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XII K.K. LUTHRA MEMORIAL MOOT COURT, 2016

Before

THE SUPREME COURT OF ARKHAM

JAMES MORRISON .....PETITIONER 1

ARISTOTLE .....PETITIONER 2

NAJEEDA SHAH..... ...PETITIONER 3

RUFUS GREY..... ...PETITIONER 4

v.

STATE OF ARKHAM..... RESPONDENT

[MEMORIAL ON BEHALF OF THE PETITIONERS]

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BACKGROUND

Arkham is a former dutch colony and a member of the BRICS organization. Recently, it has started making progress on tapping its natural resources. Unsurprisingly, foreign companies have been increasingly drawn to make investments and conduct transactions in the field of natural resources. Companies keep track of developments in this field through consulting companies, among various other sources. These consulting companies, apparently, pay low grade officials to steal documents from government documents. The Faltusa police had launched a preliminary enquiry in this regard. An Information Report was filed under various provisions of the Arkham Penal (Provisions and Punishment) Act, 1963, the Arkham Government Secrets Act, 1892, and the Prevention and Punishment of Corruption Act, 1998.

THE TRAP AND THE INTERROGATION

Two persons named Eddie and Elvis, who were ad hoc employees in the Ministry of Natural Resources, were caught red handed trying to steal documents from the Ministry. Several documents, fake ID cards and duplicate keys were recovered from their possession. On interrogation, they claimed that they were paid money to steal these documents by Mr. James Morrison of M/s LDC Pvt. Ltd., Mr. Aristotle of M/s Rustum Energy Ltd., Mrs. Najeeda Shah of M/s Mojo Energy Consultants Ltd. and Mr. Rufus Grey of M/s Grey Industries Ltd. Bank statements revealed that they had indeed paid money to Eddie and Elvis.

The police searched the offices of these four persons and recovered certain documents. The Ministry of Natural Resources and Ministry of Finance stated that these documents were classified. However, a reply to an RTI request revealed that there were no guidelines used to classify these documents. Additionally, a high ranking government servant was quoted as stating that such classification was done at the whims of the government.

THE PROCEEDINGS

Indictment was framed against these four persons in the Special Court constituted under the Prevention and Punishment of Corruption Act, 1998, despite their not being public servants. Additionally, the very foundational fact of the basis of classifying documents was in question. Hence, Mr. Morrison, Mr. Aristotle, Mr. Grey and Mrs. Shah filed a writ petition in the Supreme Court for quashing of proceedings and striking down of the Arkham Government Secrets Act, 1892. Hence, the present matter.

ISSUES RAISED

I.

IS THE PREVENTION OF ARKHAM GOVERNMENT SECRETS ACT, 1892 LIABLE TO BE STRUCK DOWN?

II.

IS THE ENTIRE PROSECUTION AGAINST THE ACCUSED PERSONS LIABLE TO BE QUASHED?

III.

IS THE FORMAL NOTICE OF INDICTMENT LIABLE TO QUASHED?

IV.

SHOULD THE PROCEEDINGS BE STAYED DURING THE PENDENCY OF THIS WRIT PETITION?

SUMMARY OF ARGUMENTS

[1]. THE PREVENTION OF ARKHAM GOVERNMENT SECRETS ACT, 1892 SHOULD BE STRUCK DOWN

The Prevention of Arkham Government Secrets Act should be struck down as being redundant and otiose because the underlying purpose of the enactment was prevention of dissemination of information which might but the national defence or economy at stake. This objective is satisfied by virtue of exemptions provided under Section 50 of the Freedom of Information Act. The Prevention of Arkham Government Secrets Act stands contrary to the letter and spirit of the Freedom of Information Act for it does not acknowledge the disclosures in public interest which is the bedrock of information regime under the Freedom of Information Act. Further, the provisions of the Prevention of Arkham Government Secrets Act are overbroad and suffer from the vice of excessive delegation which renders them unconstitutional. Given what remains post the unconstitutionality of some provisions of Prevention of Arkham Government Secrets Act cannot independently survive, the doctrine of severability warrants the striking down of the entire enactment.

[2]. THE ENTIRE PROSECUTION SHOULD BE QUASHED AS THE SPECIAL COURT HAS NO JURISDICTION TO TRY THE PETITIONERS

It is well established that the Special judge can try an accused person if he is a public servant or if the offences committed by that person fall within the same transaction as that of a public servant. It is submitted that in the instant case the court should use its inherent powers to

quash the entire prosecution as the special court has no jurisdiction to try the accused persons as, *first*, None of the petitioners are public servants. *Secondly*, the offences committed by the petitioners constitute a different transaction. The petitioners are not public servants as they not in the service or pay of the government, and they are not entrusted with any public duty. Further, the acts of Eddie and Elvis and those of the petitioners had different objectives and are not closely linked. Thus, it is submitted that the Court should use its inherent power to quash the entire proceedings.

[3]. THE INDICTMENTS MUST BE QUASHED

The trial against any accused cannot proceed unless a consideration of the record of a case and the documents submitted therewith provide "*sufficient ground*" for proceeding against the accused. It is well settled that the inherent powers of a court to quash proceedings can be used in a wide manner to secure the ends of justice. It has been held that it is not desirable to lay down inflexible or exhaustive rules in this regard. It is submitted that, from the evidence adduced in support of the charges in the instant case, *first*, the prosecution story is questionable. *Secondly*, no *prima facie* case can be made out with regard to the requisite *mens rea*. *Thirdly*, the elements of individual offences cannot be made out. Thus, it is submitted that "*sufficient grounds*" do not exist for proceeding against the accused. Therefore the indictments must be quashed.

[4]. PROCEEDINGS SHOULD BE STAYED DURING THE PENDENCY OF THE WRIT PETITION

It is well established that the proceedings can be stayed on the ground of defective or illegal sanction only. The ground of illegal sanction would necessarily include absence of sanction in the instances where the sanction is required to prosecute the public servant. It is well established that the requirement of sanction entails a reasonable connection between the act and public duty. Since Eddie and Elvis were appointed as *ad hoc* employees in the Ministry of Natural Resources, it would be part of their duty to not reveal the confidential information and documents of the ministry. Hence, it is submitted, that in the instant case sanction is required, as the acts of the petitioners and their public duty have a reasonable connection. Thus, the court should stay the proceedings till the pendency of the writ petitions.

WRITTEN PLEADINGS

[1]. THE PREVENTION OF ARKHAM GOVERNMENT SECRETS ACT, 1892 SHOULD BE STRUCK DOWN

1. The Prevention of Arkham Government Secrets Act, 1892 ["POAGSA"] is sought to be struck down via invocation of writ jurisdiction under Article 47(1) of the Constitution of Arkham. Article 47(1) is analogous to Article 32(1) of the Constitution of India. In light of this, the validity of a statute can be challenged on grounds of contravention of fundamental rights [the rights which are conferred by the Constitution],[1] absence of legislative competence or unreasonableness of the law.[2]

2. Admittedly, the court cannot strike down an enactment due to its perception that the legislation is unnecessary or unwarranted.[3] However, in the instant case, it is the cumulative effect of the redundancy and otiosity of the non-disclosure regime under the POAGSA, unconstitutionality of provisions that impose penalty for spying and wrongful communication by being overbroad along with overall unreasonableness of the law, that merits striking down of the POAGSA. It is submitted that POAGSA should be struck down because, *first,* the POAGSA is redundant and otiose **[1.1]**. *Secondly,* the POAGSA is against the letter and spirit of Freedom of Information Act, 2002 **[1.2]**. *Thirdly,* the doctrine of severability does not apply in the instant case **[1.3]**.

[1.1] THE POAGSA IS REDUNDANT AND OTIOSE

3. Redundancy refers to the fault of introducing superfluous matter into a legal instrument.[4] The POAGSA was enacted to prevent disclosure of secrets which might put the national defence or economy at stake.[5] However, the enactment of the Freedom of Information Act, 2002 ["FOIA"], *inter alia*, serves the above-mentioned purpose.

4. Clauses (a), (c) and (e) of Section 41 of the FOIA comprehensively deal with the exemptions that were envisaged to be made via the POAGSA. Hence, all the information that is required to be exempted from disclosure can be done via Section 41 of FOIA. Security classifications like 'secret', 'confidential' and 'classified' can be done in these exempted

[1] Kheybari Tea Co. Ltd. v. State of Assam, AIR 1964 SC 925, ¶ 941.
[2] Namit Sharma v. Union of India, (2013) 1 SCC 745, ¶ 10.
[3] State of Andhra Pradesh v. McDowell and Co., (1996) 3 SCC 709, ¶ 43.
[4] Henry Campbell Black, BLACK'S LAW DICTIONARY 1009 (Bryan A. Garner ed., 9th edn., 2009).
[5] Clarification No. 2, QUERIES AND CLARIFICATIONS, The K.K. Luthra Memorial Moot Court, 2016.

categories.[6] A similar suggestion was made by the Second Administrative Reforms Commission with respect to security classification *vis-à-vis* exemptions in the Right to Information Act, 2005 in India.[7] This indicates the redundancy of the exemptions provided under the POAGSA.

[1.2] THE POAGSA IS AGAINST THE LETTER AND SPIRIT OF THE FREEDOM OF INFORMATION ACT

5. It is well recognised that while the letter of the law is the body; the sense and reason of the law is its soul. It is not the words of the law but the spirit and eternal sense of it that makes the law meaningful.[8] Though the power of the legislature to make laws is plenary,[9] the determination of the constitutionality or validity of a provision requires weighing of the real impact and effect of the legislation.[10] Legislature cannot be allowed to employ indirect methods to defeat the constitutional provisions.[11]

6. The POAGSA is a pre-constitutional enactment.[12] It was enacted 78 years prior to the independence of Arkham.[13] This scenario is similar to that of India. The Indian Official Secrets Act, 1923 ["OSA"] was enacted in the colonial era to imbibe secrecy and confidentiality in matters of governance. In light of the colonial climate of mistrust, the public officials were accorded the primacy to deal with the citizens in the matters of governance. The OSA spurred a culture of secrecy which resulted in confidentiality being the norm and disclosure an exception.[14]

7. This notion has undergone a transition post the enactment of the Constitution in Arkham which provides for right to freedom of speech and expression. Article 6 of the Constitution of Arkham is analogous to Article 19(1)(a) of the Constitution of India. The right to information has been held to be integral part of right to freedom of speech and expression.[15] Therefore, a transition from the era of secrecy to transparency has taken place.

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[6] ¶ 3, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[7] 1st Report of the Second Administrative Reforms Commission, RIGHT TO INFORMATION – MASTER KEY TO GOOD GOVERNANCE, ¶4.1.8 (June, 2006).
[8] University of Calcullta v. Pritam Rooj, (2009) 1 CHN 795, ¶ 68.
[9] A.B. Kafaltiya, INTERPRETATION OF STATUTES 214 (2008).
[10] Namit Sharma v. Union of India, (2013) 1 SCC 745, ¶ 9.
[11] Namit Sharma v. Union of India, (2013) 1 SCC 745, ¶ 9.
[12] Clarification No. 13, QUERIES AND CLARIFICATIONS, The K.K. Luthra Memorial Moot Court, 2016.
[13] ¶ 1, Page 1, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[14] 1st Report of the Second Administrative Reforms Commission, RIGHT TO INFORMATION – MASTER KEY TO GOOD GOVERNANCE, ¶2.1.2 (June, 2006).
[15] State of Uttar Pradesh v. Raj Narain, AIR 1975 SC 865; Union of India v. Motion Picture Association, 1999 (6) SCC 150; Dinesh Trivedi v. Union of India, 1997 (4) SCC 306; Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd., 1995 (5) SCC 139; Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal, 1995 (2) SCC 161; Life Insurance Corporation of India v. Prof. Manubhai D. Shah, 1992 (3) SCC 637;

8. The phrase "*reasonable restriction*"[16] connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public.[17] In this context, the POAGSA is against the letter and spirit of FOIA because, *first*, the POAGSA does not recognise the 'Public Interest Test' **[1.2.1]**. *Secondly,* the provisions of the POAGSA are overbroad **[1.2.2]**. *Thirdly,* the POAGSA suffers from the vice of excessive delegation of power **[1.2.3]**.

[1.2.1] THE POAGSA DOES NOT RECOGNISE THE 'PUBLIC INTEREST TEST'

9. Section 50 of the FOIA provides for overriding effect of FOIA over the POAGSA. Dealing with similar provisions, Prof. S.P. Sathe has opined that a harmonious reading of the two enactments would result in substantially restricted information regime.[18] It is submitted that the two enactments cannot be harmoniously constructed as the underlying basis for both the statutes is contrary to each other.

10. In *S.P. Gupta* v. *Union of India*,[19] it was held that the disclosure of documents that pertain to the affairs of the state involves two competing dimensions of public interest *viz.*, the right of the citizen to obtain disclosure of information and the right of the State to protect the information relating to its crucial affairs.[20] Despite the primacy being given to public interest *vis-à-vis* disclosure of information, the POAGSA does not subscribe to the notion of public interest.

11. The provisions of POAGSA are analogous to that of the British Official Secrets Act, 1911 ["British OSA"] and the OSA. A catena of authorities states that public interest defence cannot be claimed in matters pertaining to official secrets.[21] The phrase 'in the interest of the state' cannot be equated with public interest.[22] Accordingly, it is the "*disclosure*" which is punishable and not the purpose of disclosure or prejudicial effect on certain interest deserving protection within the national interest.[23] Hence, by virtue of absence of a public interest

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Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, 1988 (4) SCC 592; Sheela Barse v. State of Maharashtra, 1987 (4) SCC 373; S.P. Gupta v. Union of India, AIR 1982 SC 149.

[16] Clarification No. 22, QUERIES AND CLARIFICATIONS, The K.K. Luthra Memorial Moot Court, 2016.

[17] Chintaman Rao v. State of Madhya Pradesh, AIR 1951 SC 118, ¶ 8.

[18] S.P.Sathe, ADMINISTRATIVE LAW 517 (6th edn., 1999).

[19] S.P. Gupta v. Union of India, AIR 1982 SC 149, ¶ 72.

[20] Attorney General v. Jonathan Cape Ltd., (1975) 3 All ER 485; Commonwealth of Australia v. John Fairfax and Sons Ltd., (1981) 147 CLR 39, at 52; Attorney General v. Guardian Newspapers Ltd., [1990] 1 AC 109; State of Uttar Pradesh v. Raj Narain, AIR 1975 SC 865; Dinesh Trivedi v. Union of India, 1997 (4) SCC 306.

[21] Rosamund M. Thomas, *The British Official Secrets Acts 1911-1939 and the Ponting case,* CRIMINAL LAW REVIEW 491-510 (August, 1980).

[22] R. v. Ponting, [1985] Crim. L.R. 318; Chandler v. D.P.P., [1962] 3 All E.R. 142.

[23] R. v. Fell, [1963] Crim. L.R. 207; M.P. Jain & S.N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW 323 (6th edn., 2013); S.P. Sathe, RIGHT TO INFORMATION 90 (1st edn., 2006).

defence, the POAGSA is contrary to the letter and spirit of FOIA, provided the bedrock of FOIA is public interest.

[1.2.2] THE PROVISIONS OF THE POAGSA ARE OVERBROAD

12. Over-breadth is a recognised ground to test the *vires* of a legislation on the touchstone of the Constitution.[24] The provisions of FOIA are derived from Article 6 of the Constitution of Arkham. The over-breadth of the provisions under the POAGSA have a chilling effect on the right conferred by the Constitution. In *Leonard Hector* v. *Attorney General of Antiqua and Barbuda,*[25] it was stated that the provisions of a legislation were likely to be abused because of the over-breath of the provision. They were struck down as unconstitutional for the reason that they might cover situations which are not envisaged according to the object of the statute. The Constitution does not "*permit legislature to set a net large enough to catch all possible offenders and leave it to the Court to step in and say who could be rightfully detained and who should be set at liberty.*"[26] In the instant case, the enactment envisages prevention of disclosure of secrets which might put the national defence or economy at stake.[27] This can be appreciated with respect to the provisions for, *first*, penalty for spying **[1.2.2.1]** and *secondly*, wrongful communication and dissemination of information **[1.2.2.2]**.

[1.2.2.1] Penalty for Spying

13. The POAGSA does not define the term "*secret*" or the phrase "*official secrets*". Accordingly, public servants enjoy the discretion to classify anything as a secret.[28] In *Sama Alana Abdulla* v. *State of Gujarat,*[29] the Apex Court categorically stated that the word "*secret*" in Section 3(1)(c) of the OSA (analogous to Section 7(1)(c) of POAGSA) qualifies "*official code or pass word*" and thereby does not extend to other forms of information mentioned in the section. However, sanction for other forms of information is provided by the provision, if the accused is found in the conscious possession of the material and is unable to offer a plausible explanation for the same.

14. Consequently, a presumption is drawn that such matters were collected or obtained by the accused for purposes prejudicial to the interests of the State. The necessary implication of this is that a document, article, note, plan, model or sketch need not be a secret *per se* in order

[24] Shreya Singhal v. Union of India, AIR 2015 SC 1523, ¶ 90.
[25] Leonard Hector v. Attorney General of Antiqua and Barbuda, (1990) 2 A.C. 312.
[26] United States v. Reese, 92 U.S. 214 (1875).
[27] Clarification No. 2, QUERIES AND CLARIFICATIONS, The K.K. Luthra Memorial Moot Court, 2016.
[28] 1st Report of the Second Administrative Reforms Commission, RIGHT TO INFORMATION – MASTER KEY TO GOOD GOVERNANCE, ¶2.2.4 (June, 2006).
[29] Sama Alana Abdulla v. State of Gujarat, (1996) 1 SCC 427, ¶ 7.

to be within the ambit of the POAGSA. The only requirement is its being classified as an "*official secret*", the determination of which has been left to the discretion of the public officials.[30]

[1.2.2.2] Wrongful communication and dissemination of information

15. Section 8 of the POAGSA is analogous to Section 5 of the OSA. The wordings of this provision is obscure, which makes it a catch-all provision covering all kinds of secret official information, whatever be the effect of its disclosure.[31] The section gives *carte blanche* to the executive to prosecute anyone disclosing official information or, any person voluntarily receiving such information knowing or having reasonable ground to believe that such information is being given to him in contravention of the Act.[32]

16. In the Indian context, the difficulty of the all-encompassing nature of this provision has been acknowledged[33] and a recommendation to the effect of defining the phrase "*official secret*" has been put forth.[34] This wide language penalises not only the communication of information useful to the enemy or any information which is vital to national security *but also includes the act of communication in any unauthorised manner any kind of secret information which a government servant has obtained by virtue of his office.*[35] This is contrary to the objective of the legislation which is only to prevent dissemination of information which might put the national defence or economy at stake. Thus, the over-breadth of these provisions renders them unconstitutional.

[1.2.3] THE POAGSA SUFFERS FROM EXCESSIVE DELEGATION

17. The classification of information as provided under the POAGSA suffers from the vice of excessive delegation of powers. Admittedly, a discretionary power may not necessarily be a discriminatory power. However, where a statute confers a power on an authority to decide matters without laying down any guidelines, principles or norms, the power has to be struck down as being arbitrary and unreasonable.[36] The absence of any document, rule, guideline or instruction which provides for the basis of classification of

[30] 1st Report of the Second Administrative Reforms Commission, RIGHT TO INFORMATION – MASTER KEY TO GOOD GOVERNANCE, ¶2.2.5 (June, 2006).
[31] Patrick Birkinshaw, FREEDOM OF INFORMATION: THE LAW, THE PRACTICE AND THE IDEAL 84 (4th edn., 2010).
[32] M.P. Jain & S.N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW 324 (6th edn., 2013)
[33] 43rd Report of the Law Commission of India, OFFENCES AGAINST THE NATIONAL SECURITY, ¶7.61 (1971).
[34] 43rd Report of the Law Commission of India, OFFENCES AGAINST THE NATIONAL SECURITY, ¶7.63 (1971).
[35] 43rd Report of the Law Commission of India, OFFENCES AGAINST THE NATIONAL SECURITY, ¶7.61 (1971).
[36] AIR India v. Nergesh Meerza, AIR 1981 SC 1829, ¶ 118.

documents[37] arms the Ministry of Natural Resources and Ministry of Finance with uncanalized and unguided discretion.

18. In the instant case, the criteria for classification of information are absent. Such a regime of classification has spurred in the tendency of unwarrantedly classifying information[38] and according higher classification than required.[39] These factors play a pivotal role in the growth of the culture of secrecy. This makes the classification of information a manifestation of excessive delegation of power. Since, the excessive delegation of power is unreasonable, the classification of information in POAGSA is against the letter and spirit of FOIA.

19. Further, it is amply clear from *Ponting's* case that the government keeps back information, even from the Parliament, which may prove *embarrassing* to itself. Thus, the principle of ministerial responsibility to Parliament is sought to be bypassed.[40] This shows that excessive delegation may result in subversion of the democratic premise of the Constitution.[41]

20. It is submitted that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness. This requires that the factors under consideration be not merely the duration and extent of restrictions but also the circumstances and manner in which the imposition has been sanctioned.[42] In the instant case, the POAGSA was enacted in the colonial climate of mistrust which furthered the era of secrecy. In light of the constitutional inclination towards an era of transparency, the over-breadth and excessive delegation of powers provided by POAGSA is unconstitutional.

[1.3] THE DOCTRINE OF SEVERABILITY DOES NOT APPLY IN THE INSTANT CASE

21. In *Attorney General for Alberta* v. *Attorney General for Canada*,[43] it was stated that the provisions which are invalid need not affect the validity of the legislation as a whole. This proposition is subject to whether what remains is so inextricably bound up with the part

[37] ¶ 3, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[38] 1st Report of the Second Administrative Reforms Commission, RIGHT TO INFORMATION – MASTER KEY TO GOOD GOVERNANCE, ¶4.1.1 (June, 2006).
[39] 1st Report of the Second Administrative Reforms Commission, RIGHT TO INFORMATION – MASTER KEY TO GOOD GOVERNANCE, ¶4.1.1 (June, 2006).
[40] Clause (VII) (a), COMMONWEALTH (LATIMER HOUSE) PRINCIPLES ON THE ACCOUNTABILITY OF AND THE RELATIONSHIP BETWEEN THE THREE BRANCHES OF GOVERNMENT, 2003 *available at* http://thecommonwealth.org/sites/default/files/history-items/documents/LatimerHousePrinciples.pdf (last accessed on November 21, 2015).
[41] D.C.Wadhwa v. State of Bihar, AIR 1987 SC 579, ¶ 6.
[42] State of Madras v. V.G. Row, AIR 1952 SC 196, ¶ 16.
[43] Attorney General for Alberta v. Attorney General for Canada, 1947 AC 503, at 518.

declared invalid that what remains cannot independently survive.[44] In the instant case, the unconstitutionality of provisions prescribing penalty for spying and, wrongful communication and dissemination of information merits striking down the entire enactment. This is because these provisions are integral to the enactment as well as the remaining provisions, and are incapable of being enforced without making alterations and modifications therein.[45]

[2]. THE ENTIRE PROSECUTION SHOULD BE QUASHED AS THE SPECIAL COURT HAS NO JURISDICTION TO TRY THE PETITIONERS

22. Inherent powers of the court can be exercised in relation to any matter when it is pending before the court.[46] The inherent powers of the court are meant to act *ex debitio justiciae* to do real and substantial justice or to prevent abuse of the process of the court.[47] It is well established that the Special Court can try an accused person if he is a public servant or if the offences committed by that person fall within the same transaction as that of a public servant.[48] It is submitted that in the instant case the court should use its inherent powers to quash the entire prosecution as the special court has no jurisdiction to try the accused persons as, *first*, the petitioners are not public servants **[2.1]**. *Secondly*, the offences committed by the petitioners constitute a different transaction **[2.2]**. *Thirdly*, in any case, the Special Court lacks jurisdiction owing to absence of sanction **[2.3]**.

[2.1] THE PETITIONERS ARE NOT PUBLIC SERVANTS

23. The term 'public servant' is not defined in the Prevention and Punishment of Corruption Act, 1998 ["PAPCA"]. However, the Prevention of Corruption Act, 1988 ["PCA"] which has provisions analogous to PAPCA provides a wide and illustrative manner.[49]

24. It is submitted that the petitioners do not come within the definition of public servants. In *G.A. Monterio* v. *State of Ajmer*,[50] the question before the court was whether a metal examiner was a public servant under the PCA. The two main tests established in the

[44] State of Bombay v. F.N.Balsara, AIR 1951 SC 318; State of Bihar v. Kameshwar Singh, AIR 1952 SC 252; R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628.
[45] R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628.
[46] State of West Bengal v. Sujit Kumar Rana, AIR 2004 SC 1851; Divisional Forest Officer v. G.V. Sudhakar Rao, (1985) 4 SCC 573; State of West Bengal v. Gopal Sarkar, (2002) 1 SCC 495.
[47] C.B.I. v. Ravishankar Prasad, (2009) 6 SCC 351, ¶ 17; Director of Public Prosecutions v. Humphrys, [1977] AC 1; Connelly v. Director of Public Prosecutions, 1964 AC 1254; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335.
[48] Vivek Gupta v. C.B.I., 2004 SCC (Cri) 51; P Nallamal v. State, 1999 Cri LJ 1591; Ramesh Chand Jain v. State of Madhya Pradesh, ILR [1992] MP 812.
[49] Section 2(c), The Prevention of Corruption Act, 1988.
[50] G.A. Monterio v. State of Ajmer, AIR 1957 SC 13.

case to determine whether a person is a public servant are, *first*, whether the person is in the service or pay of the government. *Secondly*, whether he is entrusted with the performance of a public duty.

25. In the instant case, both these tests are not satisfied. The petitioners are owners of various energy consultant companies.[51] Hence, *first*, the accused persons are neither in the service nor in the pay of the government. *Secondly*, there is nothing in the facts to indicate that they have been entrusted with performance of a public duty. Therefore, it is submitted that the petitioners are not public servants.

[2.2] THE OFFENCES COMMITTED BY PETITIONERS CONSTITUTE A SEPARATE TRANSACTION

26. Under Section 2(1) of the PCA, 'court' has been defined to mean the court duly notified under the Act to try offences against public servants for commission of offences under this Act.

27. The PCA which has provisions similar to the PAPCA, via Section 3, states that the Special Court has the jurisdiction to try any offences punishable under that act, any conspiracy to commit or any attempt to or any abetment of any of the offences triable under the PCA.[52] Under Section 4(3) of the PCA, it is stated that a Special Court may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 ["CrPC"], be charged at the same trial.[53]

28. However, in the case of *Vivek Gupta* v. *Central Bureau of Investigation*,[54] it has been held that any person other than a public servant who is charged with the same offences can also be tried under the PCA provided the offences fall under the same transaction. In the instant case, Section 114 of the Criminal Code of Procedure and Rules, 1920 ["CCPR"], which relates to joinder of persons states that the persons accused of the same offence committed within the same transaction can be tried together.[55]

29. The term 'transaction' has been used in both the CrPC and the CCPR.[56] However, its definition is neither given in the CrPC nor is it annexed to the Statement of Facts.[57] The facts of the case determine whether the actions of the accused constitute one transaction or several

[51] ¶ 2, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[52] Section 3, The Prevention of Corruption Act, 1988.
[53] Section 4(3), The Prevention of Corruption Act, 1988.
[54] Vivek Gupta v. C.B.I., 2004 SCC (Cri) 51; P Nallamal v. State, 1999 Cri LJ 1591; Ramesh Chand Jain v. State of Madhya Pradesh, ILR [1992] MP 812.
[55] Section 114, Criminal Code of Procedure and Rules, 1920.
[56] Section 223, The Code of Criminal Procedure, 1973.
[57] S.C. Sarkar, THE CODE OF CRIMINAL PROCEDURE 1173, Vol. 2, (10th edn., 2012).

transactions.[58] The words "*the same transaction*" occurring in this section comprise all the acts of all the persons concerned, done in the course of carrying through the affair in question. The *prima facie* test, as the words "*in the course of*" indicate, is *community* of purpose and *continuity* of action.[59] To ascertain whether a series of acts are parts of the same transaction, it is essential to see whether they are linked together to present a continuous whole.[60]

30. It is submitted that, in the instant case, the acts of Eddie and Elvis, and that of the petitioners constitute different transactions as there is, *first*, no community of purpose **[2.2.1]** and, *secondly*, no continuity of action **[2.2.2]**.

[2.2.1] COMMUNITY OF PURPOSE

31. In the instant case, there was no community of purpose. The purpose of Eddie and Elvis was to steal confidential information from the Ministry of Natural resources.[61] The petitioners on the other hand thought that Eddie and Elvis are journalists and did not know that they had stolen the documents.[62] Thus, the purpose of the petitioners was not to steal information but to gain legal information through *bona fide* journalists.[63]

[2.2.2] CONTINUITY OF ACTION

32. It is submitted that there is no continuity between the actions of the petitioners, and that of Eddie and Elvis. 'Continuity of action' refers to following up of some initial act through all its consequences until the series of acts comes to an end, either by attainment of object or by putting an end to the acts.[64] The actions of Eddie and Elvis to steal the information were different from the acts of the petitioners.[65] There was no common objective or purpose to be achieved from these transactions.

33. Thus, the acts of Eddie and Elvis and those of the petitioners had different objectives. They were not closely linked and did not constitute same transaction. Further, it is well settled that joinder of too many charges against too many persons at the same trial is likely to

[58] Choragudi Venkatadri v. Emperor, (1910) 20 MLJ 220; Shapurji Sorabji v. Emperor, 162 Ind Cas 399; Virupana Gowd v. Emperor, (1915) 28 MLJ 397; State of Rajasthan v. Mangtu Ram, AIR 1962 Raj 155; State of Andhra Pradesh v. Cheemalapati Ganeswara Rao, AIR 1960 SC 1850; Ramaraja Tevan v. Emperor, 32 Cr LJ 30; Emperor v. Keshavlal Tribhuvandas, (1944) 46 BOMLR 555; Lockley v. Unknown, (1920) 38 MLJ 209.
[59] Shamsher Bahadur Saxena v. State of Bihar, AIR 1956 Pat 404; Nabijan v. Emperor, AIR 1947 Pat 212.
[60] Emperor v. Keshavlal Tribhuvandas, (1944) 46 BOMLR 555.
[61] ¶ 3, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[62] ¶ 3, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[63] ¶ 3, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[64] S.C. Sarkar, THE CODE OF CRIMINAL PROCEDURE 1174, Vol. 2, (10th edn., 2012); Shapurji Sorabji v. Emperor, 162 Ind Cas 399.
[65] ¶ 2, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.

bewilder the accused in their defence.[66] Hence, it is submitted that the Court should use its inherent power to quash the entire proceedings because the Special Court cannot try the accused persons *jointly*.

[2.3] *IN ANY CASE*, THE SPECIAL COURT LACKS JURISDICTION OWING TO ABSENCE OF SANCTION

34. It is well established that the requirement of sanction *vis-à-vis* a public servant entails, first, that the act should be in discharge of an official duty and secondly, that the act so discharged should have close nexus or link with such discharge of duty.[67] If the act and the official duty are inseparably linked, notwithstanding the fact that the performance of duty was in excess of the needs and requirements of the situation, sanction is imperative.[68] Further, what is required is a reasonable connection between the act and official duty. It does not matter if the act exceeds what is strictly necessary for discharge of the duty.[69]

35. In the present case, the *modus operandi* indicates that the acts were done in the colour of their official duty.[70] The statement of facts indicates that Eddie and Elvis used ID cards of the Ministry of Natural Resources to enter the premises to steal the information.[71] It might be argued by the respondents that these acts were not part of their official duty. However, it is submitted that since Eddie and Elvis were appointed as *ad hoc* employees in the Ministry of Natural Resources,[72] it would be part of their duty to not reveal the confidential information and documents of the ministry.

36. It is submitted that the offences were committed within the official duties and thus even if the court feels that they were in the same transaction, the Special Court lacks jurisdiction as there has been no sanction to prosecute these persons.[73] The cognizance without prior sanction has vitiated the proceedings.

[3]. THE INDICTMENTS MUST BE QUASHED

37. The trial against any accused cannot proceed unless a consideration of the record of a case and the documents submitted therewith provide "*sufficient ground*" for proceeding

[66] S.C. Sarkar, THE CODE OF CRIMINAL PROCEDURE 1174, Vol. 2, (10th edn., 2012).
[67] R.P. Kapur v. State of Punjab, AIR 1960 SC 862; Mohd. Iqbal Ahmed v. State of Andhra Pradesh, AIR 1979 SC 677; M.R. Reddi, ANTI-CORRUPTION LAWS AND DEPARTMENTAL ENQUIRIES 706 (5th edn., 2014).
[68] Bishnu Prasad Mohapatra v. Harihar Patnaik, 1992 Cri LJ 2701.
[69] Nirupama Dey v. Chaitanya Dalua, 2004 Cri LJ 704; Abdul Wahab Ansari v. State of Bihar, (2004) 27 OCR (SC) 315; State of Himachal Pradesh v. M.P. Gupta, 2004 SCC (Cri) 539.
[70] ¶ 1, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[71] ¶ 1, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[72] ¶ 2, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[73] Bishnu Prasad Mohapatra v. Harihar Patnaik, 1992 Cri LJ 2701.

against the accused.[74] The standard for quashing proceedings before the conclusion of a trial, usually, is to prove that a *prima facie* case cannot be made out or that the charge cannot be made out on the face of the record.[75] However, the Supreme Court of India has held that it is not desirable to lay down inflexible or exhaustive rules in this regard. It has been held that the inherent powers of a court to quash proceedings can be used in a wide manner to secure the ends of justice.[76]

38. It is submitted that, from the evidence adduced in support of the charges in the instant case, the indictments must be quashed as, *first*, the prosecution story is unreliable **[3.1]**. *Secondly*, no *prima facie* case can be made out with regard to the requisite *mens rea* **[3.2].** *Thirdly*, the elements of individual offences cannot be made out **[3.3]**. Hence, "*sufficient grounds*" do not exist for proceeding against the accused.[77]

[3.1] THE PROSECUTION STORY IS UNRELIABLE

39. Evidence must be tested for its inherent consistency and inherent probability of the story.[78] In the instant case, the entire prosecution story is unreliable because, *first*, there are procedural irregularities in trap and seizure **[3.1.1]** and *secondly*, the statement of the co-accused, which is the basis of prosecution, is unreliable **[3.1.2]**.

[3.1.1] THERE ARE PROCEDURAL IRREGULARITIES IN TRAP AND SEIZURE

40. It is well established that the trap should be laid out in the presence of independent witnesses.[79] In the instant case, it is clear that the trap was conducted without any independent witness. Thus, the entire trap becomes questionable.[80] Further, the seizure becomes questionable as the statement of facts indicates that the two persons were apprehended at 00:50. However, the seizure form indicates the time of seizure to be 23:45.[81]

[74] Section 134, Criminal Code of Procedure and Rules, 1920.
[75] State of Haryana v. Bhajan Lal, AIR 1992 SC 604; R.P. Kapur v. State of Punjab, AIR 1960 SC 862.
[76] State of Karnataka v. L. Muniswamy, AIR 1977 SC 1489.
[77] Section 134, Criminal Code of Procedure and Rules, 1920.
[78] C. Magesh v. State of Karnataka, AIR 2010 SC 2768, ¶ 49; Suraj Singh v. State of Uttar Pradesh, 2008 (11) SCR 286.
[79] Vinod Kumar v. State of Punjab, AIR 2015 SC 1206; State of Bihar v. Basawan Singh, AIR 1958 SC 500; Major E.G. Barsey v. State of Bombay, AIR 1961 SC 1762; Bhanuprasad Hariprasad Dave v. State of Gujarat, AIR 1968 SC 1323; M.O. Shamshudhin v. State of Kerala, (1995) 1 SCC 351.
[80] ¶ 4, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[81] Investigation Records, Property Seizure Detail Form, Appendix 1, Page 7, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.

[3.1.2] THE STATEMENT OF THE CO-ACCUSED WHICH IS THE BASIS OF PROSECUTION IS UNRELIABLE

41. It is well established that the statement of the co-accused made in the course of investigation to the police can only be used when it is corroborated by independent evidence.[82] The determination of whether a statement is to be relied upon is premised not only upon the intrinsic character of the statement but also the circumstances in which it is made.[83] In the instant case, the only evidence against the petitioners is the extra-judicial confession of Eddie and Elvis before the police.[84] It is submitted that there is no independent corroboration of the confession that the petitioners lured them to steal documents. It might be contended that the recovery of documents is sufficient corroboration. However, the petitioners genuinely believed that they were receiving legally obtained documents from *bona fide* journalists. Thus, there is no corroboration of the fact that these people lured Eddie and Elvis to steal information.[85]

42. Further, in present case, though Eddie and Elvis were apprehended at 00.50 on March 21, 2015, their recorded statements are dated March 20, 2015 at 23:45.[86] This additionally affects the reliability of the confession of the co-accused.

[3.2] PRIMA FACIE CASE IS NOT MADE OUT WITH REGARD TO THE REQUISITE MENS REA

43. It is a well settled principle in common law that an offence is constituted by the presence of the *actus reus* as well as *mens rea*.[87] The requirement of *mens rea* can be dispensed with only if the statute excludes *mens rea* explicitly or by necessary implication.[88] It imposes a burden on the State to prove that the defendant "*performed the relevant actus reus with the requisite mens rea in the crime charged*".[89]

44. A useful indication that cements the requirement for *mens rea* is the use of adverbs like 'knowingly', 'wilfully' or 'dishonestly'.[90] The offences of theft, cheating, criminal trespass, criminal breach of trust and forgery, which the petitioners have been charged with,

[82] Ramlal v. State of Bombay, AIR 1960 SC 961; Sarwan Singh v. State of Punjab, AIR 1957 SC 637.
[83] State of Gujarat v. Somabhai Lalabhai, 1975 Cri LJ 74.
[84] Investigation Records, Statements, Appendix 1, Page 7, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[85] ¶ 3, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[86] Investigation Records, Statements, Appendix 1, Page 7, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[87] R v. Tolson, (1889) 23 QBD 168.
[88] Brend v. Wood, (1946) 62 TLR 462; Nathulal v. State of Madhya Pradesh, AIR 1966 SC 43.
[89] Woolmington v. D.P.P., 1935 AC 462; *Smith and Hogan's Criminal Law* 29 (David Ormerod ed., 13th edn., 2011).
[90] R v. Prince, L.R. 2 C.C.R. 154 (1875); *Smith and Hogan's Criminal Law* 167 (David Ormerod ed., 13th edn., 2011).

are explicit in their requirement for *mens rea*. This is clear from the use of the expressions "*dishonestly*",[91] "*fraudulently*",[92] "*intent*",[93] "*intentionally*"[94] and "*knowing or having reason to believe*"[95]. Hence, the prosecution needs to prove that a *prima facie* case exists with regard to the *mens rea* as well. There is nothing in the facts to show that the petitioners knew that the documents were stolen, except for the confession of the co-accused which is not considered reliable evidence.[96] The petitioners were under the belief that Eddie and Elvis were journalists[97]. Since they did not know that the documents were stolen in the first place, they did not have the intent to commit these crimes.

45. It is submitted that the same contentions hold water for the POAGSA. It cannot be said that the Act excludes *mens rea* by necessary implication, either. In fact, the act explicitly incorporates the requirement for *mens rea* through use of expressions "*intended*" and "*knowing*". Additionally, the interpretation of possession as 'conscious possession' by Indian Courts further strengthens this contention.[98] It is submitted that a *prima facie* case cannot be made out in the absence of requisite *mens rea*.

[3.3] THE ELEMENTS OF THE OFFENCES CHARGED CANNOT BE MADE OUT FROM THE RECORD

46. Clearly, some of the offences mentioned in the information report (and the indictment) pertain only to Eddie and Elvis, and not the petitioners. The offences of cheating, forgery and criminal trespass pertain only to Eddie and Elvis because only they had entered the premises of the Ministry of Natural Resources and tried to obtain the documents by illegal means.[99] Also, since the petitioners are not public servants, criminal breach of trust by public servant is also not attracted. It is also submitted that theft in a dwelling house **[3.3.1]**, dishonestly receiving stolen property **[3.3.2]** and offences under the POAGSA **[3.3.3]** are not made out.

[91] Sections 259, 300, 309 and 361, Arkham Penal (Provisions and Punishment) Act, 1963.
[92] Section 300, Arkham Penal (Provisions and Punishment) Act, 1963.
[93] Sections 343, 442 and 448, Arkham Penal (Provisions and Punishment) Act, 1963.
[94] Section 300, Arkham Penal (Provisions and Punishment) Act, 1963.
[95] Sections 361 and 448, Arkham Penal (Provisions and Punishment) Act, 1963.
[96] Ramlal v. State of Bombay, AIR 1960 SC 961; Sarwan Singh v. State of Punjab, AIR 1957 SC 637.
[97] ¶ 3, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[98] The Government of N.C.T. of Delhi v. Jaspal Singh, 2003 Indlaw SC 599; Sama Alana Abdulla v. State of Gujarat, 1995 Indlaw SC 653.
[99] ¶ 1, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.

[3.3.1] THEFT IN A DWELLING HOUSE

47. Theft in a dwelling house is an aggravated form of theft and has an identical provision in the Indian Penal Code, 1860 ["IPC"].[100] The basic definition of 'theft' in the Arkham Penal (Provisions and Punishment) Act, 1963 ["APA"], however, is in *pari materia* with the definition given in Theft Act, 1968 of UK.[101] Section 2 of the Theft Act makes it clear that belief that the owner would consent would result in the act not being considered 'dishonest'.

48. Additionally, the IPC defines dishonestly as something done with the intention of causing "*...wrongful gain...or wrongful loss...*"[102] In the instant case, the petitioners believed that Eddie and Elvis owned the documents and believed that they had consented to giving the documents to them. It is submitted that the petitioners did not have such an intention as they firmly believed that the two were journalists.[103] Consequently, irrespective of the jurisdiction this Court turns to for guidance, it cannot be said that the actions of the petitioners were 'dishonest'.

49. It has been held by courts in UK that confidential information, though it has value and can be sold, is not property within the meaning of the theft act.[104] Needless to say, the same is true in India and other countries where "*moveable property*" and "*moves*" are essential aspects of the crime.[105] The position of law is similar in Canada as well, where the Supreme Court has held that the offence of theft cannot be extended to protection of intangible things *per se*.[106]

50. The reasoning is linked to common law principle of non-retroactivity derived from the wider maxim "*nullum crimen sine lege*".[107] The idea that no crime can exist without a pre-existing enactment is an integral part of legal thinking, not just in common law, but also in most of continental Europe. Centuries of precedents have limited theft to tangible objects. Its extension to intangible objects, especially confidential information which has not been interpreted to be included in the definition of property, would amount to *ex post facto* law making by the judiciary.

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[100] Section 380, The Indian Penal Code, 1860.
[101] Section 1, Theft Act, 1968.
[102] Section 24, The Indian Penal Code, 1860.
[103] ¶ 3, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[104] Oxford v. Moss, (1978) 68 Cr App R 183.
[105] Section 378, The Indian Penal Code, 1860.
[106] R v. Stewart, (1988) 50 DLR.
[107] Andrew Ashworth, PRINCIPLES OF CRIMINAL LAW 57 (7th edn., 2013); Article 7, European Convention on Human Rights, 1950.

51. It is submitted that, since the police recovered copies of government documents and not the documents themselves, there has been no theft.[108] Therefore, even if the submission that the documents were not obtained with illegal intent were to be rejected, it is submitted that the petitioners cannot be held guilty of theft since the object in question, the confidential information, is not tangible property.

[3.3.2] DISHONESTLY RECEIVING STOLEN PROPERTY

52. A threefold test needs to be satisfied to prove that the offence of dishonestly receiving stolen property was committed.[109] *First*, that the stolen property was in the possession of the accused. *Secondly*, that some person other than the accused had possession of the property before the accused got possession of it. And *thirdly*, that the accused had knowledge that the property was stolen property. It is contended that since there was no dishonest intention, the test is not met.

53. It has already been submitted that the use of the term 'dishonestly' has two implications for criminal offences. *First*, it is a clear expression of the requirement of *mens rea*. *Secondly*, the IPC specifically defines 'dishonestly' as pertaining to an act done with the intention of causing "*…wrongful gain…or wrongful loss….*"[110] It is submitted that *mens rea*, and by extension dishonest intention, are not present in the instant case. The petitioners genuinely believed that they were receiving legally obtained documents from *bona fide* journalists. Hence, no case is made out as to dishonestly receiving stolen property.

[3.3.3] OFFENCES UNDER THE PREVENTION OF ARKHAM GOVERNMENT SECRETS ACT

54. For an offence to be made out under this Act for spying, it is necessary to show that the accused have either been around a prohibited place or done some act "*…intended to be useful to…an enemy*".[111] Multiple cases on the point indicate that the expression 'enemy' refers to an enemy state.[112] While it can refer to a current as well as a potential enemy, it is clear that it does not refer to a private individual or body.[113] There is nothing on record to show that the copy of 'Draft Arkham Budget for Financial Year 2015–2016' or the government documents recovered from the petitioners could be useful for an enemy state.

[108] ¶ 2, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[109] Trimbak v. State of Madhya Pradesh, AIR 1954 SC 39.
[110] Section 24, The Indian Penal Code, 1860.
[111] Section 7, Arkham Government Secrets Act, 1892.
[112] Safi Mohd. v. State of Rajasthan, 2013 Indlaw SC 247; Ram Swaroop v. State, 1986 Cri LJ 526.
[113] R v. Parrott, (1913) 8 Cr. App. R. 186; Kutbuddin v. State, AIR 1967 Raj 257.

The only utility of these documents, according to the facts, extend to guiding Multinational Companies in their investment decisions.[114]

55. Admittedly, the POAGSA also raises a presumption, even in the absence of any particular action, that a person has collected such material for "*purpose prejudicial to the safety or interests of the state*".[115] However, this is a rebuttable presumption.[116] More importantly, such a presumption can arise only if there is "*conscious possession*" of the material and no alternate explanation is given.[117] The petitioners were clearly not aware of the confidential nature of documents they were in possession of. Since they have provided a viable explanation,[118] this presumption will not continue to operate.

56. The POAGSA makes it an offence to receive such secret material.[119] It also makes it an offence to attempt, incite or abet another person to do anything prohibited by the Act. It is submitted that neither of these provisions are attracted for the following reasons. *First*, the petitioners did not receive such material "*knowing*"[120] or "*having reason to believe*"[121] that such material was procured in contravention of the Act. *Secondly*, no reliable evidence exists on record to indicate that they aided, abetted or incited Eddie and Elvis to commit any offence.

57. Hence, it is submitted that *prima facie* case does not exist with regard to both *mens rea* and *actus reus* for the offences that the petitioners are charged with. Thus, the indictments should be quashed.

[4]. PROCEEDINGS SHOULD BE STAYED DURING THE PENDENCY OF THE WRIT PETITION

58. Section 14 of the PAPCA states that no court shall stay the proceedings under this Act on any other ground other than defective or illegal sanction.[122] It is submitted that, in the instant case, the court should stay the proceedings during the pendency of writ petition because, *first*, stay can be granted for illegal or defective sanction **[4.1]**. *Secondly*, sanction is required as the acts of Eddie and Elvis come within their official duty **[4.2]**.

[114] ¶ 3, Page 1, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[115] Section 7(2), Arkham Government Secrets Act, 1892.
[116] C.B.I. v. Abhishek Verma, 2009 Indlaw SC 701.
[117] The Government of N.C.T. of Delhi v. Jaspal Singh, 2003 Indlaw SC 599; Sama Alana Abdulla v. State of Gujarat, 1995 Indlaw SC 653.
[118] ¶ 3, Page 4, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2016.
[119] Section 8(2), Arkham Government Secrets Act, 1892.
[120] Section 8(2), Arkham Government Secrets Act, 1892.
[121] Section 8(2), Arkham Government Secrets Act, 1892.
[122] Section 14, The Prevention and Punishment of Corruption Act, 1998.

[4.1] STAY CAN BE GRANTED FOR ILLEGAL OR DEFECTIVE SANCTION

59. It is submitted that Section 14 of the PAPCA applies even to this court while it is exercising its inherent jurisdiction. The Indian Supreme Court, while analyzing an analogous provision of the PCA, has categorically stated in *Satya Narayan Sharma* v. *State of Rajasthan*[123] that the phrase 'no court shall stay the proceedings' applies even while a Court is exercising its inherent jurisdiction. Further, the ground of illegal and defective sanction would necessarily include absence of sanction.

[4.2] SANCTION IS REQUIRED FOR THE ACTS OF EDDIE AND ELVIS

60. As has been already established in Section 2.3 under ¶¶ 36 and 37, the acts of Eddie and Elvis come within the ambit of their official duty. The act and public duty, in the present case, have a reasonable connection and, therefore, sanction is imperative. Thus, in light of Section 14 of PAPCA, it is submitted that the court should stay the proceedings till the writ petitions are pending.

PRAYER

Wherefore in the light of the issues raised, arguments advanced and authorities cited, it is humbly prayed that this Hon'ble Court may be pleased to adjudge and declare that:

1. The Prevention of Arkham Government Secrets Act, 1892 should be struck down.

2. The prosecution against the petitioners should be quashed.

3. The formal notice of indictment against petitioners should be quashed.

4. The proceedings should be stayed during the pendency of the present writ petition.

And pass any other order, direction, or relief that this Hon'ble Court may deem fit in the interests of justice, equity and good conscience.

All of which is humbly prayed,
URN – 1265,
Counsels for the Petitioners.

[123] Satya Narayan Sharma v. State of Rajasthan, 2001 (4) Crimes 34 (SC).