IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 1799 of 1996

With
R/CRIMINAL MISC.APPLICATION NO. 5959 of 1999

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIKHIL S. KARIEL Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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PRAVINSINH JHALA
Versus
STATE OF GUJARAT & 3 other(s)

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Appearance:
MR D V KANSARA(7498) for the Applicant(s) No. 1 (in CrMA No.1799/1996)
MR S.M. VATSA for the Applicant No.1 (in Cr.MA No.5959/1999)
MR ARJUN M JOSHI(11247) for the Respondent(s) No. 3
MR BC DAVE(245) for the Respondent(s) No. 4
MR S M VATSA(6000) for the Respondent(s) No. 3
NOTICE SERVED for the Respondent(s) No. 2
MR MITESH AMIN, LD. PP WITH MS. MD MEHTA, APP for the Respondent(s) No. 1 – State in both the matters
MR VIJAY PATEL FOR M/S.HL PATEL for Respondent No.2 in CrMA No.5959 of 1999

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CORAM:**HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

Date : 05/05/2022

ORAL JUDGMENT

1. Heard learned Advocate Mr.Dhaval Kansara appearing on behalf of the applicant, learned Public Prosecutor Mr.Mitesh Amin appearing with learned APP Ms.Mehta for the respondent State, learned Advocate Mr.Arjun M. Joshi appearing for respondent No.3, and learned Advocate Mr. B. C. Dave for respondent No.4 in Criminal Misc. Application No.1799 of 1996; and learned Advocate Mr.S.M. Vatsa on behalf of the applicant, learned Public Prosecutor appearing with learned APP Ms.Mehta for the respondent State, and learned Advocate Mr.Vijay Patel for M/s.H.L. Patel and Advocates appearing for respondent No.2 in Criminal Misc. Application No.5959 of 1999.

2. Both these applications challenge a Criminal Complaint filed before the learned JMFC, Bhanvad, Jamjodhpur being Criminal Case No.93 of 1992, and whereas an order passed by the learned JMFC taking cognizance of the complaint and issuing process under Section 204 of Cr.P.C., against the accused in the complaint for the offences punishable under Sections 325, 323 and 114 of IPC, is also impugned in Criminal Misc. Application No.5959 of 1999. It would be pertinent to mention herein that the complaint appears to have been filed by the complainant on 21.12.1990, and whereas the learned Magistrate had passed the above referred order issuing process on 24.4.1992.

3. Brief facts leading to filing of the present applications, as far as relevant

for the present purpose, are narrated herein below:-

3.1. The applicants in both the applications were members of the Police Force, the applicant of Criminal Misc. Application No.1799 of 1996 being a Constable and the applicant of Criminal Misc. Application No.5959 of 1999 being an IPS Officer, posted at the relevant point of time as Assistant Superintendent of Police (ASP), Jamnagar. It is the case of the applicants that on 24.10.1990, there was a nation-wide call for *Bharat Bandh* and whereas the said call had led to communal violence and communal tension in Jamnagar City and at that time, the applicant of Criminal Misc. Application No.5959 of 1999, who was posted as ASP, Jamnagar (Rural) was given additional charge of Jamnagar City Division.

3.2. It is further the case of the applicants that on 30th October, 1990 communal violence had erupted in Jamjodhpur and whereas an FIR had been lodged in Jamjodhpur Police Station being C. R. No.I-96/1990 under Sections 143, 147, 149, 151, 336, 436, and 395 of IPC and Sections 3 and 5 of TADA Act. At this stage, it would be relevant to mention that there is a variance in the narration of the immediately subsequent events by each of the applicants and since the variation in narration acquires relevance in the later part of this judgement, the same is described as herein after.

3.3. The applicant of Criminal Misc. Application No.1799 of 1996

inter alia alleging that the applicant of the said application along with other police officers, including the applicant of Criminal Misc. Application No.5959 of 1999 were discharging their duties and whereas pursuant to the FIR registered as mentioned herein above, the police officials had arrested several persons.

3.4. On the other hand, according to the applicant of Criminal Misc. Application No.5959 of 1999, upon registration of the FIR the police officers subordinate to the said applicant had arrested about 132 persons from the riotous mob and arrest *panchnama* was drawn between 9.45 a.m., to 12.15 p.m., in the afternoon. It is further case of the applicants that having learnt about the communal violence in Jamjodhpur, the said applicant had proceeded to Jamjodhpur and reached there at around 12.30 p.m., in the afternoon on 30th October, 1990 by which time approximately 132 persons, including the complainant of the impugned complaint had been arrested.

3.5. As against the above versions, the complainant of Criminal Case No.93/1992 *inter alia* alleges that he is residing at Jamjodhpur and on 30.10.1990 when the complainant was at his home, in addition to his family members, his friends Kantilal Thakkrar, Jayesh Joshi, Bhupendrakumar Padliya and Chandulal Ratanpara were also present at his residence. It is alleged that at around 1.30 p.m., when the complainant and others were watching TV, the complainant and

others were called by the applicants and others and whereas upon the complainant and his friends coming out, the accused had started assaulting the complainant and others with sticks and they were made to walk till the police jeep which was kept near a place called Prabhat Studio and whereas while the complainant and others were walking, they were being continuously assaulted by the applicants and another accused. After being brought to the police station in the police jeep, the complainant was made to lie in face down position and at that time also, the complainant had been assaulted. The complainant had also been made to crawl on his elbow inside the police station and even during such time, the complainant was being continuously beaten by the accused of the complaint and other officers. It is specifically alleged by the complainant that on account of assault by the applicant of Criminal Misc. Application No.5959 of 1999 with a stick, the complainant had received fracture injury on his right hand and whereas on account of beating by the applicant of Criminal Misc. Application No.1799 of 1996 and another accused i.e. respondent No.4 in the said application, the complainant had received injuries on his buttocks, back portion of his thighs and in the ankle portion of the leg. It is further alleged that the friends of the complainant who had also been assaulted had also received various injuries. It is further alleged in the complaint that after having been kept in the police station, without giving the

complainant any food or water, on the next day, the complainant was produced before the learned Magistrate and whereas on account of fear of the police officials, more particularly since the accused had allegedly threatened the complainant, and since the complainant was unaware about the legal process, therefore, he did not state anything regarding the ill-treatment when the learned Magistrate had inquired from the complainant at that time of production. It is further alleged that on account of the assault, the complainant had to take treatment, first at Ervin Hospital, Jamnagar and later on, after bail being granted, at Jamjodhpur Government Hospital. It is further alleged by the complainant that the cause for the assault being that there was an agitation against police officials at Jamjodhpur and whereas on account of such agitation, PSI, Head Constable and Constable had been suspended and to take revenge upon the public of Jamjodhpur, by using communal violence as an excuse and under the guise of communal riots curfew was imposed and innocent people including the complainant had been arrested by falsely implicating them as being involved in rioting. It is further alleged in the complaint that the reason for complaint being delayed for approximately one month and 20 days was on account of the fact that at the relevant point of time, there was announcement for holding a judicial probe or investigation by CID into the police excess and since nothing appears to have happened, therefore, later on the complainant had

filed the impugned criminal complaint. It appears that the learned Magistrate upon the complaint being filed had postponed issuance of process exercising powers under section 202 of Cr. P.C., and the learned Magistrate had conducted an inquiry and whereas the complainant, Medical Officer, Jamjodhpur PHC, etc., were examined and the learned Magistrate, after satisfying himself had issued process as referred to herein above under Section 204 of Cr.P.C., for offences punishable under Sections 323, 325, and 114 of IPC vide order dated 24.4.1992.

4. Learned Advocate Mr.Somnath Vatsa on behalf of the applicant in Criminal Misc. Application No.5959 of 1999 has challenged the impugned complaint mainly on the ground that the sanction for prosecution has not been granted by the State as required under Section 132 of Cr.P.C., as well as Section 197 of Cr.P.C. Learned Advocate Mr.Vatsa has submitted that sanction under Section 132 of Cr.P.C., and under Section 197 of Cr.P.C., operate in different context. Learned Advocate would submit that Section 132 appears in Chapter-X of Cr.P.C., which states with regard to maintenance of public order and tranquility and whereas Section 129 in the said Chapter states with regard to dispersal of assembly by use of civil force and Section 130 is with regard to use of armed force for dispersal of assembly and Section 131 is with regard to power of armed forces to disperse assembly, and whereas according to the learned Advocate the protection from

prosecution under Section 132 is in the context of use of force i.e. any act purported to be done under Section 129, Section 130 and Section 131 of Cr.P.C. Learned Advocate would submit that Section 132 envisages that there cannot be any prosecution against any person for any act, which is purported to have been done under Sections 129, 130 and 131. The words 'no prosecution' and 'any act' are emphasized by the learned Advocate to submit that protection under Section 132 operates at the very threshold i.e. the protection envisaged is available to the Government servant from the stage of initiation of the proceedings. Learned Advocate would further submit that the protection is premised on any act done under Sections 129 to 131 of Cr. P.C., which includes acts necessary to disperse any unlawful assembly and which also includes arresting and confining the persons, who form part of the assembly.

4.1. According to learned Advocate, the scope and ambit of requirement of sanction for institution is explained by the Hon'ble Apex Court in case of **Ram Kumar Vs. State of Haryana, reported in (1987) 1 SCC 476**. Learned Advocate would further submit that in case of **Ram Kumar** (supra), while there was indeed a sanction under Section 132 of Cr.P.C., but since there was no sanction under Section 197, the Hon'ble Supreme Court had quashed the proceedings. Learned Advocate would emphasize that in the instant case, there is neither any sanction accorded under Section

132, nor under Section 197 of Cr.P.C.

4.2. Learned Advocate Mr.Vatsa would also refer to the charge-sheet filed in the FIR being C.R. No.I-96/1990 and would submit that the charge-sheet *inter alia* reveals that the complainant was an accused in connection with a criminal complaint and whereas according to Mr.Vatsa, the charge-sheet also reveals that there was an unlawful assembly which had gathered in contravention of promulgation under Section 37 of the Bombay Police Act. Mr.Vatsa would submit that though the said proceedings have been dropped, but that would not preclude the applicant from relying upon the said charge-sheet. Learned Advocate would, in this regard, submit that the said charge-sheet had been exhibited as Exh.789 in Sessions Case No.35 before the learned Sessions Court at Jamnagar i.e. in a proceedings against the very applicant. Learned Advocate would further submit that the contents of the charge-sheet cannot be varied in terms of Section 92 read with Section 94 of the Evidence Act. Learned Advocate would submit that since the charge-sheet is required to be reduced in form of a document and whereas when the language used in the document is plain in itself and when it applies accurately to the facts that the evidence may not be shown that it was not meant to apply to such facts. Learned Advocate would submit that since the charge-sheet shows the existence of an unlawful assembly and it is in context of this unlawful assembly that some act had been done by the applicants

and, therefore, there would not be any requirement for leading any evidence for showing the said fact. Learned Advocate has further relied upon Section 33 read with Section 35 of the Evidence Act to contend that even in context of the said sections, the terms of the charge-sheet are to be treated as proved.

4.3. Learned Advocate would further submit that existence of unlawful assembly comprising of the present complainant and of two others persons whose complaint had been rejected for want of sanction, and such persons forming part of the unlawful assembly having been arrested between 9.45 a.m. to 12.15 p.m. on 30.10.1990 is borne out of the narration in the charge-sheet counter filed in C.R. No.I-96/1990. Learned Advocate would submit that a specific offence i.e. an offence under Section 135 of the Bombay Police Act for disregard of Notification dated 23.10.1990 issued under Section 37(1) of the Bombay Police Act is specifically attributed to the unlawful assembly. Learned Advocate would submit that the fact of the unlawful assembly being in existence, which could be treated as being proved on the basis of the charge-sheet and the acts of the applicants being done to disperse such unlawful assembly, the applicant would be entitled for claiming protection against prosecution under Section 132 of CR. P.C., and whereas since no sanction has been accorded to prosecute the applicants by the State Government, therefore, the impugned complaint may be quashed by

this Court.

4.4. Learned Advocate Mr.Vatsa would further submit that the complainant does not state about being an accused in connection with the FIR referred to herein above. Learned Advocate would further submit that the complainant had also not raised any grievance when he had been produced before learned Magistrate as regards the police excess. Learned Advocate would further submit that the complaint having been filed approximately after one month and 20 days from the date of arrest of the complainant in connection with the FIR, therefore, the complaint being just an act of the complainant to wreak vengeance against the applicants should be interfered with by this Court.

4.5. Most importantly learned Advocate Mr.Vatsa has relied upon a decision of the learned Coordinate Bench of this Court in Special Criminal Application Nos.970, 971, 973 with Special Criminal Application No.967 of 2007. Learned Advocate would submit that the said decision had been rendered by an Hon'ble Coordinate Bench of this Court in applications preferred by the present applicants and with regard to the very self-same incident i.e. two other complaints were filed against the applicants with regard to incidents of the very day alleging police excess. Learned Advocate would submit that this Court in the said decision has *inter alia* held that in absence of

sanction, the complaint is required to be quashed. Learned Advocate would submit that the said decision being by a Bench of Coordinate strength for the very self-same set of facts would be binding to this Court and whereas learned Advocate would submit that a view already having been taken that in absence of sanction to prosecute, the complaint being quashed by this Court, the present impugned complaint should also meet the same fate. Learned Advocate would submit that the present impugned complaint, more particularly since there is a clear absence of sanction to prosecute may be quashed by this Court.

5. Learned Advocate Mr.Dhaval Kansara has adopted the arguments of learned Advocate Mr.Vatsa. Learned Advocate Mr.Kansara would additionally relying upon the decision of the Hon'ble Supreme Court in case of **D. Devaraja Vs. Owais Sabeer Hussain, reported in (2020) 7 SCC 695** and submit that in a similar situation where the complainant had filed police complaint alleging excess in police custody, the Hon'ble Supreme Court has *inter alia* observed that if the act alleged against a public servant is reasonably connected with discharge of his official duty, it does not matter if the public servant has exceeded the scope of his power and/or acted beyond the four corners of law. Learned Advocate would further submit that the Hon'ble Apex Court has *inter alia* observed that whether sanction is necessary or not may have to be determined at any stage of the proceedings and whereas according to the

learned Advocate, complaint could be quashed in exercise of powers under Section 482 of Cr.P.C. Learned Advocate has also relied upon the decision of the Hon'ble Apex Court in case of **Sankaran Moitra Vs. Sadhna Das and Anr., reported in (2006) 4 SCC 584**. Relying upon the said judgement, learned Advocate would submit that the Hon'ble Apex Court has held that sanction is a condition precedent for prosecution of a Government servant and whereas according to the learned Advocate, if the public servant was acting in his official capacity while alleged offence was committed, then sanction to prosecute under Section 197(1) of Cr.P.C., would be required. Thus, submitting learned Advocates for the applicants, have requested this Court to quash the impugned complaint.

6. These applications are opposed by learned Public Prosecutor Mr.Mitesh Amin appearing with learned APP Ms.Mehta. Learned PP has submitted that the essential requirement to test whether sanction for prosecution was necessary or not is to ascertain whether the public servant while committing the alleged offence or act, was acting in discharge of public duty. Learned PP would submit that the complainant has made serious allegations in the complaint against the present applicants. It is submitted that such allegations are required to be tested at the stage of trial, more particularly in context of finding out whether the act or offence committed by the public servant was in discharge of his public duty or not. Learned PP would submit that

sanction under Section 132 of Cr.P.C., *inter alia* while protecting the public servant against prosecution also requires that the act for which prosecution is sought for is done under Sections 129, 130 or 131. Learned PP would submit that there are no averments in the application whereby it has been contended by the applicants that there was an unlawful assembly, which was required to be dispersed and upon its non-dispersal, force was required to be used and the act of the applicants was in purported exercise of power available under Sections 129 to 131.

6.1. Learned PP would further submit in this regard that as such perusal of the applications reveals two diverse stands taken by the applicants. The applicant of Criminal Misc. Application No.5959 of 1999 being the ASP at the relevant point of time has stated in the application that he had arrived at around 12.30 p.m., on 30.10.1990 after the members of the riotous mob had been arrested by the local police. As against the same, the applicant of Criminal Misc. Application No.1799 of 1996 had submitted that he along with Sr. Police Officers, including the applicant of Criminal Misc. Application No.5959 of 1999 were present at the site and had arrested the members of the riotous mob between 9.45 a.m. to 12.15 p.m. Learned PP would submit that apart from the diverse stands taken by the applicants themselves, the complainant has alleged that he had been arrested from his residence and whereas he had been assaulted on the way to the police station and inside the police

station. According to the learned PP, allegation of the complainant are in variance with the stands taken by the applicants. Learned PP would further submit that since the crux of the issue being absence of sanction to prosecute and since requirement of sanction to prosecute a public servant would depend on whether the public servant was acting in discharge of his public duty and in view of the diverse factual assertion by the parties, it would only be possible at the stage of trial to find out whether the public servants were acting in discharge of their duties or not and which would consequentially be relevant for deciding whether sanction to prosecute was necessary or not. Learned PP would submit that as such the learned Magistrate had at first instance postponed issuance of process and conducted an inquiry and after arriving at a satisfaction, learned Magistrate had taken cognizance and issued process. Learned PP would submit that at this stage this Court may not interfere with order passed by the learned Magistrate.

6.2. Insofar as judgement of this Court in Special Criminal Application No.970/2007 and allied matters, learned PP would submit that the said judgement may not have any binding effect, more particularly according to learned PP, the said judgement not laying down any proposition of law. Learned PP would submit in this regard that insofar as the law of precedents is concerned, a judgement is considered to be binding insofar as the proposition of

law which it seeks to propound. Learned PP would submit that in this regard the Court in the said decision had noticed that insofar as the case on hand, the public servant claimed protection from prosecution under Section 132 of Cr.P.C., as well as under Section 197 of Cr.P.C. Learned PP would submit that this Court had observed that the learned Magistrate while taking cognizance of the offence had not examined the matter from the view point of Section 197 of the Code and whereas the learned Coordinate Bench had further observed that learned JMFC had taken cognizance in spite of the fact that there was no prior approval of the competent authority. Learned PP would further submit that after referring to decision of the Hon'ble Apex Court in case of **Sankaran Moitra Vs. Sadhna Das and Anr.** (supra) and in case of **Anjani Kumar . Vs. State of Bihar and Anr., reported in (2008) 2 GLH 423**, the Court in the judgement passed in Special Criminal Application No.970 of 2007 and allied matters, has straightaway come to the conclusion that the learned Advocate appearing for the respondent was not in a position to produce sanction on record and only on that ground, the complaints were quashed. Learned PP would submit that insofar as Section 197 of Cr.P.C., the pre-requisite for claiming protection against prosecution would be the aspect of the public servant having committed the offence while he was discharging his public duty. Learned PP would submit that the said aspect had not been touched

upon by the Court in the said decision. Learned PP would submit that the conclusion of the Court for quashing the complaint was without discussing whether the public servant was discharging public duty when the offence had been committed.

6.3. Learned PP would further submit that the order of this Court in Special Criminal Application No.970 of 2007 and allied matters, not laying down a *ratio decidendi* and furthermore, the conclusion which has been arrived at by the learned Coordinate Bench about non-availability of sanction automatically resulting in quashing of proceedings may not be the correct position of law, as has been explained by the Hon'ble Apex Court in number of decisions, including the decision of **Sankaran Moitra Vs. Sadhna Das and Anr.** (supra), which has been relied upon by the learned Court in the decision itself. Learned PP would, therefore, submit that the said decision may not be treated as a binding precedent by this Court.

6.4. Learned PP would also draw the attention of this Court to a very specific observation by the learned Coordinate Bench in the said order that the order of learned JMFC takes note of the fact that the complainant therein himself is an accused and was arrested while he was part of the unlawful assembly. Learned PP would submit that while in the instant case the fact of the complainant being arrested is mentioned, there is no reference found in the order passed by the

learned Magistrate that he was part of the unlawful assembly. Learned PP would submit that since the fact of the complainant in the case before this Court in Special Criminal Application No.970 of 2007 and allied matters is different from the case of the complainant in the instant case, more particularly in view of the fact that in the instant case, the learned Magistrate while issuing process had not noticed as in the case before this Court in Special Criminal Application No.970 of 2007 that the complainant was a part of the unlawful assembly, according to learned PP, the consideration in the present case would be totally different. Learned PP would submit that the said decision under such circumstances may not be treated as binding to this Court, more particularly since there is no proposition of law laid down by this Court in the said case.

6.5. Learned PP would further submit that while it is attempted to be urged by learned Advocates for the applicants that in a complaint with almost similar allegations, this Court had been pleased to quash the complaint on the ground of absence of sanction, but at the same time, in a case registered against the present applicants and other police officers as accused for the incident that had happened on the very day and with regard to almost similar allegations, alleging police excess, which had resulted in injuries being caused to one of the accused therein subsequently resulting in his death, the learned Sessions Court in Sessions Case No.148/2016 had been pleased to

convict the applicants under Section 302 of IPC along with other offences and whereas the present applicants were sentenced to life-imprisonment. Learned PP would submit that in the appeal preferred by the applicants, the Hon'ble Division Bench of this Court had declined to suspend the sentence and whereas the said order was challenged before the Hon'ble Apex Court by applicant of Criminal Misc. Application No.1799 of 1996 and whereas the Hon'ble Apex Court vide order dated 20.8.2020 had been pleased not to interfere with the order of this Court rejecting application for suspending sentence. Learned PP would, therefore, submit that on one hand while reliance is placed on the decision of the learned Coordinate Bench of this Court, praying for quashing of the complaint on the ground of non-grant of sanction to prosecute, on the other hand, a learned Sessions Court has convicted the very petitioners for incidents which have taken place on the very day.

6.6. Learned PP would reiterate that insofar as sanction to prosecute under Section 132, since there is nothing coming on record to substantiate the contention of the applicants that the injuries sustained by the complainant may be a result of force being used by the applicants in discharge of their official duties for dispersing an unlawful assembly, therefore, the onus would be on the applicants at the stage of trial to prove that sanction would be a prerequisite since injuries were sustained by the complainant on account of the

complainant being a part of an unlawful assembly which had not dispersed even after warnings had been given by the applicants and for disbursing which force was required to be used. Furthermore, insofar as sanction to prosecute under Section 197, learned PP would submit that the requirement here would be to prove that the public servant had committed offence while they were discharging their official duties. Learned PP would submit that while the case of the applicants not being uniform and being in contradiction to the case of the complainant, it would be required to be proved at the stage of trial as to what the actual scenario was. Learned PP would submit that as such fact of the complainant having received injuries is also come out in examination of the doctor who had treated the complainant namely Dr.Nileshkumar Hargovind Kalola, which examination was in the Sessions Case. Learned PP would submit that the fact of injury being deniable, it would expedient in the interest of justice to have the facts verified at the stage of trial.

6.7. Insofar as the submissions with regard to charge-sheet in the parallel proceedings being C. R. No.I-96/90, learned PP would submit that as such the entire prosecution has been dropped by the State Government against the accused therein. In any case, learned PP would submit that accepting the submissions of learned Advocates for the applicants would amount to this Court almost examining the aspects as in a regular trial. Learned PP would submit

that the same may not be in consonance with the extent of exercise of power of this Court under Section 482 of Cr.P.C. Learned PP has, therefore, requested that this Court may not interfere with the impugned complaint at this stage.

7. At this stage it would be relevant to mention that learned PP has relied upon various orders/decision of this Court as well as of the Hon'ble Supreme Court *inter alia* trying to portray the conduct of the applicants herein more particularly attempts on the part of the learned PP being to project dilatory tactics of the applicants. In the considered opinion of this Court, since the same may not have any direct bearing on issue on hand this Court does not refer to any of such submissions and decisions in that regard.

8. Learned Advocate Mr.Vijay Patel for M/s.H.L. Patel Associates would submit that he would adopt the arguments made by the learned PP and would further submit that for the said reasons this Court may not interfere in the complaint.

9. Learned Advocate Mr.Vatsa on behalf of the applicants in rejoinder would submit that the order passed by the learned Coordinate Bench in Special Criminal Application No.970 of 2007 is final. Learned Advocate would submit that at this stage the State Government may not be heard submitting to this Court to go beyond the order of the learned Coordinate Bench. Learned Advocate would reiterate that the said

judgement was on similar set of facts and whereas the ratio laid down in the said decision would be binding to this Court. Learned Advocate would further submit that the scope of sanction under Section 132 and Section 197 of Cr.P.C., are different as stated in his original submission. Learned Advocate would submit that the sanction for prosecution as far as under Section 132 of Cr.P.C., is concerned, It would act as a bar at the stage of institution of the proceedings itself. Learned Advocate would thereafter relying upon the decision of the Hon'ble Apex Court in case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, reported in 2021 SCC Online SC 315**. Learned Advocate would submit that in the decision of **Neeharika** (supra), the Hon'ble Apex Court has reiterated the instances laid down by the Apex Court in case of **State of Haryana and others Vs. Bhajan Lal and others**, reported in **1992 Supp. (1) SCC 335**, where this Court in exercise of extraordinary jurisdiction under Article 226 of inherent powers under Section 482 of Cr.P.C., would quash a complaint as being an abuse of process of law or to meet the ends of justice. Learned Advocate would submit that the instant case is covered under the illustrations 6 and 7 as observed by the Hon'ble Supreme Court in case of **Bhajan Lal and others** (supra), paragraph 102. Learned Advocate would submit that instances 102(6) *inter alia* states with regard to an express legal bar engrafted in any of the provisions of the Code or the Act concerned to the institution and continuance of the proceedings.

Learned Advocate would submit that Section 132 sets out a clear bar against institution of proceedings and for such reason, according to learned Advocate Mr.Vatsa, the impugned complaint deserves to be quashed. Learned Advocate would further submit that as per paragraph 102(7), the Hon'ble Apex Court has *inter alia* observed that a complaint could be quashed if it were instituted with *mala fide* intention or were proceeded maliciously or instituted with ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and person grudge. Learned Advocate would submit that since the complainant might have received injuries at the time of dispersal of the unlawful assembly he had maliciously instituted the complaint with an ulterior motive for wrecking vengeance on the applicants i.e. the accused, and therefore, the learned Advocate would request that this Court may be pleased to quash the impugned complaint.

10. Heard learned Advocates for the parties, who have not submitted anything further.

11. The petitioners challenge the impugned complaint filed by the complainant and also the order of the learned Magistrate issuing process thereupon mainly on the ground of absence of sanction to prosecute the applicants, the protection available to the applicants as public servants both under Section 132 and Section 197 of Cr.P.C. The applicants place heavy reliance on the judgement passed by this Court in Special

Criminal Application No.970 of 2007 and allied matters, which according to the applicants, is in absolutely similar set of facts and also in case of the present applicants themselves. On the other hand, the State as well as the Complainant would submit that the decision of this Court dated 24.4.2009 may not be treated as a binding precedent, more particularly since the said decision does not give any reason and also on the ground that the conclusion arrived at is on the basis of a premise which is according to the State against the settled position of law in this regard. Furthermore, learned Advocates for the applicants would submit that the same is binding to this Court as it is by a Bench of coordinate strength, more particularly on the same set of facts. On the other hand, learned PP would submit that the judgement does not lay down any ratio *decidendi* and further there is a difference in the factual position. Since the judgement of this Court in case of the applicants dated 24.4.2009 is the principal submission on part of the applicants and since it has been submitted that the said decision may not be treated as a binding precedent, this Court at the outset proposes to deal with the submissions of the learned Advocates for the respective parties in that regard.

12. It requires to be reiterated that the learned Coordinate Bench of this Court was hearing a group of petitions, where the petitioners therein had challenged the complaints with regard to the very self-same incident on the ground of there being an absence of sanction. The learned Coordinate Bench after having noted the facts has given its finding

whereas learned Coordinate Bench had at the first instance held that the learned Magistrate had not examined the matter from the point of view of Section 197 of the Cr.P.C., more particularly since there was specific prohibition of the Code from taking cognizance of the offence under the said Section without any prior approval of the competent Authority, according to the learned Coordinate Bench, the same was *per se* without jurisdiction. Learned Coordinate Bench has come to a conclusion that the petitioners were discharging their official duties at the time when the offence as alleged in the complaint has taken place, more particularly the learned Coordinate Bench relying upon the order passed by the learned Magistrate, whereby it is noted that the complainant himself was arrested as he was part of the unlawful assembly. Learned Coordinate Bench had thereafter referred to the decision of the Hon'ble Apex Court in case of **Sankaran Moitra Vs. Sadhana Das and Anr.** (supra) and had observed that the prosecution is hit by provisions of Section 197 of the Code and the same cannot be launched without the contemplated sanction. Learned Coordinate Bench had also referred to the case of **Anjani Kumar Vs. State of Bihar and Anr.** (supra) whereby the Hon'ble Apex Court had *inter alia* observed that a safe and sure test with regard to sanction would be to observe where the omission or neglect on the part of the public servant in committing the act complained upon could make him answer the charge for dereliction of official duty and whereas the learned Coordinate Bench goes on to

observe that the said aspect makes it clear that concept of Section 197 does not immediately get attracted on institution of the complaint. In spite of holding as above, it appears that the learned Coordinate Bench had quashed the complaint on the ground that the Advocate for the respondent could not produce sanction on record.

13. It appears that the learned Coordinate Bench had been moved by the submissions that the petitioners were discharging their official duties at the time when the offence as alleged in the complaint took place and whereas the learned Coordinate Bench also noted that the complainant himself was an accused and was arrested while he was part of an unlawful assembly as mentioned by the learned Trial Court in its order issuing process.

14. Since the crux of the postulate being that the Government employee at the relevant point of time while committing the act was discharging official duties or not, the finding of the learned Coordinate Bench that petitioners were discharging official duty at that time acquires significance. Since the learned Coordinate Bench was discussing about the order of the learned Trial Court issuing process and since the learned Coordinate Bench refers to an observation by the learned Trial Court about the complainant also being part of the unlawful assembly as noted by the learned Trial Court, therefore, it could be presumed that the observation that the petitioners were

discharging official duties at that time had been made in terms of the observations by the learned Trial Court as regards the complainant.

15. As against the finding by the learned Coordinate Bench about applicants discharging official duties in the instant case, there are three different versions of the very same incident and two different causes alleged. According to the petitioner of Criminal Misc. Application No.1799 of 1996, he along with the petitioner of Criminal Misc. Application No.5959 of 1999 and other police officers had arrested about 132 persons from the riotous mob. While the petitioner of Criminal Misc. Application No.5959 of 1999 *inter alia* states that upon registration of FIR police officials subordinate to the said applicant had arrested about 132 persons from the riotous mob and whereas the arrest *panchnama* was drawn between 9.45 a.m., to 12.15 p.m. It is the case of the said applicant that after the arrests were effected, he had reached the said place at around 12.30 p.m., on the said date. The third version of the incident being by the complainant who would submit that while he and his friends and family members were present at his home on the said date at around 1.30 p.m., the applicants herein and other police officials had arrived there, beaten up the complainant and his friends and had taken them to the police station in a jeep which was parked at a distant place and whereas on the way also, the complainant had been assaulted. The complainant also complained of assault inside the police station.

16. Again, so far as the cause for arrest is concerned, according to the applicants, the complainant had been arrested when he was part of riotous mob, and whereas on the other hand it is the case of the complainant as mentioned in the complaint that on account of an agitation by the persons residing in the town concerned, i.e. Jamjodhpur, the PSI and other officers of the concerned police station had been suspended. According to the complainant, it is on account of the prejudice held by the police officers against the public of the town concerned that they had under the guise of riots and violence assaulted the complainant and others.

17. Thus, it clearly appears that there are significant difference in the facts of the case before the learned Coordinate Bench and before this Court. Furthermore, it also appears that in the order passed by the learned Magistrate issuing process in the present case there is no reference to the fact of the complainant being arrested since he was part of unlawful assembly.

18. In the considered opinion of this Court, the facts of the present case and the facts of the case before the Court in judgement dated 24.4.2009 are not similar. Moreover, the dissimilar facts as narrated herein above would have a direct bearing on the outcome of the case itself, more particularly if the contradictory versions as regards their roles by the applicants themselves would make the applicants dis-

entitled for claiming the protection of sanction for prosecution under Section 132 of Cr.P.C. Furthermore, the version of the complainant also if it is accepted, dis-entitle the applicants to claim the said protection. On the other hand, the variance in the cause being explained as stated herein above if the version of the complainant were to be accepted, then the same may dis-entitle the applicants from the protection of sanction to prosecution available under Section 197 of the Code.

19. At this stage, this Court proposes to rely upon certain pertinent observations of the Hon'ble Court with regard to applicability of ratio of the a judgement, more particularly of variance of even a small but significant detail between the facts of the case. The Hon'ble Supreme Court in case of **M. Siddiq (Dead) thro. LRs Vs. Mahant Suresh Das and Ors., reported in (2019) 18 SCC, 631**, at paragraph 25 has observed as under:-

"25. The following words of LORD DENNING in the matter of applying precedents have become locus classicus:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.
>
> * * *
>
> Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost

> in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it."

The above passage has been quoted with approval by this Court in Sarva Shramik Sanghatana (KV), Mumbai vs. State of Maharashtra and others, (2008) 1 SCC 494."

20. Furthermore, the Hon'ble Apex Court in case of **Deepak Bajaj Vs. State of Maharashtra and Anr., reported in (2008) 16 SCC 14** has observed as under at paragraph 7:-

> "7. It is well settled that a judgment of a Court is not to be read mechanically as a Euclid's theorem nor as if it was a statute.
>
> 14. On the subject of precedents Lord Halsbury, L.C., said in Quinn vs. Leathem:
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> "Now before discussing the case of Allen Vs. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

We entirely agree with the above observations.

> 15. In Ambica Quarry Works vs. State of Gujarat & others (1987) 1 SCC 213 (vide paragraph 18) this Court observed :
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> "18. ...The ratio of any decision must be understood in the background of the facts of that case. It has been said a long time ago that a case is only an authority for what it actually decides and not what logically follows from it".
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> 16. In Bhavnagar University vs. Palittana Sugar Mills Pvt. Ltd. (2003) 2 SCC 111 (vide paragraph 59), this Court observed :

> "59. ... It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision". (emphasis in original)

17. As held in Bharat Petroleum Corporation Ltd. & another vs. N.R. Vairamani & another (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed :

> "9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes".(emphasis supplied) 12. In London Graving Dock Co. Ltd. vs. Horton (1951 AC 737 at page 761), Lord Mac Dermot observed :
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> > "... The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge. ..."
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> 10. In Home Office vs. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid Said:
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> "... Lord Atkin's speech ... is not to be treated as if it was a statute definition; it will require qualification in new circumstances."

Megarry, J. in (1971) 1 WLR 1062 observed :

> "... One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament;"

And, in Herrington vs. British Railways Board (1972 (2) WLR 537) Lord Morris said :

> "... There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

> 11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.
>
> 12. The following words of Lord Denning in the matter of applying precedents have become locus classicus :
>
> > "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.
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> > Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it."(emphasis supplied)" ' "
> >
> > The same view was taken by this Court in Sarva Shramik Sanghatana (K.V.), Mumbai vs. State of Maharashtra & Ors. AIR 2008 SC 946 and in Government of Karnataka & Ors. vs. Gowramma & Ors. AIR 2008 SC 863."

21. Having regard to the observations of the Hon'ble Supreme Court, more particularly relying upon the law laid down by the Hon'ble Apex Court, it could be said that a judgement has to be read as applicable to particular facts proved or assumed to be proved and whereas a judgement is only an authority for what it actually decides and whereas a judgement cannot be quoted for a proposition that may seem to follow logically from it. Each case depends on its own facts and a close similarity between one case and another would not suffice for holding a judgement being applicable to the facts of a similar case because a

significant detail may alter the entire aspect. A little difference in facts may make a lot of difference in the precedential value of a decision.

22. In the instant case as noted herein above, in view of the varying stance it cannot be *per se* accepted that the applicants were discharging their official duties at the time when the offence as alleged in the complaint had taken place. To elaborate, in the context of sanction under Section 132 of Cr.P.C., while it is attempted to be submitted that the complainant might have sustained injuries while the applicants were in exercise of their public duty dispersing an unlawful assembly. While there are no averments or material produced by the petitioners, except versions of the incidents in the pleadings the fact of lack of uniformity in the versions make such versions incapable of being accepted more particularly while this Court is exercising jurisdiction under Section 482, Again as such, insofar as the applicant of Criminal Misc. Application No.5959 of 1999, in the application according to his version, he reached after the arrests were made in relation to an FIR, with regard to the riotous mob consisting of the complainant among others, thus *prima* facie dis-entitling the said applicant to claim protection under Section 132 of Cr.P.C.

22.1. Furthermore, in the instant case, there is no observation in the order of Magistrate that the complainant himself is an accused and was arrested when he was part of unlawful assembly. In the

considered opinion of this Court this small but significant fact not being same in the present case, the decision of the learned Coordinate Bench may not be binding upon this Court. It is observed that the learned Magistrate in the complaints before the learned Coordinate Bench in the order issuing process had observed that the complainant was part of the unlawful assembly, whereas existence of such a fact may tilt the balance in favour of the applicants since it could be presumed that the complainants sustained injuries when the mob comprising the complainant were dispersed by the applicants. Absence of such a finding in the present order, would alter the entire scenario. There being no finding about the complainant of the impugned complaint being part of the unlawful assembly would ensure that no presumption is available in favour of the applicants that they were doing their official duties when the injuries were sustained by the complainant. Absence of the significant and crucial fact leads this Court to hold that the decision of the learned Coordinate Bench being on a different set of facts would not act as a binding precedent to be followed by this Court.

23. In this view of the matter, more particularly relying upon the law laid down by the Hon'ble Apex Court and the discussion herein above with regard to the same, in the considered opinion of this Court, decision of the learned Coordinate Bench relied upon by the learned Advocate for the petitioners, cannot be held as a binding precedent.

24. Having held that the decision of the learned Coordinate Bench would not be binding, more particularly in view of the dissimilarity of significant facts, this Court would now proceed to consider the submissions of the learned Advocates for the parties, more particularly the learned Advocate for the petitioners, in support of the prayer for quashing of the impugned FIR. Since the learned Advocate for the petitioners had emphasized more on the protection of sanction available under Section 132 of Cr.P.C., this Court will first examine the said aspect. According to the learned Advocate for the petitioners, the protection under Section 132 is much wider in scope than the protection envisaged in Section 197 of Cr.P.C., more particularly since according to learned Advocate, the words of the said section connote the intention of the statute to bar prosecution at the very outset. Learned Advocate had further submitted that protection under Section 132 would be available if the act alleged was for any act done or purporting to be done under Sections 129, 130, and 131 of Cr.P.C., i.e. with regard to dispersal of unlawful assembly. According to the learned Advocate for the applicant since it has come on record, more particularly in charge-sheet filed in the parallel FIR being C. R. No.I-96 of 1990 that the accused, including the complainant herein were part of unlawful assembly and whereas the accused in the Criminal Complaint were also arrested, therefore, the requirements of Section 132 is fulfilled, more particularly according to the learned Advocate the act done or purporting to be done

by the applicants being under Section 129, 130, and 131 of Cr.P.C., therefore, requirement of Section 132 being fulfilled prosecution could not be launched against the applicants. In this regard, it is required to be done that except for reference/reliance on the charge-sheet filed in the FIR as noted herein above, there is nothing else on record to suggest that the applicants were, in fact, discharging their duties more particularly as per Sections 129, 130, and 131 of Cr.P.C., and whereas the assault upon the complainant had been nothing else but a result of force required to disperse the unlawful assembly. As a matter of fact, as noted herein above, there are three competing versions, which are appearing on record. While applicant of Criminal Misc. Application No.1799 of 1996 contending that the said applicant along with the applicant of Criminal Misc. Application No.5959 of 1999 had been discharging their official duties on the said date and whereas they had tried to ensure that unlawful assembly that had gathered is dispersed and the applicants along with other police officials had arrested the accused of the FIR case, including the present complainant, on the other hand, the applicant of Criminal Misc. Application No.5959 of 1999 *inter alia* contending that he had reached the city of Jamjodhpur at 12.30 hours i.e. after the arrest of accused in the FIR case had been effected. The third version is of the complainant, who states that he was at his residence when the police officials including the applicants had arrested the complainant and his friends and in course of the arrest, had assaulted the complainant

and his friends. Thus, in addition to there being varying stands on record, there is no other impeccable material relied upon by the applicants which would persuade this Court to hold that the applicants were in fact discharging their official duties when the act i.e. the assault on the complainant took place.

25. At this stage, it would be relevant to refer to the decision of the Hon'ble Supreme Court in case of **Nagaraj Vs. State of Mysore, reported in AIR 1964 SC 269**. The Hon'ble Supreme Court in case of **Nagaraj Vs. State of Mysore** (supra) was considering an appeal against an order of the High Court of Mysore, rejecting the Reference made by the Sessions Judge, Shimoga recommending the quashing of the order of the learned Magistrate, committing the accused to the Sessions for trial of offence punishable under Section 307 etc., more particularly on the ground that the learned Magistrate could not have taken cognizance of the offence without the Section of the State Government in view of provisions of Sections 132 and 197 of Cr.P.C. The observations of the Hon'ble Apex Court at paragraphs 16 and 17 being relevant are reproduced herein below for benefits:-

> *"16. The third contention really is that the Court can hold that sanction was necessary if the appellant could prima facie show that his action which is complained of was in connection with the performance of his duties under ss.127 and 128 of the Code. Assuming that this is the position in law, it does not appear from the record which consists of the orders of the Sessions judge and the High Court that the evidence in this case prima facie establishes that the appellant's contention that his acts complained of were such for which he could not be prosecuted without the sanction of the Government. In*

this case the High Court has definitely said that the Sessions judge did not arrive at any such conclusion and had made the reference on a mere acceptance of the accused's version, for which there was no justification. It is contended for the appellant that the mere fact that some of the persons alleged to have formed part of the unlawful assembly were prosecuted by the State and have also been committed by the Magistrate to the Sessions Court for trial establishes prima facie that the accused's contention about the necessity for sanction under s. 132 of the Code. is correct. The commitment of the other accused is on the basis of evidence in that case and cannot be legally taken into consideration to decide the question raised in this case. The question is to be decided on the evidence in this case and not on the basis of evidence and inferences drawn in the other case. The third contention, therefore, has no force.

17. The next question and the real question to decide then is to determine what the accused has to show in order to get the benefit of the provisions of s. 132 of the code in the case. To get such a benefit and to put off a clear decision on the question whether his conduct amounts to an offence or not, the appellant has to show (i) that there was an unlawful assembly or an assembly of five or more persons likely to cause a disturbance of the public peace ; (ii) that such an assembly was commanded to disperse ; (iii) that either the assembly did not disperse on such command or, if no command had been given; its conduct had shown a determination not to disperse ; and (iv) that in the circumstances he had used force against the members of such assembly. He has to establish these facts just in the same manner as an accused has to establish any other exception he pleads in defence of his conduct in a criminal case. It is sufficiently well- settled that it is for the prosecution to prove the offence in the sense that the offence was committed in the circumstances in which no recourse to an exception could be taken and, therefore, if the accused establishes such circumstances which either conclusively establish to the satisfaction of the Court or make the Court believe them to be probable that the case comes within the exception that would be sufficient compliance on the part of the accused with respect to his proving the exception to prove which the onus was on him. In the present case therefore the accused has to show to the Court that the alleged offences were committed during the performance of his duties in the circumstances narrated above. On his so showing, it would be the duty of the Court to hold that the complaint could not have been entertained without the sanction of the Government under s. 132 of the Code. To show this is not equivalent to the accused establishing facts which would be necessary for him to take advantage of the provisions of s. 79 of the Indian Penal Code as had been thought in some of the cases cited to us. Section 79, I.P.C. deals with circumstances which when proved makes acts complained of not an offence. The circumstances to be established to get the protection of s. 132, Or.

P.C. are not circumstances which make the acts complained of no offence, but are circumstances which require the sanction of the Government in the taking of cognizance of a complaint with respect to the offences alleged to have been committed by the accused. If the circumstances to be established for seeking the protection of s. 132 of the Code were to make the alleged conduct no offence, there could be no question of a prosecution with the sanction of the State Government. This distinction had not been considered in the cases we were referred to. It is not necessary to refer to those cases which were ultimately decided on the basis that the allegations either in the complaint or taken together with what had appeared from the evidence on record justified the conclusion that the action complained of came under ss. 127 and 128 of the Code and that no prosecution in con nection with such an action could be instituted in the Court without the sanction of the State Government."

26. A perusal of the observations of the Hon'ble Apex Court would reveal that like in the present case, from the record, it does not appear that there was evidence, which would *prima facie* establish the contention of the Government Servant that the acts complained were such for which he could not be prosecuted without the sanction of the Government. Furthermore, the Hon'ble Apex Court has *inter alia* laid down the test to determine whether the accused would be entitled to get the benefit of the provisions of Section 132 of Cr.P.C. As observed by the Hon'ble Apex Court, the appellant has to show;

(i) that there was an unlawful assembly likely to cause disturbance of public peace;

(ii) that such an assembly was commanded to disperse;

(iii) that either the assembly did not disperse on such

command or, if no command had been given, its conduct had shown a determination not to disperse; and

(iv) that in the circumstances, the Government servant had used force against the members of such assembly.

27. In the instant case, applying the test laid down by the Hon'ble Apex Court to the facts of the case, it does not appear that the applicants could even prima facie establish the existence of the above circumstances. Again, what would be very relevant would be the fact that insofar as applicant of Criminal Misc. Application No.5959 of 1999 is concerned, even in the pleadings of the application, the applicant clearly states that he had reached the town in question/the place of offence at around 12.30 hours, i.e. after the accused of the FIR case, including the complainant herein had been arrested. Thus, under such circumstances, it would obviously not be open for the applicant of Criminal Misc. Application No.5959 of 1999 to claim such a protection. On the other hand, while the petitioner of Criminal Misc. Application No.1799 of 1996 states that the applicant of Criminal Misc. Application No.5959 of 1999 was present when the arrest had taken place. It does clearly appear that both the applicants have come with varied stance and whereas insofar as the applicant of Criminal Misc. Application No.1799 of 1996, while he states that he was at the place of the offence as described in the FIR case, yet the above required circumstances are not

established even prima facie by the said applicant to derive the benefit of provisions of Section 132 of Cr.P.C.

28. Insofar as the reliance placed on the charge-sheet filed in the FIR case, more particularly relying upon provisions of the Evidence Act and submitting that no evidence would be required to be led for establishing the facts, in the considered opinion of this Court, such a contention may not be open for the applicant to take in a proceeding praying for quashing of a complaint in exercise of jurisdiction under Section 482 of Cr.PC., or Article 226 of the Constitution of India. In the considered opinion of this Court, the law with regard to exercise of jurisdiction having been laid down by the Hon'ble Supreme Court in various judgements, reliance upon which would be placed herein after, in the later paragraph, but at the same time, it would be relevant to observe that in exercise of jurisdiction under Section 482 of the Cr. P.C., the High Court while it is not prevented from taking unimpeachable evidence or totally acceptable circumstances, but at the same time the High Court cannot conduct a mini trial which the petitioners wants this Court to do at this stage. Reliance is placed by this Court upon recent decision of the Hon'ble Apex Court in case of **Central Bureau of Investigation (CBI) and Anr. Vs. Thommandru Hannah Vijayalakshmi alias T. H. Vijayalakshmi and Anr., reported in AIR 2021 SC 5041**. Paragraph 41 being relevant is quoted herein below for benefit:-

> "41 The judgment of a two Judge Bench of this Court in Gunmala Sales (P) Ltd. v. Anu Mehta makes it abundantly clear that the High Court does not conduct a mini-trial or a roving inquiry while exercising its powers under Section 482 of the CrPC. Justice Ranjana P Desai held:
>
> > "34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director."
>
> This principle also applies squarely to the exercise of powers by a High Court under Article 226 of the Constitution while considering a writ petition for quashing an FIR. Further, in numerous judgements of this Court it has been held that a court cannot conduct a mini-trial at the stage of framing of charges. Hence, doing so at the stage of considering a petition for quashing an FIR under Section 482 of the Cr.P.C., or Article 226 of the Constitution is obviously also impermissible. Therefore, we disapprove of the reasoning provided by the Telangana High Court in its impugned judgement dated 11 February 2020 for quashing the FIR."

29. The Hon'ble Supreme Court relying upon an earlier decision of the Hon'ble Supreme Court in case of **Gumala Sales (P) Ltd. Vs. Anu Mehta, reported in (2015) 1 SCC 103** has *inter alia* reiterated that conducting of a mini trial at the stage of considering a petition for

quashing an FIR under Section 482 of Cr.P.C. or Article 226 of the Constitution of India is impermissible. In the considered opinion of this Court, having regard to the fact that even on record of this case, while three different versions of the incident are being stated, and whereas since there is a variance in the versions of the petitioners themselves, and whereas at this stage this Court being of the opinion that the evidence not being unimpeachable and whereas at this stage merely relying upon a charge-sheet, which is stated to be proved under the provisions of the Evidence Act, this Court would not be justified, in holding that the petitioners were entitled to get the benefit of provisions of Section 132 more particularly and more importantly since the petitioners have not even produced prima facie material to show that the requirements as laid down by the Hon'ble Apex Court in case of **Nagaraj Vs. State of Mysore** (supra) were existing in the present case also.

30. Insofar as the entitlement of the petitioners to avail benefit of protection of Section 197 of Cr.P.C., it would be relevant refer to a recent decision in case of **D Devraja** (supra), the Hon'ble Supreme Court has *inter alia* reiterated the law with regard to requirement of sanction for prosecuting a government servant under Section 197 of Cr.P.C. Paragraphs 67, 68, 69, 70 and 71 :-

"67. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer

under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.

68. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate government.

69. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.

70. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a police man assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

71. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of government sanction for initiation of criminal action against him."

31. This Court also seeks to rely upon the observations of the Hon'ble Apex Court in a recent decision in case of **Indra Devi Vs. State of Rajasthan and Anr., reported in (2021) 8 SCC 768**. Paragraph 10 of the said decision being relevant for the present purpose is reproduced herein below for benefit:-

> "10. We have given our thought to the submissions of learned counsel for the parties. Section 197 of the CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognisance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. [See Subramanian Swamy Vs. Manmohan Singh4]. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. [See State of Maharashtra Vs. Dr. Budhikota Subbarao] The real question, therefore, is whether the act committed is directly concerned with the official duty."

32. In the considered opinion of this Court, the law laid down by the Hon'ble Apex Court in the above referred decision being that there has to be a reasonable connection between the act concerned and the performance of official duty for a government servant to claim that there is need of sanction to prosecute under Section 197 of Cr.P.C., and in absence thereof, the trial would be vitiated. In the considered opinion of this Court, thus, the first aspect that would have to be considered is whether there was any reasonable connection between the acts complained of and the discharge of official duty.

33. It is the case of the complainant that on the date in question,

while he was present in his residence, along with his friends at which time the petitioners and other police officers had arrived at his residence and assaulted the complainant and had taken them to police jeep which was kept at a distance and on the way also the complainant was continuously assaulted. It is also alleged that even inside the police station the complainant was continuously assaulted and tortured by the police officials. According to the complainant, since the police officers were having a grievance against the general public of Jamjodhpur Town, since on account of an agitation by the public certain police officials had been suspended and, therefore, under the guise of the communal riots, the complainant and others were arrested and assaulted. On the other hand, it is the contention on the part of the petitioners that the complainant was part of a riotous mob and the complainant along with around 132 persons had been arrested and whereas the injury sustained might be on account of force used to control the riotous mob and thus the applicants were discharging official duty when the act/offence was committed, thus requiring sanction to prosecute under Section 197. In the considered opinion of this Court, the contention on part of the petitioners may be correct so far as it goes, but at the same time, the question here is that, that is not the only version of the incident. As noted herein above, a contrary version, which if accepted, in the *prima facie* opinion of this Court, which would denude the petitioners from the protection available under Section 197 of Cr.P.C., is also available on

record. The question that arises is whether it would be open for this Court at this stage to conduct proceedings akin to a mini trial and come to a conclusion that the version of the petitioners is the correct version and the version of the complainant is false. As observed herein above relying upon the law laid down by the Hon'ble Apex Court in case of **T. H. Vijayalakshmi** (supra) at this stage, more particularly considering the case from the perspective of jurisdiction under Section 482 of Cr.P.C., and Article 226 of the Constitution of India, this Court is precluded from holding a mini-trial. Rather, in the considered opinion of this Court, the rival stands could be tested and proved/disproved only at the stage of the trial. Thus, in the considered opinion of this Court, the contention on part of the applicants to quash the complaint on account of lack of sanction under Section 197 of Cr.P.C., cannot be accepted.

34. Insofar as the decision in case of **Ram Kumar** (supra) relied upon by the learned Advocate for the petitioners, the Hon'ble Apex Court in the said decision has explained the difference between the absence of sanction under Section 132 and absence of sanction under Section 197. The Hon'ble Apex Court has *inter alia* observed that the disability with regard to absence of sanction operates in two different spears and whereas insofar as Section 132 is concerned, it has been observed by the Apex Court that want of sanction under the said Section renders complaint invalid, whereas want of sanction under Section 197

vitiates all the proceedings in the Court.

35. While the learned Advocate for the petitioners had emphasized on the fact that in the instant case sanction under Section 132 itself was not available, and therefore, the complaint itself is rendered invalid and whereas according to learned Advocate even insofar as absence of sanction under Section 197, the observations of the Hon'ble Apex Court would be applicable in the instant case also.

36. In the considered opinion of this Court, the observations of the Hon'ble Apex Court may not advance the cause of the petitioners more particularly since as noted herein above the Hon'ble Apex Court in an earlier decision in case of **Nagaraj Vs. State of Mysore** (supra) has laid down certain requirements which have to be prima facie established by the petitioners to avail the benefit emanating from absence of sanction underr Section 132 of Cr.P.C. In the considered opinion of this Court, until the petitioners *prima facie* prove, i.e. for the purpose of considering the petition under Section 482 of Cr.P.C., that they were fulfilling the requirement as per the decision of the Hon'ble Apex Court in **Nagaraj Vs. State of Mysore** (supra), they would not be entitled to claim the benefit flowing from the absence of sanction under Section 132 of Cr.P.C. On the other hand, insofar as Section 197 is concerned, the petitioners will have to establish that the act/offence concerned, was in discharge of public duty and whereas only upon such fact being *prima*

facie established, would the petitioners be entitled to claim the benefit arising from absence of sanction under Section 197 of Cr.P.C. In the considered opinion of this Court, as far as the consequences of the absence of sanction are concerned, the law laid down by the Hon'ble Apex Court in **Ram Kumar** (supra) will hold in favour of the applicants but since the burden of requirements as above has not been discharged by the applicants at this stage, in the considered opinion of this Court, it is premature on part of the applicants to claim benefit arising from sanction to prosecute under Section 132 and Section 197 of the Cr.P.C.

37. Having observed as above, in the considered opinion of this Court, at this stage, it would be beneficial to refer to the decision of the Hon'ble Apex Court in case of **Neeharika Infrastructure** (supra). The Hon'ble Apex Court in the said decision has reiterated the law with regard to exercise of jurisdiction by this Court for quashing of a complaint either under Article 226 of the Constitution of India or under Section 482 of Cr.P.C. Paragraph 57 of the said decision being relevant for the present purpose is reproduced herein below for benefit:-

> "57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the

complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

38. For the present purpose, this Court would note that in conclusion No.(iv) the Hon'ble Apex Court has observed that the power of quashing should be exercised sparingly and with circumspection and whereas in paragraph No.(v), the Hon'ble Apex Court has also observed that this Court is not required to embark upon an inquiry as to the reliability of the evidence or otherwise of the allegations made in the complaint. The Hon'ble Apex Court at paragraph (vii) has also observed that quashing of a complaint should be an exception and whereas at paragraph (x) the Hon'ble Apex Court has observed that only in exceptional case where non-interference would result in miscarriage

of justice, the Court should not quash a complaint. Finally at paragraph (xiv) the Hon'ble Apex Court has observed that if a case for quashing is made out regard being had to the parameters as laid down by the Hon'ble Apex Court in case of **R. P. Kapur Vs. State of Punjab, reported in AIR 1960 SC 866** and in case of **Bhajanlal (supra)**, then the complaint/FIR could be quashed..

39. The Hon'ble Apex Court in case of **State of Haryana and others Vs. Bhajan Lal and others** (supra), at paragraph 102 has laid down instances, whereby the High Court in exercise of extraordinary power under Article 226 of the Constitution of India or inherent power under Section 482 of Cr.P.C., could quash a complaint, either to prevent abuse of process of law or to secure the ends of justice. Paragraph 102 is reproduced herein below:-

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code, which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a*

case against the accused.

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

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

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

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

40. Now considering the present case in light of the observations of the Hon'ble Apex Court in case of **Neeharika Infrastructure** (supra) and **State of Haryana and Ors. Vs. Bhajanlal & Ors.** (supra), this Court finds that the primary principle as could be found from the conclusions of the Hon'ble Apex Court in case of **Neeharika (supra)**

would be that quashing of a complaint should be in an exceptional situation where non-interference would result in miscarriage of justice. In this regard, it is observed by this Court that in the complaint the complainant has alleged that he had been assaulted by the petitioners, when he along with his friends were present in his residence. It is the case of the complainant that the cause for such assault was of a prejudice held by the police department against the complainant and other members of public of Jamjodhpur Town, more particularly since an agitation by the persons of the Town had resulted in suspension of certain police officials. That the petitioners *inter alia* contended that they cannot be proceeded against since the sanction under Section 132 and/or Section 197 is absent. This Court has noticed that the legal position with regard to sanctions under both the provisions as explained by the Hon'ble Apex Court, as relied upon by this Court herein above, is not that absence of sanction would automatically vitiate the proceedings and whereas insofar as both the sanctions are concerned, the petitioners have to *prima facie* fulfill certain requirements, being that insofar as sanction under Section 132 of the Cr.P.C. is concerned, the petitioners have to fulfill the requirements as per decision of the Hon'ble Apex Court in **Nagraj** (supra) and insofar as sanction under Section 197 is concerned, the applicants have to *prima facie* show that they were discharging public duty when the offence was committed. Again this Court has noted more particularly in view of the variance in versions of

the petitioners themselves and the variance in version of the petitioners and the complainant. In the considered opinion of this Court this stage, without evidence being led it would not be possible for this Court to come to a conclusion that the versions of the petitioner ought to be accepted, as compared to the version of the complainant. This Court has also noted that in the Sessions case i.e. the Sessions Case No.148 of 2016 where for incident which happened on the very self-same day i.e. on the date of incident which is mentioned in the impugned complaint while the petitioners have been convicted, it would also be relevant to mention that an independent witness has testified to the fact that the complainant was also injured, which aspect also cannot be overlooked. While it may be contended by the petitioners that the complainant had sustained injuries while the petitioners were trying to disperse the unlawful assembly – riotous mob, but at the same time, there is no impeccable material on record, which would point out to the same. Furthermore, this Court has also noted that the decision of the learned Coordinate Bench upon which great reliance has been placed by the petitioners could not be treated as a binding precedent. Having regard to the circumstances mentioned herein above, in the considered opinion of this Court, the present is not a case where the Court finds that non-interference would result in miscarriage of justice.

41. Insofar as reliance placed by the learned Advocates for the petitioners as regards the instances No.6 and 7 of Paragraph 102 of the

decision of Hon'ble Apex Court in **State of Haryana Vs. Bhajanlal** (supra), in the considered opinion of this Court, while the law laid down by the Hon'ble Apex Court in paragraph 102(6) of the said decision *inter alia* being that if there is a specific bar engrafted in the Code, as against institution of a proceeding or continuance thereof, then this Court would be justified in quashing a complaint, which is instituted/continued in spite of the bar in question, yet this Court notes that the bar engrafted in the Code under Section 132 and Section 197 is not absolute unless it is shown even *prima facie* that there is material to hold in favour of the petitioners, which is clearly not the case here as elaborately discussed by this Court herein above, therefore, the petitioners would not be entitled to claim benefit of the observations of the Hon'ble Apex Court made at paragraph 102(6) in case of **State of Haryana Vs. Bhajanlal** (supra).

42. Furthermore, insofar as paragraph 102(7) of **State of Haryana Vs. Bhajanlal** *inter alia* states with regard to criminal proceedings which is manifestly attended with mala fide, in the considered opinion of this Court, there is prima facie material to show that the complainant had sustained injuries on account of an assault. It is also clearly coming out from the complaint itself that there is a delay in initiation of the complaint, yet a plausible reason has been stated for the same. It also appears that there is also a plausible contradictory claim by the complainant that the incident of assault by the petitioners and other

policemen was on account of a grudge held by the police establishment against the complainant and other persons i.e. public of Jamjodhpur Town more particularly on account of an agitation by the people of the Town, which had resulted in suspension of some policemen. Under such circumstances, in the considered opinion of this Court, it would be too premature to hold at this stage as regards the complaint being manifestly attended with mala fides.

43. In this view of the matter, more particularly for the discussion, reasoning and conclusions set out as herein above, in the considered opinion of this Court, no case is made out for quashing of the complaint.

44. Hence, the present applications stand rejected.

45. At this stage, learned Advocate Mr.Arjun Joshi appearing for the applicant would request that the operation of this judgement may be stayed for some time, so as to allow the applicant to approach the higher forum, challenging the same. Such a request is objected to by the learned PP Mr.Amin.

46. Having regard to the fact that the trial with regard to the complaints impugned has not proceeded any further after the order of issuing the process by the learned Magistrate, in the considered opinion of this Court, the request of the learned Advocate for the applicant deserves to be accepted. Operation of this judgement shall remain stayed for a period of 12 weeks from today.

Sd/-
(NIKHIL S. KARIEL,J)

V.V.P. PODUVAL