

**IN THE SUPREME COURT OF INDIA  
CIVIL/CRIMINAL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO 19 OF 2018**

**TEHSEEN POONAWALLA**

**..Petitioner**

**VERSUS**

**UNION OF INDIA AND ANR**

**..Respondents**

**WITH**

**WRIT PETITION (CIVIL) NO 20 OF 2018**

**BANDHURAJ SAMBHAJI LONE**

**..Petitioner**

**VERSUS**

**UNION OF INDIA AND ANR**

**..Respondents**

**WRIT PETITION (CIVIL) NO 73 OF 2018**

**JAYSHRI LAXMANRAO PATIL**

**..Petitioner**

**VERSUS**

**UNION OF INDIA AND ORS**

**..Respondents**

**TRANSFERRED CASE (CRIMINAL) NO 1 OF 2018**

**BOMBAY LAWYERS ASSOCIATION**

**..Petitioner**

**VERSUS**

**THE REGISTRAR GENERAL AND ORS**

**..Respondents**

**AND WITH**

**TRANSFERRED CASE (CRIMINAL) NO 2 OF 2018**

**SURYAKANT @ SURAJ**

**..Petitioner**

**VERSUS**

**STATE OF MAHARASHTRA**

**..Respondent**

## J U D G M E N T

### Dr D Y CHANDRACHUD, J

#### **A The Context**

1 In the batch of petitions before this Court, the petitioners seek an inquiry into the circumstances of the death of Brijgopal Harikishan Loya. He was a judicial officer in the State of Maharashtra in the rank of a district judge and died on 1 December 2014. Articles on his death were published in the issues of Caravan magazine dated 20 and 21 November 2017. The first article was titled “A family breaks its silence : shocking details emerge in death of judge presiding over Sohrabuddin trial”.

2 Since the petitions are founded on the two articles published in Caravan, it would be necessary to extract them in this judgment:

#### **(i) Caravan article dated 20 November 2017:**

“On the morning of 1 December 2014, the family of 48-year-old judge Brijgopal Harkishan Loya, who was presiding over the Central Bureau of Investigation special court in Mumbai, was informed that he had died in Nagpur, where he had travelled for a colleague’s daughter’s wedding. Loya had been hearing one of the most high-profile cases in the country, involving the allegedly staged encounter killing of Sohrabuddin Sheikh in 2005. The prime accused in the case was Amit Shah—Gujarat’s minister of state for

home at the time of Sohrabuddin's killing, and the Bharatiya Janata Party's national president at the time of Loya's death. The media reported that the judge had died of a heart attack.

Loya's family did not speak to the media after his death. But in November 2016, Loya's niece, Nupur Balaprasad Biyani, approached me while I was visiting Pune to say she had concerns about the circumstances surrounding her uncle's death. Following this, over several meetings between November 2016 and November 2017, I spoke to her mother, Anuradha Biyani, who is Loya's sister and a medical doctor in government service; another of Loya's sisters, Sarita Mandhane; and Loya's father, Harkishan. I also tracked down and spoke to government servants in Nagpur who witnessed the procedures followed with regard to the judge's body after his death, including the post-mortem.

From these accounts, deeply disturbing questions emerged about Loya's death: questions about inconsistencies in the reported account of the death; about the procedures followed after his death; and about the condition of the judge's body when it was handed over to the family. Though the family asked

for an inquiry commission to probe Loya's death, none was ever set up.

At 11 pm on 30 November 2014, from Nagpur, Loya phoned his wife, Sharmila, using his mobile phone. Over around 40 minutes, he described to her his busy schedule through the day. Loya was in Nagpur to attend the wedding of the daughter of a fellow judge, Sapna Joshi. Initially he had not intended to go, but two of his fellow judges had insisted that he accompany them. Loya told his wife that he had attended the wedding, and later attended a reception. He also enquired about his son, Anuj. He said that he was staying at Ravi Bhavan, a government guest house for VIPs in Nagpur's Civil Lines locality, along with the judges he had accompanied to Nagpur.

It was the last call that Loya is known to have made, and the last conversation that he is known to have had. His family received the news of his death early the next morning.

"His wife in Mumbai, myself in Latur city and my daughters in Dhule, Jalgaon and Aurangabad received calls," early on the morning of 1 December 2014, Harkishan Loya, the judge's father, told me when we first met, in November 2016, in his native village of Gategaon, near Latur city. They were informed "that Brij passed away in the night, that his post-mortem was over and his body had been sent to our ancestral home in Gategaon, in Latur district," he added. "I felt like an earthquake had shattered my life."

The family was told that Loya had died of a cardiac arrest. “We were told that he had chest pain, and so was taken to Dande Hospital, a private hospital in Nagpur, by auto rickshaw, where some medication was provided,” Harkishan said. Biyani, Loya’s sister, described Dande Hospital as “an obscure place,” and said that she “later learnt that the ECG”—the electrocardiography unit at the facility—“was not working.” Later, Harkishan said, Loya “was shifted to Meditrina hospital”—another private hospital in the city—“where he was declared dead on arrival.”

The Sohrabuddin case was the only one that Loya was hearing at the time of his death, and was one of the most carefully watched cases then underway in the country. In 2012, the Supreme Court had ordered that the trial in the case be shifted from Gujarat to Maharashtra, stating that it was “convinced that in order to preserve the integrity of the trial it is necessary to shift it outside the State.” The Supreme Court had also ordered that the trial be heard by the same judge from start to finish. But, in violation of this order, JT Utpat, the judge who first heard the trial, was transferred from the CBI special court in mid 2014, and replaced by Loya.

On 6 June 2014, Utpat had reprimanded Amit Shah for seeking exemption from appearing in court. After Shah failed to appear on the next date, 20 June, Utpat fixed a hearing for 26 June. The judge was transferred on 25 June. On 31 October 2014, Loya, who had allowed Shah the exemption, asked why Shah had failed to appear in court despite being in Mumbai on that date. He set the next date of hearing for 15 December.

Loya’s death on 1 December was reported only in a few routine news articles the next day, and did not attract significant media attention. The *Indian Express*, while reporting that Loya had “died of a heart attack” noted, “Sources close to him said that Loya had sound medical history.” The media attention picked up briefly on 3 December, when MPs of the Trinamool Congress staged a protest outside the parliament, where the winter session was under way, to demand an inquiry into Loya’s death. The next day, Sohrabuddin’s brother, Rubabuddin, wrote a letter to the CBI, expressing his shock at Loya’s death.

Nothing came of the MPs’ protests, or Rubabuddin’s letter. No follow-up stories appeared on the circumstances surrounding Loya’s death.

Over numerous conversations with Loya’s family members, I pieced together a chilling description of what Loya went through while presiding over the Sohrabuddin trial, and of what happened following his death. Biyani also gave me copies of a diary she said she maintains regularly, which included entries from the days preceding and following her brother’s death. In these, she noted

many aspects of the incident that disturbed her. I also reached out to Loya's wife and son, but they declined to speak, saying that they feared for their lives.

Biyani, who is based in Dhule, told me that she received a call on the morning of 1 December 2014 from someone identifying himself as a judge named Barde, who told her to travel to Gategaon, some 30 kilometres from Latur, where Loya's body was sent. The same caller also informed Biyani and other members of the family that a post-mortem had been conducted on the body, and that the cause of death was a heart attack.

Loya's father normally resides in Gategaon, but was in Latur at the time, at the house of one of his daughters. He, too, received a phone call, telling him his son's body would be moved to Gategaon. "Ishwar Baheti, an RSS worker, had informed father that he would arrange for the body to reach Gategaon," Biyani told me. "Nobody knows why, how and when he came to know about the death of Brij Loya."

Sarita Mandhane, another of Loya's sisters, who runs a tuition centre in Aurangabad and was visiting Latur at the time, told me that she received a call from Barde at around 5 am, informing her that Loya had died. "He said that Brij has passed away in Nagpur and asked us to rush to Nagpur," she said. She set out to pick up her nephew from a hospital in Latur where he had earlier been admitted, but "just as we were leaving the hospital, this person, Ishwar Baheti, came there. I still don't know how he came to know that we were at Sarda Hospital." According to Mandhane, Baheti said that he had been talking through the night with people in Nagpur, and insisted that there was no point in going to Nagpur since the body was being sent to Gategaon from there in an ambulance. "He took us to his house, saying that he will coordinate everything," she said. (Questions that I sent to Baheti were still unanswered at the time this story was published.)

It was night by the time Biyani reached Gategaon—the other sisters were already at the ancestral home by then. The body was delivered at around 11.30 pm, after Biyani's arrival, according to an entry in her diary. To the family's shock, none of Loya's colleagues had accompanied his body on the journey from Nagpur. The only person accompanying the body was the ambulance driver. "It was shocking," Biyani said. "The two judges who had insisted that he travel to Nagpur for the marriage had not accompanied him. Mr Barde, who informed the family of his death and his post-mortem, had not accompanied him. This question haunts me: why was his body not accompanied by anyone?" One of her diary entries reads, "He was a CBI court judge, he was supposed to have security and he deserved to be properly accompanied."

Loya's wife, Sharmila, and his daughter and son, Apurva and Anuj, travelled to Gategaon from Mumbai, accompanied by a few judges. One of them "was constantly telling Anuj and the others not to speak to anybody," Biyani told me. "Anuj was of course sad and scared, but he maintained his poise and kept supporting his mother."

Biyani recounted that when she saw the body, she felt that something was amiss. "There were bloodstains on the neck at the back of the shirt," she told me. She added that his "spectacles were below the neck." Mandhane told me that Loya's spectacles were "stuck under his body."

A diary entry by Biyani from the time reads, "There was blood on his collar. His belt was twisted in the opposite direction, and the pant clip is broken. Even my uncle feels that this is suspicious." Harkishan told me, "There were bloodstains on the clothes." Mandhane said that she, too, saw "blood on the neck." She said that "there was blood and an injury on his head ... on the back side," and that "his shirt had blood spots." Harkishan said, "His shirt had blood on it from his left shoulder to his waist."

But in the post-mortem report, issued by the Government Medical College Hospital in Nagpur, under a category described as "Condition of the clothes—whether wet with water, stained with blood or soiled with vomit or foecal matter," a handwritten entry reads, simply, "Dry."

Biyani found the state of the body suspicious because, as a doctor, "I know that blood does not come out during PM"—post-mortem—"since the heart and lungs don't function." She said that she demanded a second post-mortem, but that Loya's gathered friends and colleagues "discouraged us, telling us not to complicate the issue more."

The family was tense and scared, but was forced to carry out Loya's funeral, Harkishan said.

Legal experts suggest that if Loya's death was deemed suspicious—the fact that a post-mortem was ordered suggests that it was—a panchnama should have been prepared, and a medico-legal case should have been filed. "As per legal procedure, the police department is expected to collect and seal all the personal belongings of the deceased, list them all in a panchnama and hand them over to the family as they are," Asim Sarode, a senior Pune-based lawyer, told me. Biyani said the family was not given any copy of a panchnama.

Loya's mobile phone was returned to the family, but, Biyani said, it was returned by Baheti, and not by the police. "We got his mobile

on the third or fourth day,” she said. “I had asked for it immediately. It had information about his calls and all that happened. We would have known about it if we got it. And the SMSes. Just one or two days before this news, a message had come which said, ‘Sir, stay safe from these people.’ That SMS was on the phone. Everything was deleted from it.”

Biyani had numerous questions about the events of the night of Loya’s death and the following morning. Among them was that of how and why Loya had been taken to hospital in an auto rickshaw, when the auto stand nearest to Ravi Bhavan is around two kilometres away from it. “There is no auto rickshaw stand near Ravi Bhavan, and people do not get auto rickshaws near Ravi Bhavan even during the day,” Biyani said. “How did the men accompanying him manage to get an auto rickshaw at midnight?”

Other questions, too, remain unanswered. Why was the family not informed when Loya was taken to hospital? Why were they not informed as soon as he died? Why were they not asked for approval of a post-mortem, or informed that one was to be performed, before the procedure was carried out? Who recommended the post-mortem, and why? What was suspicious about Loya’s death to cause a post-mortem to be recommended? What medication was administered to him at Dande Hospital? Was there not a single vehicle in Ravi Bhavan—which regularly hosts VIPs, including ministers, IAS and IPS officers and judges—available to ferry Loya to hospital? The winter session of the Maharashtra state assembly was to begin in Nagpur on 7 December, and hundreds of officials usually arrive in the city well in advance of assembly sessions for the preparations. Who were the other VIPs staying in Ravi Bhavan on 30 November and 1 December? “These all are very valid questions,” Sarode, the lawyer, said. “Why was the report of the medication administered at Dande hospital not given to the family? Will the answers to these questions create problems for someone?”

Questions such as these “still keep bothering the family, friends and relatives,” Biyani said.

It added to their confusion that the judges who had insisted that Loya travel to Nagpur did not visit the family for “one or one and a half months” after his death, she said. It was only then that the family heard their account of Loya’s last hours. According to Biyani, the two men told the family that Loya experienced chest pain at around 12.30 am, that they then took him to Dande Hospital in an auto rickshaw, and that there, “he climbed the stairs himself and some medication was administered. He was taken to Meditrina hospital where he was declared dead on arrival.”

Even after this, many questions were left unanswered. “We did try to get the details of the treatment administered in Dande Hospital, but the doctors and the staff there simply refused to divulge any details,” Biyani said.

I accessed the report of Loya’s post-mortem, conducted at the Government Medical College Hospital in Nagpur. The document raises several questions of its own.

Every page of the post-mortem report is signed by the senior police inspector of Sadar police station, Nagpur, and by someone who signed with the phrase “*maiyatacha chulatbhau*”—or the paternal cousin brother of the deceased. This latter person is supposed to have received the body after the post-mortem examination. “I do not have any brother or paternal cousin brother in Nagpur,” Loya’s father said. “Who signed on the report is another unanswered question.”

Further, the report states that the corpse was sent from Meditrina Hospital to the Government Medical College Hospital by the Sitabardi police station, Nagpur, and that it was brought in by a police constable named Pankaj, of Sitabardi police station, whose badge number is 6238. It notes that the body was brought in at 10.50 am on 1 December 2014, that the post-mortem began at 10.55 am, and that it was over at 11.55 am.

The report also noted that, as per the police, Loya “died on 1/12/14 at 0615 hours” after experiencing “chest pains at 0400 am.” It stated, “He was brought to Dande hospital first and then shifted to Meditrina hospital where he was declared to be in dead condition.”

The time of death cited in the report—6.15 am—appears incongruous, since, according to Loya’s family members, they began receiving calls about his death from 5 am onwards. Further, during my investigation, two sources in Nagpur’s Government Medical College and Sitabardi police station told me they had been informed of Loya’s death by midnight, and had personally seen the dead body during the night. They also said that the post-mortem was done shortly after midnight. Apart from the calls that the family received, the sources’ accounts also raise serious questions about the post-mortem report’s claim that the time of death was 6.15 am.

The source at the medical college, who was privy to the post-mortem examination, also told me that he knew that there had been instructions from superiors to “cut up the body as if the PM was done and stitch it up.”

The report mentions “coronary artery insufficiency” as the probable cause of death. According to the renowned Mumbai-based cardiologist Hasmukh Ravat, “Usually old age, family history,

smoking, high cholesterol, high blood pressure, obesity, diabetes are the causes for such coronary artery insufficiency.” Biyani pointed out that none of these were applicable to her brother. “Brij was 48,” she said. “Our parents are 85 and 80 years old, and are healthy with no cardiac history. He was always a teetotaler, played table tennis for two hours a day for years, had no diabetes or blood pressure.”

Biyani told me that she found the official medical explanation for her brother’s death hard to believe. “I am a doctor myself, and Brij used to consult me even for minor complaints such as acidity or cough,” she said. “He had no cardiac history and no one from our family has it.”

(ii) **Caravan article dated 21 November 2017:**

“Brijgopal Harkishan Loya, the judge presiding over the CBI special court in Mumbai, died sometime between the night of 30 November and the early morning of 1 December 2014, while on a trip to Nagpur. At the time of his death, he was hearing the Sohrabuddin case, in which the prime accused was the Bharatiya Janata Party president Amit Shah. The media reported at the time that Loya had died of a heart attack. But my investigations between November 2016 and November 2017 raised disturbing questions about the circumstances surrounding Loya’s death—including questions regarding the condition of his body when it was handed over to his family.

Among those I spoke to was one of Loya’s sisters, Anuradha Biyani, a medical doctor based in Dhule, Maharashtra. Biyani made an explosive claim to me: Loya, she said, confided to her that Mohit Shah, then the chief justice of the Bombay High Court, had offered him a bribe of Rs 100 crore in return for a favourable judgment. She said Loya had told her this some weeks before he died, when the family gathered for Diwali at their ancestral home in Gategaon. Loya’s father Harkishan also told me that his son had told him he had offers to deliver a favourable judgment in exchange for money and a house in Mumbai.

Brijgopal Harkishan Loya was appointed to the special CBI court in June 2014, after his predecessor, JT Utpat, was transferred within weeks of reprimanding Amit Shah for seeking an exemption from appearing in court. According to a February 2015 report in *Outlook*, “During the CBI court’s hearings that Utpat presided over for this one year, or even after, court records suggest Amit Shah had never turned up even once—including on the final

day of discharge. Shah's counsel apparently made oral submissions for exempting him from personal appearance on grounds ranging from him being 'a diabetic and hence unable to move' to the more blase: 'he is busy in Delhi.'

The *Outlook* report continued: "On June 6, 2014, Utpat had made his displeasure known to Shah's counsel and, while allowing exemption for that day, ordered Shah's presence on June 20. But he didn't show up again. According to media reports, Utpat told Shah's counsel, 'Every time you are seeking exemption without giving any reason.'" Utpat, the story noted, "fixed the next hearing for June 26. But on 25th, he was transferred to Pune." This was in violation of a September 2012 Supreme Court order, that the Sohrabuddin trial "should be conducted from beginning to end by the same officer."

Loya had at first appeared well disposed towards Shah's request that he be exempted from personally appearing in court. As *Outlook* noted, "Utpat's successor Loya was indulgent, waiving Shah's personal appearance on each date." But this apparent indulgence may just have been a matter of procedure. According to the *Outlook* story, "significantly, one of his last notings stated that Shah was being exempted from personal appearance 'till the framing of charges.' Loya had clearly not harboured the thought of dropping charges against Shah even when he appeared to be gentle on him." According to the lawyer Mihir Desai, who represented Sohrabuddin's brother Rubabuddin—the complainant in the case—Loya was keen on scrutinising the entire chargesheet, which ran to more than 10,000 pages, and on examining the evidence and witnesses carefully. "The case was sensitive and important, and it was going to create and decide the reputation of Mr Loya as a judge," Desai said. "But the pressure was certainly mounting."

Nupur Balaprasad Biyani, a niece of Loya's who stayed with his family in Mumbai while studying in the city, told me about the extent of the pressure she witnessed her uncle facing. "When he was coming from the court, he was like, '*bahut tension hai*,'" she said. "Stress. It's a very big case. How to deal with it. Everyone is involved with it." Nupur said it was a question of "political values."

Desai told me, "The courtroom always used to be extremely tense. The defence lawyers used to insist on discharging Amit Shah of all the charges, while we were demanding for the transcripts of the calls, submitted as evidence by the CBI, to be provided in English." He pointed out that neither Loya nor the complainant understood Gujarati, the language on the tapes.

But the defence lawyers, Desai said, repeatedly brushed aside the demands for transcripts in English, and insisted that Shah's discharge petition be heard. Desai added that his junior lawyers often noticed unknown, suspicious-looking people inside the

courtroom, whispering and staring at the complainant's lawyers in an intimidating manner.

Desai recounted that during a hearing on 31 October, Loya asked why Shah was absent. His lawyers pointed out that he had been exempted from appearance by Loya himself. Loya remarked that the exemption applied only when Shah was not in the state. That day, he said, Shah was in Mumbai to attend the swearing-in of the new BJP-led government in Maharashtra, and was only 1.5 kilometres away from the court. He instructed Shah's counsel to ensure his appearance when he was in the state, and set the next hearing for 15 December.

Anuradha Biyani told me that Loya confided in her that Mohit Shah, who served as the chief justice of the Bombay High Court between June 2010 and September 2015, offered Loya a bribe of Rs 100 crore for a favourable judgment. According to her, Mohit Shah "would call him late at night to meet in civil dress and pressure him to issue the judgment as soon as possible and to ensure that it is a positive judgment." According to Biyani, "My brother was offered a bribe of 100 crore in return for a favourable judgment. Mohit Shah, the chief justice, made the offer himself."

She added that Mohit Shah told her brother that if "the judgment is delivered before 30 December, it won't be under focus at all because at the same time, there was going to be another explosive story which would ensure that people would not take notice of this."

Loya's father Harkishan also told me that his son had confided in him about bribe offers. "Yes, he was offered money," Harkishan said. "Do you want a house in Mumbai, how much land do you want, how much money do you want, he used to tell us this. This was an offer." But, he added, his son refused to succumb to the offers. "He told me I am going to turn in my resignation or get a transfer," Harkishan said. "I will move to my village and do farming."

I contacted Mohit Shah and Amit Shah for their responses to the family's claims. At the time this story was published, they had not responded. The story will be updated if and when they reply.

After Loya's death, MB Gosavi was appointed to the Sohrabuddin case. Gosavi began hearing the case on 15 December 2014. "He heard the defence lawyers argue for three days to discharge Amit Shah of all the charges, while the CBI, the prosecuting agency, argued for 15 minutes," Mihir Desai said. "He concluded the hearing on 17 December and reserved his order."

On 30 December, around one month after Loya's death, Gosavi upheld the defence's argument that the CBI had political motives for implicating the accused. With that, he discharged Amit Shah.

The same day, news of MS Dhoni's retirement from test cricket dominated television screens across the country. As Biyani recounted, "There was just a ticker at the bottom which said, 'Amit Shah not guilty. Amit Shah not guilty.'"

Mohit Shah visited the grieving family only around two and half months after Loya's death. From Loya's family, I obtained a copy of a letter that they said Anuj, Loya's son, wrote to his family on the day of the then chief justice's visit. It is dated 18 February 2015—80 days after Loya's death. Anuj wrote, "I fear that these politicians can harm any person from my family and I am also not powerful enough to fight with them." He also wrote, referring to Mohit Shah, "I asked him to set up an enquiry commission for dad's death. I fear that to stop us from doing anything against them, they can harm anyone of our family members. There is threat to our lives."

Anuj wrote twice in the letter that "if anything happens to me or my family, chief justice Mohit Shah and others involved in the conspiracy will be responsible."

When I met him in November 2016, Loya's father Harkishan said, "I am 85 and I am not scared of death now. I want justice too, but I am extremely scared for the life of my daughters and grandchildren." He had tears in his eyes as he spoke, and his gaze went often to the garlanded photograph of Loya hanging on the wall of the ancestral home."

## **Petitions**

3 Tehseen Poonawalla filed a petition under Article 32 of the Constitution before this Court on 11 December 2017. He informs the Court that the proceedings have been initiated "bona fide for the welfare and benefit of the society as a whole..with no ulterior or mala fide motive". He has averred that the petition was instituted for the "safety and security of the public and that of public servants" who "may not be aware of their legal rights" or possess the means to approach this Court. Besides the above writ petition, this Court has before it two other writ petitions under Article 32 on the same issue, one by

Jayshri Laxmanrao Patil<sup>1</sup> and another by Bandhuraj Sambhaji Lone<sup>2</sup>. Each of these petitioners has made similar averments, stating that the proceedings have been initiated for the “welfare of society” without any personal interest. Two writ petitions<sup>3</sup> were filed in the High Court of Judicature at Bombay : Bombay Lawyers’ Association instituted the proceedings on 4 January 2018 and Suryakant (alias Suraj), on 27 November 2017. The relief sought in the batch of cases instituted before the Bombay High Court is similar to what is sought before this Court. All the petitions are essentially based on the articles which have been published in the Caravan on 20 and 21 November 2017. Other media publications, both print and online carried news reports emanating from the Caravan articles. Among them are the Indian Express, Quint, Wire and Scroll.

### **Procedural directions**

4 On 16 January 2018, a two judge Bench of this Court issued the following directions in the Article 32 proceedings:

“Let the documents be placed on record within seven days and if it is considered appropriate copies be furnished to the petitioners.  
Put up before the appropriate Bench.”

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<sup>1</sup> Writ Petition (C)No 73 of 2018

<sup>2</sup> Writ Petition (C)No 20 of 2018

<sup>3</sup> Public Interest Litigation (Crl) No 2 of 2018 and Public Interest Litigation(Crl) No 1 of 2018

In view of the direction to put up the case before the appropriate Bench, proceedings were mentioned before the learned Chief Justice on 19 January 2018 and were directed to be listed on 22 January 2018 “before the appropriate Bench as per roster”. On 22 January 2018 the State of Maharashtra filed documents in a sealed cover of which copies were made available to counsel for the petitioners. The documents were taken on the record. Mr Dushyant Dave and Ms Indira Jaising, learned senior counsel indicated that they would be filing applications for intervention. This Court permitted them to do so. This Court was informed by counsel for the intervenors that they would be placing on record some documents which may have bearing on the case. Mr Harish Salve, learned senior counsel for the State of Maharashtra stated before the Court that there would be no objection to supply any other official documents in a sealed cover of which a list may be submitted by assisting counsel for the parties. This Court was apprised of the pendency of two writ petitions before the Bombay High Court, one at the principal seat and the other at the Nagpur Bench. Since the issue raised in the writ petitions before the Bombay High Court had the same subject matter, those petitions were transferred to this Court, to be heard along with the petitions under Article 32. Mr Dave, learned senior counsel appearing on behalf of the Bombay Lawyers’ Association agreed to this course of action. The order of this Court dated 22 January 2018 also records the agreement of Ms Jaising to the transfer of the writ petitions from the Bombay High Court. Subsequently, Ms Jaising has clarified that since she is appearing for an intervenor and not for the petitioners in any of those writ

petitions, her consent should not be recorded. We clarify the order dated 22 January 2018 to the effect that it was Mr Dave who has consented to the transfer of proceedings from the Bombay High Court.

5 Following the order of transfer, the entire batch of cases together with several applications for intervention have been heard. Hearings in this batch of cases have taken place on 2 February 2018, 5 February 2018, 9 February 2018, 12 February 2018, 19 February 2018, 5 March 2018, 8 March 2018, 9 March 2018 and 16 March 2018.

6 We have heard Mr Dushyant Dave, Ms Indira Jaising, Mr V Giri, Mr Pallav Shishodia, Mr PV Surendranath, learned senior counsel and Mr Kuldip Rai and Mr Prashant Bhushan on behalf of the petitioners and the intervenors. Mr Mukul Rohtagi and Mr Harish Salve, learned senior counsel have appeared for the respondent State.

7 In view of the nature of the issue which has been raised in the proceedings, we have permitted learned counsel appearing on behalf of the petitioners as well as the intervenors to rely upon such documentary material as would enable them to advance their submissions without being bound by technicalities of procedure. In order to analyse the facts as they emerge before the Court, it is necessary to construct the sequence of events from the material before the Court.

## Sequence of events

8 Shri Brijgopal Harkishan Loya ('Judge Loya') was presiding over the CBI Special Court in Mumbai. The criminal trial arising out of the encounter killings of Sohrabuddin Sheikh was assigned to his court. Among the accused in the case was Amit Shah, the "national President of the Bharatiya Janata Party". On 29 November 2014 Judge Loya travelled on an overnight train from Mumbai to Nagpur together with two other judicial officers, Shri Shrikant Kulkarni ("Judge Kulkarni") and Shri SM Modak ("Judge Modak") to attend the wedding in the family of another judicial officer, Smt Swapna Joshi who was then a Member Secretary of the Maharashtra State Legal Services Authority. Judge Kulkarni was at the material time working as Registrar (Judicial-I) on the Appellate side of the Bombay High Court and Judge Modak was the Principal District Judge at Alibag. Judge Loya was a Judge in the City Civil and Sessions Court at Mumbai. On 30 November 2014, Judge Loya and his colleagues attended the wedding reception. According to his colleagues, all of them stayed at Ravi Bhavan, a government guest house at Nagpur. This has been a contentious issue. In the early hours of 1 December 2014 Judge Loya is stated to have complained of chest pain. He was initially taken to Dande hospital, in close proximity of Ravi Bhavan. From there he was referred to a cardiac care facility. His colleagues are stated to have accompanied him to Meditrina hospital. Judge Loya died before he was admitted to Meditrina, since he was stated to

have been 'brought dead'. There was an inquest panchnama followed by a post-mortem. After the formalities were completed, the body was taken to Gategaon, his village near Latur, nearly 450 kilometres away where the cremation took place.

## **Issues**

9 The issue before the Court is whether the death of Judge Loya was due to natural causes, or as alleged by the petitioners (relying on the contents of news items or material which has come before the Court), there are circumstances which raise a reasonable suspicion about an unnatural death, warranting an inquiry or investigation on the directions of this Court. Moreover, should the contents of a news article by itself be made the basis to lodge an FIR under Section 154 of the Code of Criminal Procedure 1973.

## **B The Discreet Enquiry**

10 Following the publication of the Caravan articles, the Principal Secretary (Special) in the Home Department of the state government directed a discreet inquiry by the Commissioner of the State Intelligence Department. Such an inquiry was initiated by Shri Sanjay Barve, Director General and Commissioner in the State Intelligence Department. By a communication dated 23 November

2017 addressed to the Chief Justice of the Bombay High Court, he indicated that:

- “2. Following judicial officers had accompanied Mr. Loya to the hospital on 01/12/2014.
  - i. Mr Shrikant Kulkarni, Member Secretary Maharashtra State Legal Services Authority.
  - ii. Mr Modak – Principal District Judge, Pune
  - iii. Mr Barde – District Judge, City Civil Court, Mumbai
  - iv. Mr R R Rathi – District Judge, Baramati.

Similarly, Hon’ble Justice Bhushan Gawai and Hon’ble Justice SB Shukre has also visited Meditrina Hospital, Nagpur after learning about the sad demise of the aforesaid judicial officer on 01/12/2014. ”

The Commissioner sought the permission of the Chief Justice “to record the say of the above judicial officers” either in the form of a statement or a letter elaborating the sequence of events and the facts known to them in the matter. The Registrar General of the High Court, by a letter dated 23 November 2017, responded to the request and stated that the Chief Justice had granted the permission “to record the say” of the four judicial officers – Judge Shrikant Kulkarni, Judge Modak, Judge Barde and Judge RR Rathi. The report of the discreet inquiry dated 28 November 2017 was submitted to the Additional Chief Secretary (Home). The contents of the report are summarised below:

- (i) Judge Loya was in Nagpur to attend the wedding in the family of a colleague on 30 November 2014 along with his colleagues, Judge Kulkarni and Judge Modak, both in the rank of Principal District Judges;
- (ii) The three judicial officers stayed at Ravi Bhavan;
- (iii) In the early hours of 1 December 2014 Judge Loya complained of chest pain. Judge Shrikant Kulkarni called Judge Barde who was posted at Nagpur. Judge Barde informed Judge RR Rathi, Deputy Registrar of the Bench of the High Court at Nagpur and both of them reached Ravi Bhavan. In the meantime Judge Kulkarni had also intimated another colleague, Judge Waikar about Judge Loya's ill health between 0400 hours and 0415 hours;
- (iv) Judge Loya was taken to Dande Hospital in the vehicle of Judge Barde. Judge Kulkarni, Judge Modak and Judge Rathi accompanied them to the hospital. After initial examination, he was advised to be taken to a cardiac centre;
- (v) The report in the Caravan article that Judge Loya was taken to Dande hospital in an auto rikshaw is incorrect;
- (vi) The Deputy Registrar Judge RR Rathi in the meantime called his relative, Dr Pankaj Harkut, a cardiologist who advised him to bring the patient to

Meditrina hospital. Following this conversation at about 0500 hours, the accompanying judges took Judge Loya to Meditrina hospital;

- (vii) Judge Loya was shifted to Meditrina hospital, where he was admitted by Judge Shrikant Kulkarni. He was provided emergency treatment at Meditrina hospital but was declared dead at 0615 hours on 1 December 2014;
- (viii) The 'progress notes' of the doctor at Meditrina hospital indicate that a post-mortem was advised. This sets at rest the doubts raised in the Caravan article about who had recommended the post-mortem;
- (ix) Meditrina hospital furnished information of a medico-legal case to Sitabardi police station, of the patient being brought dead. The police station at Sitabardi registered AD 00/2014 under Section 174 of the Code of Criminal Procedure 1973. This was subsequently transferred to Sadar police station where AD 44/2014 was registered at 1600 hours, on 1 December 2014. The ADs were registered on the information of one Dr Prashant Rathi;
- (x) Dr Prashant Rathi was informed about Judge Loya's illness by his relative (Rukmesh Jakhotiya) from Aurangabad who requested him to help in attending to Judge Loya;

- (xi) The Caravan article raised certain doubts about the role of one Ishwar Baheti. In that context, the report of the Commissioner contains the following explanation:

“3.8 Mr Ishwar Govindlal Baheti, who runs a medical pharmacy at Latur was an old friend of Mr Loya for over 35 years. Ishwar Govindlal Baheti’s eldest brother, Dr Hansraj Govindlal Baheti [r/o Latur] got a call in the wee hours of 01-12-2014 informing him about Mr Loya’s health. On learning about his friend’s condition from his brother [Dr Hansraj], Ishwar Govindlal Baheti called up his relative in Aurangabad, Mr Rukmesh Jakhotiya, who in turn requested Dr Prashant Rathi of Nagpur to provide assistance and care to Mr Loya. Mr Ishwar Govindlal Baheti also called up another cousin of Dr Loya, Mr Om Bhutada and got in touch with the Latur-based relatives of Mr Loya. During verification, Mr Ishwar Govindlal Baheti claimed that he was a worker and well-

wisher [“karyakarta & shubh-chintak”] of late Mr Vilasraoji Deskhmukh and that he was not connected with RSS. Late Mr Brijgopal Loya’s father, Shri Harkishan Ramchandra Loya, confirmed to the undersigned that Ishwar Baheti was a close friend of his son and that he was ‘like a brother’ to him. Mr Loya’s son, Anuj, has stated as follows: “my uncle, Mr Iswar Baheti had organized a big function in memory of my father on his first death anniversary according to panchang on 06-12-2015 at Gategaon, Latur where everyone from my family including my grandfather Harkishanji and my aunty Dr Anuradha were present.” My verification revealed that Loya family held Mr Ishwar Baheti in very high esteem and treated him as a member of the family.

3.8.1 Incidentally, another gentleman by name Ishwar-prasad Bajranglal Baheti, @ 60 confirmed during the verification

that he used to be active in RSS long ago and that presently, he runs a shop called Radhey Shubhmangal Stores & Handicrafts in Latur. He also confirmed that he did not know Mr Loya and that he had not made any calls in connection with Mr Loya's health to anybody.

3.8.2 One more person by name – Ishwarlal Jawaharlal Baheti lives in Nilanga, District Latur where he runs a shop called Amrit General Stores. During verification, he also confirmed that he did not know Mr Loya.

3.8.3 The above details dispel the doubts raised in the Caravan report about the role of **Mr Ishwar Baheti.**”

- (xii) Judge Barde and Judge Modak informed Judge Loya's relatives about his ill-health and death. The Principal Secretary to the Chief Justice and other Judges at the Nagpur Bench were also informed. Chief Justice Mohit Shah and Justices Bhushan Gavai, Justice SB Shukre and Justice PR Bora visited Meditrina hospital around 0700 hours on 1 December 2014. The Chief Justice directed the officials present there to make necessary administrative arrangements;

- (xiii) The entire sequence of events was narrated in the statements filed by the four judicial officers – Judge Kulkarni, Judge Modak, Judge Barde and Judge RR Rathi;
- (xiv) An inquest was conducted between 1000 hours and 1030 hours on 1 December 2014. The post-mortem was conducted between 1055 hours and 1155 hours on 1 December 2014. The post-mortem report indicates the absence of any bodily injury and notes the cause of death as “coronary artery insufficiency”. The report of the Regional Forensic Science Laboratory indicates that no traces of poison have been found;
- (xv) The factual position indicates that Judge Loya suffered a heart attack in the early hours of 1 December 2014 and died in consequence. His body was sent to village Gategaon in Latur in an ambulance. Two judicial magistrates from Nagpur, Mr Yogesh Rahangdale and Mr Swayam Chopda were deputed by Judge Sonawane, Principal District Judge, Nagpur to accompany the body. The statement in the Caravan article that the body was not accompanied by anyone is incorrect;
- (xvi) Intimation of the death was furnished to the members of the family of Judge Loya and to his colleagues who resided at Haji Ali, Mumbai by Judge Barde and Judge Modak in the early hours of 1 December 2014;

- (xvii) The claim in the Caravan article that sources in the Government Medical College and Sitabardi police station had seen the body during the course of the night was devoid of substance;
- (xviii) The reference in the Caravan article to blood-stains on the neck of the deceased is contrary to the post-mortem report which stated that there were no external injuries on the body;
- (xix) The members of Judge Loya's family including his son, wife, father and sister have not supported the insinuations in the Caravan article; and
- (xx) The second article in Caravan dated 21 November 2017 contains unfounded insinuations against the former Chief Justice of the Bombay High Court Shri Justice Mohit Shah. They have been levelled on the basis of an array of hearsay versions. The report concludes by stating that the article published in the Caravan "made several unsubstantiated claims and is replete with falsehoods".

The conclusion of the discreet inquiry is that Judge Loya suffered a heart attack in the presence of his colleagues belonging to the judicial fraternity. They had made all possible efforts to provide medical assistance to save him. Judge Loya died as a result of natural causes.

## **C Submissions:**

### **I The petitioners and intervenors**

#### **A Mr Dushyant Dave**

11 Mr Dushyant Dave, learned senior counsel appearing on behalf of the Bombay Lawyers' Association has premised his submissions on the foundation that the cause which he represents raises "serious questions of general importance as to (the) independence of judiciary" and the protection of the subordinate judiciary against threats or attacks. Mr Dave emphasised the role espoused by the petitioners, by adverting to the decision of this Court in **Delhi Judicial Service Association, Tis Hazari Court, Delhi v State of Gujarat**<sup>4</sup> in which this Court regarded an assault on a judicial officer as something which affected judicial authority as well as the administration of justice in the entire country. An impassioned plea has been made that the Court should have regard to the background of this case, originating in the judgment in **Rubabbuddin Sheikh v State of Gujarat**<sup>5</sup>. While transferring the investigation to the CBI, this Court observed:

"..in order to make sure that justice is not only done, but also is seen to be done and considering the involvement of the State police authorities and particularly the high officials of the State of Gujarat, we are compelled even at this stage to direct the CBI Authorities to investigate into the matter."

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<sup>4</sup> (1991) 4 SCC 406

<sup>5</sup> (2010) 2 SCC 200

After this court directed a CBI investigation into the killings of Sohrabuddin and his wife Kauserbi, a charge-sheet was submitted against a number of accused including Amit Shah, the then Minister of State for Home in the State of Gujarat. Subsequently, in **Narmada Bai v State of Gujarat**<sup>6</sup> this Court directed a separate investigation by the CBI into the killing of Tulsiram Prajapai, which, it has been submitted, was a part of the conspiracy to kill Sohrabuddin and Kauserbi. In issuing these directions, this Court held thus:

“It is not in dispute that it is the age-old maxim that justice must not only be done but must be seen to be done. The fact that in the case of murder of an associate of Tulsiram Prajapati, senior police officials and a senior politician were accused may shake the confidence of public in investigation conducted by the State police. If the majesty of the rule of law is to be upheld and if it is to be ensured that the guilty are punished in accordance with law notwithstanding their status and authority which they might have enjoyed, it is desirable to entrust the investigation to CBI.”

Subsequently, in **Central Bureau of Investigation v Amitbhai Anil Chandra Shah**<sup>7</sup>, while upholding the grant of bail by the Gujarat High Court, this Court ordered the transfer of the criminal case outside the State of Gujarat to the State of Maharashtra. The following directions were issued:

“In another decision in **Ravindra Pal Singh v Santosh Kumar Jaiswal**<sup>8</sup>, this Court directed for transfer of the case outside the State because some of the accused in a case of fake encounter were policemen. The case in hand has far more stronger reasons for being transferred outside the State. We, accordingly, direct for the transfer of Special Case No.5 of 2010 pending in the Court of the Additional Chief Metropolitan Magistrate, CBI, Courtroom No 2, Mirzapur, Ahmedabad titled **CBI v D.G.Vanzara** to the Court of CBI, Bombay. The Registrar General of the Gujarat High Court is directed to collect the entire record of the case from the Court of

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<sup>6</sup> (2011) 5 SCC 79

<sup>7</sup> (2012) 10 SCC 545

<sup>8</sup> (2011) 4 SCC 746

the Additional Chief Metropolitan Magistrate, CBI, Room No 2, Mirzapur, Ahmedabad and to transmit it to the Registry of the Bombay High Court from where it would be sent to the CBI Court as may be decided by the Administrative Committee of the High Court. The Administrative Committee would assign the case to a court where the trial may be concluded judiciously, in accordance with law, and without any delay. The Administrative Committee would also ensure that the trial should be conducted from beginning to end by the same officer.”

Mr Dave submitted that an application for discharge under Section 227 of the Code of Criminal Procedure was moved by Amit Shah in 2013. His application for exemption from personal appearance was declined by Judge JT Utpat who was nominated by the Administrative Committee of the Bombay High Court in pursuance of the directions extracted above. Before the proceedings could be taken up, it was alleged, Judge Utpat was transferred on 25 June 2014 by the Administrative Committee of the Bombay High Court contrary to the directions contained in the judgment of this Court dated 27 September 2012. Following the transfer, Judge Loya was appointed as CBI judge in which assignment he continued until his death on 1 December 2014. Mr Dave urges that the decision to transfer Judge Utpat, without seeking appropriate orders of this Court “raises serious questions, if not doubts, about the functioning of the Administrative Committee of the High Court”. After Judge Loya died on 1 December 2014, a new appointment of Judge MB Gosavi was initiated. The discharge application was allowed on 30 December 2014. Mr Dave has categorically stated before the Court that the legality of the order of discharge is not being questioned in the present proceedings. CBI, it has been submitted, did not assail the order of discharge though it subsequently filed appeals against the discharge of some

police officers. Rubabuddin, the original petitioner also challenged the order of discharge but withdrew the application for condonation of delay thus rendering the criminal revision application as not maintainable before the Bombay High Court.

12 Based on this background, Mr Dave has submitted that the respondents should be directed to file “appropriate affidavits” on oath having regard to the fact that the jurisdiction under Article 32 is extraordinary in its nature and scope.

13 Mr Dave has submitted that the discreet inquiry and report prepared by the Commissioner of the State Intelligence Department is an attempt to stall an independent investigation. It is, according to him, unusual for the state government to order a discreet inquiry on the basis of a report published in a news periodical. Highlighting the sequence of events, it is urged that on 23 November 2017, the state government directed the Commissioner to conduct a discreet verification and on the same day, a letter was addressed to the Chief Justice of the Bombay High Court seeking to record the say of the four judicial officers who had accompanied Judge Loya to the hospital on 1 December 2014. The High Court of Bombay communicated the approval of the Chief Justice on the same day. The judicial officers submitted their statements within a day. The report was submitted by the Commissioner on 28 November 2017, within five days. There is, in his submission, a sense of alacrity which is not ordinarily found amongst public functionaries.

14 The documents and statements which form part of the report of the Commissioner of State Intelligence have been called into question on the basis of the following submissions:

“(i) The death investigation report prepared under Section 174 of the Code of Criminal Procedure Code by PSI RK Mundhe of the Sitabardi police station, Nagpur city dated 1 December 2014 records that the body of the deceased was identified by Dr Prashant Rathi and does not refer to the presence of any other individual, including the judicial officers;

(ii) The case papers of Meditrina hospital record that the patient was brought dead to the hospital and was admitted by Judge Shrikant D Kulkarni who disclosed his relationship with the deceased as a friend. The progress notes of the doctor recorded that the accompanying person had indicated that the patient had suffered chest pain. The bill prepared by Meditrina hospital inexplicably contains charges for non-invasive lab, neurosurgery, diet consultation and non-medical expenses (the total bill being in the amount of Rs 4290);

(iii) The post-mortem report describes the shirt and jeans worn by the deceased. It has been urged that if Judge Loya had suffered a heart attack in his sleep, it would not be conceivable that he would be sleeping in such clothes. The rigor mortis was found to be slightly present either in the upper limbs but not in the lower limbs. The submission is that if the cause of death was due to coronary artery insufficiency, rigor mortis would have set in fully. As against this, the form under which the dead body was sent for post-mortem indicates that rigor mortis was well marked;

(iv) The report of the Regional Forensic Science Laboratory dated 5 February 2015 indicates that the viscera did not reveal any trace of poison. Analysis commenced on 5 January 2015 and was completed on 19 January 2015 in pursuance of AD 44/2014 of PS Sadar under Section 174 of the Cr PC. On 1 December 2014 Sitabardi police station which was investigating the matter had forwarded the body for post-mortem through police constable Pankaj. Doubt has been cast on the histo-pathological report of 5 February 2015 on the ground that it refers to PS Sadar instead of Sitabardi. On 10 December 2014, Sadar police station addressed a letter to the Government Medical hospital, Nagpur to correct the name of Judge Loya from **Brijmohan** Harikishan Loya to **Brijgopal** Harikishan Loya. It has been urged that if Judge Loya was accompanied by his colleagues, his name would not have been furnished incorrectly to the hospital;

(v) The record indicates that Sadar police station made a fresh accidental death summary almost one and a half years later on 2 February 2016. While doing so, the officer of PS Sadar recorded as follows:

“Sir,  
PSI SD Warade was day officer on 01/12/2014, he got AD no 00/14, 174 CrPC from PC PANKAJ b No 6238 [from Sitabardi Police Station]. The said AD was that of Shri Brijgopal Harikishan Loya, age 48 years, resident of Hajjali Government Colony, Building No 11, Mumbai. On perusing the case diary, I found that the place of occurrence is in jurisdiction of Police Station Sadar, so I registered AD No 44/14, u/s 174 Cr PC.”

If AD 44/14 was registered in February 2016, it was urged, there is a contradiction in the reference to the above AD in the report of the Regional Forensic Science Laboratory dated 5 February 2015;

(vi) The statements of the four judicial officers “omitted to say much more than what they have stated”. None of them has furnished the suite number at Ravi Bhavan in which Judge Loya stayed during the night of 30 November 2014. The register of Ravi Bhavan does not contain any entry of Judge Loya having stayed there. The account of Judge Kulkarni that he stayed with Judge Loya and Judge Modak in the same suite at Ravi Bhavan has been called into question. The conduct of the judicial officers at Nagpur is criticized on the ground that none of them claims to have informed the family after the death had occurred. Judge Barde in his statement recorded that he and Judge Kulkarni had met the relatives of the deceased after a few days at Mumbai, which is submitted to be unnatural;

(vii) If indeed, the Chief Justice of the Bombay High Court, the Registrar General, judges of the High Court and judicial officers were present in the hospital, efforts would have been made to ensure that the family of Judge Loya travels to Nagpur by the next available flight;

(viii) While in 2015 Judge Loya’s son had addressed a letter for the filing of an FIR or for instituting an inquiry into the death, and his father and sister had demanded an inquiry in video recorded interviews with Caravan and alleged that the Chief Justice of the Bombay High Court had made an effort to bribe Judge Loya, the subsequent statements of the members of the family have been extracted by the State Intelligence Department and ought not to be relied upon;

(ix) The security of Judge Loya was withdrawn on 24 November 2014 a week before his death;

(x) The Commissioner in the State Intelligence Department did not meet any person nor did he visit any place to satisfy himself of the truthfulness of the statements or facts;

(xi) The statement of Dr Prashant Rathi was recorded on 22 November 2017 by the police at Nagpur though the discreet inquiry was ordered on 23 November 2017;

(xii) The press interviews given by Justice Bhushan Gavai and Justice SB Shukre of the Bombay High Court to the Indian Express on 27 November 2017 contain a repetition of what the four district judges had mentioned in their letters. This raised a grave suspicion as to why the interviews were given to the press in the first place;

(xiii) The Commissioner ought to have examined the statements made by the father, sister and son of Judge Loya to Caravan;

(xiv) If Judge Loya had suffered a heart attack, his colleagues instead of taking him to Dande hospital ought to have shifted him to a reputed cardiac facility some of which were situated within a distance of five kilometres from Ravi Bhavan. That the judicial officers did not rush their colleague to "the best hospital available" raises doubts about the theory that they had accompanied Judge Loya; and

(xv) While on one hand Dr Dande claimed that an ECG was taken, Judge Rathi in his statement has recorded that at Dande hospital the ECG machine was not working."

On the above grounds, it has been submitted, that the report of the Commissioner of State Intelligence should be rejected. An independent inquiry by a Special Investigating Team has been sought. He has suggested to the Court that this is a fit case for initiating the in-house procedure against two judges of the Bombay High Court for granting an interview to the media.

15 Mr Dave has submitted an application that he may be allowed to cross-examine the four judicial officers whose statements have been relied upon in the report submitted by the Commissioner of State Intelligence. In support of his application Mr Dave has relied upon the decision of this Court in **K.K. Kochunni v State of Madras**<sup>9</sup> and on the provisions contained in Order IX of the SC Rules. Cross-examination has been sought of the following persons:

“1 Mr Sanjeev Barve, Director General/Commissioner, State Intelligence Department, Maharashtra,

2 Dr Prashant Bajrang Rathi, Resident of Sai Regency, Ravi Nagar, Nagpur,

3 Mr Niranjana Takle, Reporter of CARAVAN,

4 Shri Shrikant D Kulkarni, Member Secretary, Maharashtra State Legal Service Authority

5 Shri SM Modak, Principal District Judge, Pune,

6 Shri Vijay C Barde, Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay

7 Dr Pinak Gangadhar Rao, Dande, Ram Nagar, Nagpur

8 Shri Anuj Brij Gopal Loya, s/o late Sh. BH Loya

9 Smt Sharmila Brij Gopal Loya w/o Sh. BH Loya

10 Shri Hari Kishan Ramchandra Loya, f/o late Sh BH Loya

11 Dr Anuradha Balaprasad Biyani, sister of late Sh. BH Loya.”

Mr Dave urged that the State should be directed to file an affidavit controverting the allegations contained in the petition.

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<sup>9</sup> (1959) Supp (2) SCR 316

**B Ms Indira Jaising:**

16 Ms Jaising has appeared on behalf of an intervenor (Admiral Ramdas). Ms Jaising urges that the following circumstances create a suspicion that the death of Judge Loya was not due to natural causes:

- (i) The absence of any entry in the register at Ravi Bhavan recording the name of Judge Loya as an occupant on 30 November and 1 December 2014;
- (ii) The improbability of three judicial officers residing in one room of Ravi Bhavan;
- (iii) The mis-spelling of the name of Judge Loya in the records of Dande hospital and Meditrina hospital and in the post-mortem report, despite the fact that several judicial officers were alleged to be present;
- (iv) Non-production of the ECG carried out at Dande hospital and the date of 30 November 2014 contained in the ECG published in the Indian Express on 27 November 2017;
- (v) The statement of judge Rathi that the ECG facility at Dande hospital was not working;

- (vi) The failure of the police to involve the Executive Magistrate on 1 December 2014 when an accident report was generated at Sitabardi police station at 8.30 am;
- (vii) Contradictions in the post-mortem report:
  - (a) Correction of the name on 10 January 2015;
  - (b) The date of death is shown as 7 December 2014;
  - (c) The over-writing of the date of death from 30 November 2014 to 1 December 2014;
  - (d) The cause of death as Coronary Artery Insufficiency;
- (viii) The failure to prepare a panchnama of the personal belongings of the deceased which assume significance from the statement of the sister of the deceased to Caravan that his cell phone was returned a few days later with all messages deleted;
- (ix) The first accidental death report (AD 00/14) under Section 174 Cr PC was recorded at Sitabardi. The second AD 44/2014 was recorded at 1600 hours at Sadar police station without the Executive Magistrate being informed;
- (x) The failure to produce the case diary of PS Sitabardi or Sadar;

- (xi) Failure to follow the procedure prescribed by law under Section 174 Cr PC. No inquiry was carried out by the police or by anyone else at the inquest under Section 174;
- (xii) Dr Prashant Rathi was not a 'relative' within the meaning of Section 176 Cr PC;
- (xiii) Furnishing of information to the Executive Magistrate in respect of the accidental death summary on 2 February 2016;
- (xiv) The grievance of the Judge Loya's sister to Caravan that the ambulance containing the dead body was not accompanied by any judicial officer;
- (xv) The letter dated 18 February 2017 of Anuj Loya requesting the Chief Justice of the Bombay High Court to conduct an inquiry. Ms Jaising has urged submissions on the scope of provisions of Section 157 of Cr PC. The submission is that the expression "reason to suspect the commission of an offence" must receive an appropriate construction since at that stage, the question of technical proof of facts alleged in the first information report does not arise (**State of Haryana v Bhajan Lal**)<sup>10</sup>. In the present case, it was urged that upon the death of Judge Loya, the police appeared to have treated it as an accidental death and generated AD 00/14 under Section 174 of the Cr PC. The police were bound to

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<sup>10</sup> (1992) Supp (1) SCC 335

follow the procedure prescribed by law. As held by this Court in **Ashok Kumar Todi v Kishwar Jahan**<sup>11</sup> the police may either close the case or register an FIR and investigate into the offence. Neither was an investigation conducted under Section 174 Cr PC, nor was an FIR recorded; and

- (xvi) Ms Jaising adverted to the decision in **Zahira Habibullah Sheikh v State of Gujarat**<sup>12</sup> in which it was held:

“35. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affects the whole community as a community and is harmful to society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as *persona non grata*. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of

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<sup>11</sup> (2011) 3 SCC 758

<sup>12</sup> (2006) 3 SCC 374

justice—often referred to as the duty to vindicate and uphold the “majesty of the law”. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.”

Reliance was also placed on the following observations contained in the decision in **Vineet Narain v Union of India**<sup>13</sup>:

“3. The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: “Be you ever so high, the law is above you.” Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the government agencies.”

In the submission of Ms Jaising, there is a chain of suspicious circumstances which warrants a court monitored investigation. These have been summarised as follows:

- (a) Inconsistencies in the documents produced by the State of Maharashtra;
- (b) Statements made by the family which appeared in the Caravan dated 20 November 2017 and 21 November 2017 and the contradictory statements by the two sitting judges of the High Court in the Indian Express dated 27 November 2017;
- (c) The statements made by the family of the deceased to Niranjana Takle of Caravan that they suspect foul play;

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<sup>13</sup> (1996) 2 SCC 199

- (d) Contradiction of those statements by the family in documents produced by the State of Maharashtra;
- (e) Non-compliance with the provisions of Section 174 Cr PC;
- (f) The absence of the family during the post-mortem;
- (g) The handing over of the body to Dr Prashant Rathi who was a stranger;
- (h) The misspelling of the name of the deceased in medical documents;
- (i) The absence of the name of Judge Loya in the occupancy register of Ravi Bhavan;
- (j) The transfer of the earlier judge, Judge Utpat a day before the hearing of the Sohrabuddin trial in the teeth of the judgment in **CBI v Amitbhai Anil Chandra Shah**<sup>14</sup>; and
- (k) The fact that the incoming judicial officer after Judge Loya's death discharged one of the accused within a month of his assuming charge.

**C Mr PV Surendranath:**

17 Mr PV Surendranath, learned senior counsel appearing on behalf of All India Lawyers' Union, an intervenor, submitted that the scope of the present hearing is only confined to the death of Judge Loya on 1 December 2014 and

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<sup>14</sup> (2012) 10 SCC 545

does not extend to the “Sohrabuddin fake encounter case trial..or its trajectory; the transfer of the predecessor officer etc.” Relying on the decision of this Court in **Vineet Narain** (supra), Mr Surendranath submitted that the setting up of a Special Investigation Team is warranted, having regard to the nature of the crime in the Sohrabuddin case, the status of the accused, circumstances which led to the transfer of the proceedings from Gujarat to Maharashtra; the discharge of some of the accused after a new judicial officer took charge upon the death of Judge Loya and the absence of security for Judge Loya at the relevant time. In his submissions, the contradictory versions given by close relatives of the deceased judge is in itself a reason to order a formal investigation under the Cr PC by registering an FIR.

**D Mr Prashant Bhushan:**

18 Mr Prashant Bhushan, learned counsel appearing on behalf of the Centre for Public Interest Litigation has filed an application for intervention. The affidavit in support of the application has been sworn and verified by Mr Prashant Bhushan. Reiterating the contents of the application, it has been urged that on 11 February 2018 Caravan published a report stating that the post-mortem report and histo-pathology report that accompanied the sample of the viscera were submitted to Dr RK Sharma, a former Head of Forensic Medicine and Toxicology at AIIMS. Mr Bhushan submitted that the intervenor obtained a copy of the histo-pathology report and a copy of the ECG. The

expert opinion of Dr RK Sharma, it has been submitted, indicates that there was no evidence of myocardial infarction and though changes were observed in the condition of the heart, they are not conclusive to show coronary artery insufficiency. Moreover, emphasis has been placed on the fact that the post-mortem report indicated congestion in the dura which would indicate that the possibility of poisoning cannot be ruled out.

19 Mr Prashant Bhushan states that the intervenor submitted a copy of the ECG and histo-pathology report to Dr Upendra Kaul, a former Professor of Cardiology at AIIMS. Mr Prashant Bhushan addressed an e-mail to Dr Kaul, attaching the ECG and histo-pathology report and addressed three questions which read as follows:

- “1. Could this person have suffered a serious heart attack, one-two hours before this ECG is taken? In other words, is this ECG consistent with the ECG of a person who has had a serious myocardial one to two hours before this ECG is done?
2. Is the histopathology report of his coronary arteries and heart muscle consistent with his death being due to acute myocardial infraction or coronary thrombosis?
3. In addition I would also like to ask you whether a person who has died due to myocardial infraction could show significant congestion of the dura, liver, spleen, kidney, larynx, trachoa and Bronchi, lungs. Is it possible for this congestion of all his organs as mentioned in the post mortem report, to have taken place because of CPR administrated at the time of his death?”

In reply Dr Kaul has stated thus:

- “1. Most unlikely, the ECG has no evidence of a recent myocardial infraction.

2. The histo-pathology of heart muscle says it is normal. The coronary artery block in LAD could be an innocent bystander.
3. Unlikely to be because of a recent MI but could be because of an intensive CPR. “

Mr Bhushan submitted that he has also spoken to “other reputed cardiologists” who have “also given essentially the same opinion”. Mr Bhushan has submitted that the statements by the four judges which were produced in court have not been filed on affidavit. Besides, the statements of the four judicial officers would only indicate that Judge Loya complained of chest pain following which he died on the way to Meditrina hospital. According to him, the eye-witness accounts would be consistent with other causes of death including poisoning. Virtually at the end of his submissions, Mr Bhushan queried this Court as to whether two members of the Bench (Justice AM Khanwilkar and Justice DY Chandrachud) would like to hear the matter since it may be that as judges of the Bombay High Court earlier they may have been acquainted with the four judicial officers and the two judges (Justice Gavai and Justice Shukre). In response to his query we had inquired of Mr Bhushan as to whether he intended to file an application for recusal. No application for recusal has been filed. Mr Bhushan has stated that he leaves the matter there.

**E Mr Pallav Shishodia:**

20 Mr Pallav Shishodia, learned senior counsel, has urged in his submissions that:

“These stories have led to a tide of insinuations, questions on integrity of our judicial system and war of recriminations. The present writ proceedings also appear to have found resonance in one eminent press conference as also led to open aspersions cast on the some of the judges of this Hon. Court hearing the matter. In the circumstances, it is submitted that an independent probe cannot be one way traffic in which persons making allegations can just “hit and run” without any responsibility to damages caused to the reputation, prestige and faith in institutions including this Hon’ble Court and judiciary as a whole”

**F Mr V Giri:**

21 Mr V Giri, learned senior counsel has independently urged submissions similar to those which have been urged before the court by the other learned senior counsel. Much of what has been argued by earlier counsel has been reiterated. His assisting counsel urged during the course of his rejoinder that the judges who were present with Judge Loya were a party to the conspiracy.

**II State of Maharashtra**

**A Harish Salve:**

22 Mr Harish Salve, learned senior counsel submitted that judicial review is a potent weapon to preserve the rule of law. Though counsel for the petitioners asserted that the petitions were instituted to preserve the independence of the judiciary, the nature of the allegations and the tenor of the submissions indicate that the effort is to launch a frontal attack on judicial independence. Judges of

the district judiciary are in a vulnerable position and it was urged that it is all the more necessary in the facts of this case for this Court to assert its authority to protect them from the indiscriminate attacks levelled by counsel appearing on behalf of the petitioners.

**B Mr Mukul Rohtagi:**

23 Mr Mukul Rohtagi, learned senior counsel submitted that though the batch of present cases is styled as petitions filed in the public interest, reality is far away from the principles enunciated by this Court in **State of Uttaranchal v Balwant Singh Chauhal**<sup>15</sup>. The petitions as well as the submissions urged in support constitute an attempt to scandalise the judiciary and sensationalise the issue.

Mr Mukul Rohatgi submitted that:

- (i) Judge Loya died on 1 December 2014 at Nagpur and was cremated at Gategaon, near Latur in the presence of his family and friends. Three years later, on 20 and 21 November 2017 articles were published in Caravan which was followed by a flurry of writ petitions;
- (ii) Ordinarily, this Court would not entertain a petition only on the basis of news reports, because they are hearsay in the nature. All the petitions

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<sup>15</sup> (2010) 3 SCC 402

are based entirely on news reports. The source of knowledge is the reports which appeared in the print and electronic media;

- (iii) Despite the submission in (ii) above, having due regard to the fact that the death of a judge in the state judicial service is in issue, the State of Maharashtra is not pressing for dismissal on grounds of maintainability and urges its submissions on merits to satisfy the conscience of the court;
- (iv) Two colleagues of Judge Loya from the district judiciary – Judge Kulkarni and Judge Modak were with him from 29 November 2014 until he died on 1 December 2014. They have furnished a clear and cogent account of the events which took place. Their statements are corroborated by the statements of two other judicial officers – Judge Rathi and Judge Barde;
- (v) An inquiry can be ordered by this court only if it finds sufficient justification to reject the eye-witness account of the judges of the district judiciary who accompanied Judge Loya from the night of 29 November 2014 (when they left Mumbai for Nagpur) until the afternoon of 1 December 2014 (when the ambulance left for Gategaon). The statements of the judges are an abundant reflection of the truth of the matter. After Judge Loya died on 1 December 2014, four judges of the High Court, including the Chief Justice, who were informed of the death reached Meditrina hospital shortly after the death;
- (vi) The issue before the court is whether Judge Loya died a natural death or whether there are circumstances which indicate that the death was

- unnatural. The court is not called upon to evaluate the nature of the care or treatment that was received by him at Dande and Meditrina hospitals;
- (vii) The four statements by Judge Kulkarni, Judge Modak, Judge Barde and Judge Rathi are signed by them. The statement of Judge Modak states that Judge Loya was in the same room at Ravi Bhavan. The statements of the four judges also cover an important stretch of time from 0400 hours to 0630 hours on 1 December 2014. There is no reason to cast doubt or suspicion on the statements of the four judges of the district judiciary. They have neither an axe to grind nor any motive not to speak the truth. Minor contradictions should not result in the statements being discarded since they are not of consequence. Minor contradictions are in fact natural when events which took place three years earlier are recalled. Moreover, this court is not hearing a regular criminal appeal after a full-fledged trial;
- (viii) The ECG was taken at Dande hospital and was evidently carried to Meditrina hospital. The progress notes of the doctor at Meditrina hospital advert to the nature of the ECG and it also forms a part of the record. Significantly Judge Barde has deposed to the fact that an ECG was done though Judge Rathi has stated that at Dande hospital the nodes of the ECG machine were not in order;
- (ix) After the death had occurred, an inquest was conducted under Section 174 Cr PC in the mortuary of the Government Medical College at Nagpur.

Thereafter a post-mortem was conducted which indicated that the death was due to coronary artery insufficiency. The post-mortem was necessitated because Judge Loya was brought dead to Meditrina hospital. A request was made to the forensic science laboratory on 1 December 2014 for analysis of the viscera. The FSL report and the report dated 5 February 2015 specifically notes that no trace of poison was found;

- (x) No credence should be attached to the fact that the name of Judge Loya was recorded as **Brijmohan** instead of **Brijgopal**, having due regard to the emergency in which he was initially taken to Dande hospital and later to Meditrina. The error was corrected on 10 December 2014;
- (xi) The death report was initially recorded at Sitabardi police station Nagpur. The death report at police station Sadar was recorded later since Ravi Bhavan falls within the jurisdiction of Sadar police station. As the record indicates, the death report at police station Sadar was on the basis of the earlier report lodged at Sitabardi police station;
- (xii) Finding that there was no warrant for suspicion in regard to the death, a request for closure was submitted to the Executive Magistrate in February 2016;
- (xiii) There was nothing untoward in the conduct of a discreet inquiry by the Commissioner, SID. The inquiry was initiated after news reports appeared in Caravan on 20 and 21 November 2017. While conducting

such inquiries, a parallel is drawn by the State on the basis of the Anticorruption Manual which envisages the procedure to be followed in a discreet inquiry. Even independent of the manual, the state government was justified in conducting an inquiry having due regard to the fact that aspersions were cast by a news periodical in regard to the circumstances leading to the death of a judge of the district judiciary;

- (xiv) On the initiation of the discreet inquiry, an authorisation was obtained from the Chief Justice for recording the 'say' of the four judicial officers. Letters were addressed to them. Judge Kulkarni and Judge Barde were posted at Mumbai, Judge Modak was posted at Pune and Judge Rathi was at Baramati. The DGP sent a hard copy of the order of authorisation by the Chief Justice to Pune and Baramati. There is no reason to entertain any suspicion because the judges submitted their statements immediately upon receipt of the authorisation of the Chief Justice of the Bombay High Court;
- (xv) Significantly while the petitioners and intervenors have doubted whether the three judges stayed at Ravi Bhavan, the report in Caravan expressly acknowledges that it was at Ravi Bhavan that they had stayed during their visit to Nagpur;
- (xvi) Immediately on the publication of the Caravan report on 11 February 2018 containing a reference to the opinion purportedly given by Dr Sharma, two letters dated 14 February 2018 were addressed to AIIMS

with reference to the opinion. AIIMS in its reply has specifically clarified that it is not a practice to give such information. Dr Sharma has clarified that he was grossly misquoted by Caravan and that the conclusions in the article are imaginary;

(xvii) The police inspector at Nagpur addressed a communication to Dr Harish Pathak, Head of Department of Forensic Medicine and Toxicology at KEM hospital, Mumbai. The report submitted by Dr Pathak specifically mentions that the findings in the post-mortem and histo-pathology reports are indicative of acute coronary insufficiency;

(xviii) The manner in which the petitioners have conducted themselves is evident from the innuendos attaching to the reliance by Mr Dave on an order of the Nagpur bench of the High Court, quashing a criminal prosecution against several petitioners of whom the fourth petitioner was Mr Devendra Fadnavis, Chief Minister of Maharashtra. The manner in which reliance has been placed on that order before this court would indicate that these proceedings are not instituted bona fide but constitute a clear attempt to subvert judicial independence and to cast aspersions on the independence of the judiciary; and

(xix) The timing of the publication of the newspaper article was politically motivated, since it coincided with the elections to the Gujarat Assembly. It is urged that the purpose is to target a political opponent by engaging the process of the Court.

24 The rival submissions would now be analysed.

## **D Analysis**

25 Mr Dave submitted that notice be issued formally in the writ proceedings and the State should be called upon to file affidavits in response to the petitions. Counsel submitted that once affidavits are filed it would be open to the petitioners to initiate steps for perjury, if a false statement has been made before the court.

26 While dealing with this submission, it is necessary to record that in pursuance of the procedural directions which were issued during the course of the first hearing, the state has filed a compilation of documents on the record. All contesting parties have appeared and have been heard. The documentary material which has been filed by the state has been tendered to the court and forms part of the record of judicial proceedings. No affidavit by a police officer or authority can improve upon the factual situation emerging from the documentary material which is placed before the Court. Once this is the position, the state and its officers must necessarily take full responsibility for all that has been placed on the record and face any legal consequence which arises from the documentary material which is produced in the proceedings before the court. The issue before the court is whether an inquiry into the death of Judge Loya is warranted on the directions of this court. This would depend in substance on the nature of the inquiry which has been conducted. The latter is

a matter of record. Affidavits cannot improve upon the official record of the state. Besides, as we have noted earlier, counsel for the State of Maharashtra informed the court that the state government would be willing to produce any further documents which form a part of the official record as are required for inspection by learned counsel appearing on behalf of the petitioners and intervenors. Moreover, Mr Rohatgi urged that the state would willingly accept any directions of the Court, in addition to the material which was filed. Under the order of this court learned counsel were permitted to provide a list of such documents to counsel for the state, if any additional documents were required to be produced. We have also scrutinised with the assistance of counsel, the material which has been produced by counsel for the petitioners and intervenors besides the material produced by the state without regard to technicalities of procedure. This batch of cases has been heard fully. Hearings have been convened over ten dates of judicial sitting. We find no justification at this stage to call upon the state to file affidavits since a full and complete opportunity has been granted to all the parties and their counsel to address submissions on every aspect of the case that they desire to address. The entire record is before the court.

### **Section 174 Cr PC**

27 Section 174 of the Code of Criminal Procedure 1973 provides thus:

“174. Police to enquire and report on suicide, etc.

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) <sup>1</sup> When-

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate."

28 Section 174 deals with a situation where information is received by an officer in-charge of a police station of a person having committed suicide, or having been killed (i) by another; or (ii) by an animal; or (iii) by machinery or (iv) by an accident or of having died under circumstances raising a reasonable suspicion that some other person has committed an offence. In any of these situations, the police officer is required to furnish intimation immediately to the nearest Executive Magistrate who is empowered to hold inquests. He is required to proceed to the place where the body is situated and in the presence of two witnesses to make an investigation and draw up a report of the apparent cause of death. The report would describe the wounds including marks of injury which are found on the body and in what manner or by what weapon or instrument if any they appear to have been inflicted.

29 The purpose of holding an inquest is limited. The inquest report does not constitute substantive evidence. Hence matters relating to how the deceased was assaulted or who assaulted him and under what circumstances are beyond the scope of the report. The report of inquest is primarily intended to ascertain the nature of the injuries and the apparent cause of death. On the other hand, it is the doctor who conducts a post-mortem examination who examines the body from a medico-legal perspective. Hence it is the post-mortem report that

is expected to contain the details of the injuries through a scientific examination<sup>16</sup>.

30 The scope of an inquiry under Section 174 of the Cr PC has been considered in several decisions of this court. In **Pedda Narayana v State of Andhra Pradesh**<sup>17</sup>, this court explained that the limited scope of such an inquiry is to ascertain whether a person has died in suspicious circumstances or an unnatural death and, if this was the case, the apparent cause of death. The court observed:

“The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report.”

This principle was reiterated in **Amar Singh v Balwinder Singh** (supra) where the court observed thus:

“12...The requirement of the section is that the police officer shall record the apparent cause of death describing the wounds as may be found on the body and also the weapon or instrument by which they appear to have been inflicted and this has to be done in the presence of two or more respectable inhabitants of the neighbourhood. The section does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the

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<sup>16</sup> Madhu v State of Karnataka (2014) 12 SCC 419; Radha Mohan Singh @ Lal Saheb v State of UP (2006) 2 SCC 450; Mahendra Rai v Mithlesh Rai (1997) 10 SCC 605 Amar Singh v Balwinder Singh (2003) 2 SCC 518; Suresh Rai v State of Bihar AIR 2000 SC 2207 and Shukla Khader v Nausher Gama (1975) 4 SCC 122

<sup>17</sup> (1975) 4 SCC 153

inquest report. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or by some machinery etc. (Id at page 641)”

The view in **Pedda Narayana** (supra) has been approved by a three judge Bench in **Khujji @ Surendra Tiwari v State of Madhya Pradesh**<sup>18</sup>. Hence in **Radha Mohan Singh Alias Lal Saheb v State of U.P.**<sup>19</sup>, a Bench of three learned judges formulated the principle in the following terms:

“Thus, it is well settled by a catena of decisions of this Court that the purpose of holding an inquest is very limited viz. to ascertain as to whether a person has committed suicide or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eyewitnesses or the gist of their statements, nor is it required to be signed by any eyewitness.”

A Bench of two learned judges of this Court in **Madhu Alias Madhuranatha v State of Karnataka**<sup>20</sup> has observed that an inquest report is not substantive evidence.

In **Manoj Kumar Sharma v State of Chhattisgarh**<sup>21</sup>, a Bench of two learned judges held that the purpose of an ‘inquest’ in cases of accidental or suspicious

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<sup>18</sup> (1991) 3 SCC 627

<sup>19</sup> (2006) 2 SCC 450

<sup>20</sup> (2014) 12 SCC 419

<sup>21</sup> (2016) 9 SCC 1

deaths under Sections 174 and 175 is distinct from the ‘investigation’ under Section 157 of the Code under which if an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered to investigate, he shall proceed in person to the spot to investigate the facts and circumstances of the case.

Reiterating this principle, a two judge Bench in **Bimla Devi v Rajesh Singh**<sup>22</sup> explained the scope of the provisions of Section 174 in the following observations:

“The scope of the section is investigation by the police in cases of unnatural or suspicious death. However, the scope is very limited and aimed at ascertaining the first apparent signs of the death. Apart from this, the police officer has to investigate the place wherefrom the dead body is recovered, describe wounds, fractures, bruises and other marks of injury as may be found on the body, stating in what manner or by what weapon or instrument, such injuries appear to have been inflicted. From the above, it thus becomes clear, that the section aims at preserving the first look at the recovered body and it need not contain every detail. Mere overwriting in the name of the informant would not affect the proceedings.”

The same position has been laid down in a more recent decision of a two judge Bench in **Yogesh Singh v Mahabeer Singh**<sup>23</sup> :

“41. Further, the evidentiary value of the inquest report prepared under Section 174 CrPC has also been long settled through a series of judicial pronouncements of this Court. It is well established that inquest report is not a substantive piece of evidence and can only be looked into for testing the veracity of the witnesses of inquest. The object of preparing such report is merely to ascertain the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or caused by animals

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<sup>22</sup> (2016) 15 SCC 448

<sup>23</sup> (2017) 11 SCC 195

or machinery, etc. and stating in what manner, or by what weapon or instrument, the injuries on the body appear to have been inflicted. (See *Pedda Narayana v. State of A.P.* [*Pedda Narayana v. State of A.P.*, (1975) 4 SCC 153 : 1975 SCC (Cri) 427] , *Khuji v. State of M.P.* [*Khuji v. State of M.P.*, (1991) 3 SCC 627 : 1991 SCC (Cri) 916] , *Kuldip Singh v. State of Punjab* [*Kuldip Singh v. State of Punjab*, 1992 Supp (3) SCC 1 : 1992 SCC (Cri) 946] , *George v. State of Kerala* [*George v. State of Kerala*, (1998) 4 SCC 605 : 1998 SCC (Cri) 1232] , *Suresh Rai v. State of Bihar* [*Suresh Rai v. State of Bihar*, (2000) 4 SCC 84 : 2000 SCC (Cri) 764] , *Amar Singh v. Balwinder Singh* [*Amar Singh v. Balwinder Singh*, (2003) 2 SCC 518 : 2003 SCC (Cri) 641] , *Radha Mohan Singh v. State of U.P.* [*Radha Mohan Singh v. State of U.P.*, (2006) 2 SCC 450 : (2006) 1 SCC (Cri) 661] and *Sambhu Das v. State of Assam* [*Sambhu Das v. State of Assam*, (2010) 10 SCC 374 : (2010) 3 SCC (Cri) 1301] .)”

31 Sub-section (3) of Section 174 requires the police officer to forward the body for being examined to the nearest civil surgeon, or as the case may be, to a duly qualified medical person appointed by the state government in this behalf, in the circumstances set out there. Among the circumstances, clause (iv) deals with a situation where there is any doubt regarding the cause of death while clause (v) deals with a case where the police officer considers it expedient to do so. Sub-section (4) of Section 174 specifies that the District Magistrate, Sub-Divisional Magistrate and any other Executive Magistrate especially empowered may hold inquests. Under Section 175, the police officer proceeding under Section 174 is empowered to summon for the purposes of the investigation any person who appears to be acquainted with the facts of the case. Under Section 176, where the case is of the nature specified in clauses (i) or (ii) of sub-section (3) of Section 174, the nearest Magistrate empowered to hold an inquest shall hold an inquiry into the cause of death instead of or in addition to the investigation held by the police officer. In any other case

mentioned in sub-section (1) of Section 174 the Magistrate may hold an inquiry.

Sections 175 and 176 provide as follows:

“175. Power to summon persons.

(1) A police officer proceeding under section 174, may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate' s Court.

176. Inquiry by Magistrate into cause of death.

(1)<sup>2</sup> when the case is of the nature referred to in clause (i) or clause (ii) of sub- section (3) of section 174] the nearest Magistrate- empowered to hold inquests shall, and in any other case mentioned in sub- section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(1A) Where –

- (a) any person dies or disappears, or
- (b) rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorized by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.

Explanation.- In this section, expression "relative" means parents, children, brothers, sisters and spouse."

## **Documentary material**

32 In the context of the above statutory provisions, it is necessary to examine the material on record. We will proceed to initially analyse the documentary material which has been placed before the court by the State of Maharashtra. Since the statements of the judicial officers which were recorded during the course of the discreet inquiry have been the subject of a considerable amount of argument, we will analyse them in a subsequent part of the judgment.

33 Judge Loya was brought to Meditrina hospital at Nagpur at 6.15 am on 1 December 2014. Dr NB Gawande of Meditrina addressed a letter to the PSI, Sitabardi police station on the following subject:

"MLC information on hospital in-patient death/brought dead".

The communication states that the deceased was "brought with no evidence of life to our hospital" with history of retrosternal chest pain. The patient was reported to have come to Nagpur to attend a function. The person who admitted

the patient is recorded as Shrikant D Kulkarni. His relationship with the patient is described as “friend”. The probable cause of death is stated to be unknown. The name of the consultant is endorsed as Dr Pankaj Harkut.

34 The Progress notes of the doctor at Meditrina hospital contain a death summary. It records that according to the history given by the accompanying persons, the patient had suffered retrosternal chest pain during the course of the immediately previous night. It states that the patient was taken to Dande hospital where an ECG was done. The ECG (it is recorded) reflected a “tall ‘T’” in the anterior lead and that the patient collapsed while being shifted. The death summary further states that resuscitation was started immediately after reaching the hospital and emergency medication was provided. The steps which were taken to revive the patient are recorded and it has been stated that in spite of resuscitative efforts, the patient could not be revived and was declared dead at 6.15 am on 1 December 2014. The death summary records that a post-mortem was advised for ascertaining the cause of death. A death report was accordingly issued on 1 December 2014 by the duty medical officer at Meditrina. The post-mortem became necessary because, Judge Loya was ‘brought dead’.

35 At 8.30 am on 1 December 2014, the police station at Sitabardi (within whose jurisdiction Meditrina hospital is located) recorded the statement of Dr Prashant B Rathi. The statement is to the effect that the deceased was related

to his uncle. The deceased had travelled to Nagpur for attending a marriage and was residing at Ravi Bhavan, Civil Lines. When he complained at 0400 hours of chest pain, he was admitted to Meditrina hospital where he was declared as “brought dead” at 0600 hours. On the basis of the statement of Dr Prashant Rathi, the death report (*marg khabri*) was drawn up under Section 174 of Cr PC bearing AD 00/14. The statement of Dr Rathi is reproduced in the death report and titled as “*nakal bayan*” (this is because the statement is reproduced). The death report contains an endorsement of PSI RK Mundhe, the duty officer from 2100 hours on 30 November 2014 to 0900 hours on 1 December 2014 of the registration of an accidental death report on the basis of the statement of Dr Rathi and of having sent police constable Pankaj for taking care of the dead body.

36 Government Medical Hospital, Nagpur received the dead body at 10 am on 1 December 2014 for post-mortem. An inquest panchnama commenced at 10 am and ended at 10.30 am in the presence of two panchas. PSI Mundhe attached to Sitabardi police station conducted the inquest. The inquest panchnama notes the condition of the dead body and does not find any mark of injury or assault. The dead body was then sent to the medical officer for conducting the post-mortem. There is an advance report dated 1 December 2014 of Dr NK Tumram of the Department of Forensic Medicine at Government Medical College recording that the probable cause of death is “coronary artery insufficiency”. The post-mortem report of 1 December 2014 records that there

is no evidence of bodily injury. The dura and brain are found to be congested and edematous. Lungs are also found to be in a congested condition and edematous. The heart is found to be congested. The post-mortem records that there is evidence of atherosclerosis in the left coronary and left anterior descending artery with calcification. It records the narrowing of the artery and evidence of hypertrophy of the left ventricle. Evidence is found of plaque in the inner wall of the aorta. The report indicates that samples of the stomach, liver, kidney and blood were preserved for histo-pathological examination. The probable cause of death is recorded as "coronary artery insufficiency".

37 Following the post-mortem, the dead body was handed over to Dr Prashant Rathi on 1 December 2014 in token of which a receipt was obtained by Sitabardi police station.

38 On the basis of the death report which was recorded by Sitabardi police station the police station at Sadar recorded an accidental death report (AD 44/14) under Section 174 Cr PC. The death report contains a statement that PSI Warpade, the day duty officer on 1 December 2014 had received the case diary of AD 00/14 from police constable Pankaj and that he had registered AD 44/14 under Section 174 Cr PC. The registration of the AD at Sadar police station is at 1600 hours on 1 December 2014. Ravi Bhavan falls within the jurisdiction of Sadar police station.

39 On 1 December 2014, the duty officer at Sadar police station addressed a communication to the Deputy Director of the Forensic Laboratory, Dhantoli, Nagpur, and sought a chemical analysis of the samples of the viscera and of a bottle of blood which had been preserved. Analysis of the samples commenced on 5 January 2015 and ended on 19 January 2015. On 5 February 2015 the Assistant Chemical Analyser in the Regional Forensic Science Laboratory submitted his report stating that:

“general and specific : chemical testing does not reveal any poison in exhibit nos.(1), (2) and (3).”

Exhibits (1), (2) and (3) are respectively samples of the stomach, liver, spleen and kidney and blood.

40 In the records of Meditrina hospital referred to earlier, the name of the deceased was referred to as Brijmohan H Loya. It appears from the post-mortem report that the name of the deceased was initially recorded as Brijmohan Harikishan Loya. The records of Meditrina hospital as well as the post-mortem contain a reference to the address of the deceased being the official quarters at Haji Ali Government Colony, Building no.11, Mumbai. This, it is undisputed, is where Judge Loya resided. There is hence absolutely no doubt about the identity of the body on which post-mortem was performed. On 10 December 2014 the PSI at Sadar police station addressed a letter to Government Medical Hospital seeking a correction in the name of the deceased

as Brijgopal Harikishan Loya. The correction was endorsed on 10 December 2014 on the post-mortem report.

41 In February 2016, the Sadar police station addressed a communication to the Special Executive Magistrate making a reference to the death summary bearing No.07/16 dated 2 February 2016. The summary records that on 1 December 2014, the police station at Sadar received AD004/14 from the Sitabardi police station. On perusing the case diary, it was noticed that the place of occurrence was within the jurisdiction of Sadar police station. Hence AD 44/14 was recorded under Section 174 Cr PC. An inquest panchnama was prepared by PSI Mundhe in the presence of two panch witnesses. The post-mortem was conducted at the Medical College Hospital by Dr NK Tumram of the Forensic Medicine Department. After the post-mortem concluded, the body was handed over to Dr Prashant Rathi, a relative of the deceased. During the course of inquiry, it has been noted from the post-mortem report that the cause of death was coronary artery insufficiency. On discussing the matter with Dr Tumram, it was ascertained that the death was due to a heart attack and there was nothing suspicious about the death. During the course of the inquiry the police station at Gategaon, District Latur was contacted when it was intimated that the relatives of the deceased reside in Mumbai. Dr Prashant Rathi had intimated, that the deceased had visited Nagpur to attend a marriage; on the date of the incident he developed pain in the chest at 0400 hours and was admitted to Meditrina hospital where he was declared dead. The summary

records that Judge Loya died due to a heart attack. No complaint has been lodged by his relatives at the local police station or at PS Sadar of any suspicion in regard to the cause of death and the medical officer has recorded the cause of death as a heart attack in the PM report and there was no evidence of assault. The summary was accordingly submitted to the Special Executive Magistrate, Sadar division, Nagpur.

### **Statements of four judicial officers**

42 Now it is in this background, that it would be necessary to advert to the statements of the judicial officers which were recorded during the course of the discreet inquiry in November 2017. A discreet inquiry was ordered on 23 November 2017 by the Home department of the state government following the reports which were published in Caravan on 20 and 21 November 2017. Mr Rohtagi has apprised the court that in ordering the discreet inquiry, the state took recourse to the provisions of its Vigilance Manual. The Manual of Instructions provides for the procedure which is to be followed in conducting discreet inquiries. In the present case, following the news reports published in Caravan, the death being of a judge from the state judicial service, a discreet inquiry was ordered particularly in the context of the innuendos contained in the news reports. Quite apart from the Manual, the state government is not prohibited in law from holding such an enquiry in the exercise of its executive power.

43 The Commissioner of the State Intelligence Department sought the permission of the Chief Justice of the Bombay High Court “to record the say” of Judge Shrikant Kulkarni (Member Secretary, Maharashtra State Legal Service Authority), Judge Modak (Principal District Judge, Pune), Judge Barde (District Judge, City Civil Court, Mumbai) and Judge RR Rathi (District Judge, Baramati). By a communication of 23 November 2017, the Registrar General stated that the Chief Justice had granted permission to do so. Following the receipt of permission, the Commissioner, SID wrote to the four judicial officers. They tendered - signed statements.

44 The statement of Judge Kulkarni dated 24 November 2017 is extracted below:

“Reference: Your letter No-COI/PA/Loya/DE/2017-165.

Sir,

With reference to your letter, I hereby submit brief sequence/say about the unfortunate death of Shri BH Loya at Nagpur.

In the month of November – December 2014, I was working as Registrar(Judicial -I), Appellate Side, High Court, Bombay. Mrs Swapna Joshi was the Member Secretary, Maharashtra State Legal Services Authority at that time and she was my Principal Judge while working in the City Civil Court, Mumbai. She had invited me, my colleague Shri SM Modak and Shri BH Loya who were working in the City Civil Court, Mumbai for the wedding of her son at Nagpur.

Accordingly, I along with Shri SM Modak and Shri BH Loya left Mumbai by train in night of 29<sup>th</sup> November, 2014 and reached Nagpur in the morning of 30<sup>th</sup> November 2014. We went to Ravi Bhavan Government Guest House where V.I.P. Suit was booked.

On the night of 30<sup>th</sup> November, 2014 we attended reception arranged by Mrs Swapna Joshi on account of wedding of her son and returned to Ravi Bhavan Government Guest House at about 11.30 p.m. to 12.00 midnight.

Early morning of 1<sup>st</sup> December 2014 Shri Loya started complaining of chest pain. I called my another brother Judge from Nagpur Shri Barde by calling on his cell phone and asked him to rush immediately to Ravi Bhavan Government Guest House with his car due to bad health of Shri Loya. Accordingly, Shri Barde with another colleague Shri Rathi rushed to Ravi Bhavan Government Guest House. It was about 4.00 to 4.15 am. Shri Waiker, Judge was also informed about Shri Loya's bad health.

We took Shri Loya to the nearby Dande Hospital by using car of Shri Barde where emergency treatment was given to Shri Loya. Shri Waiker, Judge also joined there by his car. However chest pains continued. As per Doctor's advice Shri Loya was required to be shifted to Cardiac Hospital. Accordingly, Shri Loya was immediately taken to Meditrina Hospital, Nagpur. We accompanied with him in the car. Shri Rathi who was working as Deputy Registrar called his relative Doctor to rush at Meditrina Hospital. We rushed to Meditrina Hospital, however on the way Shri Loya collapsed. We put him on the stretcher and took to the I.C.U where Doctor started immediate treatment. After giving treatment no response from Shri Loya was seen. Unfortunately, Shri Loya succumbed to death due to massive heart attack on early morning of 1<sup>st</sup> December 2014.

We communicated this unfortunate incident to the Hon'ble Shri Justice PR Bora as well as Hon'ble Shri Justice BR Gavai. We also informed the said unfortunate incident to Shri Sham Joshi, Principal Secretary to the Hon'ble The Chief Justice whose sitting was at Nagpur that time. Hon'ble Shri B R Gavai, Hon'ble Shri Justice SB Shukre and Hon'ble Shri Justice PR Bora immediately rushed to the Meditrina Hospital within half an hour. Thereafter Hon'ble Shri Mohit Shah, The Chief Justice also arrived there. Thereafter, the dead body of Shri Loya was taken to the Government Medical College and Hospital for post-mortem examination.

After post-mortem examination dead body was sent to native place of Shri Loya in one ambulance. Two Magistrates from Nagpur were also sent in another car to accompany dead body.”

The statement of Judge SM Modak, Principal District Judge, Pune dated 24 November 2017 reads as follows:

“Sub : Discreet Verification in the death of Judge Shri Loya.

Ref : Your letter OW No. COI/PA/LOYA/DE/2017-165 Dated 23/11/2017.

Respected Sir,

I received your above mentioned letter in the morning through the hands of your representative. It accompanies permission letter issued by Hon'ble Registrar General dated 23/11/2017. It is not accompanied by any complaint/application/any document. You have requested me to give my say in the captioned matter. There is gap of almost three years after the death of our brother Judge Loya. As per my memory I am giving sequence of events as follows :

- a. I accompanied Judge Shri Shrikant Kulkarni and Judge Shri Loya on 29/11/2014 for attending the marriage of son of Ladyship Smt Joshi (then Secretary MHALSA).
- b. We left by train at the night. Ladyship Smt Joshi, her family members and few other judges were also travelled in the same train but in different compartments.
- c. We reached Nagpur in the morning of 30/11/2014. Journey was comfortable. It was through AC coach.
- d. From station we went to Ravi Bhavan
- e. After bath, myself accompanied Judge Shri Kulkarni to visit the quarters of Lordship Shri Shukre, Lordship Shri Borha. Judge Shri Kulkarni intended to give invitation of his daughter's marriage to them. Even Judge Shri Loya accompanied us.
- f. Even we have visited the house of Judge Shri Barde quarter at Ravi Nagar.
- g. After that and after some marketing, we returned Ravi Bhavan. We have to attend reception in the evening.
- h. We attended the reception. There number of judges and even Few lordship have attended the function.
- i. After dinner, we returned Ravi Bhavan almost at about 11.30 pm to 12 midnight.
- j. During our way back, we stopped at one square. I remember Judge Mahajan was also with us but in different car. He offered us famous pan. He left to his house as he had to catch night train for Mumbai and we returned to Ravi Bhavan.
- k. We slept in one room. At about early morning probable at 4 am Judge Loya woke up. He was not feeling comfort. Myself and Judge Kulkarni called local judges probably Judge Barde and Judge Rathi.
- l. I do not exactly remember both of them or single.

- m. In a car we took Judge Loya to Dande Hospital. After initial check up, doctor advised him to shift him to another hospital
- n. We shifted Judge Loya to another hospital. I do not remember the name. We shifted him in a car. I also remember another local Judge Shri Waiker had also come in his car.
- o. At the hospital doctors have declared him dead.
- p. We have informed this fact to our judges at Hajiali colony.
- q. We all were in shock. I do not exactly remember who informed this fact to family members of Loya.
- r. Few Lordship have also attended the hospital. Further events took place as per their directions.
- s. Dead body was taken to Government Hospital for post mortem.
- t. Then PDJ Shri Sonavane (now Lordship) had also come to hospital and also for post mortem.
- u. Then PDJ Shri Sonavane deputed two local judges along with dead body.
- v. We all were in deep shock. Myself and Judge Kulkarni met the relatives of Judge Loya at Hajiali colony after few days.
- w. During that period I was posted as P.D.J. at Alibag, Raigad.

I have narrated the events as per my memory. You have instructed yesterday on phone to give events today. I am handing over this letter through hands of your representatives Shri Patil.”

The statement of Judge VC Barde, dated 24 November, 2017 reads as follows:

“SUB: Your letter dt. 23.11.2017 for my Say, regarding occurrence dt. 1.11.2014 at Nagpur of sad demise of District Judge Shri BH Loya Sir,

Dear Sir,

With reference to the subject mentioned as above, I state that on the above date, at about 4 A.M. I received a call on my mobile No. 9423406827 from Shri S.D. Kulkarni Sir, Registrar of Hon'ble Bombay High Court that I with my Car and Shri R.R. Rathi, Senior Civil Judge, should come to Ravi Bhavan Govt. Guest House, where he, Shri Modak Sir District Judge, and late Shri Loya Sir were staying having come from Mumbai. He said that Shri Loya Sir was having chest pains. Accordingly, I called Shri Rathi and proceeded to Ravi Bhavan.

Immediately, we the above 5 persons in the Car proceeded towards Dande Hospital. In the meanwhile, Shri S.D. Kulkarni Sir also called Shri Waiker Sir, now retired District Judge. The medical officer on duty there checked up Shri Loya by ECG, Blood Pressure etc. as per their procedure. Judge Shri Rathi has his brother in relation by name Dr Shri Pankaj Harkut, M.D.

and D.M., as a Doctor at Meditrina Multispecialty Hospital, whom he could contract in the meanwhile, who said that we should come to Meditrina Hospital, where he would also come from his residence.

Thereafter, we proceeded to Meditrina Hospital in 2 Cars. However, Shri Loya who himself sat in the Car, after some distance started Snoring-like in sleep, to whom Shri Kulkarni Sir stated to awake. When I took the Car in the porch of Meditrina Hospital, Shri Loya Sir did not awake and was rushed on a stretcher to the ICU of the said Hospital. He was immediately taken in and the doctors started treatment. We stayed outside ICU. However, after sometime the Doctor came out, and told that when Shri Loya Sir was taken in ICU, his pulses were not working, and that they were trying out their best to make him revive.

While Shri Loya Sir was in ICU, I tried to contact the friends of Shri Loya Sir at Haji Ali, Govt Colony, where he was residing. Shri O.K. Bhutada, Senior Civil Judge, could be contacted, whom the entire occurrence was told. Shri Modak Sir and Shri Kulkarni Sir also contacted the other friends of Shri Loya Sir at Haji Ali, known to them and told the occurrence to them. Local judges were also called at Hospital. The Hon'ble High Court Judges, and Judges from District Judiciary, and some Court Staff approached to the Hospital, and some were consulting the Doctor. Judge Shri Bhutada from Mumbai, provided my mobile number to the near relatives of Shri Loya Sir, and by making call to me, told that I should inform the happenings at Hospital to such near relatives, if they contact me. Some relatives contacted me, to whom I told the happenings, and that they may come to Nagpur.

After about 6.a.m. the Doctor came out of ICU and declared that Shri Loya Sir is no more. Thereafter, the Judges gathered there saw his body. The police also approached the Hospital. Thereafter, at or about 10 p.m. the dead body was taken for post-mortem at Govt. Medical College by police. I in my car went there, where the Judges of District Judiciary also gathered. After the post mortem was over, after 11 a.m. the dead body was sent in an ambulance to the native place of Shri Loya.

Shri Loya, being my Senior Colleague and residing in neighbouring building No. 11 of Haji Ali. Govt. Colony and I in building No. 13 in the same colony during my posting for 2011 to 2014, I was well acquainted with him, and performed by moral duty to take him in the hospital with other learned officers to provided all the possible help.”

The statement of Judge RR Rathi dated 23 November 2017 reads as follows:

“Upon request of Shri Sanjay Barve, Commissioner SID, Mumbai and as Hon’ble High Court of Bombay granted permission to give say, I am stating the fact know to me regarding Judge Shri Brijgopal Harikishnan Loya.

Myself R R Rathi Adhoc District Judge, Baramati on dated 1.12.2014 was working as 5th Civil Judge Shri V C Barde phoned me on mobile and asked for my help by stating that Judge Loya is not feeling well and is at Ravi Bhavan, so we should help him. Hearing the same and in order to help, being local Judge, I was immediately ready. Mr Barde came to my quarter in his car and we then immediately went to Ravi Bhavan.

At Ravi Bhavan Judge Shri Modak and Shri Shrikant Kulkarni were also present. At that time Judge Loya was attending nature's call. Thereafter he came down and told that he is having heart burn and having ache in his heart and requested for help. Thereafter we all present there went in the car and Mr Barde. At that time some of them also called for help of Judge Waiker. He also followed us. Then we went to the nearest hospital at Ravi Nagar i.e. Dr Dande Hospital that hospital was on 1<sup>st</sup> Floor and so we all climbed stairs and were there. One assistant doctor was present there. Mr Loya complained about severe chest pain. His face was sweating and he was continuously telling about severe chest pain and heart burn. At that time the doctor tried to do his ECG but the nodes of ECG machine were broken. Doctor tried and wasted sometime but machine was not working. I think he gave 2 injections to Mr Loya. I asked the doctor he said it of antacid and painkiller. Mr Loya was again complaining chest pain. I called my brother (cousin) Dr Pankaj Harkut, who is a cardiologist but his phone ringed but he did not pick my phone. After sometime he called me and I told him all these things. He immediately told me to brought him to Meditrina Hospital at Ramdaspath Nagpur. It was 5.00 am, approx. that time. Thereafter I sitted in car of Judge Waiker. Mr Loya sitted in the car of Barde and Shri Kulkarni and Modak accompanied the. Thereafter we proceeded to Meditrina Hospital. At Meditrina Hospital when we reached that time Mr Loya was unconscious and was unable to speak. Then he was taken inside hospital for treatment. Thereafter Dr Pankaj Harkut also came there. Mr Loya was treated at that hospital. After sometime we came to know that Mr Loya suffered heart attack. Thereafter we came to know that he died. It was very unfortunate that Mr Loya died and I was very upset to know this. Hence this say.”

## The submissions analysed

45 A frontal assault has been launched on the statements of the four judicial officers by learned counsel appearing on behalf of the petitioners on the ground that the procedure of obtaining the permission of the Chief Justice was completed within one day and the statements were submitted by the four judges on the next day. Two of the judges (Judge Shrikant Kulkarni and Judge Barde) were based in Mumbai while the other two (Judge Modak and Judge Rathi) were based at Pune and Baramati.

46 We are unable to subscribe to this line of submissions. The Chief Justice of the Bombay High Court granted permission to the Commissioner of the State Intelligence Department to record the say of the four judicial officers. The matter was of importance. A discreet inquiry had been ordered by the state government in view of the articles which were published in Caravan regarding the death of a judicial officer. Three of the statements specifically refer to the letter to the Commissioner while the fourth refers to the request which has been made by the Commissioner and the permission which has been granted by the High Court. There was no reason for the four judicial officers to procrastinate or delay the submission of their statements. There is no basis whatsoever to make any imputation against the four officers of the state judiciary. They were present with Judge Loya at Nagpur to attend a wedding in the family of a colleague. Each of them responded, as judges of the district judiciary, to the permission

which was granted by the Chief Justice of the High Court to the Commissioner, SID to record their say. The judges have spoken about the facts of the case as they could recall, with details. We have extracted each of the four statements fully, as they stand. Each of the judges has spoken in detail of the facts and events which were within their personal knowledge. The statements contain matters of detail which would be known to those who were present with Judge Loya. They have a ring of truth. They had nothing to conceal nor an axe to grind. Three of the statements are dated 24 November 2017 while the fourth submitted by Judge Rathi is dated 23 November 2017 and contains an endorsement of receipt by the Commissioner on 24 November 2017. The fact that two of the judges were respectively at Pune and Baramati is absolutely no ground to cast doubt. The statements were submitted with dispatch. Reading them it is clear that they have been submitted without pre-meditation. The four judicial officers acted responsibly. There was no reason for them either to hasten or to cause a delay in submitting their versions of what they knew. Each of the four judges has acted with a sense of duty. This is how they would be expected to conduct themselves, in answering to a call of duty.

47 One of the submissions which has been urged by Mr Dave to cast doubt on the statements is that an article was published in the Indian Express in which the statements of two judges of the High Court (Justice Bhushan Gavai and Justice SB Shukre) were published. Mr Dave submitted that the statements of the judicial officers cannot be regarded as independent, in view of the fact that

two judges of the High Court had taken the same view as elicited in the Indian Express article, that the death of Judge Loya was due to natural causes. Mr Dave submitted that judicial officers in the district judiciary could not be expected to take a plea at variance with what was stated by the two judges of the High Court. He urged that disciplinary action should be initiated against the two High Court judges. This submission is preposterous. It constitutes an undisguised attempt to malign four senior judicial officers and the judges of the High Court. What the submission glosses over is that the article in the Indian Express was published on **27 November 2017** and that was when the statements attributed to Justice Gavai and Justice Shukre were published. The statements of the four judicial officers are dated on **23 and 24 November 2017** and were in fact received by the Commissioner of the SID on **24 November 2017** much before the Indian Express article was published. We are mentioning this aspect because the line of submissions in this case indicates an unfortunate attempt to use every possible ploy to cast aspersions on members of the district and higher judiciary. That senior counsel chose with all seriousness to make those submissions without a sense of responsibility, and without verifying the basic facts reveals a disturbing state of affairs. We must express our disapproval in no uncertain terms.

48 Learned counsel appearing on behalf of the petitioners as well as the intervenors have sought to question the course of action which was followed by the judicial officers after Judge Loya complained of chest pain in the early hours

of 1 December 2014. Why, they have queried, was he taken to Dande hospital initially and not to a specialised cardiac care facility when it was available within a radius of 5 kilometres of Ravi Bhavan. This line of argument is without merit. Judge Loya, as the statements of Judge Kulkarni and Judge SM Modak indicate, complained of chest pain at about 0400 hours on 1 December 2014. His colleagues who were with him took a decision in good faith to take him to Dande hospital which is in close proximity to Ravi bhavan. The issue in the present case is whether Judge Loya died a natural or unnatural death. To attribute motives to his colleagues who were with him and took immediate steps to shift him to a hospital nearby is absurd, if not motivated. In hindsight, it is easy to criticise actions which are taken by human beings when faced with an emergency. It is easy for an observer sitting in an arm-chair at a distant point in time to assert that wisdom lay in an alternate course of action. That can never be the test for judging human behaviour. The conduct of the colleagues of Judge Loya in attending to him is not in question. They did their best under the circumstances, acting entirely in good faith. At Dande hospital, the medical advise was that the condition of Judge Loya required him to be shifted to a specialised cardiac hospital. Judge Rathi who was attached to the Nagpur Bench of the High Court at the material time was with Judge Kulkarni and Judge Modak when he was shifted to the hospital, as was Judge Waikar. Dr Pankaj Harkut who was a relative of Judge Rathi was a cardiac consultant attached to the Meditrina hospital. Judge Rathi contacted him on phone and it was at his suggestion that the judges took a decision to shift Judge Loya to Meditrina. To

find fault with the judges for this course of action is unacceptable. But there is another and more serious aspect of the line of submissions which has been urged. Though as we have noted earlier, the proceedings have been purportedly instituted to protect the independence of the judiciary, this is one more instance where behaviour in court belies the ostensible position of the petitioners, intervenors and their counsel. It is as if the judicial officers are in the dock. We have no hesitation in rejecting that attempt. Mr Rohtagi submitted before the court that this line of argument of the petitioners and intervenors would postulate that the judicial officers are co-conspirators. In fact, it was so argued by counsel assisting Mr Giri. This is neither the case in the pleadings of the petitioners nor is there any material on the record which can even remotely suggest such an inference. We must emphatically reject such attempts on the part of the petitioners and the intervenors to malign judicial officers of the district judiciary. They acted in good faith to ensure medical treatment to their colleague. Their conduct cannot be questioned.

49 Similarly, a considerable degree of emphasis has been placed on the statement of Judge Rathi that the nodes of the ECG machine at Dande hospital were not working. Based on this, it has been seriously urged that in fact no ECG was done at Dande hospital. Judge Shrikant Kulkarni in his statement dated 24 November 2017 has stated that “emergency treatment” was given to Judge Loya at Dande hospital. Judge SM Modak states that after an initial check-up, the doctors at Dande hospital advised shifting the patient to another

hospital. Judge Vijay Barde who was present at Dande hospital specifically stated that the medical officer on duty there examined (“checked-up”) Judge Loya “by ECG, blood pressure etc. as per their procedure”. Judge Rathi has stated that at Dande hospital, time was wasted because the nodes of the ECG machine were broken and the machine was not working. This statement of Judge Rathi must, however, be weighed with the doctor’s progress notes at Meditrina hospital. The death summary (extracted earlier) specifically adverts to the fact that the patient was taken to Dande hospital earlier where an ECG was done. Dr Dande has made the same statement. The progress notes also note a “tall ‘T’” in the anterior lead which indicates that the ECG was seen by the doctors attending to Judge Loya at Meditrina hospital. These progress notes are contemporaneous, since they also form part of the communication addressed by Dr NB Gawande at Meditrina to the PSI at Sitabardi on the same day after the judge had been brought dead to the hospital. As a matter of fact, it is this very ECG which forms the subject matter of the submissions which have been urged by one of the intervenors, for whom Mr Prashant Bhushan appears. Having regard to the fact that the ECG has been specifically mentioned in the progress notes of the doctor at Meditrina hospital, we find no reasonable basis to infer that no ECG was done at Dande hospital.

50 The statements of the four judges are called into question by Mr Dave, counsel for the petitioners, pointing out certain alleged inconsistencies. It has been urged that the Caravan article states that no car was available at 4 am on 1 December 2014 at Ravi Bhavan and hence Judge Loya was transported by

an auto-rickshaw to Dande hospital. Mr Dave criticised the conduct of the judicial officers and submitted that it is inconceivable that at a government guest house, a car and driver would not have been available even in the early hours of the morning. The submission lacks merit. Judge Kulkarni has stated that Judge Loya was taken in Judge Barde's car to Dande hospital. Judge Modak also notes that Judge Loya was shifted by car to Dande hospital and thereafter to Meditrina. This is confirmed in the statements of Judge Barde and Judge Rathi. The allegation that Judge Loya was not provided even a car to travel from Ravi Bhavan to Dande hospital and onwards to Meditrina is a red-herring.

51 Another submission urged by Mr Dave is that the judicial officers did not meet the family of Judge Loya in Mumbai soon after the death. Judge Modak in his statement observes that he and Judge Kulkarni met the relatives of Judge Loya at his Haji Ali residence after a few days. The suggestion that this is callous, is unfortunate, besides being incorrect. It must be remembered that the family of Judge Loya had proceeded to Gategaon for the funeral. Can the circumstance that Judge Kulkarni and Judge Modak met the family a few days later in Mumbai have a bearing on their sense of humanity, as Mr Dave urged? The obvious answer is in the negative.

52 Then it was sought to be urged that if Judge Loya had suffered a heart attack around 0400 hours, he would not be wearing a trouser and shirt which the inquest report records. This is another submission which has been urged to cast doubt on the sequence of events as set out in the statements of the four

judicial officers. Now a close reading of Judge Rathi's statement indicates that when he reached Ravi Bhavan and met Judge Modak and Judge Kulkarni, Judge Loya was attending to a call of nature. It is evident from the statement that Judge Loya, when he left Ravi Bhavan was not unconscious and was complaining of chest pain and heart burn. To urge that the depiction of the clothes worn by Judge Loya casts doubt on the sequence of events narrated by the judicial officers is hence untenable.

53 Another submission is that if the four judges had accompanied Judge Loya to hospital, then as colleagues they would not have indicated his name to be Brijmohan instead of Brijgopal. This is but another attempt to cast doubt on the version of the four judicial officers without a substantive basis or foundation. Judge Loya was taken to hospital in an emergency. The normal course of human events would indicate that his four colleagues would be more concerned about getting Judge Loya attended than filling up an admission form. A mistake did occur in recording his name as Brijmohan instead of Brijgopal. In our view, this cannot be a ground to discredit the detailed factual narration made by the four judicial officers who were with him. Two of them – Judge Kulkarni and Judge Modak – were with Judge Loya from the time that the three officers left Mumbai for the wedding at Nagpur and until Judge Loya died on 1 December 2014. They have provided a trustworthy account of their schedule since they left Mumbai. All of them travelled together, stayed together, visited local judges at

Nagpur, attended the wedding and remained in the company of each other and their friends in the judicial fraternity.

54 Ms Jaising sought to rely on a photograph of a room in Ravi Bhavan and wondered how three judges would have shared a room. Judge Kulkarni has referred to the fact that a VIP suite was booked at Ravi Bhavan. Judge Modak and Judge Barde support the position. The account provided by the judge cannot be discredited on the basis of surmises. The occupancy register does show that the room was in the name of Judge Kulkarni. His account is that his two friends and colleagues (Judge Loya and Judge Modak) shared the accommodation with him. It is unfair to disbelieve this account of colleagues in the district judiciary. They were friends, known to each other and had stayed together at Ravi Bhavan during the short trip to Nagpur. No counsel has suggested that they were not closely acquainted to each other.

55 The date of the death in the post-mortem is not mentioned as 7 December 2014, as submitted by Ms Jaising during the course of her submissions. The date of death is clearly mentioned as 1 December 2014. The hospital bill of Rs 4290 at Meditrina is criticised on the ground that it contains, *inter alia*, neurological charges and charges for diet consultation. It must be noted that the issue in the present case is not whether the bill which was prepared at Meditrina amounts to negligence. The charge for dietary consultation is erroneous. But that cannot be a ground to discredit the fact that Judge Loya was

taken to Meditrina. That he was taken to Meditrina is clear from the documentary material on the record and the consistent statements of all the four judicial officers.

56 The handing over of the body to Dr Prashant Rathi cannot be faulted. The family of Judge Loya took a considered decision that they would proceed to his home town, Gategaon, for the funeral ceremonies. The report of the discreet inquiry contains an elaborate reference to the fact that Dr Prashant Rathi who was stationed at Nagpur was contacted by a relative in Aurangabad, requesting his help on 1 December 2014. Dr Rathi has in his statement made a factual explanation about how he was contacted by his relative and asked to assist in the formalities for Judge Loya. The presence of Dr Rathi cannot be doubted, having regard to the contemporaneous documentary material including the accident summary.

57 Similarly, a fair amount of critical comment has been devoted by counsel for the petitioners and intervenors to (i) why the family of Judge Loya was not brought to Nagpur by a flight from Mumbai after the death had occurred; and (ii) why, as alleged, in the Caravan article, the body reached Gategon for the funeral rights unaccompanied. It is necessary to emphasise that both these submissions have no bearing on whether the death of Judge Loya was due to natural causes or otherwise, since they relate to events which took place after his death. But it is necessary in the present judgment to discuss the

submissions because on a close analysis they are evidently unfounded. That the family of Judge Loya did not travel to Nagpur after they received intimation of his death, is a fact. If the family decided that the funeral should be held at the place to which he belonged namely, Gategon near Latur, this was a decision personal to the family. Judge Loya had died. If a considered decision was taken by the members of his family to proceed to Gategon instead of travelling first to Nagpur and then traversing a distance of nearly 450 kilometres by road to the place where the funeral was to be held, such a decision has to be respected. Moreover, the allegation that the body was sent unaccompanied to Gategaon is contrary to what has emerged on the record. Judge Kulkarni in the course of his statement made a reference to the fact that while the body was sent by an ambulance to the place where Judge Loya originally belonged, two judicial officers from Nagpur were also sent in another car to accompany the body. Judge SM Modak in his statement dated 24 November 2017 specifically notes that Shri Sonawane, the Principal District Judge then at Nagpur, deputed two local judges to accompany the dead body. Judge VC Barde has also stated that after the conclusion of the post-mortem at about 11 am, the dead body was sent in an ambulance to the native place of Judge Loya and two judges; Judge Rahangdale and Judge Chopda accompanied the body. The report of the discreet inquiry by the Commissioner, SID contains the following observation:

“4.4 Mr Loya's body was sent to village Gategaon in Latur in an ambulance provided by Mr Pawankumar Bhagat, Ambulance-Incharge of Meditrina Hospital. Two magistrates [Mr Yogesh Rahangdale & Mr Swayam Chopda) were sent by the then Principal District Judge, Nagpur, Mr Sonawane along with the mortal remains of Mr Loya to Gategaon, Latur. The

question sought to be replied vide CARAVAN report as "*why was his body not accompanied by anyone?... is a clear attempt to mislead the readers as the facts are otherwise.*"

58 There is no reason for this Court to doubt the statements of Judge Kulkarni, and Judge SM Modak. Both of them and Judge Loya stayed at Ravi Bhavan guest house, where a VIP suite was booked. All the three judicial officers were invited for a wedding in the family of a colleague who in December 2014 was the Member Secretary of Maharashtra State Legal Services Authority. Judge Kulkarni, Judge Modak and Judge Loya travelled together by the same train from Mumbai to Nagpur on 29 November 2014 and arrived in Nagpur on the morning of 30 November 2014. They proceeded to Ravi Bhavan where a suite was reserved. During the course of the day, the three judicial officers visited the residences of two judges of the High Court at Nagpur, Justice SB Shukre and Justice PR Bora. They visited the home of Shri Barde and were together all along. They went to the market, returned to Ravi Bhavan and attended the wedding reception in the evening. After dinner the three judges returned to Ravi Bhavan a little before midnight. Judge Modak is also clear in the details that he offers. All the three judges who were accompanied by Judge Mahajan stopped by at a pan shop before they came back to Ravi Bhavan. The fact that all the three judges stayed together is the consistent account which emerges from the statements of Judge Modak and Judge Kulkarni which is corroborated by the statement of Judge Barde. There is no basis for the court to doubt the veracity of the natural account of the above three judicial officers (Judge Kulkarni, Judge Modak and Judge Barde). The court is requested to do

so on the ground that the entry in the register at Ravi Bhavan mentions the name of Judge Kulkarni but does not contain any reference to the occupancy of Judge SM Modak or Judge Loya. Judge Kulkarni has expressly stated that a VIP suite was booked at Ravi Bhavan. We must lean in favour of the version of the four judicial officers unless strong and indisputable circumstances are shown to doubt their credibility. This would be in the larger public interest, to uphold the independence and integrity of the institution. This is corroborated by a photocopy of the occupancy register which has been produced on record. All the three judicial officers were invited for the same event. If as friends and colleagues, they decided to share one room, that cannot be regarded as an unnatural course of conduct. There is no reason for this court to discard the consistent statements of the three judicial officers by engaging in surmises of the nature which are sought to be drawn by counsel for the petitioners. In fact, though nothing would turn on it, it is a matter of some interest that even the article that was published in the Caravan on 20 November 2017 records Judge Loya having had a conversation with his wife on the night of 30 November 2014 and informing her of the fact that he was staying at Ravi Bhavan together with the judges who had accompanied him to Nagpur.

59 At this stage, we must also make a reference to certain other matters to which a reference has been copiously made on behalf of the petitioners to cast doubt on the circumstances in which Judge Loya had died. The first submission is that contrary to the directions that were issued in the judgment of this Court

in its decision in **CBI v Amitbhai Anil Chandra Shah (supra)**, JT Utpat who was nominated by the Administrative Committee of the Bombay High Court to preside over the criminal trial was transferred on 25 June 2014. It has been urged that since the Court had on 27 September 2012 directed that the Administrative Committee would ensure that the trial is conducted from the beginning to the end by the same officer, JT Utpat ought not to have been transferred. We must note at this stage that Mr Dave appearing on behalf of the petitioners has categorically stated that the court should in the present proceedings, confine itself to the issue as to whether Judge Loya had died a natural death or otherwise. The issue as to whether Judge JT Utpat could have been transferred has no bearing on the circumstances in which Judge Loya died. Mr Rohtagi appearing on behalf of the State has urged that the trial was yet to begin and hence the transfer of Judge JT Utpat on his request cannot be faulted. We clarify that it is not necessary to express any opinion on the submission of Mr Rohtagi since we are of the view that the transfer of the earlier judge and the appointment of Judge Loya in June 2014 has no bearing on whether Judge Loya's death on 1 December 2014 was due to natural causes.

60 The petitioners have sought to rely upon the allegations against the then Chief Justice of the Bombay High Court, Shri Justice Mohit Shah made by the father and sister of Judge Loya. Reliance has also been placed on a handwritten note dated 18 February 2015 purportedly scribed by Anuj Loya after a meeting with the Chief Justice of the Bombay High Court, who had come to visit

the family. The video recording of an interview given to Caravan by the father and sister of Judge Loya was also handed over to the court on a pen drive. The members of the family of Judge Loya have disassociated themselves from the statements attributed to them in the Caravan publication. The video recording, which we have seen, contains snippets of an interview. Evidently, only a part of the interview has been produced. The allegations against the Chief Justice of the Bombay High Court are hearsay.

61 During the course of his submissions in rejoinder, Mr Dave has attempted to discredit the discreet inquiry conducted by the Commissioner of the SID urging that the statement of Dr Prashant Rathi was recorded on 22 November 2017 by the Police Inspector (Crime) police station Sadar, before the state government had ordered a discreet inquiry on 23 November 2017. The submission is based on the hypothesis that the statement of Dr Rathi was recorded as a part of the discreet inquiry. This is seriously disputed by Mr Rohtagi who urged that the statement was recorded by the Sadar police station on 22 November 2017 after the articles in the Caravan had appeared on 20 and 21 November 2017. The discreet enquiry was held by the Commissioner, SID. Be that as it may, the presence of Dr Prashant Rathi is established in the accidental death summary (AD 00/14) dated 1 December 2014, in the inquest report, the receipt executed on 1 December 2014 by Sitabardi police station on handing over the dead body, and in the accidental death summary (AD 44/14) recorded by Sadar police station at 1600 hours on 1 December 2014. In the

face of the contemporaneous documentary material, the statement of Dr Rathi recorded on 22 November 2017 cannot be construed as something which casts doubt on the validity of the discreet inquiry.

### **Application for cross-examination**

62 During the course of his submissions, Mr Dave moved an application for cross-examination of the following persons whose statements were recorded during the course of the discreet inquiry:

“1 Mr Sajeed Barve, Director General/Commissioner, State Intelligence Department, Maharashtra,

2 Dr Prashant Bajrang Rathi, Resident of Sai Regency, Ravi Nagar, Nagpur,

3 Mr Niranjana Takle, Reporter of CARAVAN,

4 Shri Srikant D Kulkarni, Member Secretary, Maharashtra State Legal Service Authority,

5 Shri SM Modak, Principal District Judge, Pune,

6 Shri Vijay C Barde, Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay,

7 Dr Pinak Gangadhar Rao Dande, Ram Nagar, Nagpur,

8 Shri Anuj Brij Gopal Loya s/o Late Sh. BH Loya,

9 Smt Sharmila Brij Gopal Loya w/o Sh BH Loya

10 Shri Hari Kishan Ramchandra Loya, f/o Late Sh BH Loya,

11 Dr Anuradha Balaprasad Biyani, sister of Late Sh BH Loya.”

63 Order IX of the Supreme Court Rules 2013 deals with Affidavits. Rules 1 and 2 provide as follows:

“1. The Court may at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

2. Upon any application evidence may be given by affidavit; but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent, and such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court or the Court otherwise directs.”

Rule 1 empowers the court to allow facts to be proved on affidavit for sufficient reason. However, if the court is of the view that the production of a witness for cross-examination has been desired by a party bona fide and that such a witness can be produced, an order shall not be made authorising the evidence of the witness to be given by affidavit. Under rule 2, a discretion is vested in the court to order the attendance for cross-examination of the deponent of an affidavit. Under Order IX, a discretion is vested in the court to allow cross-examination of a person who has filled an affidavit. A party to a proceeding before this court –particularly a proceeding under Article 32 – cannot demand as of right the production of a person, who has filed an affidavit, for cross-examination. Whether cross-examination should be allowed has to be determined by the court having regard to the interests of justice. Mr Dave submitted that this court should, in the first place, direct that the above persons should file affidavits before this court and that upon the filing of those affidavits, they should be produced for cross-examination by him. In support of his

submissions Mr Dave relied a few decisions of this court. In **K.K. Kochunni v State of Madras(supra)** this Court held:

“12... it is possible very often to decide questions of fact on affidavits. If the petition and the affidavits in support thereof are not convincing and the court is not satisfied that the petitioner has established his fundamental right or any breach thereof, the Court may dismiss the petition on the ground that the petitioner has not discharged the onus that lay on him. The court may, in some appropriate cases, be inclined to give an opportunity to the parties to establish their respective cases by filing further affidavits or by issuing a commission or even by setting the application down for trial on evidence, as has often been done on the Original sides of the High Courts of Bombay and Calcutta, or by adopting some other appropriate procedure. Such occasions will be rare indeed and such rare cases should not, in our opinion, be regarded as a cogent reason for refusing to entertain the petition under Article 32 on the ground that it involves disputed questions of fact.”

In **CS Rowjee v State of AP**<sup>24</sup> this Court held:

“16. It is, no doubt, true that allegations of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation, in fact, are made in several of the cases which have come up before this and other courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of it at least might stick. Consequently it has become the duty of the Court to scrutinise these allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact. In this task which is thus cast on the courts it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made came forward to place before the court either their denials or their version of the matter, so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of mala fides on the part of authorities of the status of those with which this appeal is concerned, have discharged their burden

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<sup>24</sup> (1964) 6 SCR 331

of proving it. In the absence of such affidavits or of materials placed before the Court by these authorities, the Court is left to judge the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer. This is precisely the situation in which we find ourselves in the present case.”

Reliance was placed on the decision in **Sher Singh in Re**<sup>25</sup>.

The submission which has been urged is based on a mis-appreciation both of the role of the petitioners and on the scope of these proceedings. The petitioners have moved this court in a petition filed in the public interest. Their position is that of a relator who seeks to bring a grievance to the attention of the court for the purpose of seeking a court mandated inquiry. None of the persons whose cross-examination has been sought is a witness in the present proceedings. The court is essentially required to consider to whether a case has been made out on behalf of the petitioners (supported by the intervenors) for directing an inquiry into the circumstances leading to the death of Judge Loya. As part of this process, the court has to decide as to whether the inquiry which has been conducted by the state is vitiated and if circumstances have been brought to the notice of the court which cast a reasonable suspicion about the events leading upto the death of Judge Loya. The petitioners cannot assert as of right that they should be allowed to cross-examine a host of persons including the doctors and judicial officers. By casting unfounded aspersions on the judicial officers who had accompanied Judge Loya, the petitioners have revealed the real motive of these proceedings which is to bring the judiciary into

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<sup>25</sup> (1997) 3 SCC 216

disrepute on the basis of scurrilous allegations. We find no basis or justification to allow the request for cross-examination. The application shall accordingly stand rejected.

### **Intervention by Centre for Public Interest Litigation**

64 Mr Prashant Bhushan appeared in these proceedings at the stage of the rejoinder. This was after the learned counsel appearing on behalf of the petitioners and intervenors had addressed the court and the court had heard submissions on behalf of the State of Maharashtra. The Centre for Public Interest Litigation which Mr Prashant Bhushan represents as counsel has sought to intervene by an application<sup>26</sup>. The application relies on a report in Caravan published on 11 February 2018 stating that the post-mortem and histo-pathology reports were sent to a forensic expert, Dr RK Sharma, formerly attached to AIIMS, and that Dr Sharma has ruled out the possibility of the death being due to a heart attack. Moreover, it has been stated that the documents indicate signs of trauma to the brain. Hence, it was urged that poisoning cannot be ruled out. The application for intervention states that the intervenor obtained a set of documents from Caravan, including the histo-pathology report and a copy of the ECG done at Dande hospital. Mr Prashant Bhushan claims to have forwarded the ECG and histo-pathology report to Dr Upendra Kaul, a former professor of Cardiology at AIIMS. Mr Prashant Bhushan himself addressed an

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<sup>26</sup> I.A.No.31086 of 2018

e-mail to Dr Upendra Kaul seeking his professional opinion on certain queries. Dr Kaul responded that the ECG “most unlikely.. has no evidence of a recent myocardial infarction”. Moreover, it has been stated that the histo-pathology of the heart mostly indicates that it was normal and that the coronary artery block in the LAD “could be” an innocent bystander. The application for intervention also states that Mr Prashant Bhushan who is a member of the intervenor has spoken to other reputed cardiologists who are of the same opinion.

65 The affidavit in support of the application for intervention has been sworn by Mr Prashant Bhushan personally. Mr Prashant Bhushan appeared on behalf of the intervenor as its counsel during the course of the hearing and not as a party in person.

66 In response, Mr Mukul Rohtagi has placed on the record copies of two letters dated 14 and 16 February 2018 addressed to Dr Sidharth Gupta, Head of the Department of Forensic Medicine at AIIMS by the Senior Police Inspector at PS Sadar, Nagpur. A clarification was specifically sought in regard to the opinion furnished by Dr RK Sharma. In a response dated 3 March 2018, Dr Abhishek Yadav, Assistant Professor and Member Secretary, Departmental Committee, Department of Forensic Medicine, AIIMS has stated that besides constituting a committee of three doctors to examine the issue, AIIMS had addressed a letter seeking a clarification from Dr RK Sharma. The letter extracts the following reply sent by Dr RK Sharma to AIIMS:

“Thanks for your mail, I would like to state that I have been grossly misquoted by Caravan magazine regarding death of Judge Loya. The conclusions drawn are imaginary. I had general discussion with the reporter. I do not agree with contents of report published which are ascribed to me. I have not given any report regarding death of Judge Loya.”

The letter dated 3 March 2018 from AIIMS accordingly contains the following clarification:

“In continuation of the previous reply dated 16.2.2018, it is added that no doctor from the Department of Forensic Medicine has given any opinion about the death of Judge Loya in official or individual capacity to the Caravan Magazine or any other media agency. It is further reiterated that AIIMS New Delhi has a fixed protocol to respond only to official written request from the Government agency or Honourable Court with all the Mandatory corroborative investigating documents including Medical Documents for Medicolegal opinion and without the same holistic opinion can't be formed for the perusal by law.”

The clarification issued by AIIMS indicates that Dr Sharma has categorically stated that he was grossly misquoted by Caravan magazine and that he does not agree with the contents of the report ascribed to him. It may also be noted that by a previous reply dated 16 February 2018 Dr Sidharth Gupta of AIIMS had stated thus:

“In reference to above, Kindly note that, AIIMS, New Delhi has a fixed protocol to respond only to the official written request from the government investigating agency or Honourable court with all the MANDATORY corroborative investigating documents including medical documents, details of scene investigation along with the interaction with the doctors who conducted the post-mortem, for medico legal opinion, since

without the same, holistic opinion can't be formed for the perusal by law.”

From the material on the record it is evident that an effort has been made by Mr Prashant Bhushan to collect evidence to somehow bolster the case of the petitioners, acting in his personal capacity. A questionnaire in the form of leading questions was addressed by him to Dr Upendra Kaul, formerly at AIIMS, upon which a reply was obtained. The court has been apprised of the fact that following this, the senior police inspector at Sadar police station addressed a communication on 11 February 2018 to Dr Harish Pathak, Professor and Head of the Department of Forensic Medicine, KEM Hospital, Mumbai seeking his opinion on the basis of the report of the Regional Forensic Science Laboratory, the ECG, MLC papers and Meditrina hospital documents and histo-pathology report of the Government Medical College. In response, Dr Pathak by his e-mail dated 14 February 2018 sought additional documents. These were furnished by the Senior Police Inspector, Sadar. Dr Harish Pathak has in a detailed and considered opinion categorically stated that the conclusion of the post-mortem that the death was due to coronary artery insufficiency is valid and is in accordance with medical knowledge on the subject. The opinion has been supported by references to medical texts.

67 The opinion of Dr Harish Pathak is extracted below:

“I have carefully perused the following documents:

1. Autopsy note of Shri Loya
2. ECG report

3. Histopathology report.
4. ADR.
5. Panchnama.
6. C.A. Report.
7. Statement of Dr Rathi, Dr Gavande, Dr Harkut, Dr Ganar.
8. Hospital (Meditrina) reports (Progress notes & MLC).
9. Two Articles from the Caravan magazine dated 26/01/18 & 11/02/18.

Based upon all the documents made available to me and the recent medical literature, I would like to state as under:

1. As per Doctor's progress notes of Meditrina Hospital (**Annexure, 1 Page 1**) and statement given by Dr Pankaj Harkut (**Annexure 2, Page 2**),

On 01<sup>st</sup> December 2014, at around 04 am (As per Autopsy notes). When Mr Brijgopal H Loya complained of chest pain and restrosteral pain. (Doctor progress Notes Annexure 1)

According to **Principles of Internal Medicne, Harrison,** (**Annexure 3, Page 4**) Chest discomfort is among the most common reasons for which patients present for medical attention at either an emergency department or an outpatient clinic. Retro-sternal pain is the typical clinical feature of myocardial ischemia (**Annexure 3, Table on Page 5**). Chest discomfort associated with *Myocardial Infraction* is typically more severe, is prolonged usually lasting more than 30 minutes and is not relieved by rest (**Annexure3, Page6**).

According to Oxford Dictionaries, (URL: <https://oxforddictionaries.com/definition/us>)

*Retro-sternal: Behind the breastbone.* (**Annexure 4, Page7**)

(Retrosternal chest pain is pain felt behind the sternum bone- a flat bone located in the middle of the chest. This bone may also referred to as the breastbone)

*Myocardium:* The muscular tissue of the heart. (**Annexure5, Page 8**)

*Ischemia :* An inadequate blood supply to an organ or part of body, especially heart muscles. (**Annexure 6, Page 9**)

*Infraction:* Obstruction of the blood supply to an organ or region of tissue, typically by thrombus or embolus, causing local death of tissue. (**Annexure 7, Page 10**)

2. The ECG showed tall "T-waves" in the anterior leads. This is consistent with the history indicative of myocardial ischemia.

According to **Principles of Internal Medicine, Harrison,**

Tall, positive hyperacute T waves are the earliest stages of ischemia. (**Annexure 8, Page 12**)

3. DOCTOR'S PROGRESS NOTES (**Annexure 1 Page 1**) indicate that Mr Brijgopal H Loya was brought to Meditrina Institute of Medical Sciences with cardiac arrest in collapsed condition.

In spite of all resuscitative measures, he could not be revived and declared dated at 06:15 am on 01/12/2017 at Meditrina Hospital. (**Annexure 1, Page 1, Annexure 16 Page 32, Annexure 17, Page 34**)

4. According to the statement of Dr Pankaj Harkut, Director of Cardiology centre at Meditrina Institute of Medical Sciences, he had reviewed the ECG from Dhande Hospital which in his opinion showed tall T-Waves. (**Annexure 2, Page 2a**)

As per, **American Journal of Emergency Medicine (2007)**, Hyperacute T wave, the early sign of myocardial infraction; 25, 859. E1 -859. e7

The three main differential diagnoses of HATW (hyper acute T waves) on electrocardiogram are : (i) left ventricular hypertrophy, (ii) hyperkalemia and (iii) early repolarization variant. (**Annexure 9, Page 13**)

5. As per the statement of Dr Ninad D Gavande, MBBS, MD FMT, attached as honorary medico-legal consultant at Meditrina Hospital he had reviewed all relevant documents before the body was forwarded for autopsy examination. (**Annexure 16, Page 33**)

The body was shifted to Government Medical College mortuary and Panchnama was done wherein no external marks of injuries were noted.

6. Autopsy examination was conducted on 01-12-2017 from 10:50am to 11:55 am at Government Medical College Nagpur, by Dr N K Tumram, who was then working as a lecturer at Forensic Medicine Department, Nagpur.

At autopsy examination, no external marks of injuries were found and on internal examination, following significant observations were made.

7. With regard to autopsy notes and observations therein, my opinion on the findings with their medico-legal interpretation and relevance along with authorities which are being attached as annexures.

## 7A “Dura congested”

According to Snell’s Textbook of Anatomy, Dura is a fibrous tissue (**Annexure 10, Page 15**)

It does not have blood supply in order to show the signs of congestion.

Autopsy surgeon is expected to see if dura is intact and probably he meant to comment the Meanings, which are the outer coverings of brain and their congestion in normally seen in most of the cases of sudden cardiac deaths.

Hence the entire argument in caravan magazine about congestion of Dura and thereby it being the indication of head injury is unscientific, and devoid of any rationale.

**7B. “Heart congested, weighing 320 grams – Evidence of atherosclerosis in left coronary and left anterior descending coronary artery with calcification and luminal narrowing of 100 percent 01 cm distal to its origin and 90 % 02cm distal to its origin respectively. Evidence of hypertrophy of left ventricle present”.**

According to Principles of Internal Medicine, Harrison,

Myocardial ischemia also can occur if myocardial oxygen demands are markedly increased and particularly when coronary blood flow may be limited, as occurs in severe left ventricular hypertrophy due to aortic stenosis.

“..an increase in oxygen demand due to left ventricular hypertrophy secondary to hypertension and a reduction in oxygen supply secondary to coronary atherosclerosis and anemia. Abnormal constriction or failure of normal dilation of the coronary resistance vessels also can cause ischemia.’ (**Annexure 11, Page 17**)

**7C. “Large vessels intact, evidence of atherosclerotic changes present in the inner walls of arch of aorta., ascending aorta” – No comment is required.**

**7D. “Abdomen- All organs were congested and stomach contains 10 ml of yellowish juicy material, with no peculiar odour” – No comment required.**

8. Routine viscera were preserved for chemical analysis and the report of the same did not reveal any presence of poison. Pieces of brain, lungs, liver, heart, spleen, both kidneys, left descending aorta were preserved for histopathology examination. The result of histopathology examination are not inconsistent with the observations at autopsy examination described and explained as above.

**As to claims made by Newspaper Article:**

8.1. No Claim of Myocardial Infraction in the Histopathological report (**The Caravan, Annexure 19, Page 46**)

- The earliest signs of Myocardial Infraction which can be detected through naked eyes and histopathological examination appears not before 12 to 24 hours after the survival after acute coronary insufficiency. (**Annexure 12, Page 20**)
- Dr Bernard Knight, in his book KNIGHT'S FORENSIC PATHOLOGY writes, "Most sudden deaths from Coronary artery insufficiency do not have Myocardial Infraction, even when the most sophisticated techniques are employed for its detection. Neither do the majority have a coronary thrombosis, though severe coronary stenosis is by definition present. (**Annexure 12, Page 23**)
- A narrowing of the lumen to 01mm or lesser at a minimum of one point is required to diagnose of Ischemic Heart Disease. (**Annexure 13, Page 25**)
- The lesions associated with atherosclerosis can be graded from Grade I to IV, based on percentage of narrowing of lumen of Coronary artery, where Grade IV signifies thickening and calcification of wall of coronary artery with narrowing of lumen more than 75 %. (**Annexure 13, Page 26**).
- Significant obstruction of the coronary artery lumen requires 75 % narrowing of the lumen (**Forensic Pathology, Vincent J DiMaio, Annexure 14, Page 28**)

In the present case, severe stenosis (Narrowing) in left coronary 100 % and left anterior descending 90 % was observed and noted at autopsy. The findings are consistent with the cause of death due to acute coronary insufficiency. Hence I do not find any merit in the said argument.

8.2 Once coronary arteries are calcified, one cannot die due to heart attack (**The Caravan, Annexure 19, Page 46**)

- This is highly unscientific interpretation as calcified arteries can be blocked by the dislodged thrombus and I find no merit in it and disagree with this opinion.

8.3 Once person alive for 30 minutes after symptoms condition of heart will have clear signs, (**The Caravan, Annexure 19, Page 47**)

- Nowhere in the medical literature I have come across such observation. In fact, the earliest signs do not appear before 12 hours. (**Annexure 12, Page 20**)
- The fact gross changes in the myocardial tissue appears only 18-24 hours post ischemia/infarction. (Practical Cardio Vascular Pathology, Mary N Sheppard **Annexure 15, Page 31**)

8.4 No conclusive evidence of coronary artery insufficiency. (**The Caravan, Annexure 19, Page 47**)

- Following evidences are sufficient to reach to the conclusion of acute coronary insufficiency:
  - (a) Initial symptoms narrated by the deceased to the witnesses and the doctors at first hospital.
  - (b) ECG findings.
  - (c) Coronary Artery Blockage seen at autopsy

Hence, I find no merit in the argument and disagree with the same.

8.5 Blood stains over neck, cloths are indicative of heart injury (**The Caravan, Annexure 19, Page 47**)

- According to inquest panchnama and post mortem report, there deceased was wearing Grey Full Sleeve Shirt and blue color jeans pant with black belt. There is no mention of any blood stains.
- When clothes are put back on the body after autopsy by the mortuary attendants, the precision and neatness of clothing cannot be compared to the way a living person may dress.
- After autopsy examination is over, the incisions over neck, chest, abdomen and head on the dead body are sutured after putting the dissected organs back in to the cavities. In spite of every precaution being taken to make sure that there is no leakage of post mortem blood from the stitched post mortem wounds, sometimes, minor leakage of blood tinged body fluid can happen. The chances of such leakage become high when bodies are being transported for long distances as it had happened in the present case.

8.6 Every single item is congested hence possibility of poisoning. (**Annexure 19, Page 17**)

This is absolutely unscientific opinion. In case of sudden cardiac deaths when heart suddenly stops beating, presence of congestions of almost all the organ is an expected finding. In fact, congestion is such a common and nonspecific finding

in many cases that one cannot in ordinary course of nature make much significant interpretation of it.

8.7 Question about chain of custody. (**The Caravan, Annexure 19, Page 47**)

- The bottles containing viscera for chemical analysis are always sealed by medical officer and handed over to the police. If Chemical analyser observes any tempering with the seal, he reports about the same. Since no such report exists, it would be unreasonable and unjustifiable to doubt sanctity of evidence.

8.8 The Deceased had healthy life style and no family history of heart disease hence could not have died due to sudden cardiac arrest at the young age of 48 years. (**Caravan, Annexure 19, Page 48**)

- Family history of cardiac illness only makes a person more prone to the risk of cardiac disease but does not rule out the possibility of the same among the persons without such history.

**9. Conclusion:**

On careful perusal of all documents made and relevant medical literature on the subject, it is my opinion that,

1. Late Shri Brijgopal Harikisan Loya died due to acute coronary insufficiency, which was a sudden natural death.
2. There was no evidence to suggest any inconsistencies in the history, clinical findings and autopsy report made available to me.
3. Claims of foul play and suspicions in the articles in *The Caravan* made are unscientific and incorrect, as explained by me in this report with relevant references.

Dr Harish M Pathak  
Professor & Head  
Forensic Medicine & Toxicology  
Seth GSMC & KEM Hospital, Mumbai."

68 We are not really considering here whether the opinion of Dr Pathak should be preferred to what was opined by Dr Kaul. The point of the matter is

that facts have emerged from the record which indicate that a carefully orchestrated attempt has been made during the course of these hearings on behalf of the Centre for Public Interest Litigation to create evidence to cast a doubt on the circumstances leading to the death of Judge Loya. In their practice before this court, Counsel are expected to assist the court with a sense of objectivity in aid of justice. What has happened here is that Mr Prashant Bhushan has adopted a dual mantle, assuming the character of a counsel for the intervenor as well as an individual personally interested on behalf of the intervening organisation of which he is a member. He has gone to the length of personally collecting evidence to somehow bolster the case. The manner in which the opinion of Dr Kaul was obtained on the basis of a laconic questionnaire leaves much to be desired and is a singular reflection on the lack of objectivity which is to be expected from counsel appearing before this Court. This has bordered on an attempt to misrepresent the facts and mislead the court.

69 During the course of his submissions, Mr Dave filed before this Court a compilation, inter alia, consisting of a proceeding instituted under Section 482 of the Cr PC (Criminal Application 824 of 2014) before the Nagpur Bench of the Bombay High Court by five petitioners for quashing a criminal case pending on the file of the Joint Civil Judge, Junior Division and JMFC, Nagpur. The fourth petitioner in the proceeding is Devendra Gangadhar Fadnavis, the Chief Minister of Maharashtra. The case relates to an incident which took place on 7

June 1991 on account of the removal of certain construction in Nagpur. As a result, two crimes came to be registered for offences under Sections 147, 148, 149, 294, 448, 324, 336 and 427 of the Penal Code. The Division Bench of the High Court noted, that though the incident was of 1991, not much progress has been made in that case and with the passage of time, the dispute was amicably settled between the parties who are residents of Nagpur localities. The Bench of the Bombay High Court at Nagpur, consisting of BR Gavai and VM Deshpande, JJ, relied upon a decision of this Court in **Narinder Singh v State of Punjab**<sup>27</sup> and held thus:

“The Apex Court in the case of Narinder Singh and Others vs State of Punjab and Others, (2014) 6 SCC 466 has laid down various guidelines to be followed by this Court while exercising its power under Section 482 of the Code of Criminal Procedure for quashing criminal proceedings. One of the guidelines laid down by the Apex Court is that normally this Court would not entertain an application for quashing the proceedings wherein an element of public law is involved. In the present case, perusal of the record would reveal that the proceedings came to be initiated against each other out of a dispute which is purely private and where no element of public law is involved. Another guideline laid down is that if there is no possibility of trial being culminated into conviction, this Court should exercise powers under Section 482 of the Code of Criminal Procedure to give an end to the criminal proceedings. Since the parties have agreed to give an end to the dispute amongst themselves, there is not even a remote possibility of trial ending into conviction. We, therefore, find that it would be in the interest of justice to accept the settlement between the parties and to give an end to the criminal proceedings so that the parties are in a position to maintain peace and harmony in the area where they reside.”

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<sup>27</sup> (2014) 6 SCC 466

The criminal case was accordingly quashed. Mr Dave has gone to the extent of insinuating that one individual is controlling the entire judiciary in Maharashtra and elsewhere.

70 We are rather surprised at the manner in which an insinuation has been made by producing the above order, which was passed in completely unrelated proceedings. The insinuation is against the judges of the Bombay High Court at Nagpur for having quashed a criminal case in which the present Chief Minister was involved. We are not called upon to evaluate the merits of the decision, save and except to note that the High Court in quashing the proceedings placed reliance on a decision of this Court and had noted that the dispute was admittedly private in nature where no element of public law was involved. The attempt of the petitioners is to create prejudice and to malign the dignity of the judges, particularly of Justice BR Gavai. Copies of the criminal application and of the order of the Bombay High Court form part of the same compilation in which is also annexed a copy of the article published in the Indian Express of 27 November 2017, referring to the statements of Justice Gavai and Justice Shukre. This is another instance in the course of the hearing of the present case where a matter extraneous to the subject of the inquiry before the court has been sought to be relied upon to somehow sensationalise the case. What is worse is the manner in which wholly unfounded aspersions have been cast on the judges of the Bombay High Court following a decision

which has been taken in the judicial capacity. This constitutes a serious attempt to scandalise the court and obstruct the course of justice.

### **Public Interest Litigation**

71 Public Interest Litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in **Bandhua Mukti Morcha v Union of India**<sup>28</sup>. Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and under trials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the

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<sup>28</sup> (1984) 3 SCC 161

adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable instrument and jurisdictional tool to promote structural due process.

72 Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly mis-utilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this court in **State of Uttaranchal v Balwant Singh Chauhal**<sup>29</sup>. Underlining these concerns, this court held thus:

“143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.”

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<sup>29</sup> (2010) 3 SCC 402

73 The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this court and the High Courts are flooded with litigation and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a

danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space.

74 The present case is indeed a case in point. Repeatedly, counsel for the petitioners and intervenors have attempted to inform the court that they have no personal agenda and that they have instituted these proceedings to protect judicial independence. An aura of good faith has been sought to be created by submitting that the true purpose of seeking an inquiry into the circumstances relating to the death of Judge Loya is to protect the district judiciary. But as the submissions have evolved, it has become clear that the petition is a veiled attempt to launch a frontal attack on the independence of the judiciary and to dilute the credibility of judicial institutions. Judicial review is a potent weapon to preserve the rule of law. However, here we have been confronted with a spate of scurrilous allegations. Absent any tittle of proof that they are conspirators in a murder the court must stand by the statements of the judicial officers. The judges of the district judiciary are vulnerable to wanton attacks on their independence. This court would be failing in its duty if it were not to stand by them.

75 We must in this context record what we have heard during the course of the submissions. Mr Dave has urged that (i) he wants to cross-examine the judges; and (ii) he does not believe the judicial officers. Aspersion has been cast on the Administrative Committee of the Bombay High Court. This court has

been called upon to issue a notice of contempt to the judges on the Committee at the relevant time. Ms Jaising has joined the fray by requesting that this court to issue contempt notices to the Administrative Committee of the Bombay High Court. Junior counsel appearing with Mr Giri went to the extent of urging that the judicial officers whose statements were recorded during the discreet inquiry are suspect. Even the judges of this Bench hearing the present proceedings, have not been spared from this vituperative assault on the judiciary.

76 Mr Prashant Bhushan argued that because two of the judges constituting the present Bench (Justice AM Khanwilkar and Justice DY Chandrachud) were judges of the Bombay High Court, they may have known the judicial officers who have submitted statements or Justice Bhushan Gavai and Justice SB Shukre. If this were to be the test, it is rather ironical that the petitioners had instituted proceedings before the Bombay High Court each of whose judges were expected to be faced with the same situation. We informed Mr Bhushan that a decision as to whether a judge should hear a case is a matter of conscience for the judge. There is absolutely no ground or basis to recuse. Judges of the High Court hear intra court appeals against orders of their own colleagues. References are made to larger Benches when there are differences of view. Judges of the Supreme Court hear appeals arising from judgments rendered by judges of the High Courts in which they served, either as judges or on appointments as Chief Justices. Maintaining institutional civilities between or towards judges is distinct from the fiercely independent role

of the judge as adjudicator. We emphatically clarify that on the well-settled parameters which hold the field, there is no reason for any member of the present Bench to recuse from the hearing. While it is simple for a judge faced with these kinds of wanton attacks to withdraw from a case, doing so would amount to an abdication of duty. There are higher values which guide our conduct. Though Mr Bhushan ultimately made it clear that he is not filing an application for recusal – and none has been filed – we have recorded what transpired to express our sense of anguish at the manner in which these proceedings have been conducted. Serious attacks have been made on the credibility of two judges of the Bombay High Court. The conduct of the petitioners and the intervenors scandalises the process of the court and prima facie constitutes criminal contempt. However, on a dispassionate view of the matter, we have chosen not to initiate proceedings by way of criminal contempt if only not to give an impression that the litigants and the lawyers appearing for them have been subjected to an unequal battle with the authority of law. We rest in the hope that the Bar of the nation is resilient to withstand such attempts on the judiciary. The judiciary must continue to perform its duty even if it is not to be palatable to some. The strength of the judicial process lies not in the fear of a coercive law of contempt. The credibility of the judicial process is based on its moral authority. It is with that firm belief that we have not invoked the jurisdiction in contempt.

## **E Conclusion**

77 For the above reasons, we have come to the conclusion that there is absolutely no merit in the writ petitions. There is no reason for the court to doubt the clear and consistent statements of the four judicial officers. The documentary material on the record indicates that the death of Judge Loya was due to natural causes. There is no ground for the court to hold that there was a reasonable suspicion about the cause or circumstances of death which would merit a further inquiry.

78 The hearings commenced on 2 February 2018 and ended on 16 March 2018. The batch of cases was heard on 2 February 2018, 5 February 2018, 9 February 2018, 12 February 2018, 19 February 2018, 5 March 2018, 8 March 2018, 9 March 2018 and 16 March 2018. Having regard to the large volume of work, we had considered it appropriate to list the hearings at 2 pm on Mondays and Fridays, after the miscellaneous cases had been dealt with. The conduct of the petitioners and the intervenors is, as we have indicated, lacking in bona fides and reveals a misuse of judicial process.

79 The petitions shall stand dismissed.

80 The transferred cases and pending applications, if any, are also disposed of.

**Transferred Case (Criminal) No. 2 of 2018:**

81 This Transferred case was heard together with the accompanying group of cases<sup>30</sup> in which judgment has been delivered today. In so far as the circumstances relating to the death of Judge Loya are concerned, all issues raised in that connection in the present case shall stand governed by the judgment delivered by this Court. Since the case also raises certain other matters (other than the death of Judge Loya), learned counsel requested this Court to remit the proceedings back to enable the petitioner to pursue before the High Court the reliefs sought on matters other than the death of Judge Loya. We find the request to be fair and proper. We accordingly direct that the present case shall be remitted back to the Nagpur Bench of the High Court of Judicature at Bombay. However, we clarify that the circumstances relating to the death of Judge Loya which have been dealt with by this Court in the judgment delivered

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<sup>30</sup> WP (C) No 19 of 2018, W P (C) No 20 of 2018, W P (C) No 73 of 2018 and TC (Crl.) No.1 of 2018

today stands concluded and the High Court would be at liberty to deal with other issues raised in the petition/case.

82 Ordered accordingly.

.....CJI  
[DIPAK MISRA]

.....J  
[A M KHANWILKAR]

.....J  
[Dr D Y CHANDRACHUD]

**New Delhi;  
April 19, 2018.**