

(1986) 11 DEL CK 0025
In the Delhi High Court
Case No : Civil Writ No. 1146 of 1986

Ram Jethmalani

APPELLANT

Vs

The Director, CBI, Spe, CIA-I, New Delhi

RESPONDENT

Date of Decision : 25-11-1986

Acts Referred:

Citation : (1986) 11 DEL CK 0025

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Judgement

1. The petitioner in this case has come to the Court, seeking a writ of mandamus of any other suitable writ, direction or order for permitting the petitioner inspection of statements and documents in possession of the respondent relating to the investigation and final report under S. 173, Criminal P.C., in respect of Crime No. RC-8/77-CIA (I), and to grant the petitioner copies or to make copies of the documents mentioned below :-

"(a) Statements of one Mr. J. S. Gill dt. 21-11-1977 and any further statements thereafter.

(b) Statements of one Mr. Nissim Gaon of Noga, Switzerland.

(c) Correspondence between the State Trading Corporation of India and the said Mr. Nissim Gaon and/or his Company called Compagnie Noga d"Importation et d"Exportation.

(d) Documents in the shape of draft statements and telex messages procured during the course of the said investigation."

2. The petitioner, a Senior Advocate of the Supreme Court of India, states that he is the plaintiff in a libel action instituted by him in the Queen's Bench Division of the High Court of Justice in England. The action is numbered as 1983-J No. 6467 against one Swaraj Paul of London, and that the cause of action arises out of the statements made by Swaraj Paul in London to the correspondents of "The

Hindustan Times" and "The Daily" which appeared on 28th August, 1983 and 1st September, 1983, respectively.

3. The petitioner also asserts that the defendant in that suit had made counter claim arising out of the petitioner's statement which appeared in "The Indian Express" dated 30th August, 1983.

4. For the purposes of the reliefs which have been sought, it is not necessary to refer to the newspapers reports herein, which are annexed to the writ petition.

5. The petitioner states that during the course of the litigation in England, the petitioner has been called upon to furnish particulars of certain allegations made by the petitioner. He further asserts that these detailed particulars are available in the statements and documents in possession of the respondent. It is also asserted that the statements and documents form part of the record of an investigation which had been conducted by the Delhi Special Police in Crime No. 8/77-CIA (I), the first information report in respect to which was registered on 22nd October 1977. A copy of the F.I.R. is also annexed to the writ petition.

6. The petitioner asserts that unless inspection of the documents above mentioned, is permitted to him or copies furnished to him, it will be impossible for the petitioner to furnish the particulars which are required to be furnished by him in the case which is pending adjudication in England.

7. The petitioner had applied to the respondent by his letter dt. 3rd March, 1986 for being permitted to inspect or given certified copies of the above said documents. The letter of request of the petitioner dt. 3rd March, 1986, and the reply thereto dated 10th April, 1986 are set out below :-

"RAM JETHMALANI New Delhi. Advocate Supreme Court Dated 3-3-1986. To : The Director, C.B.I., SPE, CIA-I, New Delhi. Sir, Re : Crime No. RC. 8/77-(CIA-I)

At a later stage during the investigation of the above case at the instance of the Government of India the CBI had asked my advice and for that purpose the files of the investigation were produced before me by the officers of the department. The investigation was, however, dropped sometime in 1981.

But on the 27th August, 1983 a vitriolic attack was made on my character and reputation by Mr. Swaraj Paul and the libel statements appeared in the Indian press. Based on my knowledge and what I had learnt in the course of my professional duties I defended myself and repudiated the allegations made against me. In respect of these statements and counter-statements litigation is pending in the High Court of Justice, Queen's Bench Division, being Action 1983 J-6467.

While I remember the broad facts the Court has ordered some details to be furnished which I cannot state from memory. These can only be had from the statements and documents which are available in the files of that investigation.

For the purpose of defending my character and reputation I urgently require inspection and/or certified copies of the relevant papers and proceedings, in particular, I require the :

(1) Statements of one Mr. J. S. Gill dt. 21-11-77 and any further statements thereafter.

(2) Statements of one Mr. Nissim Gaon of Noga, Switzerland.

(3) Correspondence between the S.T.C. i.e. the State Trading Corporation of India and/or Mr. Nissim Gaon or his Company called Compagnie Noga d"Importation et d"Exportation, S.A.

(4) Documents in the shape of draft statements and telex messages procured during the course of the said investigation.

I have a legitimate substantial, urgent interest in securing these documents. These documents do not constitute official secrets nor do I seek any material covered by Ss. 123 124 and 125, Evidence Act, I am fighting a litigation against a foreign national in a foreign Court and I conceive it as your duty to render me all possible assistance. It is not out of place to mention that in a democracy every citizen has a fundamental right to know subject to exceptions which have no application here.

Kindly treat this as urgent. I am willing to pay all the costs and charges.

Thanking you, Yours faithfully, Sd/- (Ram Jethmalani)" No. 2503/3/8/77-CIU (I) Central Bureau of Investigation Special Investigation Cell, Dated the, 10-4-1986. To : Shri Ram Jethmalani, Advocate, Supreme Court of India, New Delhi. Sub : Case No. RC. 8/77, CIU (I), Dear Sir,

I have the honour to refer to your letter dt. 3rd March, 1986 regarding supply of copies of statements of witnesses and documents in the said case and to state that the documents mentioned in your esteemed letter are not available with us in original. Besides, neither the said documents nor the statements of witnesses recorded by the CBI in the said case under S. 161, Cr.P.C. are public documents.

There is no provision under the Criminal Procedure Code to allow inspection or to furnish copies of the same to any person when the case is not pending trial in any Court in India.

It is registered that this office is unable to provide the help requested, for want of any legal provision or orders from a competent Court.

Yours faithfully, Sd/- SUPERINTENDENT OF POLICE CBI SIC SIUIII, N. DELHI." 8. Before me, the petitioner has contended that the reputation of an individual, the petitioner herein, is an element of a fundamental right of personal liberty guaranteed to the petitioner under Art. 21 of the Constitution.

9. It is also contended by the petitioner that the respondent is bound to render assistance to the petitioner, a citizen of India, who is seeking to enforce his right

to reputation, which has been impinged upon by a foreign citizen and an action with regard thereto against a foreign citizen is pending in a foreign Court. The petitioner asserts that he has substantial and urgent interest in securing copies and/or inspection of the above said documents and statements.

10. It is urged that the statements which are recorded by a police officer is either an act of the police officer, or record of an act of police officer, and as such they are public documents within the meaning of S. 74, Evidence Act.

11. It is also asserted that every citizen has a right to inspect and obtain copies on payment of legal fee therefore. The petitioner says that the proceedings with respect to Crime No. 8/77-CIA (I) resulted in judicial order of the Court, on the basis of the report filed by the police under S. 173, Cr.P.C., and under S. 363, Cr.P.C., the petitioner has a right to obtain the copy of the final order made by the Court.

12. What the petitioner further asserts it that he is entitled to obtain copy of all material on which the said judicial order is passed.

13. The petitioner strongly relies upon the observations of Justice Mathew in the case in The State of U.P. Vs. Raj Narain and Others, . It was observed as under :-

"According to Wigmore, the extent to which this privilege has gone beyond "secrets of State" in the military or international sense is by no means clearly defined and Therefore its scope and bearing are open to careful examination in the light of logic and policy. According to him, in a community under a system of representative government, there can be only few facts which require to be kept secret with that solidity which defies even the inquiry of Courts of justice (see "Evidence", 3rd Vol. 8 p. 788).

In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security, see *New York Times Co. v. United States*, (1971) 29 Law Ed 2d 822 : 403 US 713. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics of personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption. Whether it is the relations of the Treasury to the Stock Exchange, or the dealings of the Interior Department with public lands, the facts must constitutionally be demandable, sooner or later, on the floor of Congress. To concede to them a sacrosanct secrecy in a Court of justice is to attribute to them a character which for other purposes is never

maintained a character which appears to have been advanced only when it happens to have served some undisclosed interest to obstruct investigation into facts which might reveal a liability (see "Wigmore on Evidence", 3rd Ed. Vol. 8, P. 790.)"

These observations of Justice Mathew were approved in the case of S.P. Gupta Vs. President of India and Others, by Justice Bhagwati (as he then was), Justice Bhagwati observed as under :-

"Now it is obvious from the Constitution that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its cradle faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No, democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective Participatory democracy, "Knowledge" said James Madison, "will forever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both." The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world.

The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their ruler and, once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means, inter alia, that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government - an attitude and habit of mind. But this important role people can fulfill in a democracy only if it is an open government where there is full access to information in regard to the functioning of the government.

There is also in every democracy a certain amount of public suspicion and distrust of government, varying of course from time to time according to its performance which prompts people to insist upon maximum exposure of its functioning. It is axiomatic that every action of the government must be actuated by public interest but even so we find cases, though not many, where

governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes governmental action is influenced by political and other motivations and pressures and at times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open government with means of information available to the public, there would be greater exposure of the functioning of government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is clean government and a powerful safeguard against political and administrative aberration and inefficiency.

The Franks Committee of the United Kingdom also observed to the same effect while pleading for an open government. It said in its report at p. 12 :

"A totalitarian government finds it easy to maintain secrecy. It does not come into the open until it chooses to declare its settled intentions and demand support for them. A democratic government, however, though it must compete with these other types of organisation, has a task which is complicated by its obligations to the people. It needs the trust of the governed. It cannot use the plea of secrecy to hide from the people its basic aims. On the contrary it must explain these aims : it must provide the justification for them and give the facts both for and against a selected course of action. Now must such information be provided only at one level and through one means of communication ? A government which pursues secret aims, or which operates in greater secrecy than the effective conduct of its proper functions requires, or which turns information services into propaganda agencies, will lose the trust of the people. It will be countered by ill-informed and destructive criticism. Its critics will try to break down all barriers erected to preserve secrecy, and they will disclose all that they can, by whatever means, discover. As a result matters will be revealed when they ought to remain secret in the interests of the nation."

14. These observations were made in response to a contention raised by the Union of India in the shape of claim of privilege against disclosure of correspondence that had been exchanged between the Chief Justice of the Delhi High Court, Chief Justice of India and Minister of Law & Justice in connection with matters relating to appointment of Judges of the Delhi High Court. The claim of privilege which had been raised, was rejected by six of the seven Judges. The only Judge who upheld the privilege claimed by the Union of India, was Justice S. Murtaza Fazal Ali.

15. The observations of Justice Bhagwati in the above cited case have been

referred to and relied upon by the Bombay High Court in its decision dated 7th October, 1986, in the case of Bombay Environmental Action Group v. Pune Cantonment Board, Pune wherein a Division Bench of that Court said, "if Art. 19(1)(a) takes in its import the disclosure of information in regard to the functioning of the government and the right to know about it, which is implicit in the right of free speech and expression guaranteed under Art. 19(1)(a) of the Constitution, then the right of inspection as claimed by the petitioners in this writ petition must flow from the said fundamental right."

16. In view of the above, the petitioner has contended that by virtue of Art. 19(1) (a) and Art. 21 of the Constitution, he has a right to get information so that he can effectively defend his litigation in London. Article 19(1)(a), Art. 19(2) and Art. 21 read as under :-

"19(1) All citizens shall have the right -

(a) to freedom of speech and expression;

xx xx xx xx xx xx xx xx xx

(2) Nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of "the sovereignty and integrity of India (the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence).

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

17. The petitioner also relies on the Preamble to the Constitution of India which secures to all its citizens "Justice - social, economic and political." The petitioner contends that in view of the Preamble to the Constitution which has been held to be the basic structure of our Constitution in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , he is entitled to such assistance from the State, which will ensure him social justice in the shape of protection of his name and reputation which has been impinged by the statements made in the aforestated publications, particularly as he is an Indian citizen, and the attack on his reputation is by a person who is not an Indian citizen.

18. The petitioner also relied upon the provisions of Art. 51-A, which was added by Forty-second Constitutional Amendment. This article enjoins that "it shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions " The petitioner also refers and relies upon Art. 39-A of the Constitution which is one of the directive principles to the effect that "the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other (manner ?) and to ensure that

opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. From what is stated above, it is clear that it is the duty of the State in India to secure justice to all its citizens.

19. An unusual feature of the case before me is that in the letter denying request of the petitioner for inspection there was no claim of privilege under S. 123, Evidence Act, there was no assertion which could have been made on the basis of Art. 19(2); that any public interest or national interest would suffer, or the national security would be endangered by disclosure of the documents of which the petitioner sought inspection; it is also not asserted that disclosure to the petitioner will affect friendly relations with a foreign State, or "public order", or "decency would not be ensured", or that disclosure would lead to immorality, or any contempt of Court would be committed, or some one would be defamed, or it would be an incitement to an offence.

20. Instead what was stated was that the documents or the statements of witnesses which had been recorded by the C.B.I. in the case were not public documents. It was also asserted that there is no provision under the Cr.P.C. to allow inspection or furnish copy to any person when the case was not pending trial in any Court of India.

21. The counsel for the petitioner contends that the documents in question are public documents, For this purpose, he relies upon the provisions of S. 74, Evidence Act, which reads as under :-

"74. The following documents are public documents :-

(1) Documents forming the acts, or records of the acts -

(i) of the sovereign authority.

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, (of any part of India or of the Commonwealth), or of a foreign country; (2) Public records kept (in any State) of private documents."

22. The documents and statements of which the petitioner sought inspection/copies, came into being as a result of the investigation made under S. 161, Cr.P.C. Section 161, Cr.P.C., reads as under :-

"161. Examination of witnesses by police -

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

(2) Such person shall be bound to answer truly all questions relating to the case

(3) The police officer may reduce into writing"

23. The contention of Mr. Gujral, appearing for the petitioner that documents forming acts or records of acts of police in exercising powers under the Code of Criminal Procedure, are public documents, is supported by the judgment of Kerala High Court in the case, v. V.J. Thomas Vs. State of Kerala, .

24. Mr. P. P. Khurana who appears for the respondent contends that S. 74, Evidence Act, has to be read with S. 76 of the Act. Section 76 reads as under :-

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

25. It is contended by Mr. Khurana that the petitioner herein has no right to inspect, and, Therefore, even if the documents which he seeks inspection of, are public documents, no copy can be supplied.

26. Mr. Khurana strongly relies on a judgment of a Division Bench of this Court in the case State v. Gian Singh, 1981 Cri LJ 538, whereby it was held that a post-mortem report given by a police doctor is only an opinion of an expert, and was not an act or record of act of public officer. For this proposition, this Court relied upon a judgment of a single Judge in the case AIR 1928 155 (Oudh) . In that case the report of Civil Surgeon about the age of the accused was held not to be a record of an act in official capacity. The Oudh Court held that "the formal proof for the document was required, and that it could not be admitted in evidence without formal proof." This Court held that it is well settled that "post-mortem report or injury report is not substantive evidence". The opinion of this Court in the case of State v. Gian Singh (supra) related to the report of a Medical Officer who was not investigating into the crime. In the case before me, what is sought to be inspected is the acts of the police officer, investigating into a crime, or record of such acts. As such the judgment of the Division Bench of this Court is distinguishable on facts.

27. According to Mr. Khurana, right to inspect has to be direct and tangible interest. There is no direct and tangible interest when the documents which are sought to be inspected are needed for success in another proceedings, and for this proposition, he relies upon a judgment in the case of Muniyammal, Proprietrix, Salem Vs. Third Additional Income Tax Officer, Salem and Another, .

28. In the above cited case, the Court was moved for issuance of a writ of prohibition on the assertion that one of the respondents was claiming to see the Income Tax returns that had been filed by the deceased, an assessed, whose

assessment had been completed, and no tax were due and the petitioner therein, the wife of the deceased-assessed sought restraint order to prevent her mother-in-law, the mother of the deceased, from getting access to the Income Tax returns that had been filed by her husband. The mother of the deceased-assessed had filed a suit for petition of properties, and was wanting to get produced the Income Tax returns filed by the assessed. The petitioner in that case had referred to and relied upon S. 54, Income Tax Act, which in its terms overrides the provisions of the Evidence Act, that is to say Ss. 74 and 76, and prohibits disclosures except in the circumstances which are mentioned in the Income Tax Act. In the Madras High Court judgment, the contention raised for the mother of the assessed (was ?) that in view of S. 76. Evidence Act, returns being public documents, same are to be allowed to be produced. The Division Bench of the Madras High Court entertained this plea, despite the prohibition in S. 54, I.-T. Act. The I.-T. Act being special law, and the Evidence Act being general law, the prohibition in special law would operate and nothing more need be said on the subject. The Madras High Court, however, chose to examine English Law on the subject which may have had a bearing on the determination of the fact whether a document was a public document, and the nature of the right to inspect the same, and adopted the direct and tangible interest in the document test which is a rest applicable in England. In my view, in view of the statutory provisions in the Indian Evidence Act and the I.-T. Act, this question, with due respect to the Madras High Court, need not have been examined and the direct and tangible text laid down. In any case, the prohibition of the kind which was considered in the facts of the Madras High Court's case do not exist in the present case. As stated above, there is no claim of privilege here at all. No prohibitions are urged by the respondent in this case. What is urged is that here the documents are sought for a collateral purpose. In my view the observations in the case reported as *Muniyammal, Proprietrix, Salem Vs. Third Additional Income Tax Officer, Salem and Another*, , regarding direct and tangible interest have been whittled down and controlled by the observations of the Supreme Court in the case of *The State of U.P. Vs. Raj Narain and Others*, and in the case of *S.P. Gupta Vs. President of India and Others*, , as also the Preamble of the Constitution of India, Art. 51A; and Art. 39 of the Constitution of India. The direct and tangible interest, in view of the aforesaid cases, and provisions of the Constitution, in the facts and circumstances of the case, must necessarily be what is needed to secure justice to a citizen of India against a foreign citizen in a foreign jurisdiction to protect his reputation and to advance the cause of justice.

29.Mr. P. P. Khurana relies upon *Natabar Jana Vs. State and Another*, , for the proposition that statements made under S. 161, Cr.P.C., are not public documents. In this authority, Justice Sen of the Calcutta High Court relied upon an earlier judgment reported as (1901) 28 Cal 348. In that judgment, it had been held that written statements recorded by police officer in the course of investigation did not come within the description of record within the meaning of S. 35. Evidence Act. If the statement as recorded by the police officer is not a

record within the meaning of S. 35, it follows that it cannot be a public document within the meaning of S. 74. Section 35, Evidence Act, reads as under :-

"35. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact."

30. A perusal of S. 35 indicates that the record postulated thereby was in the shape of a book or register or record, which was required to be maintained by law. This provision, in my view, would be confined to statutory books and registers, and similar records, and in my view, cannot be looked at for the purpose of giving meaning and colour to the provisions of S. 74 of the Evidence Act. Section 74 of the Evidence Act, in my view, does not postulate record contemplated by S. 35, but relates to acts, or records of the acts. The records of the acts in S. 74 mean something different from the public or other statutory book, public register which is required to be kept by law, postulated by S. 35. I am, Therefore, in respectful disagreement with the Hon"ble Judges of the Calcutta High Court.

31. It is also to be noted that the authority, (1901) 28 Cal 348 dealt with the provisions of the Criminal Procedure Code prior to its being amended in 1955. In the Cr.P.C., 1973, S. 175(5) and (7) when read together, indicates that all statements recorded under S. 161 of the Code are to be furnished to the accused. There was no such provision in the old Code. The accused has now a right to the documents. Besides this, S. 207 of the Code requires furnishing the police reports, F.I.R., statements under S. 161(3), etc., to the accused. The legislative thinking has, Therefore, changed from one of secrecy to one of giving out information, and the authority (1901) 28 Cal 348 has, Therefore, been whittled down.

32. In my view the records of acts mentioned in S. 74 are something different from the records mentioned in S. 35. It is noteworthy that this judgment of the Calcutta High Court reported as Natabar Jana Vs. State and Another, , has not been followed later on. It appears to stand alone. This fact is accepted by Mr. Khurana.

33. Mr. P. P. Khurana has also referred to the case of The State Vs. G. Veerana Goud, , which says that the judgment of a Court of law, as distinguished from other parts of the record, is an act in which every member of the public is prima facie interested. This conclusion of the Mysore High Court seems to give no assistance to the propositions being propounded by Mr. Khurana in this case. The proceedings in the Mysore case had arisen out of refusal by stationary Sub-Magistrate Bellary, for a copy of a judgment. The Magistrate had refused to give copy. The High Court directed the copy of the judgment to be given.

34. Mr. Khurana also relied upon the case Maj. Genl. A.S. Gauraya and Another

Vs. S.N. Thakur and Another, . In this case, what the Supreme Court ordered was that the subordinate Criminal Courts did not have any inherent jurisdiction to restore cases based upon private complaints after they had been dismissed for non-presence of the accused. The presence of the complainant being mandatory under S. 249, Cr.P.C., and it being mandatory by that section, that on the complainant being absent, the accused has to be discharged, once the accused is discharged the Supreme Court held, that it is not open to restore the complaint. This case does not seem to apply to the facts of the instant case at all.

35. Mr. P. P. Khurana also referred to Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, , for the proposition that the instant writ ought not to be granted. Mr. Khurana relied upon the proposition laid down in that case by the Supreme Court that "writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge that statutory obligation." The Supreme Court said that the chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction."

The petitioner has invoked the constitutional provisions of the preamble, Art. 14, Art 19, Art. 21, Art. 39 and Art. 51A. These provisions of the Constitution make out a stronger case in favor of the petitioner. These provisions of the Constitution impose superior obligations and confer better rights than are furnished by the statute as the constitutional obligations and rights are basic rights and basic obligations. Besides this, S. 74, Evidence Act, makes the actions of investigation into a crime by public officers and (sic) evidence correct, their acts, record of acts of public officers. The said constitutional provisions mandate that State should assist in securing justice to its citizens. In the instant case, an Indian citizen has got a right on the basis of the aforesaid provisions to invoke the aid of the State for successfully prosecuting, legal proceedings against foreign citizens in a foreign country. The statutory rights of the petitioner herein, will be established on an examination of the provisions of S. 161, Cr.P.C.

36. Section 161, Cr.P.C., imposes a statutory obligation on police officers to examine orally any person supposed to be acquainted with the facts and circumstances of the case. Section 161(2) imposes an obligation on all persons examined by police officers; to answer truly all questions except those which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. By S. 161(3) the police officer has got the statutory obligation to reduce into writing any statement made to him in the course of examination under this section. Every such statement of separate persons has to be separately recorded. In view of these statutory provisions, it is not possible to say that the statements which are recorded by the police officer under S. 161, Cr.P.C., are not acts of a police officer, or public officer, or record of acts of public officers. All documents which may be handed over to such police officer to

substantiate the statements made to the police officer would also be part and parcel of the record of acts of the police officer. The statements recorded and documents filed in support of the statements with public officers would be public documents.

37. Mr. Khurana lastly contended that the observations of the Supreme Court in *S.P. Gupta Vs. President of India and Others*, relate to a case where a privilege was claimed against the production of document, and that privilege was disallowed. Inasmuch as no such claim for privilege has been made out in these proceedings, the observations of the Supreme Court are inapplicable to the present case. I cannot see how a case in which privilege is not claimed against giving of inspection or giving of copies, the case can be stronger for the respondent. In my view, the case of the respondent herein is, in fact, weaker than the case in which privilege is claimed. A claim of privilege, as has been stated, *inter alia*, by the Supreme Court in *S.P. Gupta Vs. President of India and Others*, is adjudicated upon by balancing the national interest as against individual interest. There is no assertion in the case before me that the national interest is in any way jeopardised. In fact none of the considerations mentioned in Art. 19(2) of the Constitution were put forth to prevent inspection sought. In fact, I specifically asked Mr. Khurana to let me know what kind of harm will be caused by giving inspection of the documents which were asked for, particularly when the petitioner filed an affidavit in the Court undertaking that he shall not use the copies or notes taken after inspection against the Government of India, or any State, or any public authority of the country. Filing of this affidavit is noted in the order of this Court dated 30th May, 1986. The affidavit filed by the petitioner reads as under :-

"IN THE HIGH COURT OF DELHI AT NEW DELHI ORIGINAL JURISDICTION. Writ Petition (Civil) No. 1146 of 1986. Shri Ram Jethmalani Petitioner. v. The Director, C.B.I., S.P.E., C.I.A., New Delhi Respondent. AFFIDAVIT I, Ram Jethmalani, son of late Shri Boolchand G. Jethmalani, aged about 62 years, Indian adult, now residing at Hotel Manor, 77 Friends Colony West, New Delhi, do hereby solemnly affirm and state as under :-

1. That the inspection or copies are required by me urgently, only and exclusively for use in connection with libel action mentioned in the Writ Petition.
2. I undertake not to use them for any other purpose or against the Government of India, any State Government or any public authority of this country.

Deponent. Verification : I, Ram Jethmalani, the deponent above named, do hereby verify that the contents of paras 1 and 2 of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from. Verified at New Delhi, on this the 29th day of May, 1986. Deponent."

38. In view of the foregoing discussion, I am of the view that the record of the witnesses and documents given by them in support of the statements to the

police officer in support of their statements comprised of acts of public officer or records of acts of public officer, and as such are public documents, and any person (who ?) has a right to inspect the same, especially when the person who seeks it is a person who has something more than a mere idle curiosity, with regard thereto. I do not think that the petitioner in this case can be categorised as a person with mere idle curiosity in the acts of the public officer or record of acts of public officer. He is a person who is concerned in a litigation in which he is defending his reputation. He is a citizen of India. He alleges that he has been libeled by a foreign citizen. He is making a plea to public officers in this country, as public servants, as representative of the Union of India to aid him in prosecution of the case by letting him have the information which the law in a foreign country and Courts of foreign country require him to give according to the procedure in that country. The Constitution of this country by its Art. 39 directs the State to secure justice for its citizens. The State would be doing right to its citizen, the petitioner herein, to secure him justice by giving him an access to the documents to which he seeks access or of which he seeks copies. The petitioner has given an affidavit, undertaking that he shall not use it against the State. The petitioner has a right to have the information which is available in these public documents by virtue of the law laid down by the Supreme Court in The State of U.P. Vs. Raj Narain and Others, . The libel against the petitioner was published in India, as also in England. Every citizen is entitled to seek vindication of his reputation which is a part of life with which Art. 21 of the Constitution is concerned, and in the aforesaid circumstances, in my view, it is fit and proper that a mandamus is issued to the respondent to give inspection of the documents which are sought by the petitioner.

39. I accordingly issue mandamus, directing the respondent to give inspection of the following documents to the petitioner :-

"(a) Statements of one Mr. J. S. Gill dt. 21-11-1977 and any further statements thereafter.

(b) Statements of one Mr. Nissim Gaon of Noga, Switzerland.

(c) Correspondence between the State Trading Corporation of India and the said Mr. Nissim Gaon and/or his Company called Compagnie Noga d'Importation et d'Exportation, S.A.

(d) Documents in the shape of draft statements and telex messages procured during the course of the said investigation."

40. I further direct that copies of these documents may be furnished to the petitioner, if required, on payment of actual costs for making such copies.

41. The writ petition is disposed of as such. I make no order as to costs.

42. Order accordingly.