 22.11.2005, in pursuance of aforesaid letter, CBI re-registered the case FIR No. 347/1991, PS-Sultanpuri as RC No. 25(S)/2005/SCU-I/CBI/SCR-I/New Delhi and also registered case FIR No. 307/1994 at PS-Sultanpuri as RC-8(S)/2005/SCB-II/Delhi.

27. Ld. Senior Counsel for the petitioner submitted that while passing the order on charges against the petitioner, the trial court has not considered the relevant aspects which were required to be looked into.

28. He submitted, a bare reading of material on record leads to two equally possible views and, therefore, the benefit should have been accorded in favour of the petitioner. Moreover, the case is also suffering from basic legal and factual infirmities. The trial court has adopted completely erroneous approach (as noted in Para

47) against the dictum of law that if two views are possible one favouring the prosecution should be adopted. The witnesses cited by the prosecution have already appeared and deposed before the Courts earlier in respect of charges which are being prosecuted in the present proceedings. In earlier depositions these witnesses had not named the petitioner Sajjan Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 Kumar, therefore, rendering their present deposition are suspicious and unreliable.

29. Further submitted that while refusing to discharge the petitioner, the learned trial court failed to appreciate that RC No. 7 dated 07.11.2005 relates to death of Hoshiyaar Singh, Mohan Singh, Ranjit Singh, Basant Singh, Balbir Singh and Balihaar Singh. The death of the said six persons has already been investigated under FIR No. 250/1984, P.S. Sultanpuri and a full-fledged trial had already taken place in respect of death, rioting and related offences. Hence the present case is nothing but abuse of process of law.

30. The statements of prosecution witnesses, even if accepted on their face without any cross-examination, fails to make out a case against the petitioner, at least the same does not give rise to grave suspicion as required under the Law to frame charge. There are 34 witnesses made by CBI in the present case, out of which 12 witnesses speak about the petitioner. Out of which 2 witnesses namely PW11 and PW12 are hearsay witnesses. Out of rest of 10 witnesses, two witnesses namely PW2 and PW10 have already appeared as witnesses before the Courts in course of some trial or the other connected with the incidents which are being tried in the present proceedings. These trials have taken place before the courts of competent jurisdiction and reached their natural and logical conclusions. None of these witnesses ever named the petitioner in any of the statement before the court during the course of these trials including any allegation of incitement of rioting in that locality during that period. After a lapse of almost 24 years, CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 surfacing of these witnesses claiming to have seen the petitioner as inciting the riot during that period in clearly contradictory to their earlier statements recorded before the court of competent jurisdiction in trial conducted for the death and riot committed during the relevant period in that very area. It also renders their deposition highly doubtful, suspicious and unreliable on the very face of it.

31. The statement of PW1/Bhagwani Bai is also not reliable on face of it as in her own statement, she has stated that death of her son has already been enquired by a court of competent jurisdiction wherein she chose not to appear as a witness and in fact, her husband appeared as an eye witness in the trial of offence relating to murder of her sons. But her husband never named the petitioner. She also went to Police Station on number of occasions but chose not to appear before the court.

The trial in death of her sons has resulted in acquittal of the accused persons involved.

32. Now after lapse of almost 24 years, appearance of this witness not only erodes the entire confidence in the witness but also shows that she has been tutored to say specific which she has never stated earlier. Even on a bare look, the credibility of this witness is highly doubtful and the deposition of said witness is full of suspicion and therefore, needs to be rejected out-rightly.

33. The trial court omitted to notice that the entire investigation as conducted by the CBI is unfair, prejudiced and with a sole view to seek conviction of the petitioner rather than investigating the matter fairly and arriving at a fair conclusion. The court is duty bound to accept and CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 accord its approval only to a report which is a result of faithful and fruitful investigation. It is one of the basic principles of criminal jurisprudence that court should not look into and should decline to accept the report submitted by investigating officer where it is glaringly unfair and offends the basic canon of criminal investigation and jurisprudence. In the instant case, the unfair, prejudiced and determined manner in which the investigation has been carried out by CBI is apparent from the very fact that though the witnesses have repeatedly said in their statements that they have already appeared and made statements before the Court in respect of offences committed during 1984 riots, but no efforts were made by the investigating agency to look into and collect material, statement and records pertaining to those trials where these witnesses had appeared and deposed before the court.

34. Ld. Sr. Advocate further submitted that the trial court has failed to appreciate that unfair investigation is apparent on the face of it as much as one of the witnesses Thakari Devi PW9 in her statement has stated that in her earlier deposition before the court, she has already named Sajjan Kumar. She was blatantly lying to CBI with respect to earlier statement that she named the petitioner, however, no attempt was made by CBI to collect the record of the earlier deposition of the said witness.

35. The unfair investigation of CBI is also revealed from the fact that when three FIRs were registered, the CBI has filed a joint charge- sheet in all three FIRs without any rhyme and reason. The said CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 Joint charge-sheet was filed with a view and purpose that had it not been a joint charge-sheet, none of the case would have stand on its own footing. The same is apparent from the fact that the complainant in RC No. 8 has already died and there is no material other than the statement of deceased complainant.

36. Further submitted that in RC No. 7, the entire matter has already been investigated, the trial has already taken place and all the accused persons have been acquitted by court of competent jurisdiction. Had CBI filed a charge-sheet alone in RC No. 7, the principles of abuse of process would have come into play and would have resulted in quashing of the charge-sheet and consequent proceedings.

37. As far as RC No. 25 is concerned, the complaint under the said RC was sent untraced after recording the statements of the complainant before the court of competent jurisdiction and this case would have also not stood on its footing as there would not have been clear abuse of process.

38. Mr. Saran submitted that by devising innovating method, the CBI has joined all the three RCs in one joint charge-sheet in an unfair manner. No record of earlier investigation and trial or statement of the witnesses earlier recorded was made part of the charge-sheet which would have clearly shown that the entire prosecution is nothing but abuse of process of law. The aim of criminal justice system is not only to find out the culprit but also to secure the right of an innocent man who may be falsely implicated. CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 39. The erroneous approach of the trial court at the time of passing of order on charge is further reflected in its order in Para 41 wherein the trial court accepted the contention of the prosecution not pressing the case of death of six persons under RC No. 7 (in respect of which trial has already taken place under FIR no. 250/1984) but only qua death of Surjeet Singh under RC No.

25. In such a situation, the legal course open to be adopted by the trial court was to discharge all the accused persons under RC No. 7 and frame charges with respect to the killing of Surjeet Singh under RC No.

25. 40. It is further submitted that unfair and arbitrary manner of investigation is further apparent from the fact that it has chosen to file charge-sheet in RC (7)/2005 in respect of death of six persons, in which 3 deaths have been enquired under FIR No. 250/1984 in State vs. Suresh Chand and rest of the 3 deaths have been put to the Sessions Trial in case of State vs. Gopi.

41. It may not be out of place to mention here that in these two trials viz., State v. Suresh Chand and State v. Gopi, killing of 49 and 7 persons respectively inquired, accused were identified, sent for trial. They were tried by the Court of competent jurisdiction and trial concluded to natural consequences.

42. There is absolutely no reason why the CBI investigated and preferred chargesheet with respect to the death of only six persons out of 56 deaths and rest 50 deaths were either not enquired or no whisper was made. The selective and hand-picked witnesses of the prosecution in the present proceedings have already appeared and deposed in the CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 trials. There is no whisper as to why CBI has chosen to select the killing of 3 persons each from chargesheet no. 1 and no. 2 titled as State vs. Suresh Chand and State vs. Gopi in FIR no. 250/1984 43. That apart, investigating agency has not assigned even slightest of reason as to why instead of 27 accused persons only two accused persons have been re-chosen and why not all others have been put to trial. Two accused persons, petitioner Khushal Singh and Vedu Singh, they were neither named earlier in the trial nor by any of the witnesses whose statements had been recorded under Section 161 Cr.P.C. or 164 Cr.P.C., except Joginder Singh, who had already deposed before the court in regard to this incident, i.e., the subject matter of the present incident and not named any of the accused persons.

44. Ld. Counsel has pointed out that in the instant case, CBI approached the court for permission for re-investigation in FIR No. 307/1994 and FIR No. 250/1984, PS-Sultanpuri and vide order dated 15.12.2005, Id. Trial Court rejected the application

and refused to give any specific permission to CBI to re-investigate the matter.

45. Id. Counsel has further submitted that on setting aside the order of framing of charge, the Division Bench of this Court on 14.10.1989 in W.P.(C) 3337/1987 titled as Brahmanand Gupta v. Delhi Administration & ors. reported in 41 (1990) DLT 212 goes to the root of the matter wherein the validity of the constitution of the Jain Bannerjee Committee was challenged. While setting aside the constitution of such committee held in no uncertain terms that entertainment of fresh allegation against individuals is beyond CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 jurisdiction of the said Committee and it is not authorized to accept fresh allegations as same would be negation of rule of law. Therefore, the court directed that no fresh allegation in respect of an individual can be entertained. It became a binding mandamus not only for that Committee, but also for all authorities.

46. Therefore, the material which was a fresh allegation against the petitioner ought not to have been taken and cannot be taken into consideration and, therefore, reliance of Id. Trial Court and Prosecution on Nanavati Commission for prosecuting the petitioner is prohibited under the Law as same would amount to negation of rule of law and hence, the framing of charges on the basis of fresh allegation against the petitioner made for the first time in the year 2000 is liable to be set aside.

47. It is further submitted that the prosecution has taken shelter of recommendation of Justice Nanavati Commission (which was not expressly authorized to accept any fresh allegation against an individual) for prosecuting the petitioner in the instant case, which has also weigh heavily on the mind of the Id. Trial Court while framing the charges against the petitioner.

48. However, the Id. Trial Court has lost the sight of the crucial fact that Justice Nanavati Commission, while recommending re- investigation, Registration of FIR in case stated that same to be done only if permissible under the law. In the instant case none of the requirements as set out by the Nanavati Commission are present because in this case, no closure report is accepted, initially petitioner CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 was not named nor

was there exist any legal justification for prosecution.

49. Mr. Anil Sharma, Ld. Counsel submitted that in case of Crl. Rev. P. 439/2010, there are 12 witnesses, out of total 34, who now named about the petitioners. These witnesses have already appeared and deposed before the court earlier in respect of the charges which is being prosecuted in the present proceedings. In earlier deposition these witnesses have not named the petitioners, therefore, rendering their present deposition is suspicious and unreliable.

50. While refusing to discharge the petitioners, the trial court failed to appreciate that RC 7 dated 07.11.2005 relates to the deaths of Hoshiyaar Singh, Mohan Singh, Ranjit Singh, Basant Singh, Balbir Singh and Balihar Singh. The death of above said six persons has already been investigated under FIR 250/1984, PS-Sultanpuri and full-fledged trial had already taken place which was concluded by the judgments of the Id. Sessions Court of competent jurisdiction.

51. Further submitted, there are 34 witnesses produced by CBI in the present case, out of which 12 witnesses speak about the petitioners. Out of which two witnesses, i.e., PW11 and PW12 are hearsay witnesses. Out of rest of 10 witnesses, 9 witnesses, i.e., PW2 to PW10 had already appeared as witnesses before the courts in course of some trial or the other connected with the incidents which are being tried in the present proceedings. These trials have taken place before the court of competent jurisdiction and reached their natural and logical conclusions. None of these witnesses ever named the petitioners in Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 any of the statements before the court during the course of trials including any allegation of incitement of rioting in that locality during that period. After lapse of 24 years, surfacing of these witnesses claiming to have seen the petitioner as inciting the riot during that period is clearly contradictory to their earlier statements recorded before the court of competent jurisdiction in trial conducted for the death and riot committed during the relevant period in that very year.

52. Ld. Counsel has further pointed out that the statement of PW1 Bhagwani Bai, has in her own statement stated that the death of her sons has already been enquired by the court of competent jurisdiction, wherein she chooses not to appear

as witness and in fact her husband appeared as eye witness in the trial of offence relating to murder of her sons. Her husband never named the petitioners herein.

53. As far as Brahmanand Gupta and Peeriya Sansi are concerned, who are the subject matter of W.P.(Crl.) 205/2010, they have already been tried for the acts of rioting and murder of persons in respect of whom, present charge-sheet being RC No. 7/2005 has been filed. The said persons cannot be tried again for the same offence. In this regard Provisions of Section 300 Cr.P.C and Article 20 of Constitution are relevant. The same are as under:Section 300 of Cr.P.C. Person once convicted or acquitted not to be tried for the same offence. (1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub section (1) of section 221, or for which he might have been convicted under sub section (2) thereof. Article 20 (2) of the Constitution of India. (2) No person shall be prosecuted and punished for the same offence more than once.

54. So far as Ved Prakash @ Veedu Pradhan and Khushal Singh, petitioners in Crl. Rev. P. 439/2010 are concerned, none of these persons were named by any of the 8 witnesses earlier at the time of trial of FIR no. 250/1984. The said persons were not named by any of the 9 witnesses either in their statement under Section 161 or in their statement under Section 164 Cr.P.C., who have been cited as witnesses in RC No. 7/2005.

55. Ld. Counsel has relied upon a case of Vinod Chaturvedi & Ors. v. State of Madhya Pradesh (1984) 2 SCC 35.wherein it is held as under:The peculiar features of this case are that the prosecution had alleged that Brindaban had been murdered by a set of five persons different from the present appellants and had made them face a regular trial. Three most material witnesses being P.Ws. 1, 3 and 24 of the present trial who are close relations of deceased Brindaban had then testified before the Court that those five accused persons and no others including

the appellants were responsible for the death of Brindaban. After the acquittal in 1974 nothing happened in the matter for three years and suddenly 97 on the same old allegations in the hands Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 of the police, fresh investigation was undertaken and the present set of accused persons were arrayed as murderers of Brindaban. Those three eye-witnesses who on the earlier occasion had deposed that five named assailants were the murderers of the Brindaban changed their version and now spoke that the present appellants were the murderers. The fact that these alleged eye-witnesses were prepared to implicate the five persons who were acquitted on the earlier occasion and the present appellants on the subsequent occasion in a serious charge like murder is indicative of the fact that no credence can be given to the evidence of these witnesses and they were willing to lend their oath to any story that the prosecution advanced. Once the evidence of P.Ws.1, 3 and 24 is brushed aside on that ground, the residue by itself would not be adequate to support the charge. We have grave doubts whether the High Court in whose hands there has been a reversal of the acquittal would have found the remaining evidence to be good basis for the conviction.

56. Mr. Sharma submitted that as far as the trial in respect of looting and death of 6 persons in respect of which RC 7/2005 has already been held, a court of competent jurisdiction after trying the offences after detailed trial has passed an appropriate order acquitting the persons who were arrayed as accused. Revision Petitions against the acquittal order is pending before this Court. There cannot be retrial of an offence for which revisions are pending. Moreover, the court, for the offences in FIR No. 250/1984, had already taken cognizance and thereafter passed appropriate orders. As per settled law, court cannot take cognizance of the same offences twice. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 57. Therefore, Id. Trial Court ought not to have framed charges against the petitioners. Even during the course of hearing before the Id. Trial Court, the Counsel for the CBI had made a categorical statement that he was only pressing the charges qua murder of Surjeet Singh and not of any other deceased in regard to whom trial had already taken place. The said fact has been noted in the impugned order as under: Moreover, the submission that in FIR No. 250/1984, four charge sheets and one supplementary chargesheet were filed

pertaining to death of 60 persons and involving 27 accused and out of those 60 accused, 6 are subject matter of present RC, same is devoid of merit in as much as during the course of arguments, it was submitted by Counsel for CBI that they are pressing the charge only qua murder of Surjeet Singh and not of any other deceased in regard to whom trial had already taken place. It is not disputed that as regard murder of Surjeet Singh, none of the accused have faced trial.

58. It is further submitted that Id. Trial Court has erred in passing impugned order in view of observation noted above. Therefore, the error is apparent from the fact that the Id. Trial Court has held that a consolidated charge-sheet have been filed and statements of other witnesses also have been recorded.

59. In the impugned order it is recorded as under: Although, FIR no. 307/1994 registered on the statement of Smt. Anek Kaur and FIR no. 347/1991 on the statement of Joginder Singh were sent untraced and Smt. Anek Kaur has since expired and at that time CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 Joginder Singh did not own his affidavit, but keeping in view the fact that consolidated charge-sheet has been filed and now number of witnesses, as discussed above, have been examined by CBI and their statements U/s. 164 of the Cr.P.C. have also been recorded, therefore, even if some of the witnesses have deposed, in earlier proceedings, the alleged deviation will have to be explained by the witnesses in the court during trial.

60. Mr. Sharma further submitted that on accepting the categorical statement of CBI that it is only pressing the charge qua murder of Surjeet Singh, there is only one witness that is Joginder Singh who earlier had deposed twice in this regard. Further testimony of Joginder Singh is totally unreliable and cannot be looked into. He had specifically disowned his affidavit and further stated that the same was signed under a false pretext. In his earlier statement, he had categorically denied even seeing any such incident.

61. The naming of the petitioners by the witnesses who had already been examined earlier, after about 21 years is wholly belated for which there is no explanation with C.B.I.

62. So far as RC8(S)/05/SCB-II/DLI is concerned, CBI has cited two witnesses, namely, PW-11 Smt. Misri Kaur and PW-12, Smt. Prem Kaur in the charge-sheet to prove the charges in the said RC.

63. The above named witnesses do not name the petitioners in CrI. Rev. P. 439/2010 and in their statements also they do not, in any manner, name the petitioners in CrI. Rev. P. 205/2010. CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 64. Mr. Sharma has pointed out that Smt. Misri Kaur (PW11) has stated as under: On being asked, I stated that I have not seen Sajjan Kumar and Jai Kishan leading the rioters on 01.11.1984 nor Sajjan Kumar was heard while ordering mobsters. When we were in E-6, neither I saw Sajjan Kumar and Jai Kishan coming in a Jeep nor I accompanied my Bhabhi to Police Station Sultanpuri. Whatever, I had told you today has been stated after recollecting it thoroughly, I had heard from the people that Sajjan Kumar had hand in the riots. I do not know the whereabouts of Sheela Jatni as to where she lives. She has left the House No. F-4 Block several years earlier.

65. Similarly, Smt. Prem Kaur (PW12) in her statement has stated as under: On being asked, I stated that I had never seen Anek Kaur going to Police Station. When were in E-6 Camp, I never saw Sajjan Kumar and Jai Kishan, Congress Leaders coming in the Jeep. I had not seen any rioters with eyes as at that time, we were worried to save our lives.

66. It is submitted by Id. Counsel for the petitioner that from the statements made by above two witnesses, it is clear that the witnesses have in no manner personally seen petitioner Sajjan Kumar. Therefore, the statements also do not in any manner implicate the petitioner Sajjan Kumar.

67. Even if the entire statement is taken to be true, no prosecution could be launched and can be continued on the basis of the said CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 statement in as much as the said statement does not in any manner implicate any of the petitioners in any of the matter.

68. He submitted, the Delhi Police after investigation of the matter and after recording the statement of the complainant Anek Kaur, filed its report under Section 173 of Cr. P.C. The Id. Trial Court vide its order dated 15.01.1999 accepted the said report and recorded as under: On the basis of submissions made by Inspr. Crime C.S. Rathi, I also perused the material placed on record, statement of executants of affidavit (Anek Kaur) and satisfied that she has not supported the contents of affidavit filed by her on the basis of which this case was registered. Moreover, she has also been examined by the court wherein she has clearly and superficially mentioned that she had never seen Sajjan Kumar with the mob and she had never seen him with her own eyes but she has disclosed his name after hearing from other persons. Except Sajjan Kumar she has not disclosed of any person whose name she has disclosed in an affidavit filed by her. Taking into consideration, the fact and circumstances of the case, statement of the witnesses placed on record as well as the contents of affidavit filed by Smt. Anek Kaur and her statement in the Court, I am satisfied that it is a fit case to be consigned untraced. Accordingly, the file be consigned untraced.

69. Further submitted that recording of statement of the same persons again and again amounts to re-investigation which is prohibited by law under Section 173 (8) of Cr.P.C. This provision only permits further investigation and not re-investigation, re-recording Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 the statement of the witnesses whose statement has been recorded earlier and accepted by the court.

70. Ld. Counsel has relied upon a Judgment passed by this Court in the case of Hoor Begum v. NCT of Delhi 2011 (3) JCC 2131 wherein it is held as under: But one thing is to be borne in mind that the word used under Section 173 (8) Cr.P.C. is further investigation and not re-investigation. While as re-investigation would mean revisiting the evidence which has already been collected by the investigating agency which is not permissible within the domain of Section 173 (8) of Cr.P.C. but further investigation is possible which would mean, to investigate the matter further from the point from where it has been left in the previous investigation.

71. The case was earlier investigated by the police authorities and filed a report under Section 173 of Cr.P.C. which was also accepted by the Id. Trial Courts after examining the complainant Smt. Anek Kaur as a court witness. She, in her statement, had disowned her earlier affidavit.

72. Accordingly, Id. Trial Court passed its order dated 15.01.1999 filing the said case (FIR No. 307/1994) as untraced after considering the entire material including earlier statements of the same witnesses who are witnesses in the present case.

73. As far as RC25(S)/05/SCR-1/DLI is concerned, same has been registered for investigation and trial for the death of Surjeet Singh. Earlier, death of Surjeet Singh was investigated under FIR No. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 347/1991 and a report under Section 173 Cr.P.C. was filed by the investigating agencies. After perusing the report and after recording the statement of the complainant therein, i.e., Joginder Singh as a court witness, the concerned court vide its order dated 28.02.2004 had filed the case as untraced.

74. Id. counsel for petitioners submitted that on the basis of complaint of Joginder Singh, the aforesaid FIR was registered, who had made a statement dated 22.08.1992 which was recorded by the Id. Magistrate under Section 164 Cr.P.C. He stated therein that the affidavit on the basis of which FIR was registered was got signed from him on a false pretext and he had not seen anything. After the filing of the report by the police under Section 173 Cr.P.C. the said witness on being summoned by the Court, before the acceptance of the report filed by the police, was examined on 31.05.2003 as a Court Witness. While being examined as a court witness, Joginder Singh reiterated his earlier statement made under Section 164 Cr.P.C.

75. It is further submitted that Joginder Singh had already been examined twice by a Court of competent jurisdiction under Section 164 Cr.P.C and a Court Witness as well. On both the occasions, he had stated and reiterated that he was not aware of any incident and disowned his affidavit on the basis of which the earlier FIR 347/1991 was registered. Joginder Singh, on whose statement the present RC has been registered is purportedly the brother of the deceased Surjeet Singh and

therefore, he cannot be treated as ordinary witness who had earlier given a version while exonerating the petitioners. He being CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 brother of the deceased would not have maintained silence for such a long period.

76. Ld. Counsel for the petitioners further submitted that as per the prosecution case, present RCs were registered on the recommendation of the Nanavati Commission. The recommendations of the Nanavati Commission were as under: No useful purpose can now be served by directing registration of those cases where the witnesses complaining about the same were examined before the Courts and yet other accused were acquitted by the Courts. The Commission, therefore, recommends to the Government to examine only those cases, where the witnesses have accused Sajjan Kumar specifically and yet no charge-sheet was filed against him and the cases were terminated as untraced and if there is justification for the same then take further action as is permitted by law.

77. It is submitted, as far as RC7(S)/05/SCB-II/DLI is concerned other accused persons have already been acquitted and therefore even as per the recommendations of the Nanavati Commission, the said RC could not have been registered.

78. As far as RC8(S)/05/SCB-II/DLI is concerned, Anek Kaur is complainant in the said case, which had earlier been registered as FIR no. 307/1994, had already died prior to the recommendation of the Nanavati Commission. Therefore even as per the recommendations of the Nanavati Commission, the said RC could not have been registered. CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 79. As far as RC25(S)/05/SCR-I/DLI is concerned, the case had earlier been registered as FIR no. 347/1991. There was only one witness, i.e, Joginder Singh in the said FIR no. 347 of 1991. The statement of Joginder Singh was recorded under Section 164 Cr.P.C. as well as a court witness. It is only after considering the said statements the Id. Trial Court passed an order for closing the case as untraced. Therefore, even as per the recommendations of the Nanavati Commission the said RC also could not have been registered.

80. Mr. Anil Sharma submitted that the prosecution has committed a gross illegality in filing a consolidated charge-sheet in all the three RCs. The witness in RC 8 do not in any manner implicate any one, the witnesses in RC 7 do not in any manner name the petitioners in Crl. Rev. No. 439 of 2010, i.e., Ved Prakash and Khushal Singh and the petitioners in W.P.(Crl.) No. 205 of 2010, i.e., Brahmanand Gupta and Peeriya Sansi.

81. The consolidation is itself accepted to be bad in law by the CBI before the Trial Court, wherein they have stated categorically that they are pressing the charge only qua the murder of Surjeet Singh and not the charge for murder of persons in respect of which trial has already been held.

82. No prosecution could be launched even in respect of other offences as sought to be done in RC No. 7 as is evident from the fact that all allegations which have been made in the said RC including allegation in relation to burning of the Gurudwara were investigated and were part of investigation in FIR No. 250/1984. In this regard DD Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 No. 13A dated 01.11.1984 clearly records that at 2.10 PM someone informed the Police Station that the crowd had set on fire the Gurudwara at Block A-4 and that the members of the Sikh Communities were being killed and the houses and shops of Sikhs were being burnt and looted.

83. It is submitted that there was no ground of any kinds whatsoever to proceed against the petitioners. For the purpose of framing of charges, the court has to sift and weigh the evidence with a view to examine whether any prima-facie case is made out against the accused persons. Charge can only be framed only if there is grave suspicion against the accused being involved in the offence which is not properly explained by the accused.

84. Ld. Counsel for the petitioners has relied upon a case of Union of India v. Profulla Kumar Samal 1979 (3) SCC 4. wherein it is held as under: Thus, on a consideration of the authorities mentioned above, the following principles emerge: (1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the

accused has been made out: (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 fully justified in framing a charge and proceeding with the trial. (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him which giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. (4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

85. Further submitted that same view has been taken by the Apex Court in *Dilawar Balu Kurane v. State of Maharashtra* 2002 (2) SCC 135.

86. Further relied upon a case of *Ashok Kumar Nair vs. State* 2007 (2) JCC 1489. wherein it is held as under:- CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 The facts on record which are part of the charge sheet, therefore, present a conflicting picture all the statements of independent witnesses do not support the version of the informant. It was only the statement of the informant that the incident alleged by her occurred, according to the facts described in the FIR and the charge sheet. It is well-settled in *Prafulla Kumar Samal's* case that the Court has to sift the evidence and determine whether a grave suspicion about commission of offence exists on the basis of the materials. *Kurane's* case is an authority for the proposition that if there are two versions or two inferences can be reasonably drawn, the version favorable to the accused has to be accepted by the Court so long as it is a reasonable one. No doubt some judgments such as *State of Maharashtra Etc. v. Som Nath Thapa Etc.*

JT 199.(4) SC 61.have indicated that in charges of rape etc. the Court should avoid embarking on detailed consideration of the probative value of materials. The decision in Rajbir Singh's case is also to that effect. However, in my opinion these do not detract from the basic time tested norm that the Court has to form a reasonable opinion about existence of grave suspicion, regarding commission of the offence. Equally if two versions are possible, the one supporting the accused has to be preferred. In this case the entire materials before the Court are in the form of statements. There is a clear conflict about the facts alleged. Besides the informant there is no one speaking about the incident as alleged by her. The police constable who was admittedly on the spot, stated that there was no quarrel as described by her and the two independent witnesses again admittedly CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 present, gave a completely different picture pointing to the informant starting a quarrel with them. They clearly state that the petitioner did not threaten, assault or abuse the informant. In these circumstances, after careful consideration of the materials I am of the opinion that there is a reasonable version which supports the petitioner. The materials on record also do not point to a grave suspicion to warrant the charges, framed in the impugned order.

87. Further submitted that same view has been reiterated by the Apex Court in Sajjan Kumar v. CBI 201.(9) SCC 36.wherein it is held as under: On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case. ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving

enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 88. The Apex Court in Shiv Shankar Singh v. State of Bihar and Anr. 2012 (1) SCC 13.dealt with the issue as to whether second FIR could be registered and / or a second complaint could be maintainable where the earlier complaint had been dispose of on full consideration of the case of the complainant on merit and held as under:Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts and provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of one full consideration of the case of the complainant on merit.

89. In the present case FIR no. 347/1991 has been registered as RC No.

25. The only witness in R.C. No. 25 is Joginder Singh who was the complainant in earlier FIR no. 347/1991. After filing the report under Section 173 Cr.P.C., Id. Trial Court had in accordance with the decision of the Honble Supreme Court in

Bhagwant Singh v. Commissioner of Police 1985 (2) SCC 53.summoned the complainant Joginder Singh, recorded his statement as a Court witness wherein Joginder Singh reiterated his statement dated 22.08.1992 U/s. 164 Cr.P.C. whereby Joginder Singh had stated that the affidavit on the basis of which FIR no. 347 of 1991 was registered was got signed from him on a false pretext and he had not seen anything. CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 Ld. Trial Court after examining the complainant and after recording his statement by order dated 28.02.2004 accepted the report filed by the Police.

90. It is further submitted that as the report had been accepted and order dated 28.02.2004 had been passed after full consideration of the case of the complainant, no second FIR / Investigation / complaint could be maintained or initiated.

91. In Popular Muthiah v. State represented by Inspector of Police (2006) 7SCC 29.it is held as under:Mr. M.N. Rao, the learned senior counsel appearing on behalf of the appellants raised the following contentions in support of this appeal:(i) The High Court while hearing the appeal preferred by Nallakannan @ Muthu wrongly exercised its power in terms of Section 482 of the Code of Criminal Procedure. (ii) While exercising the said jurisdiction, the High Court, thus, could neither exercise any revisional jurisdiction under Section 397 nor its inherent jurisdiction under Section 482 of the Code of Criminal Procedure. (iii) Suo motu exercise of power by the High Court under Section 482 is unknown in law. While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 being that the High Court can exercise its revisional jurisdiction and/ or inherent jurisdiction not only when an application therefor is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of the Parliament, while making the new law the emphasis of the Parliament being 'a case before the court' in contradistinction from 'a person who is arrayed as an accused before it' when the

High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it. In certain situations, the court exercises a wider jurisdiction, e.g., it may pass adverse remarks against an investigator or a prosecutor or a judicial officer, although they are not before it. Expunction of such remarks may also be directed by the High Court at a later stage even suo motu or at the instance of the person aggrieved. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters. *Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010* In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that: (i) power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused. (ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

92. On the other hand, Mr. D.P.Singh, Id. Counsel appeared on behalf of the respondent CBI has submitted that prosecution is seeking the trial of the accused persons for the murder of Surjeet Singh (RC25) arising out of FIR no. 347/1991, PS-Sultanpuri. In this matter only an untraced report was submitted by the Delhi Police which was accepted by the Court.

93. In RC-8 arising out of FIR No. 307/1994 of PS-Sultanpuri, the prosecution is seeking trial for burning, looting arson, damaging of Gurudwara. In this matter also only an untraced report was submitted which was accepted by the Court concerned. Hence in both RC-8 and RC-25, there has not been any trial of the accused persons.

94. In so far as RC-7, arising out of FIR No. 250/1984 of PS- Sultanpuri is concerned, accused Sajjan Kumar was not tried. It is imperative to mention that in

RC-25 and RC-8 arising out of FIRs No. 347/91 and 307/94 respectively pertaining to PS-Sultanpuri, the cases CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 were registered only on the basis of direction given by Committees formed to look into the 1984 Anti Sikh Riots, as no action was taken by the Delhi Police in 1984 itself on these cases.

95. Justice Nanavati Commission of enquiry was appointed in 2000 to look into 1984 anti-sikh riots. The report of the Nanavati Commission was tabled before the Lok Sabha on 10.08.2005 and before the Rajya Sabha on 11.08.2005. The Nanavati Commission in its report recommended registration of those cases where witnesses have accused Sajjan Kumar specifically and yet no charge-sheet was filed against him and the cases were closed as untraced. The mandate of the Commission to the CBI was to examine cases arising out of FIR No. 250/1984, 307/94 and 347/91 of PS-Sultanpuri. Under these specific directions issued by the Commission, the investigating agency has reregistered these FIRs as RC-7 arising out of FIR No. 250/84 of PS-Sultanpuri, RC-8 arising out of FIR no. 307/94 of PS-Sultanpuri, RC-25 arising out of FIR 347/1991 of PS-Sultanpuri.

96. It is further submitted that CBI has submitted a consolidated charge-sheet in the three abovementioned RCs as all the incidents of rioting, looting, burning, arson were committed in continuity, pertain to the same day and the same area, thus reflecting proximity of time and place, unity of purpose and design and continuity of action. The criminal acts of the accused form part of the same transaction. The idea of presenting a consolidated charge-sheet emanates from the scheme of the Cr.P.C. reflected in the chapter on charge, Part B, contained in Section 218 to 223. These sections deal with provisions of law CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 reflecting instances where offences of a particular kind, depending on various factors under which they have been committed may be tried together.

97. He argued that while dealing with a criminal case there are two stages which come before the Court, one is the stage of discharge / framing of charge and other is the stage of trial. It is a settled law that the at the stage of discharge / framing of charge the purpose is to decide whether the Court should proceed with the trial.

The probative value of the material cannot be gone into at this stage. The court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his acquittal. At the initial stage if there is strong suspicion which leads the court to think that there is ground for presuming that the accused has committed the offence, a charge would be framed. The requirement at the stage of charge / framing of charge is a mere presumption leading to a strong suspicion, whereas the consideration at the stage of trial is the principle of beyond reasonable doubt. The scheme of the Code and the object with which Section 227 was incorporated goes to show that at the stage of framing of charge, a roving and fishing inquiry is impermissible.

98. In the matter of Sajjan Kumar v. CBI 201.(9) SCC 36.while considering the various decisions dealing with the provisions of Section 227/228 Cr.P.C, Honble Apex Court held as under:At the stage of framing of charge under Section 228 Cr.P.C. or while considering the discharge petition filed under Section 227, it is not for the magistrate or Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 the judge concerned to analyze all the materials including pros and cons, reliability or acceptability. It is at the trial, the judge concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents and is free to take a decision one way or the other.

99. Ld. Counsel has further submitted that in the present case, victims have been naming the accused since 1985/1987 and there are direct allegations of murder, arson, looting, burning and targeting members of one community. The statements of the victims recorded under Section 161 Cr.P.C. would show the presence of Sajjan Kumar in the area and his leading the mobs and instigating them to commit crimes of arson, looting, murder and burning, upon members of one community, hence raising direct allegation, i.e., much more than giving rise to grave suspicion, which is the requirement at the stage of discharge / framing of charge.

100. Further submitted that Section 227 of the Code of Criminal Procedure, 1973 covenants the provision for discharge. The Section envisages that upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and prosecution if the Judge

considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. The material before the trial court was only the charge-sheet, and the annexures which have been annexed here, were not part of the charge-sheet, therefore, same cannot be relied upon at this stage. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 101. Ld. Counsel has relied upon the case of State of Orissa v. Debendra Nath Padhi 2005 (1) SCC 56.deals with the larger questions of what entails the record of the case. The record of the case as understood in Section 227 of Cr.P.C. has to be read with the documents referred to in Section 209 Cr.P.C. It is settled law that at the stage of discharge / framing of charge, hearing the submissions of the accused has to be confined to the material produced by the investigating agency. It is held that: It is evident that the record of the case and the documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of trial.

102. The query at the stage of charge is limited to the point so as to adduce whether or not, based on the material on record, there exists a prima-facie case giving rise to grave suspicion. At this stage the probative value of the material placed on record by the prosecution is not to be examined, but it is the sufficiency of the material that has to be the focal point of scrutiny.

103. He submitted that in the case of Rukmini Narvekar v. Vijaya Satardekar & Ors. (2008) 14 SCC 1.while reiterating the decision in Debendra Nath Padhi Case (Supra), the Apex Court concluded that the larger Bench did not leave any scope for a different interpretation Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 of the provisions of Section 227, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 Cr.P.C. can be taken into consideration at the stage of framing of charge.

104. In the present case, the judgment dated 23.12.2002 passed by Smt. Manju Goel, the then Id. ASJ, the judgment dated 30.09.1993 passed by Sh. S.S. Bal, Id. ASJ, order dated 15.01.1999 passed by Sh. B.S. Chumbak, Id. MM, order dated 28.02.2004 passed by Sh.G.P.Singh, Id. MM, Delhi, Memorandum of Action Taken Report on the Report of Justice Nanavati Commission placed before the Parliament, depositions of witnesses PW2, PW3, PW4, PW5, PW7, PW8, PW9 and PW10 before various Courts are not part of the report under Section 173 Cr.P.C. Therefore, above mentioned documents cannot be relied upon at the stage of charge.

105. The petitioners have moved to this Court under its Revisional Powers. The revisional jurisdiction enables the Superior Court to call for and examine the record of any proceeding so as to satisfy itself as to the correctness, legality or propriety of any finding. The question to be considered is not whether the Court can invoke its inherent jurisdiction under Section 482 Cr.P.C at any given stage. Rather, the moot point is that, what is the material which can be looked into by the Courts at the stage of discharge / framing of charge. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 106. On the issue of double jeopardy, it is submitted that the case of the prosecution is that in FIR No. 347/1991, PS-Sultanpuri (RC-25(S)/05/SCR-I/DLI) and in FIR No. 307/1994, PS-Sultanpuri (RC-8(S)/05/SCB-II/DLI), only an untraced report was submitted which was accepted by the Court. As such there has not been any trial in these cases resulting in acquittal / conviction. Therefore, the filing of untraced report does not operate as a bar to subsequent prosecutions.

107. Moreover Sajjan Kumar was not an accused in any of the trial pertaining to incident of rioting in the area of Sultanpuri except in one case RC-1(S)/90-SIV-2/SIC/1-B which resulted in acquittal by the Id. Sessions Court and the appeal against the same is pending in this Court.

108. In RC-25 the prosecution is seeking the trial of the accused persons for the murder of Surjeet Singh while in the remaining two RCs, the trial of the accused persons is being sought for arson, looting, burning the houses of Sikhs and in these cases Sajjan Kumar has never been tried. The trial from the PS-Sultanpuri

area arose from FIR no. 250 and FIR no. 252, PS-Sultanpuri, in both of which Sajjan Kumar was not an accused and hence there was no occasion for any witness to depose against him.

109. Ld. Counsel for CBI has argued that the provisions of Section 300 (2) Cr.P.C. wherein it is specifically mentioned that the prosecution is permitted notwithstanding acquittal or conviction for an offence with the consent of the State Governments. A glance at the CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 explanation appended with Section 300 Cr.P.C. further clarifies that the discharge of an accused is not an acquittal for the purpose of this section.

110. It is further submitted that an untraced report under Section 169 Cr.P.C. cannot be treated as a chargesheet contemplated in the scheme of section 173 Cr.P.C. It shall be the travesty of justice to hold that the acceptance of an untraced report even if the same carries a statement of the complainant amounts to an acquittal as envisaged in the scheme of the Code. The formality of the recording the statement of the complainant before passing an order on an untraced report is only an abundant precaution and does not falsify the statement of the complainant made during the course of investigation under the scheme of the Code contained in Section 161 and 164 Cr.P.C. or for that matter before a lawfully constituted commission of enquiry. The settled law is that the veracity of such statements has to be examined at the stage of trial and not at the stage of discharge / framing of charge. The witnesses have been consistently naming the accused since 1985/1987. Any alleged deviations in the various statements of the witnesses are a matter of trial.

111. The law on the issue of double jeopardy obliges that it is not the identity of allegations that matters but the identity of ingredients of the offences. It is therefore, necessary to analyze and compare not the allegations in the two cases but the ingredients of the two offences and see whether their identity is made out. There may be a situation where the same facts may give rise to different prosecutions and punishments. CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 112. Ld. Counsel for CBI has relied upon the case of Monica

Bedi v. State of A.P. 2011 (1) SCC 284. wherein has held as under: It is settled law that the persons can be prosecuted and punished more than once even on sustainably same facts provided the ingredients of both offences are totally different and they do not form the same offence.

113. Further submitted that in the present case petitioner Sajjan Kumar is being prosecuted for instigating the mob to kill persons belonging to one religious group. Hence, the larger picture has to be seen including the circumstances at the time, the fact that male members of one religious community were targeted, the role of the police in protecting the accused and not helping the victims. The fact that many of the victims in their statements under Section 161 have specifically mentioned fear psychosis as a factor of delay has also been looked into.

114. It is submitted that in the present case witnesses named the accused directly describing their specific role in the riot. Smt. Bhagwani Bai (PW1) has stated the following in her statement under Section 161 Cr.P.C.: I saw that mob which was led by Sajjan Kumar, MP were killing Sikhs and burning their houses. Mob entered our house and dragged my two sons Hoshiar Singh and Mohan Singh out of the house and killed them with lathies, saria and ballam. Police persons Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 came to me and they threatened not to make any statement against Sajjan Kumar.

115. PW2 Cham Kaur in her statement under Section 161 Cr.P.C. has stated that Sajjan Kumar was giving inciting speech against Sikh community; he was provoking people and telling them to kill the Sikhs and burn their houses. Therefore, under the influence of his provocative speech that the mob got agitated and attacked their block.

116. PW3 Popri Kaur in her statement under Section 161 Cr.P.C. has specifically stated that it was in her presence that a mob led by Sajjan Kumar killed the sons of Bhagwani Bai. She has further stated that Sajjan Kumar instigated the mob to kill a Sikh child whom they were going to leave.

117. PW4 Sheela Kaur in her statement under Section 161 Cr.P.C. has attributed the role of instigation to Sajjan Kumar by stating that he was calling upon the mob

to kill Sikhs, burn and loot their houses.

118. Even PW5 Jatni Kaur in her statement under Section 161 Cr.P.C. has referred to the provocative speech made by Sajjan Kumar instigating the mob to kill Sikhs, loot and burn their houses.

119. PW6 Joginder Singh in his statement under Section 161 Cr.P.C. has named all the accused including Sajjan Kumar and attributed to him the role of instigating the mob to kill Sardars. He has also spoken about the presence of Police persons in the mob which killed Surjeet Singh. CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 120. Even PW7 Gopi Kaur has stated about the presence of the accused persons in mob led by Sajjan Kumar and his role as an instigator for killing Sikhs, burning and looting their houses.

121. PW8 Prem Kaur in her statement under Section 161 Cr.P.C. has stated that she heard the provocative speech of Sajjan Kumar addressing the mob to kill Sardars, loot and burn their houses.

122. PW9 Smt. Thakri Devi in her statement under Section 161 Cr.P.C. has specifically stated Sajjan Kumar came to police station Sultanpuri, he was travelling in the vehicle and showing the houses of Sikhs to the mob.

123. Ld. Counsel submitted that the case law on this proposition has been summarized in State of Madhya Pradesh v. Sheetala Sahai & Ors. 2009 (8) SCC 617. wherein it is held as under: If upon the perusal of the entire material on record the court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the Court shall not put the accused to harassment by asking him to face a trial.

124. He submitted that perusal of the statements of the witnesses enumerated above would reveal that the allegations are so direct that only one view comes out of it that the accused have to face trial. Moreover, the veracity of the statements is the matter of trial as at this stage the probative value of the material on record has not to be gone into and the same has to be accepted as true at this stage. CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 125. On further

investigation, Id. Counsel for the respondent has relied upon a case of Zahira Habibulla H. Sheikh and Ors. v. State of Gujarat 2004 (4) SC 15. wherein it is held as under: Section 173(8) of Cr.P.C. permits further investigation, even de hors any direction from the court as such it is open to the police to conduct proper investigation even after the Court has taken cognizance of an offence on the strength of the police report submitted under Section 173 Cr.P.C.

126. Id. Counsel has pointed out that in the present case vide order dated 02.12.2005, Id. MM, Tis Hazari Courts, granted permission for further investigation in RC-25 arising out of FIR no. 347/1991 of PSSultanpuri. In the order dated 15.12.2005 passed by Id. MM, Karkardooma Courts in respect of RC-8 arising of FIR no 307/1994 and RC-7 arising out of FIR NO. 250/1984 respectively, it was held that the investigation is primarily the job of the investigating agency and no specific permission of Court is required for conducting further investigation in these matters.

127. On riot jurisprudence, Id. Counsel for the respondent has placed reliance on the judgment in the case of Harendra Sarkar v. State of Assam 2008 (9) SCC 2004. wherein it is observed as under: The genesis of a communal riot, its development as it goes along and the consequences have been identified/underlined by dozens of commissions of inquiry both judicial and administrative for more than four decades now and there appears to be near unanimity that a deliberate attempt is made by the Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 police and the investigating agencies to forestall fair investigation in attacks on the minority communities and on the contrary to connive with the perpetrators. It is indeed tragic that though reams of paper have been used and dozens of suggestions made as to the methods to prevent or to control communal riots, yet the cancer continues to metastasize on account of several factors, one of the predominant being the feeling amongst the assailants, emboldened yet further by the anonymity which a crowd provides, that come what may, no harm will come to them.

128. Id. Counsel for the respondent has submitted that the above noted case enumerates several broad principles common to cases dealing with riots targeting

a particular community, which are as follows: a) Police Offices deliberately make no attempt to prevent the collection of crowds. b) Only Half hearted attempts are made to protect the life and property of the minority community. c) In rounding up those people participating in the riots, the victims rather than the assailants are largely picked up. d) There is an attempt not to register cases against the assailants and in some cases even if the cases are registered, loopholes are provided with the intention of providing a means of acquittal to the accused. e) The investigation is unsatisfactory and tardy and no attempt is made to follow up the complaints made against the assailants. f) The evidence produced in Court is often deliberately distorted so as to ensure an acquittal. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 129. Ld. Counsel argued that in the present case, the role of the police is under the scanner not only as instigators and perpetrators but also as facilitators of these heinous crimes. The same is reflected in the charge in this particular case which reads as under: That you Sajjan Kumar, on 1st day of November, 1984 and thereafter, in an around the area of Sultanpuri, i.e. Block-A, B,C,E and F, and within the jurisdiction of PS-Sultanpuri, being a Principal offender, abetted and instigated your co-accused persons, namely, Ved Prakash Pial @ Veedu Pradhan, Peeru @ Periya Sansi @ Peera Ram @ Peeriya Gujrari, Khushal Singh @ Munna and Brahmanand Gupta @ Gupta Tel Wala along with other known and unknown persons including police personnels.

130. Moreover, the witnesses in their statements to the Investigating agencies have underlined the continuous presence of fear psychosis generated from the power yielded by the perpetrators of the crime, which prevented them from approaching the State establishment at the first point in time. The nature of the crime further shows that the targets were the Sikh males and in most of the families the victims were the lone widows who found upon themselves the uphill task of looking after their family whatever little was left of it.

131. Ld. Counsel further submitted that ground reality in this case is different from the various cases of riots in this country. Here is a case where the MP of the area has been seen in the mobs, leading them from the front, provoking and instigating them to commit upon the Sikh community crimes of murder, arson, looting and burning. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 132. He

further submitted that in the recent anti-Muslim 2002 riots in Gujarat the prominent leaders were roped in by way of circumstantial evidence as they were not directly part of the mobs. However, in 1984 riots these leaders were directly seen by the people leading the mob, hence giving rise to grave suspicions required for framing of charge.

133. Learned counsel for the CBI has relied upon a case of Devender Nath Padhi (Supra). In the said case, the Supreme Court was not concerned and was not dealing with the exercise of power by the High Court while exercising revisional jurisdiction. The Apex Court was only concerned with the powers of the Trial Court to consider the material filed by the accused at the time of framing of charge. In the said case, Supreme Court has held that the width of the powers of the High Court under Section 482 of the Cr.P.C. and Article 226 of the Constitution is unlimited, whereunder in the interest of justice, the High Court can make such orders as may be necessary to prevent abuse of process in the court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lals Case.

134. In the case of J.

Kumardasan Nair & Anr. v. IRIC Sohan & Ors. 2009 (2) Scale 544 it is held as under: It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 135. On the issue of the registration of the second FIR, as is the present case, the Apex Court in Shiv Shankar Singh v. State of Bihar and Anr. 2012 (1) SCC 13.has dealt with the issue as to whether the second FIR could be registered and/or the second complaint could be maintainable where the earlier complaint had been disposed of on full consideration of the case of the complainant on merit. In the present case, FIR no. 347/1991 has been registered as RC-25. The only witness in RC-25 is Joginder Singh, who was the complainant in earlier FIR no. 347/1991.

136. In a criminal jurisprudence one of the cardinal principles for the court to look for a plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of unsoiled or untarnished version of the case to be presented before the court at the earliest instance. It is one of the fundamental principles of the criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between the accused may have committed the offence and must have committed the offence which must be traversed by the prosecution by adducing reliable and cogent evidence.

137. Mr. H.S. Phoolka, Id. Counsel appearing as an intervener and on behalf of the Revisionist Sheela Kaur in Crl. Rev. P. 113/2011 submitted that the influence of the accused persons and their ability to Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 influence the witnesses and investigation is an important factor which this court should keep in mind while deciding this case. In the present case, the petitioners are influential and powerful persons and hence intimidation of witnesses on their behalf is not ruled out.

138. Id. Counsel has relied upon a case of Kailas v. State of Maharashtra 2011 (1) SCC 793.wherein it is held as under: However, we see no reason to interfere with the judgment of the High court convicting the appellants under various provisions of the IPC and imposing fine on them. In fact, we feel that the sentence was too light considering the gravity of the offence. There are a large number of religions, castes, languages, ethnic groups, cultures etc. in our country, which is due to the fact that India is a country of immigrants. Somebody is tall, somebody is short, some are dark, some are fair complexioned, with all kinds of shades in between, someone has Caucasian features, someone has Mongoloid features, someone has Negroid features, etc. There are differences in dress, food habits and various other matters.

139. He further relied upon a case of Zahirashekh v. State of Gujarat AIR 200.SC 3114.wherein it is held as under: A criminal trial is a judicial examination of the

issues in the case and its purpose is to arrive at judgment on an issue as a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 to convict the guilty and protect the innocent, the trial should be a search for the truth and not about over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial and not by an isolated scrutiny. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial. "Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their bench men and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smother and trifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and

destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression, and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to mockery. The State has definite role to play in protecting the witnesses to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the "TADA Act") have taken note of the reluctance shown by witnesses to depose against dangerous criminals-terrorists. In a milder form also the reluctance and the hesitation of witnesses depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies Legislative measures to emphasise prohibition against tampering with witness, victim or informant have CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair as noted above to the needs of the society. On the contrary, the efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance if not more, as the interests of the individual accused. In this courts have a vital role to play. The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence

Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness. *Crl. Rev.P. 438/2010*, *Crl.Rev.P. 439/2010*, *W.P.(Crl.)205/2010* The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Courts to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. In *Mohan Lal v. Union of India* this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the word such as, "any Court" "at any stage", or "any enquiry or trial or other proceedings" "any person" and "any such person" clearly spells out that the Section has expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case - 'essential', to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has

failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 the evidence in aid of a just decision and to uphold the truth. It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The Court can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in. Ultimately, as noted above, *ad nauseam* the duty of the Court is to arrive at the truth and subserve the ends of justice. Section 311 of the Code does not confer any party any right to examine, cross-examine and re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case. Section 391 of the Code is another salutary provision which clothes the

Courts with the power of effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the Court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate Court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate Court to call for further evidence before the appeal is disposed of. The appellate Court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, specially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the prevention of guilty man's escape through some careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable. CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 Those who are responsible for protecting life and properties and ensuring that investigation is fair and proper seem to have shown no real anxiety. Large number of people had lost their lives. Whether the accused persons were really assailants or not could have been established by a fair and impartial investigation. The modern day 'Neros' were looking elsewhere when Best Bakery and innocent children and helpless women were burning, and were probably deliberating how the perpetrators of the crime can be saved or protected. Law and justice become flies in the hands of these "wanton boys". When fences start to swallow the crops, no scope will be left for survival of law and order or truth and justice. Public order as well as public interest become martyrs and monuments. A somewhat an unusual mode in contrast to the lapse committed by non-examining victims and injured witnesses adopted by the investigating agency and the prosecutor was examination of six relatives of accused persons.

They have expectedly given a clean chit to the accused and labeled them as saviors. This unusual procedure was highlighted before the High Court. But the same was not considered relevant as there is no legal bar. When we asked Mr. Rohtagi, learned counsel for the State of Gujarat as to whether this does not reflect badly on the conduct of investigating agency and the prosecutor, he submitted that this was done to show the manner in which the incident had happened. This is a strange answer. Witnesses are examined by prosecution to show primarily who is the accused. In this case it was nobody's stand that the incident did not take place. That the conduct of investigating agency and the prosecutor was not bona fide, is apparent and patent. So far as non-examination of some injured relatives are concerned, the High Court has held that in the Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 absence of any medical report, it appears that they were not present and, therefore, held that the prosecutor might have decided not to examine Yasminbanu because there was no injury. This is nothing but a wishful conclusion based on presumption. It is true that merely because the affidavit has been filed stating that the witnesses were threatened, as a matter of routine, additional evidence should not be permitted. But when the circumstances as in this case clearly indicate that there is some truth or prima facie substance in the grievance made, having regard to background of events as happened the appropriate course for the Courts would be to admit additional evidence for final adjudication so that the acceptability or otherwise or evidence tendered by way of additional evidence can be tested properly and legally tested in the context of probative value of the two versions. There cannot be straightjacket formula or rule of universal application when alone it can be done and when, not. As the provisions under Section 391 of the Code are by way of an exception, the Court has to carefully consider the need for and desirability to accept additional evidence. We do not think it necessary to highlight all the infirmities in the judgment of the High Court or the approach of the Trial Court lest nothing credible or worth mentioning would remain in the process. This appears to be a case where the truth has become a casualty in the trial. We are satisfied that it is fit and proper case, in the background of the nature of additional evidence sought to be adduced and the perfunctory manner of trial conducted on the basis of tainted investigation a re-trial is a must and essentially called for in order to save

and preserve the justice delivery system unsullied and unscathed by vested interests. We should not be understood to have held that whenever additional evidence is accepted, re-trial is a necessary corollary. The case on hand is Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 without parallel and comparison to any of the case where even such grievances were sought to be made. It stands on its own as an exemplary one, special of its kind, necessary to prevent its recurrence. It is normally for the Appellate Court to decide whether the adjudication itself by taking into account the additional evidence would be proper or it would be appropriate to direct a fresh trial, though, on the facts of this case, the direction for re-trial becomes inevitable. We direct the State Government to appoint another Public Prosecutor and it shall be open to the affected persons to suggest any name which may also be taken into account in the decision to so appoint. Though the witnesses or the victims do not have any choice in the normal course to have a say in the matter of appointment of a Public Prosecutor, in view of the unusual factors noticed in this case, to accord such liberties to the complainants party, would be appropriate.

140. Further relied upon a case of *Zahirashekh v. State of Gujarat* AIR 200.SC 1367, wherein it is held as under: This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an over-riding duty to maintain public Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a

participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial. The fair trial for a criminal offence consists not only in technical observance of the

frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he had deposed. Every State Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like, caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation. We can only say this with regard to the criticism leveled against the State of Gujarat. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the "TADA Act") have taken note of the reluctance shown by witnesses to depose against people with muscle power, money power or political power which has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance if not more, as the interest of the Individual accused. In this Courts have a vital role to play. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 141. Ld. Sr. Counsel has submitted that the witnesses in their statements under Section 161 Cr.P.C have stated that they were scared and were

under the influence of higher-ups not to depose against the petitioners. Bhagwani Bai, PW1 has stated that she can identify Sajjan Kumar even today. She further stated that Police persons came to her and they threatened her not to make any statement against him. She was called in an office at Mehrauli. She went with Atam Singh Lubhana in the year 1993 and she wanted to make statement, but the police did not record her statement.

142. Ld. Counsel further submitted that PW5 Jatni Kaur stated that her statement was also recorded in the Court, but because of the fear of the police, she could not make the correct statement.

143. Joginder Singh, PW6 stated that he also deposed before the Aggarwal-Jain Committee that he could not identify any rioters because of the fear of the persons involved in the mob. He had given the statement to CBI, but that time, he was under fear and did not say anything. At that time, he had injury on his forehead and used to feel giddy.

144. Gopi Kaur, PW7 stated that prior to this she made statement to the police, but they did not record her statement correctly. She further deposed that she can identify Sajjan Kumar, MP. He used to come for votes in their area. He is a leader of the Congress Party and she used to cast votes in his favour. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 145. Mr. Phoolka, Id. Sr. Counsel has further submitted that the extent of influence and its effect is a matter of trial and not to be decided at the stage of charge. Delhi Police, which was earlier investigating the case pertaining to 1984 riots went out of the way to shield and protect the accused in colourable exercise of their power rather than performing their duty in dispassionate manner to book the accused for the offences committed by them.

146. Ld. Sr. Counsel has placed reliance on Sajjan Kumar v. CBI 201.(171) DLT 120.wherein it is held as under: The unsatisfactory manner in which the Delhi Police conducted itself in controlling the communal violence, and thereafter handled the investigation in the 1984 anti-Sikh riot cases is demonstrated by the fact that, from time to time various commissions including Justice Nanavati Commission, were constituted to examine the role of politicians and other players

in the said riots. Political interference in the working of the police organizations is a hard reality in our system. The same has been repeatedly noticed by various Commissions and Committees set up by the Government from time to time. The National Police Commission was appointed by the Government of India in 1997 with wide terms of reference covering the police organization, its role, functions, accountability, relations with the public, political interference in its work, misuse of powers, evaluation of its performance etc. This was the first Commission appointed at the national level after Independence. The Commission produced eight reports between 1979 to 1981, suggesting wide ranging reforms in the Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 existing police set-up. The second reported submitted by the National Police Commission specifically dealt with the aspect of political interference in police work. It observed that in the existing set-up, the police function under the executive control of the state government. According to the Commission, the manner in which political control has been exercised over the police in this country has led to gross abuses, resulting in erosion of rule of law and loss of police credibility as a professional organization. The threat of transfer/suspension is the most potent weapon in the hands of the politician to bend the police down to his will. The Commission made several recommendations to remedy the situation. I am not confronted with the aforesaid issue on which there was a difference of opinion in the said case. However, some of the observations made by the Hon'ble Mr. Justice H.S. Bedi in his opinion are relevant and useful for the present purpose. In paragraph 61 his lordship observe: The genesis of a communal riot, its development as it goes along and the consequences have been identified/underlined by dozens of Commissions of Inquiry both judicial and administrative for more than four decades now and there appears to be near unanimity that a deliberate attempt is made by the police and the investigating agencies to forestall fair investigation in attacks on the minority communities and on the contrary to connive with the perpetrators. It is indeed tragic that though reams of paper have been used and dozens of suggestions made as to the methods to prevent or to control communal riots, yet the cancer continues to metastasise on account of several factors, one of the predominant being the feeling amongst the assailants, emboldened yet further by the anonymity which a crowd provides, that come what may, no harm will come

to them. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 The learned Judge extracted from the various Commissions of Inquiry set up from time to time in the aftermath of communal riots which had taken place in different parts of the country. In this process he extracted the following quotation from the Justice Ranganath Misra Commission on the 1984 Anti-Sikh Riots in Delhi: The riots occurred broadly on account of the total passivity, callousness and indifference of the police in the matter of controlling the situation and protecting the people of the Sikh community.... Several instances have come to be narrated where police personnel were found marching behind or mingled in the crowd. Since they did not make any attempt to stop the mob from indulging in criminal acts, an inference has been drawn that they were part of the mob and had the common intention and purpose.... The Commission was shocked to find that there were incidents where the police wanted clear and definite allegations against the anti-social elements in different localities to be dropped out while recording FIRs. The delay in the prosecution of the case against the petitioner-accused does not, in any event, appear to have caused any prejudice to him. He has not faced the trial for over two and a half decades and has enjoyed his freedoms. He has claimed that in the meantime, Sh. Rajiv Gandhi has passed away, with whom he was throughout present after the assassination of late Smt. Indira Gandhi. This fact by itself does not appear to be enough to conclude that the petitioner-accused has suffered prejudice. Merely because the evidence that late Sh. Rajiv Gandhi may have led in support of the petitioner's claim, as aforesaid, is lost, the petitioner is not irreparably handicapped. He can still establish his defence by Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 producing numerous other witnesses who may have been present with late Sh. Rajiv Gandhi after the demise of late Smt. Indira Gandhi to condole her death. The facts of this case also demonstrate the inexplicable manner in which the Delhi Police sought to hurriedly file a cancellation report on 17/22.12.2005, even though the investigation had already been entrusted to the CBI in October, 2005 and the records were given to the CBI vide letter dated 08.11.2005. What prompted Delhi Police to then file a cancellation report even though it had been divested of its jurisdiction to proceed in the matter remains a moot question. This aspect was noted by the learned Magistrate when the cancellation report was placed before him. While passing the

order dated 31.07.2008, the learned M.M. took note of the fact that the investigation had been entrusted to the CBI. Consequently he did not accept the cancellation report and merely consigned the file to the record room. If the Government of the day has displayed the objectivity to rise above political considerations, and to take steps to bring the culprits to justice for such heinous crimes against the society, though belatedly, by divesting the Delhi Police of its power and jurisdiction to deal with the matter and by placing the investigation of the FIR in question in the hands of the CBI, such conduct of the Government deserves to be appreciated and commended. The endeavour of the petitioner to put spokes in the wheels of justice on the ground of delay is meritless and, therefore, must fail. I have already noticed the inexplicable manner in which, despite the investigation being entrusted to the CBI in Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 October 2005, and the records being given to the CBI vide letter dated 08.11.2005, Delhi Police proceeded to file the cancellation report on 17.12.2005/ 22.12.2005. In fact, the Delhi Police had no jurisdiction to file the untraced report on 17.12.2005/22.12.2005 as was sought to be done by them. The learned MM before whom a fresh status report was filed on 31.07.2008 was conscious of the entrustment of the investigation to the CBI and consequently did not accept the untraced report filed by the Delhi Police. After taking note of the development that the investigation of the case stand transferred to the CBI, the learned MM merely consigned the case file to records as the CBI was investigating the case and granted liberty to the State to move appropriate motion in respect of the untraced report as and when required. For a report submitted under Section 173(2) of the Cr PC to be actionable, it is essential that the same should be submitted by the duly empowered/authorized officer. The untraced report submitted by Delhi Police was not by an authorized/empowered officer inasmuch, as the investigation of the case on the relevant date stood transferred to the CBI. Moreover, the investigation was not complete as, even according to the untraced report submitted by Delhi Police, the Complainant Jagdish Kaur had not joined the investigation. The endeavour of Delhi Police to rush with the filing of the untraced report despite the transfer of the investigation to the CBI, prima facie, appears to be clandestine and calls for a high level enquiry. The enquiry should be made into the issue as to whether there was justification for

the concerned police officers to file the untraced report even after the investigation stood transferred to the CBI, and if no satisfactory explanation is found, to enquire into the conduct of the concerned officer of Delhi Police, who Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 proceeded to file the untraced report, despite having no authority to do so.

147. He further submitted that influence of the accused did not end only with the Delhi Police, they also influenced Delhi Government for not filing the appeals against acquittal.

148. I have heard Id. counsel for the parties. It is emerged that on the basis of DD No. 14-A dated 01.11.1984, case FIR No.250/1987 was registered at P.S. Sultanpuri, Delhi on 01.11.1984 for the riots which took place in Sultanpuri area, Delhi. The police had filed four charge-sheets including one supplementary charge-sheet. After trial, accused therein were acquitted in the first charge-sheet vide judgment dated 23.12.2002 passed by Smt. Manju Goel, the then Id. Addl. Sessions Judge, Patiala House Courts, New Delhi. In the second charge-sheet accused therein were also acquitted vide judgment dated 30.09.1993 passed by Shri S.S. Bal, the then Id. Addl. Sessions Judge, Patiala House Courts, New Delhi. In third charge-sheet accused therein were convicted vide judgment dated 30.03.1991 passed by Shri J.B. Goel, the then Id. Addl. Sessions Judge, Patiala House Courts, New Delhi. In the fourth charge-sheet accused therein were acquitted vide judgment dated 24.04.1997 passed by Shri S.S. Bal, the then Id. Addl. Sessions Judge, Patiala House Courts, New Delhi.

149. The first charge-sheet, i.e., State vs. Suresh Chand & Ors. was qua the killing of 49 persons whereas second charge-sheet, i.e., State vs. Gopi & ors. related to the killing of 7 persons in C-Block, Sultanpuri area. In the present case, the CBI has picked up names of Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 three persons, i.e., Vasant Singh, Balbir Singh and Balihar Singh killed in riots from the list of 49 deceased persons mentioned in charge-sheet No. 1 and further 3 deceased persons namely Mohan Singh, Hoshiar Singh and Ranjeet Singh from the charge-sheet no.

2. Thus, the CBI has made killing of above six persons as the subject matter of the RC-7(S)/2005/SCB-II-Delhi(FIR No.250/84).

150. Joginder Singh had filed an affidavit before Sh. L.N. Jain and A.K. Banerjee Committee constituted on 23.07.1987 alleging the killing of his cousin Surjeet Singh by some assailants named in that affidavit. On the basis of the said affidavit FIR No. 347/1991, PS Sultanpuri, was registered on 13.12.1991. The same was investigated. Police filed report under section 173 of Cr.P.C. Complainant Joginder Singh was examined by the concerned court and vide order dated 28.02.2004 filed the case as untraced. However, death of Surjeet Singh is the subject matter of the present RC 25(S)/05/SCR-1/DLI.

151. FIR No.307/1994 was registered at PS. Sultanpuri, Delhi on the basis of an affidavit filed by Smt. Anek Kaur before Justice Ranganath Mishra Commission constituted on 09.09.1985 regarding the killing of her husband Vakil Singh. This affidavit was accepted by Lt. Governor and consequently on 14.06.1994, aforesaid FIR was registered.

152. The CBI had clubbed two cases bearing FIR No. 347/1991 and 307/1994 registered at Police Station Sultanpuri on 13.12.1991 and 14.06.1994 respectively. The aforesaid two cases were sent for closure Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 before the concerned competent court and the closure report was accepted vide order dated 28.02.2004 and 15.01.1999 respectively.

153. The complainant Smt. Anek Kaur did not support the contents of her affidavit filed before the Justice Ranganath Mishra Commission on the basis of which the above said case was registered. disowned her affidavit. Rather, she Smt. Anek Kaur was examined during investigation of FIR No. 268/1984, which covers the offences alleged in her affidavit and there too she did not support the version of the prosecution.

154. Thereafter, the Ministry of Home Affairs, Government of India while exercising its power conferred under section 3 of the Commission of Enquiry Act, vide Notification No. 441(E) dated 08.05.2000 appointed Justice Nanavati

Commission of Enquiry (1984 Anti Sikh Riots) to enquire into 1984 Anti sikh riots incident. Accordingly, Justice Nanavati Commission submitted its report to the Government of India on 09.02.2005.

155. The aforesaid Commission recommended to the Government of India to examine only those cases, where the witnesses stated against accused Sajjan Kumar specifically, yet no charge-sheet was filed against him. The Commission further recommended to examine the cases which were closed as untraced and still deserve to be reexamined including FIR No. 250/1984, FIR No. 347/1991 and FIR No. 307/1994 registered at Police Station Sultan Puri, Delhi. The Trial Court had accepted the final report under Section 173 of Cr.P.C in case Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 FIR No. 347/1991 which was registered on the basis of the affidavit filed by Joginder Singh before Jain-Banerjee Committee. The final report in aforesaid case was accepted after considering the statement of Joginder Singh in the Court and statement recorded under Section 164 Cr.P.C whereby he totally disowned the affidavit and denied having seen the incident of killing of his brother, i.e., Surjeet Singh.

156. It is noted that both the complainants, namely, Joginder Singh and Smt. Rajwant Kaur, brother and wife of deceased Surjeet Singh (subject matter of the present case) were also summoned and examined by the Court on 15.03.1995 and 31.05.2003 respectively. Both of them denied witnessing the incident having taken place as alleged in the affidavit.

157. In the report, submitted by Justice Nanavati Commission, it is observed that there was credible material against Sajjan Kumar, no useful purpose would be served by directing registration of those cases where the witnesses complaining about the same were examined before the Court and yet other accused persons were acquitted by the Court. Accordingly, the Commission recommended to the Govt. of India to examine only those cases wherein the complainants have specifically accused Sajjan Kumar. Further directed that in those two charge-sheets filed against him and the cases were terminated as untraced and if there is justification for the same, to take action as permitted under the law. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 158. However, the fact

incorporated by the CBI in para 4 of the charge-sheet that Justice Nanavati Commission had wrongly observed that FIR No.205/1994 registered at PS Sultanpuri, Delhi was consigned untraced. In fact, full trial was conducted in that case.

159. Moreover, the Government filed a Memorandum of Action Taken Report of Justice Nanavati Commission in the month of August, 2005 wherein it was categorically stated that Sajjan Kumar was neither named as an accused in this case nor any fresh material / evidence was produced before the aforesaid Commission in connection with the incident of riots covered under FIR No. 250/1984, FIR No. 347/1991 and FIR No. 307/1994, all the above noted FIRs registered at PSSultanpuri, Delhi. It was categorically stated before the Parliament that no fresh affidavit was filed before the Justice Nanavati Commission in connection with this incident against Sajjan Kumar nor any new or additional evidence was there against him and there was hardly any justification to re-open this case.

160. Therefore, pursuant to the discussion held in Lok Sabha and Rajya Sabha on 10.08.2005 to 11.08.2005, the Ministry of Home Affairs, Govt. of India entrusted the case to CBI on 24.10.2005 for conducting further investigation/re-investigation as per the recommendation of Justice Nanavati Commission. Accordingly, the CBI registered three FIRs as noted above.

161. The court is duty bound to accept and accord its approval only to a report which is a result of faithful and fruitful investigation. It is one of the basic principles of criminal jurisprudence that court should not CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 look into and should decline to accept the report submitted by investigating officer which is glaringly unfair and offends the basic cannon of criminal jurisprudence.

162. It is settled law that at the initial stage if there is strong suspicion which leads the court to think that there is ground for presuming that the accused has committed the offence, a charge would be framed. The requirement at the stage of charge / framing of charge is a mere presumption leading to a strong suspicion, whereas the consideration at the stage of trial is the principle of beyond

reasonable doubt. The scheme of the Code and the object with which Section 227 of Cr.P.C. was incorporated goes to show that at the stage of framing of charge, a roving and fishing inquiry is impermissible.

163. Law is also settled in case of Devinder Nath Padhi (supra) that at the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the investigating agency. Thus, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 Cr.P.C. can be taken into consideration at that stage.

164. But the admitted fact is that the judgment dated 23.12.2002 passed by Smt. Manju Goel, the then Id. ASJ, judgment dated 30.09.1993 passed by Shri S.S. Bal, the then Id. ASJ and orders dated 15.01.1999 and 28.02.2004 passed by Id. Metropolitan Magistrates and Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 depositions of witnesses PW2/ PW3/ PW4/ PW5/ PW7/ PW8/ PW9 and PW10 before various courts are not part of the present report under section 173 Cr.PC.

165. It may be noted that petitioner Sajjan Kumar was not an accused in any of the trial pertaining to incident of rioting in the area of Sultanpuri except in one case RC-1(S)/90-SIV-2/SIC/1-B which resulted in acquittal by the Id. Sessions Court and the appeal against the same is pending for adjudication in this Court.

166. In the case of Debendra Nath Padhi (supra), it has further been held that the width of the powers of the High Court under Section 482 of the Cr.P.C. and Article 226 of the Constitution is unlimited, whereunder in the interest of justice, the High Court can make such orders as may be necessary to prevent abuse of process in the court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal's case.

167. The submissions of Mr. Phoolka, Id. Sr. Counsel appearing as an intervener and on behalf of the Revisionist Sheela Kaur in Crl. Rev. P. 113/2011 that the influence of the accused persons and their ability to influence the witnesses and investigation is an important factor which this court should keep in mind while

deciding this case.

168. Law is settled in *Zahira Shekh (supra)* that if the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different *Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010* from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice.

169. It is worth to note that on investigation in *RC7(S)/05/SCBII/N.D., RC8(S)/05/SCB-II/ND* and *RC 25(S)/05/SCU-I*, single chargesheet was filed by the CBI. However, record of earlier investigation and trial or statement of the witnesses recorded earlier was not made part of the charge-sheet.

170. During the course of hearing before the Id. Trial Court, the Counsel for the CBI had made a categorical statement that though the charge-sheet pertains to killing of six persons, he was only restricting the charges qua murder of Surjeet Singh and not of other deceased persons in respect of whom trial had already taken place. The said fact has been noted in the impugned order on charge as under: Moreover, the submission that in *FIR No. 250/1984*, four charge sheets and one supplementary chargesheet were filed pertaining to death of 60 persons and involving 27 accused and out of those 60 accused, 6 are subject matter of present *RC*, same is devoid of merit in as much as during the course of arguments, it *Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010* was submitted by Counsel for CBI that they are pressing the charge only qua murder of Surjeet Singh and not of any other deceased in regard to whom trial had already taken place. It is not disputed that as regard murder of Surjeet Singh, none of the accused have faced trial.

171. The trial court at the time of framing of charge has accepted the contention of the prosecution that they were not pressing the case of death of all the six persons in RC 7 under FIR No. 250/1984 but, only qua the death of Surjeet Singh under RC-25. Accordingly, trial court has framed the charges noted above.

172. I am conscious, on quashing of criminal prosecution initiated against the accused, this Court enjoys unrestricted power under section 482 of Cr.P.C. to do substantial justice. The Supreme Court in a recent case of Satish Mehra vs. State of NCT of Delhi 2013 Cri LJ 411.has examined the scope of powers under section 482 Cr.PC vested in High Court and observed as under:14. Though a criminal complaint lodged before the court under the provisions of Chapter XV of the Code of Criminal Procedure or an FIR lodged in the police station under Chapter XII of the Code has to be brought to its logical conclusion in accordance with the procedure prescribed, power has been conferred Under Section 482 of the Code to interdict such a proceeding in the event the institution/continuance of the criminal proceeding amounts to an abuse of the process of court. An early discussion of the law in this regard can be found in the decision of this Court in R.P. Kapur v. State of Punjab AIR 196.SC 86.wherein the parameters of exercise of the inherent power vested by Section 561A of the repealed Code CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 of Criminal Procedure, 1898, (corresponding of Section 482 Code of Criminal Procedure, 1973) had been laid down in the following terms: (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.

15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that

in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed.

173. In yet another report, Rajiv Thapar and Ors. Vs. Madan Lal Kapoor (2013) 3 SCC 330, the Supreme Court had the occasion to consider the jurisdiction of the High Court to quash the prosecution at the initial stage. Various parameters to be considered by the High Court while exercising the discretion under Section 482 Cr.P.C. to quash the proceedings as have been laid down in the above-noted case. It would be appropriate to refer to Paras 21 to 23 of the said Report which crystallize the factors to be considered by the High Court in recording its satisfaction while considering the prayer for quashing of the prosecution: 21. The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by

establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure, if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Code of Criminal Procedure, at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Code of Criminal Procedure the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Code of

Criminal Procedure to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure: (i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality? (ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a CrI. Rev.P. 438/2010, CrI.Rev.P. 439/2010, W.P.(CrI.)205/2010 reasonable person to dismiss and condemn the factual basis of the accusations as false. (iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant? (iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Code of Criminal Procedure. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.

174. The case of the petitioners before this Court is that there were sterling quality of documents which they have brought on record of the trial court, but same have not been considered while framing the charge. Ld. trial court by considering the charge-sheet and the material annexed therewith for the purpose of framing of charge had operated within the scope of section 227 of Cr.PC and legal position settled in this regard by the Supreme Court in Devender Nath Padhi's case. Although, FIR No.307/94 registered on the statement of Smt. Anek Kaur and FIR No.347/91 on the statement of Joginder Singh were sent CrI. Rev.P. 438/2010,

Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 untraced and Smt. Anek Kaur has since expired and at that time Joginder Singh did not own his affidavit, but keeping in view the fact that consolidated charge-sheet has been filed and now number of witnesses, as discussed above, have been examined by CBI and their statements under section 164 of the Code of Criminal Procedure has also been recorded, therefore, even if some of the witnesses have deposed, in earlier proceedings, the alleged deviation will have to be explained by the witnesses in the Court during trial. The settled law is that the veracity of such statements has to be examined at the stage of trial and not at the stage of framing of charge. Therefore, I find no illegality if the trial court has not considered the documents other than the documents filed by the investigating agency to support the charge- sheet.

175. Regarding the issue of filing one joint charge-sheet in more than one RCs, although there is no specific provision in Cr.P.C. prescribing one charge-sheet for more than one RCs/FIRs but it has not happened first time in this case. The Supreme Court had an occasion to deliberate upon such situation in the case of C. Muniappan and Ors. vs. State of Tamil Nadu (2010) 9 SCC 567. and observed as under:28. The submission on behalf of the appellants that two crimes bearing Nos. 188 and 190 of 2000 could not be clubbed together, has also no merit for the simple reason that if the cases are considered, keeping in view the totality of the circumstances and the sequence in which the two incidents occurred, taking into consideration the evidence of drivers and conductors/cleaners of the vehicles involved in the first incident and the evidence of C. Ramasundaram Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 V.A.O., (PW.87), we reach the inescapable conclusion that the second occurrence was nothing but a fall out of the first occurrence. The damage caused to the public transport vehicles and the consequential burning of the University bus remained part of one and the same incident. Merely because two separate complaints had been lodged, did not mean that they could not be clubbed together and one charge sheet could not be filed (See: T.T. Antony v. State of Kerala and Ors. MANU/SC/0365/2001 : (2001) 6 SCC 181).

176. A similar issue has been dealt by the Supreme Court recently in the case of Amitbhai Anilchandra Shah vs. The Central Bureau of Investigation and Anr. 2013

IV AD (SC) 449, wherein referring to its earlier decision of C. Muniappan and Ors. vs. State of Tamilnadu, 2010 (9) SCC 567. the Apex Court was of the view that merely because two separate complaints had been lodged, did not mean that they could not be clubbed together and one charge-sheet could not be filed.

177. It is worth noting that 12 FIRs were clubbed together and a common charge-sheet was filed in the case of State of Maharashtra vs. Mohammed Azmal Amir Kasab and Ors. The division Bench of Bombay High Court in para 76 of Crl. Appeal No.738/2010, decided on 21.02.2011, recorded as under: "76. All the 12 FIRs were clubbed together and a common charge-sheet was submitted by the DCB, CID against A1- Kasab, A2-Ansari and A3- Shaikh and wanted A1 to A35." Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 178. In view of the above discussion and legal position, Crl. Rev. P. 438/2010 and Crl. Rev. P.439/2010 are dismissed.

179. Since this Court has already affirmed the order on charge against all the accused persons(which includes petitioner herein), therefore, the present petition, i.e., W.P.(Crl.) 205/2010 impugning the summoning order is to be disposed of summarily. In the present petition, under challenge is the order dated 01.02.2010 passed by learned ACMM, Karkardooma Courts, Delhi whereby he took cognizance of joint RC7(S)/05/SCB-II/N.D., 25(S)/05/SCU-I. charge-sheet filed in three RC8(S)/05/SCB-II/ND RCs, viz., and RC As per the procedure, at the time of taking cognizance of the offence, the Court is required to consider the averments made in the complaint or the charge-sheet filed under section 173 Cr.PC. When a charge-sheet is filed under section 173 Cr.P.C., the facts stated by the prosecution in the charge-sheet on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the Court. Thus, it is not the province of the Court at that stage to embark upon and sift the evidence to come to the conclusion, whether or not, an offence has been made out. Since on examining the charge-sheet and the material available on record, it is clear that none of the tests laid down in Satish Mehra vs. State of N.C.T. of Delhi and Rajiv Thapar and Ors. vs. Madan Lal Kapur (supra) are satisfied, this petition is bound to be dismissed. Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 180. In view of above discussion, I do not find any discrepancy

in the order dated 1.2.2010 passed by Id. ACMM Karkardooma, Delhi.

181. Accordingly, the W.P.(Crl.) 205/2010 is dismissed.

182. In Crl. Rev. P. 113/2011, filed by Sheela Kaur to seek directions for trial court to frame charges against the accused persons under section 120B of Indian Penal Code, 1860, in addition to the charges framed vide impugned orders dated 01.07.2010 and 07.07.2010.

183. The learned trial court, after discussing the material, was of the view that the witnesses in their statements recorded under section 161 and 164 of the Code of Criminal Procedure, 1973 have alleged that Sajjan Kumar made provocative speeches and was asking the mob to kill Sikhs, and was also supervising the work of his followers. As a result of those provocative speeches, large scale arson, looting, killing and burning in the areas of Sultan Puri, Delhi took place. Thus, the learned trial court passed an order on charge for abetment under section 109 read with sections 147, 148, 149, 153-A, 302, 436 and 295 IPC and substantive offences thereof on petitioner Sajjan Kumar. Remaining accused persons were ordered to be charged for offences punishable under section 147, 148, 149, 153-A, 302, 436 and 295 IPC. This order has already been affirmed by this Court while disposing of Crl. Rev. P. No.438/2010 and Crl. Rev. P. 439/2010.

184. Even otherwise, no material is available on record to infer even meeting of mind of the accused persons so as to draw inference of their Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010, W.P.(Crl.)205/2010 having entered into criminal conspiracy to commit the offences complained of.

185. Moreover, Mr. Phoolka, Id. Senior Advocate could not point out any material from the charge-sheet on the basis of which the petitioners could be charged for conspiracy.

186. Accordingly, Crl. Rev. P. 113/2011 is dismissed.

187. Trial court record be sent to the concerned court forthwith. SURESH KAIT, J
JULY 16 2013 Jg/sb/RS Crl. Rev.P. 438/2010, Crl.Rev.P. 439/2010,
W.P.(Crl.)205/2010

