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THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: , 22nd September, 2010

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Judgment Pronounced on: 6th December, 2010

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WP(Crl.) No. 468/2010

COURT ON ITS OWN MOTION

THROUGH MR. AJAY CHAUDHARY Petitioner

Through: Dr. L.S. Chaudhary, Mr. Mathew D.,
Advocates

Mr. Arvind Nigam, Sr. Adv., Amicus
Curiae with Mr. Raghu Tandon, Adv.

versus

STATE

..... Respondent

Through: Mr. A.S. Chandhiok, ASG with
Mr. Pawan Sharma, Standing Counsel
for State (Criminal)

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

The fundamental issue that has emerged for consideration in this writ petition that has been instituted on the basis of a letter sent to this Court is whether an accused is entitled to a copy of the First Information Report after it is lodged and if so, what steps are required to be taken to facilitate its availability as the liberty of an individual is inextricably linked with his right to be aware how he has been booked under law and on what allegations. Liberty and freedom are the strongest passion of men and many have

sacrificed their lives for the cause of liberty. No one has ever conceived it as an arduous contrivance, a distant notion to be achieved by fortunate moments but as a basic human right. Liberty and life are in wedlock in a civilized society with the pledge not to tolerate the idea of separation. Jose' Marti has described liberty thus:

“Like bone to the human body, and the axle to the wheel, and the song to a bird, and air to the wing, thus is liberty the essence of life.”

2. Regard being had to the aforesaid concept, we now proceed to deal with the issue. At the very initial stage of adjudication, on 28.4.2010, the learned standing counsel for the State submitted that a scheme has been formulated in respect of the supply of First Information Report to the accused. A statement was made that further time would be required to set up a suitable mechanism for providing copies to the accused persons in certain categories of cases.

3. On 04.08.2010, Mr. Chandhiok, learned Additional Solicitor General, submitted that when an FIR is registered under Section 154 of the Code of Criminal Procedure (for short 'the Cr.P.C.), the same is sent to the Magistrate within 24 hours even if the accused is not apprehended. It was his further submission that this Court can issue a direction that anyone can file an application for obtaining the certified copy of the FIR and that would subserve the purpose. On that date, this Court directed the Registrar General of this Court to examine the aforesaid facet and submit a report. Mr.Arvind Nigam, learned senior counsel, was appointed as the Amicus Curiae to assist

the Court. On the basis of the aforesaid order, the Registrar General of this Court has submitted a report. Be it noted, the Registrar General has given certain suggestions on which there was a debate at the bar on various issues. It is also worth noting that the learned amicus curiae and the learned counsel for the petitioner, Dr. L.S. Chaudhary, who appeared on behalf of Mr. Ajay Chaudhary, who had invoked the jurisdiction of this Court, have given their respective suggestions.

4. Presently to the scheme under the Cr.P.C. Section 154 of the Cr.P.C requires a police officer to reduce in writing any information given to him disclosing the commission of a cognizable offence. It is also incumbent that the FIR is to be signed by the person giving it. The said provision being relevant for the present purpose is reproduced hereinbelow:

“Section 154 - Information in cognizable cases-

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

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

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied

that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

5. On a scanning of the anatomy of Section 154 of the Cr.P.C., it is clear as crystal that certain conditions are to be satisfied for recording of the first information. The Apex Court in *State of Haryana & Ors. v. Ch. Bhajan Lal & Others*, AIR 1992 SC 604 has enumerated the conditions which are sine qua non for recording the First Information Report. We think it appropriate to reproduce the relevant paragraph from the said decision:

“31. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act XXV of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer incharge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act X of 1872) which thereafter read that 'every complaint' preferred to an

officer incharge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1955 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973(Act II of 1974). An overall reading of all the Codes makes it clear that the condition which is sine-qua-non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence.”

6. Section 155 of the Cr.P.C. provides for information as to non-cognizable cases and investigation of such cases. Section 156 of the Cr.P.C. deals with the police officer’s power to investigate into cognizable cases. After investigation, when a final report is submitted by the police, the Magistrate has a role under Section 156(3) of the Cr.P.C. Wherever the Magistrate chooses to take cognizance, he can adopt certain alternatives as has been stated by a three-Judge Bench of the Apex Court in *Tula Ram & Ors. v. Kishore Singh*, AIR 1977 SC 2401.

7. Section 157 of the Cr.P.C. deals with the procedure for investigation. The said provision is reproduced hereinbelow:

“Section 157 - Procedure for investigation-

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to

take measures for the discovery and arrest of the offender:

Provided that—

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer (to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements to that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.”

8. Section 207 of the Cr.P.C. which deals with the supply of copies to the accused is as follows:

207. Supply to the accused of copy of police report and other documents.-

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such

exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

9. To understand the present provision and the authorities in the field, it is apposite to refer to Section 173(4) of the Code of Criminal Procedure, 1898. It read as follows:

“173(4). After forwarding a report under this section, the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under sub-section (1) and of the first information report recorded under section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under section 164 and the statements recorded under sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.”

On a reading of the said provision, it is luculent that there was a statutory duty on the police officer to furnish to the accused free of cost copies of the police report, first information report under Section 154 and all

other documents and relevant extracts after forwarding the report and before the commencement of the enquiry or trial but the legislature thought it appropriate to introduce Section 207 to confer the power on the Magistrate to supply copies of the documents specified in the section to the accused free of cost. This is an obligation and a duty cast upon the Magistrate to see that they are furnished. We may hasten to clarify that we are presently only concerned with the supply of the copy of the FIR. In the course of our discussion, we will refer to the decisions to show how the courts had dealt with the right of an accused to get a copy of the FIR on payment of legal fees at any stage even earlier than the stage under Section 173(4) of the old Code.

10. Be it noted, lodging of FIR, launching of criminal prosecution, investigation, facilitation of the trial by enabling the accused to defend himself and speedy trial are the sacred pillars of dispensation of the criminal justice system.

11. In *Emperor v. Kampu Kuki*, (1902) 11 Cal W N 554, Chief Justice Prinsep and Mr. Justice Henderson observed thus:

“The first information if recorded as directed by S.154 at the time that it is made, is of considerable value at the trial because it shows on what materials the investigation commenced and what was the story then told.”

12. In *Thulia Kali v. The State of Tamil Nadu*, AIR 1973 SC 501, it has been held thus:

“12. ...First information report in a criminal case is an extremely vital and valuable piece of evidence for the

purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation....”

13. The lodging of FIR has an object. The Apex Court in *Hasib v. State of Bihar*, AIR 1972 SC 283 has observed thus:

“4.The principal object of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party....”

14. In *Vidyadharan v. State of Kerala*, (2004) 1 SCC 215, it has been held that delay in lodging of FIR cannot be a ground to arouse suspicion and it can only be so when the delay is unexplained. Similar view has also been expressed in *State of Punjab v. Ramdev Singh*, AIR 2004 SC 1290. When the delay is not satisfactorily explained, the same creates doubt as to the genuineness of the prosecution. It has been ruled in *State of Punjab v. Ajaib Singh & Ors.*, AIR 2004 SC 2466 that if the explanation is not satisfactory in the facts of the case, the same might have been due to long deliberation questioning on its credence and acceptability.

15. It is apposite to note that once an FIR is lodged and the conditions precedent are satisfied, it is the statutory duty of the police to investigate a cognizable offence and in case it is not investigated, the informant can take recourse to other modes as provided under the Cr.P.C. but we have dealt with the aforesaid provisions only to highlight the significance of lodging an FIR and the duty of the investigating authority under the Code. The submission of Mr. Nigam, learned senior counsel, is that an FIR which is recorded under Section 154 of the Cr.P.C. is to be recorded in terms of the Punjab Police Rules, 1954 under the Indian Police Act, 1861 as extended to Delhi in terms of Rule 24.1 thereof and in terms of Rule 24.5(1), an FIR is required to be filled up in Form 24.5(1). A copy of the FIR is required to be sent to the Superintendent of Police and to the Magistrate under Rule 24.5(b) immediately and the said Magistrate is required to initial the same and note the date and time of receipt, etc. That apart, submits Mr. Nigam, the police, in terms of Section 157 of the Cr.P.C., is also required to submit to the Magistrate forthwith the report of investigation, etc. It is contended by him that recording of an FIR is an official act of a public official in discharge of his official duties and, therefore, it becomes a public document within the meaning of Section 74 of the Evidence Act, 1872. It is contended by him that being a public document, every public officer having in custody thereof, which any person has right to inspect, shall give to that person on demand a certified copy thereof in terms of Section 76 of the Evidence Act, 1872. The learned senior counsel further urged that under Sections 437, 438 and 439 of the Cr.P.C., an accused is required to satisfy the Court in respect of the

matters specified therein before the Court may admit the accused to bail and such right cannot be exercised by the accused in the absence of knowing the substance of the allegations made against the accused if a copy of the FIR is denied.

16. First, we shall refer to Section 74 of the Evidence Act. It reads as follows:

“74. Public documents. The following documents are public documents:-

- (1) documents forming the acts, or records of the acts-
 - (i) of the sovereign authority.
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country;
- (2) public records kept [in any State] of private documents.”

17. Section 76 of the Evidence Act being pertinent is reproduced below:

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

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

18. A Division Bench of Allahabad High Court in *Shyam Lal v. State of U.P. and Others*, 1998 CrL. L.J. 2879 has ruled that the First Information Report is a public document.

19. In *Chnnappa Andanappa Siddareddy and others v. State*, 1980 CrL. L.J. 1022, it has been held thus:

“The FIR being a record of the acts of the public officers prepared in discharge of the official duty is such a public document as defined under Section 74 of the Evidence Act. Under Section 76 of the Evidence Act, every public officer having the custody of a public document, which any person has a right to inspect is bound to give such person on demand a copy of it on payment of the legal fees therefor.”

20. In this context, we may refer with profit to the decision in *Munna Singh v. State of M.P.*, 1989 CrL. L.J. 580, wherein a Division Bench of Madhya Pradesh High Court has opined that a First Information Report is not a privilege document under the Evidence Act.

21. Thus, there can be no trace of doubt that FIR is a public document as defined under Section 74 of the Evidence Act.

22. Presently, coming to the entitlement of the accused to get a copy of FIR, we may notice few decisions in the field. In *Dhanpat Singh v. Emperor*, AIR 1917 Patna 625, it has been held thus:

“... It is vitally necessary that an accused person should be granted a copy of the first information at the earliest possible state in order that he may get the benefit of legal advice. To put difficulties in the way of his obtaining such a copy is only creating a temptation in the way of the officers who are in possession of the originals.”

23. The High Court of Calcutta in *Panchanan Mondal v. The State*, 1971 Cr.L.J. 875 has opined that the accused is entitled to a copy of the FIR on payment of legal fees at any stage. After so opining, the learned Judge proceeded to deal with the facet of prejudice in the following terms:

“The question of prejudice of the accused on account of the denial of the copy of the FIR at the earlier stage therefore assumes greater importance and on a proper consideration thereof, I hold that it is expedient in the interests of justice that a certified copy of the first information report, which is a public document, should be granted to the accused on his payment of the legal fees therefor at any stage even earlier than the stage of S.173(4) of the Code of Criminal Procedure. At the later stage of accused will have the right to have a free copy but the same would not take away the right he already has in law to have a certified copy of the first information report on payment of the legal fees.”

24. In *Jayantibhai Lalubhai Patel v. The State of Gujarat*, 1992 Cr.L.J. 2377, the High Court of Gujarat has ruled thus:

“6. ...whenever FIR is registered against the accused, a copy of it is forwarded to the Court under provisions of the Code; Thus it becomes a public document. Considering (1) of the provisions of Art.21 of the Constitution of India, (2) First Information Report is a public document in view of S.74 of the Evidence Act; (3) Accused gets right as allegations are made against him under provisions of S.76 of the Indian Evidence Act, and (4) FIR is a document to which S.162 of the Code does not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution, as and when application is made by accused for a certified copy of the complaint, the Court to which it is forwarded should give certified copy of the FIR, if the application and legal fees thereof have been tendered for the same in the Court of law...”

25. The situation can be viewed from the constitutional perspective. Article 21 of the Constitution of India uses the expression ‘personal liberty’.

The said expression is not restricted to freedom from physical restraint but includes a full range of rights which has been interpreted and conferred by the Apex Court in a host of decisions. It is worth noting, the great philosopher Socrates gave immense emphasis on ‘personal liberty’. The State has a sacrosanct duty to preserve the liberties of citizens and every act touching the liberty of a citizen has to be tested on the anvil and touchstone of Article 21 of the Constitution of India, both substantive and also on the canons of procedural or adjective law. Article 22 of the Constitution of India also has significant relevance in the present context inasmuch as it deals with protection against arrest and detention in certain cases. For the sake of completeness, we think it apposite to reproduce Articles 21 and 22 of the Constitution of India:

“21. Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases -

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply-

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe-

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).”

26. The Constitution Bench in *Shri Gurbaksh Singh Sibbia and others v. State of Punjab*, (1980) 2 SCC 565 has held thus:

“26. ... No doubt can linger after the decision in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

27. In *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240, it has been held thus:

“...the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process.... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.

28. In *Ranjitsing Brahmajeetsingh Sharma v. State of Maharashtra and another*, (2005) 5 SCC 294, while reiterating that presumption of innocence is a human right, the three-Judge Bench has held thus:

“35. ...Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor.”

29. In *State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others*, (2010) 3 SCC 571, the Apex Court has expressed thus:

“68(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.”

30. In *Narendra Singh and another v. State of M.P.*, (2004) 10 SCC 699, the Apex Court has observed that presumption of innocence is a human right.

31. In this context, we may refer with profit the decision in *Som Mittal v. Government of Karnataka*, (2008) 3 SCC 753, wherein it has been stated thus:

“46. The right of liberty under Article 21 of the Constitution is a valuable right, and hence should not be lightly interfered with. It was won by the people of Europe and America after tremendous historical struggles and sacrifices. One is reminded to Charles Dickens’s novel *A Tale of Two Cities* in which Dr. Manette was incarcerated in the Bastille for 18 years on a mere lettre de cachet of a French aristocrat, although he was innocent.”

32. The Apex Court in *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610, while emphasizing on personal liberty in a civilized society on the

backdrop of constitutional philosophy especially enshrined under Articles 21 and 22(1) of the Constitution of India, has expressed thus:

“22. ... The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.”

In the said case, regard being had to the difficulties faced by the accused persons and keeping in view the concept that the action of the State must be “right, just and fair” and that there should not be any kind of torture, their Lordships issued the following directions:

“36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health

Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

33. Recently, in the decision rendered in *Siddharam Satlingappa Mhetre v. State of Maharashtra and others* (Criminal Appeal No.2271/2010 decided on 2.12.2010), the Apex Court, while dealing with the concept of liberty, has opined thus:

“41. All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty.

42. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why "liberty" is called the very quintessence of a civilized existence.

43. Origin of "liberty" can be traced in the ancient Greek civilization. The Greeks distinguished between the liberty of the group and the liberty of the individual. In 431 B.C., an Athenian statesman described that the concept of liberty was the outcome of two notions, firstly, protection of group from attack and secondly, the ambition of the group to realize itself as fully as possible through the self-realization of the individual by way of

human reason. Greeks assigned the duty of protecting their liberties to the State. According to Aristotle, as the state was a means to fulfil certain fundamental needs of human nature and was a means for development of individuals' personality in association of fellow citizens so it was natural and necessary to man. Plato found his "republic" as the best source for the achievement of the self-realization of the people.”

After so holding, their Lordships referred to various jurisprudential thought expounded by eminent jurists which we think it condign to reproduce:

“53. Roscoe Pound, an eminent and one of the greatest American Law Professors aptly observed in his book "The Development of Constitutional Guarantee of Liberty" that whatever, `liberty' may mean today, the liberty is guaranteed by our bills of rights, "is a reservation to the individual of certain fundamental reasonable expectations involved in life in civilized society and a freedom from arbitrary and unreasonable exercise of the power and authority of those who are designated or chosen in a politically organized society to adjust that society to individuals."

54. Blackstone in "Commentaries on the Laws of England", Vol.I, p.134 aptly observed that "Personal liberty consists in the power of locomotion, of changing situation or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint unless by due process of law".

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57. Eminent former Judge of this Court, Justice H.R. Khanna in a speech as published in 2 IJIL, Vol.18 (1978), p.133 observed that "liberty postulates the creation of a climate wherein there is no suppression of the human spirits, wherein, there is no denial of the opportunity for the full growth of human personality, wherein head is held high and there is no servility of the human mind or enslavement of the human body".

Thereafter, their Lordships referred to life and liberty under our Constitution and opined thus:

“61. Life and personal liberty are the most prized possessions of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilized society.”

In this regard, we think it seemly to reproduce paragraphs 71 and 72 of the said decision:

“71. The object of Article 21 is to prevent encroachment upon personal liberty in any manner. Article 21 is repository of all human rights essentially for a person or a citizen. A fruitful and meaningful life presupposes full of dignity, honour, health and welfare. In the modern "Welfare Philosophy", it is for the State to ensure these essentials of life to all its citizens, and if possible to non-citizens. While invoking the provisions of Article 21, and by referring to the oft-quoted statement of Joseph Addison, "Better to die ten thousand deaths than wound my honour", the Apex court in *Khedat Mazdoor Chetana Sangath v. State of M.P. and Others* (1994) 6 SCC 260 posed to itself a question "If dignity or honour vanishes what remains of life"? This is the significance of the Right to Life and Personal Liberty guaranteed under the Constitution of India in its third part.

72. This court in *Central Inland Water Transport Corporation Ltd. and Another v. Brojo Nath Ganguly and Another* (1986) 3 SCC 156 observed that the law must respond and be responsive to the felt and discernible compulsions of circumstances that would be equitable, fair and justice, and unless there is anything to the contrary in the statute, Court must take cognizance of that fact and act accordingly.”

34. From the aforesaid enunciation of law, it is graphically vivid that fair and impartial investigation is a facet of Article 21 of the Constitution of India and presumption as regards the innocence of an accused is a human

right. Therefore, a person who is booked under criminal law has a right to know the nature of allegations so that he can take necessary steps to safeguard his liberty. It is imperative in a country governed by Rule of Law as crusaders of liberty have pronounced ‘Give me liberty, or give me death’. Not for nothing it has been said that when a dent is created in the spine of liberty, it leads to a rainbow of chaos.

35. At this juncture, we may profitably refer to a part of the first Menon & Pai Foundation Law Lecture delivered at Cochin by Lord David Pannick, Queen’s Counsel, wherein he has spoken thus:

“We should respect human rights in difficult times as well as in tolerable times because we are battling against terrorism precisely so that we can maintain a democratic society in which we enjoy individual liberty, the right to debate and dissent, and all the other freedoms that we cherish and which the terrorists abhor. To discard those values even temporarily, devalues all of us. And it would hand a victory to the terrorists, part of whose goal is to destroy the values we cherish and they despise.”

The aforesaid luminously throws the laser beam on the cherished value of liberty.

36. In this context, it is apt to note that the right to know has its own signification. The protagonists of modern democracy plead and preach with immense enthusiasm and rationally support the principle that the collective has a basic and fundamental right to know about things which are supposed to be known by the society. In *The State of Uttar Pradesh v. Raj Narain and others*, AIR 1975 SC 865, while dealing with a claim of privilege under Section 123 of the Evidence Act, their Lordships have held as follows:

“41. The several decisions to which reference has already been made establish that the foundation of the law behind Sections 123 and 162 of the Evidence Act is the same as in English law. It is that injury to public interest is the reason for the exclusion from disclosure of documents whose contents if disclosed would injure public and national interest. Public interest which demands that evidence be withheld is to be weighed against the public interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The court will proprio motu exclude evidence the production of which is contrary to public interest. It is in public interest that confidentiality shall be safeguarded. The reason is that such documents become subject to privilege by reason of their contents. Confidentiality is not a head of privilege. It is a consideration to bear in mind. It is not that the contents contain material which it would be damaging to the national interest to divulge but rather that the documents would be of class which demand protection. (See 1973 AC 388 (supra) at p. 40). To illustrate, the class of documents would embrace Cabinet papers, Foreign Office dispatches, papers regarding the security to the State and high level inter-departmental minutes. In the ultimate analysis the contents of the document are so described that it could be seen at once that in the public interest the documents are to be withheld. (See *Merricks v. Nott Bower*. [1964] 1 All ER 717.”

We have referred to the same only to show how a larger interest will prevail over the private interest. It is basically in the realm of the doctrine of striking of balance.

37. In *S.P. Gupta v. Union of India and others*, AIR 1982 SC 149, their Lordships opined thus:

“73. ...Now we agree with the learned counsel on behalf of the petitioners that this immunity should not be lightly extended to any other class of documents, but, at the same time, boundaries cannot be regarded as immutably fixed. The principle is that whenever it is clearly contrary to the public interest for a document to

be disclosed, then it is in law immune from disclosure. If a new class comes into existence to which this principle applies, then that class would enjoy the same immunity.”

Thereafter, their Lordships proceeded to state as follows:

“74. ...It is necessary to repeat and re-emphasize that this claim of immunity can be justifiably made only, if it is felt that the disclosure of the document would be injurious to public interest. Where the State is a party to an action in which disclosure of a document is sought by the opposite party, it is possible that the decision to withhold the document may be influenced by the apprehension that such disclosure may adversely affect the head of the department or the department itself or the minister or even the Government or that it may provoke public criticism or censure in the legislature or in the press, but it is essential that such considerations should be totally kept out in reaching the decision whether or not to disclose the document. So also the effect of the document on the ultimate course of the litigation whether its disclosure would hurt the State in its defence - should have no relevance in making a claim for immunity against disclosure. The sole and only consideration must be whether the disclosure of the document would be detrimental to public interest in the particular case before the Court.”

[Emphasis supplied]

38. In *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. and others*, AIR 1989 SC 190, their Lordships, while dealing with the said issue, have ruled thus:

“9. Elaborate arguments were advanced by counsel for both sides. It was contended that there was no contempt of Courts involved herein and furthermore, it was contended that pre-stoppage of newspaper article or publication on matters of public importance was uncalled for and contrary to freedom of Press enshrined in our Constitution and in our laws. The publication was on a public matter, so public debate cannot and should not be stopped. On the other hand, it was submitted that due administration of justice must be unimpaired. We have to balance in the words of Lord Scarman in the House of

Lords in *Attorney-General v. British Broadcasting Corporation*, 1981 A.C. 303 at page 354, between the two interests of great public importance, freedom of speech and administration of justice. A balance, in our opinion, has to be struck between the requirements of free press and fair trial in the words of the Justice Black in *Harry Bridges v. State of California*, (86 Led 252 at page 260).”

39. Thereafter, their Lordships referred to the decisions rendered in *Express Newspapers (Pvt.) Ltd. v. The Union of India*, AIR 1958 SC 578, *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699, *In Re: P.C. Sen,* AIR 1970 SC 1821, *C.K. Daphtary v. O.P. Gupta*, AIR 1971 SC 1132, *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, AIR 1986 SC 515, *Harry Bridges v. State of California*, 1941-86 Law ed 192, *Abrams v. United States*, (1918) 63 Law ed 1173, *John D. Pennekamp v. State of Florida*, (1945) 90 Law ed 1295, *Nebraska Press Association v. Hugh Stuart*, (1976) 49 Law ed 2d 683, *Attorney General v. British Broadcasting Corpn.*, (1979) 3 All ER 45, *Attorney General v. B.B.C.*, 1981 AC 303, *Attorney General v. Times Newspapers Ltd.*, (1974) AC 273, *Bread Manufacturers Ltd.*, (1937) 37 SR (NSW) 242 and eventually came to hold as under:

“38. In this peculiar situation our task has been difficult and complex. The task of a modern Judge, as has been said, is increasingly becoming complex. Furthermore, the lot of a democratic Judge is heavier and thus nobler. We cannot escape the burden of individual responsibilities in a particular situation in view of the peculiar facts and circumstances of the case. There is no escape in absolute. Having regard, however, to different aspects of law and the several decisions, by which though we are not bound, except the decisions of this Court referred to hereinbefore, about which we have mentioned, there is no decision dealing with this particular problem, we are of the opinion that as the Issue is not going to affect the

general public or public life nor any jury is involved, it would be proper and legal, on an appraisal of the balance of convenience between the risk which will be caused by the publication of the article and the damage to the fundamental right of freedom of knowledge of the people concerned and the obligation of Press to keep people informed, that the injunction should not continue any further.”

40. In *Dinesh Trivedi, M.P. and others v. Union of India and others*, (1997) 4 SCC 306, while dealing with the facet of right to know, their Lordships have expressed thus:

“16. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognised limitations; it is, by no means, absolute. This Court has had many an opportunity to express itself upon this issue. In the case of *State of U.P. v. Raj Narain*, (1975) 4 SCC 428, Mathew, J. eloquently expressed this proposition in the following words:

“In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. *The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries.* They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, *though not absolute*, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, *have no repercussion on public security.* To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the

chief safeguard against oppression and corruption.”

[Emphasis added]

41. Be it noted, in the said case, their Lordships referred to the decision in *S.P. Gupta* (supra) opining that the ordinary rule is that secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest and eventually came to hold that to ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society and sunlight is the best disinfectant. After so stating, their Lordships have proceeded to state as follows:

“19. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers in Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.”

42. As is evincible from our aforesaid analysis, we have adverted to the singular issue from the schematic prism of the Code of Criminal Procedure, the provisions contained in the Evidence Act, right under Article 21 and the safeguards engrafted under Article 22 of the Constitution of India, the basic human right and also the right to know and the limitations thereto be thought

of. Having dwelled upon the said facet, we shall now refer to the scheme suggested by the learned Additional Solicitor General and combat put forth by the learned counsel for the petitioner and also the suggestions given by him.

43. The learned Additional Solicitor General has submitted the following mechanism / procedure for obtaining a copy of FIR:

“II PROCEDURE FOR OBTAINING COPY OF AN FIR

I) FIRST APPLICATION

a. The applicant (accused person himself / herself or blood relation duly authorized by accused) may submit an application along with a declaration on the prescribed form (Annexure – “A”). It will be submitted at the concerned police station where the SHO will initiate immediate necessary action on the request.

b. The SHO will record the reasons for recommending or opposing the request of the applicant and forward the same immediately to the ACP / Sub-Division.

c. The ACP / Sub-Division shall take a decision based on the above mentioned criteria and also keep in mind any other relevant factor depending upon the nature of the case.

d. Thereafter, the copy of the FIR or a letter of rejection will be sent by the ACP to the concerned police station from where it can be collected by the applicant within one week of the date of receipt of application.

e. The applicant will be duly intimated about the rejection of his / her application by the ACP concerned in the prescribed format (Annexure – “B”).

f. It shall be ensured by the ACP / Sub-Division that this entire process of supplying a copy or rejecting the request is completed at the most within seven working days from the date of receipt of the application.

II) APPEAL

a. In case the applicant fails to get copy of FIR within seven working days from the date of application, or the application is rejected by the ACP / Sub-Division, he / she can make an appeal to the concerned Addl. CP / DCP.

b. On receipt of an appeal, the Addl. CP / DCP shall consider the grounds of appeal and keeping in view the totality of the circumstances including the nature of allegations made in the FIR and the current state of the investigation, the Addl.CP/DCP shall pass a speaking order accepting or rejecting the said appeal.

c. The second appeal against the order of the Addl.CP/DCP shall lie with the concerned Jt. COMPANY.

III. NON ENTITLEMENT OF FIR: In the following types of cases, copy of FIR will not normally be provided to the accused, and in such cases no reason would be required to be given for non supply of an FIR nor even any confirmation or otherwise be given whether FIR has been recorded or not:

a. Cases of kidnapping for ransom.

b. Cases of kidnapping and abduction.

c. Heinous cases with a component of trauma like murder, rape etc.

d. Cases in which desperate gangsters are involved and there is the danger of witnesses or the complainant being intimidated.

e. Other serious cases in which only one accused has been arrested while others may be at large and since the FIR contains the names of the complainant, eye-witnesses etc, there may be chances of undue advantage being taken either by the accused still at large to continue to evade arrest or his / their becoming a threat to the complainant or eye-witnesses etc.

f. Cases relating to terrorists and cases in which the contents of the FIR may deal with issues of National Security.

g. Other cases such as those registered under the Official Secrets Act etc. where there may also be serious security implications or scope of leakage of sensitive information by revealing the contents of the FIR.

IV. MEASURES TO ENSURE COPY OF FIR DOES NOT FALL INTO UNAUTHORIZED HANDS

a. Copy of FIR being sent for information to the area Metropolitan Magistrate and senior officers will be properly marked and stamped and dispatched in a sealed cover.

b. Steps will be taken by supervisory levels to maintain confidentiality by Delhi Police Officers.

c. An undertaking will be taken from the accused / relative in the prescribed declaration (Annexure – “A”) that he / she will use it only for the bona fide purpose and entitlement under the law and no pass on the same or its contents to any unauthorized person / organization.”

44. Mr. Ajay Chaudhary has filed an affidavit opposing the mechanism suggested by the learned counsel for the State on the grounds that the proposed mechanism is not capable of achieving the object required to be achieved inasmuch as if an accused has no relation in Delhi then the copy of FIR would not be supplied to him; that if the accused has severed his relations with the relatives, then the accused will be deprived of the copy of FIR; that if a person, from distant part of the country visits Delhi and he is implicated in any offence / case in Delhi then it would not be possible for him to get a copy of FIR; that there is no need for any declaration being attested by a Gazetted Officer because an accused some time may not have access to a Gazetted Officer which eventually amounts to denial of a copy of the FIR to the poor and downtrodden person who is badly in need of protection of law and that the mechanism proposed by the police will increase unnecessary paper work and wastage of manpower and time and the

hierarchical system of appeal and second appeal is totally impracticable and that the suggestions given are fundamentally unworkable. Mr. Chaudhary has given certain suggestions, namely, that the FIR should be recorded on the computer and the person who operates the computer can give a printout by asking the same which would lessen the use of manpower and minimize the human resources; that if the copies of FIR are uploaded on the internet on the website of the Delhi Police, a person desirous of taking the copy of the FIR may download the same; that the higher officials of the police like DCP or the Joint Commissioner who sometimes receive copies of FIR be directed to supply the copy / certified copy on demand to anyone; that the Ahlmad / Record Clerk concerned can be authorized to supply the copy of FIR; that no authorization from the accused would be necessary as that would cause unnecessary and improper delay and negate the concept of access to justice; and the charges can be fixed keeping in view the provisions of the Right to Information Act, 2005.

45. It is fruitful to note that though the aforesaid scheme was given by the learned Additional Solicitor General during the debate and deliberation in Court, yet he fairly conceded that the investigating agency has no objection to put the First Information Report which do not relate to sensitive matters on the Delhi Police website so that an accused or his relative can download the same.

46. Keeping in view the law in the field, the entitlement of the accused, the mechanism suggested by the learned Additional Solicitor General as well

as the learned counsel for the petitioner and regard being had to the concept of striking of balance, as had been referred to earlier, we proceed to record our conclusions and the directions as enumerated below:

- (A) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.
- (B) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative / agent / parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the court. On such application being made, the copy shall be supplied within twenty-four hours.
- (C) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.
- (D) The copies of the FIR, unless reasons recorded regard being had to the nature of the offence that the same is sensitive in nature, should be uploaded on the Delhi Police website within twenty-four hours of

lodging of the FIR so that the accused or any person connected with the same can download the FIR and file appropriate application before the court as per law for redressal of his grievances.

- (E) The decision not to upload the copy of the FIR on the website of Delhi Police shall not be taken by an officer below the rank of Deputy Commissioner of Police and that too by way of a speaking order. A decision so taken by the Deputy Commissioner of Police shall also be duly communicated to the Area magistrate.
- (F) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR.
- (G) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation with the Commissioner of Police who shall constitute a committee of three high officers and the committee shall deal with the said grievance within three days from the date of receipt of the representation and communicate it to the grieved person.
- (H) The Commissioner of Police shall constitute the committee within eight weeks from today.

- (I) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused / his authorized representative / parokar to file an application for grant of certified copy before the court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned court not beyond three days of the submission of the application.
- (J) The directions for uploading the FIR on the website of the Delhi Police shall be given effect from 1st February, 2011.
47. A copy of this order be sent to the Commissioner of Police to take appropriate action to effectuate the directions in an apposite manner so that grievances of this nature do not travel to court.
48. The writ petition is accordingly disposed of.

CHIEF JUSTICE

MANMOHAN, J

December 6, 2010
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