**UR NO. 213**

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**THE K.K. LUTHRA MEMORIAL MOOT COURT COMPETITION 2013.**

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**IN THE**

**HON'BLE COURT OF APPEALS, POLKRAINE**

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**CASE CONCERNING**

**"MANUFACTURE SALE & POSSESSION OF BANNED NARCOTIC DRUG"**

**&**

**"CONTEMPT OF COURT & MEDIA TRIAL"**

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**Criminal Appeal No._____/2013**

**[Under S.385 1AA of The Polkranian Criminal Procedure, 2006 ]**

**IN THE MATTERS OF:**

**DR IBRAHIMOVIC** **v.** **POLKRANIAN TIMES & OTHS.**

**(APPELLANT)** **( RESPONDENT)**

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**Memorandum on Behalf of Respondents**

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## STATEMENT OF FACTS

Polkraine is a landlocked country established in 2005 with its capital city as 'Torresnik'. It has adopted common law system, as a judicial model within its constitutional democracy. The country is very famous for its numerous tourist destinations but is also struggling with an escalating drug problem.

### [PARTIES]

*Dr Ibrahimovic*- Is a Nobel Prize winner chemist. He has received several patents for developing new organic compounds to combats ailments affecting the sinuses, nasal passages and respiratory system.

*The Polkranian Times*- Is a leading English daily, it is 90% state owned and controlled.

*Torresenik Today*- is a news channel owned by Polkranian Inc.

### [RELEVANT FACTS]

1. Dr. Ibrahimovic had thrown a lavish party at his villa on the outskirts of Torresenik on 19th January, which was attended by the top notch socialites of the city. An undercover journalist from Torresenik Today had slipped into the party with a hidden camera concealed in the button of his blazer and engaged Dr Ibrahimovic in a forty five minutes conversation, at a secluded spot near swimming pool, which was noticed by other guests.
2. On 21st January at 10:30 am police raided the accused's laboratory, accompanied with a video journalist from Torresenik Today and a chemical expert attached to police department.
3. At The time of raid, the accused seemed to be working with 'Red Phosphorous' and nearby in a vat contained ingredients for production of 'Pseudoephedrine', which was said to have initiated half an hour ago.
4. He was arrested after the raid and on the basis of information by CEO of Polkranian Times, video clip evidences and on the grounds of possession of ingredients for producing "crystal meth", a prohibited substance. On same day in evening Torresenik Today showed video clips of the party in an news segment "Ibrahimovic : The Meth Man". The channel showed footage of the party, containing clippings like a model inhaling cocaine in a driveway, lights, loud music and Dr Ibrahimovic socialising with the guests and a 28 minutes conversation of the Journalist with him.

### [CONVERSATION LEADING TO CONTROVERSY]

JOURNALIST- "So….that Inquiry. Did you really smoke grass in office?"

IBRAHIMOVIC-"Ha Ha…No Someone just saw it lying in my drawer. Obviously, I cleaned everything before the stuff hit the fan"

JOURNALIST-"I am more of a meth man myself"

IBRAHIMOVIC-"Yeah? I haven't tried it"

JOURNALIST-"NO WAY! I don't believe you"

IBRAHIMOVIC-"I am not lying"

Journalist- "But are you telling me that you've never come in contact with the stuff? You've never been tempted?"

IBRAHIMOVIC- "No I have never been tempted...[*audio is unclear for 30 seconds*] know where can get some ?

JOURNALIST- "Could you get me some? I'm willing to pay good money. I mean a LOT! Because my friends do it as well."

IBRAHIMOVIC- "Let me see and get back to you."

7. The news channel claimed that the video was sent to the police through 'proper channels'. Dr. Ibrahimovic identified his voice in the recording but said footage has been cobbled distorted to give an incomplete picture. The trial began on 10th Feb. The journalist during cross examination said they were following the accused for quite some time and had many more evidence against him.
8. The counsel for accused argued that firstly the video tape evidence is insufficient, Secondly, his actions do not constitute 'attempt' as he was in 'preparation' stage & thirdly (in the alternative) he has been 'entrapped' by journalist who acted as *'agent provocateur'* and the entire episode amounts to abuse of process. The prosecutor, in her rejoinder denied all the above arguments and said they had no bearing on the case. The judge, while asking questions to the prosecutor, seemed skeptical about their case to many.

Torresenik Today broadcasted certain talk shows and collected citizen's views regarding the trial. Polkrainian Times published a statement in the editorial about the judge trying the case which read-"Will the judge continue to question the prosecutor or will he do what his conscience tells him to do?", after which the judge abruptly rescued himself from the case. The accused also filed an application for initiating contempt of court against Polkranian Times Inc.. The new judge reheard the entire case, convicted Dr. Ibrahimovic and sentenced him to 9 yr's imprisonment & fine of 40,000 polkranian dollars. Dr Ibrahimovic then moved two separate appeals challenging the conviction and the dismissal of the contempt application, which have been clubbed together. The matter is now up for hearing.

## STATEMENT OF ISSUES

I. **WHETHER THE CONVICTION IS UNREASONABLE AND LIABLE TO BE SET ASIDE?**

II. **WHETHER CONTEMPT PROCEEDINGS SHOULD BE INITIATED AGAINST POLKRANIAN TIMES INC.?**

# PLEADINGS

## CONTENTION I. THE VERDICT OF TRIAL COURT IS REASONABLE & SUPPORTED BY EVIDENCE.

### [I.A.] REQUISITE MENS REA IS PRESENT.

It is humbly submitted that it is a general principle of criminal law that there must be a blameworthy state of mind.[1] In the present case, there is presence of requisite *mens rea* as-

### [I.A.1] *The accused is capable of manufacture of methamphetamine.*

It is most humbly submitted that capacity of accused is significant factor in determining his intention.[2] The facts of present case show that accused is a patent holder chemist who specialises in drugs administered through the nasal passages. Thus it can't be denied that his knowledge would be limited about the drug whose abuse is very common in the country. Hence, it is evident from the fact itself that accused is capable for production of meth(hereinafter referred as meth).

### [I.A.2] *The accused has accepted earlier connections with marijuana.*

Evidence of past drug related activity is admissible on issue of motive.[3] The admissibility of evidence of similar acts, conditions or occurrences is probative of commission or existence of a particular act.[4] The facts clearly states that accused has accepted possession of marijuana in video tape, with regard to which his company conducted inquiry on accused[5]. Therefore, it may be validly concluded that the accused does not has clean hands, & has some involvement in drug related activities.

### [I.A.3] *The accused has not denied sale of meth.*

It is submitted that any visualization is potential & valuable aid to help construe and convey a large amount of complex information.[6] The evidence of past drug use or addiction is admissible to prove motive only where there exists some affirmative link between the crime

[1] THE DIGEST 17 (1st ed., Vol 14 (2), London Butterworths & Co. Ltd. 1993).
[2] DAVID ORMEROD, SMITH & HOGAN CRIMINAL LAW 45 (12th ed. Oxford Press 2008).
[3] U.S v. Martinez, 890 F.2d 1088, CORPUS JURIS SECUNDUM ¶ 261 (Thomson West 2006).
[4] Atlanta Joint Terminal v. Knight, 98 Ga. App 482.
[5] Moot Proposition of K.K Luthra Moot Court Competition 2013, ¶ 4 (Hereinafter referred as moot problem ).
[6] STEPHEN MASON, ELECTRONIC EVIDENCE 139 (2nd ed., LexisNexis Butterworths 2010).

& the drug use. It is clear from the video tape conversation between the accused and journalist that accused has only denied addiction to meth but has not denied possession or sale.[7]

**[I.B.] REQUISITE ACTUS REAS IS PRESENT.**

The physical element of a crime or behaviour connected to the crime is called the *actus reus*.[8] A person must participate in all the acts necessary to constitute a particular crime in order to be guilty thereof.[9] In the present case, the accused's conduct in the party & at his laboratory is enough to constitute the *actus reus* for the attempt of sale and manufacture of meth as-

**[I.B.1]** ***The accused had all required material for manufacture of meth.***

It is humbly submitted that the basic materials required in the production of methamphetamine by the 'Red P method' are a mixture of an ephedrine-bearing precursor substance (i.e. pseudoephedrine), red phosphorus, and hydriodic acid (HI).[10] Red phosphorus is combined with elemental iodine to produce hydriodic acid, which is used to reduce ephedrine or pseudoephedrine to methamphetamine.[11] In the present case, all the requisite ingredients were present with the accused as the facts visibly say that the accused was working with red phosphorus and a vat was also found which contained the ingredients for the production of pseudoephedrine.[12] Iodine, being a very basic reagent can very well be presumed to be present in the accused's laboratory.

**[I.B.2]** ***The chemicals expert endorsed that the process of production of meth had begun.***

It is humbly submitted that the facts clearly state that the chemicals expert concluded that the process of production of meth had been initiated half an hour earlier.[13] To render the opinion of an expert admissible, the expert must have special skill in the subject concerning which his opinion is sought to be given[14] and in the present matter, the facts mention that the expert was a chemicals expert. An expert evidence/opinion has probative force or value,[15] and it may be

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[7] Refer Moot Problem, ¶ 9.
[8] DAVID ORMEROD, SMITH AND HOGAN CRIMINAL LAW 42 (12th ed., Oxford 2002).
[9] Scott v. Com., Ky. 353, 197 S.W. 2d 774 (1946).
[10] Harrison, *Potential Health Effects at a Clandestine Methamphetamine Laboratory using the Red Phosphorus Production Method*, MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
[11] L. FIESER AND M. FIESER, REAGENTS FOR ORGANIC SYNTHESIS 449 (Vol. 1, Wiley and Sons 1967); Harry F. Skinner, *Methamphetamine Synthesis via HI/Red Phosphorus Reduction of Ephedrine*, FORENSIC SCIENCE INTERNATIONAL 48 128-134 (1990).
[12] Refer Moot Problem, ¶ 8.
[13] *Id.*
[14] Car v. Northern Liberties, 35 Pat St 324 (AM).
[15] Banks v. Chicago Mill & Lumber Co., 92 F. Supp. 232 (E.D. Ark. 1950).

substantial enough, of itself,[16] to raise a fact question,[17] or be sufficient to support a verdict or finding.[18] If the court has conscientiously discharged its duty of satisfying itself from the evidence of an expert, it would be failing in its duty if it does not act on the conclusion it has reached.[19] The chemicals expert being attached to the police department was competent to give his opinion and the same should be admitted as evidence, considering his powers of observation and the degree of attention which he paid to the matter.

**[I.B.3]** ***The act of the accused amounts to attempt.***

It is further submitted that under Polkranian Penal Code,[20] to establish attempt of illicit preparation of drugs, intent to manufacture the drugs and the performance of overt or substantial acts towards manufacture[21] has to be proved.[22] *According to Halsbury's Laws of England,* an attempt to commit an offence is an act done or omitted with an intent to commit that offence, forming part of series of acts or omissions which would have constituted the offence, if such series of acts or omissions had not been interrupted, either by voluntary determination of the offender not to complete the offence[23] or by some other cause.[24]

The ingredients of attempt are – (a) mere intention not enough[25] (b) there must be an act done[26] (c) the act leading towards the commission of the offence is an attempt to commit it[27] (d) must be more than mere preparatory[28] (e) must not be voluntary discontinued.[29] According to Black Burn J**.**, the difference between preparation and actual attempt is that actual transaction has commenced which would have ended in crime if not interrupted.[30] In the instant case, all the ingredients of attempt are fulfilled as the accused, with the intention of manufacturing meth, had initiated the process of the same, which is more than mere preparatory. This act of the accused led towards the commission of the offence and it was not

[16] International Paper Co. v. U.S., 227 F.2d 325 (5th Cir. 1955).
[17] Jennings v. White, 238 S.W.2d 300 (Tex. Civ. App. Eastland 1951).
[18] Barrow v. Talbott, 417 N.E.2d 917 (Ind. Ct. App. 1981).
[19] Y.R. RAO, EXPERT EVIDENCE 1316-1317 (4th ed. 2010).
[20] Section 321, 322, The Polkranian Penal Code, 2006.
[21] State v. Stensaker, 2007 ND 6.
[22] CORPUS JURIS SECUNDUM ¶ 267 (Thomson West 2006).
[23] State v. Brenn, 138 N.M 451.
[24] R v. Laliwood, (1910) 4 Cr App Rep 248, CCA
[25] R v. Eagleton, All ER Rep 363.
[26] R v. Hogkiss, (1869) 39 LJMC.
[27] THE DIGEST 1 (1st ed., Vol 14 (1), London Butterworths & Co. Ltd. 1993).
[28] R v. Cheeseman, (1862) L & C 140.
[29] R v. Duckworth, [1892] 2 QB 8.
[30] Cheeseman, *supra* note 28.

voluntarily discontinued.[31] The actual transaction which had commenced would have ended in commission of crime if not interrupted by the raid.

**[I.B.4]** ***The accused has nowhere denied his involvement in the production & sale of meth.***

It is most respectfully contended that in the matter at hand, the accused has nowhere denied his involvement in the manufacture and sale of methamphetamine. In the most relied evidence, i.e. the video tape, the accused has only mentioned that he has never been tempted for its use.[32] He did not deny any links to the sale and production of methamphetamine anywhere during the trial or investigation.

The relevant portion of the video where the audio is unclear leads to many probable interpretations. One very probable interpretation could be: *Dr. Ibrahimovic – "No, I've never been tempted...[to use it but I do make it for some of my friends. I'll let you] know where you can get some."* Hence, it can be established that accused is involved into manufacturing and selling of meth.

*In the present case as the accused had denied only addiction to meth and not sale of meth, had previous involvement in possession of prohibited drugs i.e. marijuana & further is capable for production of drugs. Therefore, it can be concluded that accused had requisite mens rea and actus reas for the attempt of sale & manufacture of meth.*

**[I.C.] VIDEO TAPE PRODUCED IS ADMISSIBLE AS EVIDENCE.**

Video tapes when properly authenticated[33] and relevant to the issue are admissible as evidence.[34] In the present case, video tape produced is admissible as evidence because-

**[I.C.1]** ***Video Tape is a relevant piece of evidence.***

Video tapes are a reliable evidentiary resource if they are relevant and provide fair representation.[35] In the present case video tape offered is relevant piece of evidence as-

**[I.C.1 .i]** *Connection with marijuana is relevant.*

It is submitted that for evidence of similar acts or transaction to be admissible it must be relevant to the issue.[36] Evidence of prior acts may be admitted if it is relevant to a material

[31] Refer Moot Problem, ¶ 8.
[32] *Id.* ¶ 9.
[33] State v. Brooks, 178 N.C. App. 211.
[34] Com. v. Leneski, 66 Mass. App. Ct. 291, 846 N.E.2d 1195 (2006).
[35] AMERICAN JURISPRUDENCE 553 (2nd ed., Vol. 29, Thomson Reuters 2011).

issue[37] which can be proved by a preponderance of the evidence.[38] The evidence should be similar in kind[39] and renders the crime higher in probative value.[40] The prior evidence of accused's past involvement in possession of marijuana, a prohibited drug is relevant because such involvement makes the present charge i.e. manufacture and sale of meth more probable.

**[I.C.1.ii]** *The conversation in Video Tape is relevant to the charge in issue.*

The rationale for permitting admission of extrinsic acts evidence is that such evidence may be critical to the establishment of truth especially when that issue involves ascertaining the relevancy in drawing inferences from conduct.[41] It is clear from the impugned video tape conversation between the accused and journalist that accused has only denied addiction to meth but has not denied possession and sale.[42] Hence the video tape is relevant evidence with regard to charge on accused that is manufacture and sale of meth.

**[I.C.2]** ***Video evidence is authentic.***

**[I.C.2.i]** *The accused has identified himself in the video.*

It is humbly submitted that identification of voice of speaker is an essential precondition of authenticity and accuracy of a video tape.[43] In order to be admissible, the voice of the speakers should be duly identified. In the present case, the accused has recognized himself and his voice in the video tape; hence, it is proved that the person other than the journalist is the accused.

**[I.C.2.ii]** *The accused has failed to present his own version of video tape.*

*Wigmore* says that, "*It is the cardinal principal of criminal law that burden of proof lies on one who asserts.*"[44] It is evident from the fact that accused has said that video tape is distorted, tampered & cobbled so as to give incomplete picture in his trial[45], but he never said what is the real story of video tape any time during investigation or trial. The accused has neither given evidence to prove that the tape is concocted or tampered nor he has successfully

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[36] CORPUS JURIS SECUNDUM ¶ 117 (Vol. 32A .Thomson West 2006).
[37] JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW 1456 (Vol. IA, Wolters Kluver (India) Pvt. Ltd. 2008).
[38] AMERICAN JURISPRUDENCE 553 (2nd ed., Vol. 29, Thomson Reuters 2011).
[39] *Id.* at 555.
[40] Refer Moot Problem, ¶ 9.
[41] Huddleston v. U.S, 485 U.S 681.
[42] Refer Moot Problem, ¶ 9.
[43] R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106.
[44] *Id.*
[45] Refer Moot Problem, ¶ 9.

established any other version of records.[46] Hence his statement is ambiguous, misleading and suggests involvement of accused.

**[I.C.2.iii]** *The Video Tape can be corroborated by circumstantial evidence.*

Video tape is admissible as evidence, if it is corroborated by independent circumstantial evidence.[47] In the present case, each and every matter of conversation between the journalist and accused can be corroborated by independent circumstantial evidence as, the accused as well as the journalist have agreed to their presence in the video, the guests in the party had seen both of them talking in a secluded place near swimming pool[48] and further based on that conversation, the accused was caught red handed manufacturing meth by the police.

**[I.C.3]** ***Substantial part of the Video Tape is audible and intelligible.***

In a video tape, the video portion must be clearly visible and the audio portion should be clearly audible and sufficiently understandable.[49] Video tape evidence in order to be admissible should accurately present the events. It is very much evident from the fact itself that the substantial part of the video was very clearly visible and audible.[50]

**[I.C.3.i.]** *The unclear part of the video is not inadmissible.*

It is submitted that if some portions of a tape recording are inaudible and unintelligible does not invariably render the entire tape inadmissible.[51] Such a tape is inadmissible where the intelligible portions are not so substantial to render the whole recording untrustworthy.[52] The inaccuracies or any unreliability features of the videotape can be judged or exposed by cross-examination, allowing a jury to properly evaluate the evidence and assign it appropriate weight.[53] Hence, in the present case, the unclear part can be held as admissible by subjecting it to proper cross examination.

[46] Rupchand v. Mahabir Prasad, AIR 1956 Punj. 173.
[47] *Id.*
[48] Refer Moot Problem, ¶ 9.
[49] State v. Hewett, 86 Wash. 2d 545 P 2d 1201 (1976); Clifford S. Fishman, *Recordings, Transcripts, and Translations as Evidence*, 81 WASHINGTON LAW REVIEW 473, (2006).
[50] Refer Moot Problem, ¶ 11.
[51] U.S v. Terry, 729 F.2d 1063,
[52] U.S. v. Stone, 960 F.2d 426.
[53] Daniel v. Indiana Mills and Mfg. Inc., 103 S.W.3d 302 (Mo. Ct. App. S.D. 2003).

**[I.C.4.]** ***There is no possibility of tampering.***

**[I.C.4.i]** *The operator was bona fide & competent enough to operate the device.*

It is most humbly submitted that before admitting video tape evidence it must be proved to the satisfaction of the court that the operator of the device was competent to operate the device.[54] In the present case, the sting operator being a journalist[55] of a news channel[56] entrusted enough to carry out a sting operation alone with a button camera proves in absence of any evidence to the contrary that he is competent enough to use a video camera.

**[I.C.4.ii]** *Recordings were preserved in the safe custody.*

It is submitted that a chain of custody which establishes the "reasonable probability that no tampering has occurred" is to be shown.[57] Once the safe custody of original records is established then judge cannot reject the evidence.[58] Hence, strict custody has to be proved with respect of original tape recordings so as to rule out the possibility of tampering.[59] In this regard, facts of the case clearly states that video tape has been sent to the police through 'proper channels',[60] and also any possible tampering would be directly attributable to the T.V. channel, which would not only hold them liable for a serious crime of tampering evidence, but also harm their reputation. Therefore, keeping the tapes in safe custody becomes more of a responsibility of the channel and hence it should be presumed that they were in safe custody.

**[I.C.4.iii]** *Reduction of contents does not amounts to tampering.*

It is submitted that editing does not necessarily render the video inadmissible, as the editing of the film affects the weight rather than the admissibility of evidence.[61] Whether the party offering the film in evidence should be permitted to edit it to remove irrelevant matter is within the discretion of trial court.[62] Hence the deletion done by the police[63] to reduce 45 minutes video to 28 minutes does not amount to tampering. Hence it is contended that the evidence provided is relevant, authentic and therefore is valid basis for conviction of accused.

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[54] Steve M. Solomon, Jr., Inc. v. Edgar, E.2d 167 (Ga. Ct. App. 1955).
[55] Refer Moot Problem, ¶ 9.
[56] *Id.*
[57] John W. Thornton, *Expanding Video Tape Techniques in Pretrial and Trial Advocacy*, 9 FORUM 105 1973-1974.
[58] R v. Stevenson, 1971 (1) All ER 678.
[59] R.K. Anand, *supra* note 43.
[60] Henriette Picot & Marlene Kast, *Digital Evidence and Electronic Signature*, 5 LAW REVIEW, 108-109 (2008).
[61] Pritchard v. Bownie, 326 F.2d 323(8th Cir. 1964).
[62] Harris v. St.Louis Public Service Commission, 270 S.W.2d 850(Mo. 1954).
[63] Refer Moot Problem, ¶ 9.

**[I.D] STING OPERATION IS VALID.**

It is proper to use a sting operation at least where it amounts to providing a defendant with an "opportunity" to commit a crime. This will not amount to entrapment.[64] Without this kind of law enforcement weapon, it would often prove difficult, or impossible, to stop certain seriously criminal activity, particularly activity involving drugs, in which no direct participant wants the crime detected.[65]

**[I.D .1]** ***Torresenik Today has bonafide intention and no personal interest.***

It is respectfully submitted that the Apex Court of India recently affirmed the validity of sting operations if it is carried out in public interest[66] or without any ulterior purpose.[67] In the matter at hand, the sting operation was carried solely for purpose of catching the accused red-handed which is very clearly evident from the facts of the case. Also, the sting operation undertaken by Torresnik Today was only an attempt by an informed and alert media to reveal the underbelly of the drug trade in the country. Thus, the news channel had a public interest in undertaking such action and is, therefore, valid.

**[I.D.2]** ***Torresnik today has been permitted by police to conduct sting operation.***

It is humbly submitted that sting operations contain four basic elements: (1) an opportunity or enticement to commit a crime which is either created or exploited by the police; (2) a targeted offender or group of offenders who are likely to commit a type of crime; (3) a third party surrogate, an undercover or hidden police officer, or some other form of deception; (4) a climax when the operation ends.[68] Police have used sting operations since the middle of the twentieth century[69] to target a range of misdemeanours and felonies, including drug dealing.[70] It is no accident that police departments engaged in sting operations contact the media when they begin their night-time roundup.[71] Thus, in the present case, as Torresnik Today conducted the operation with the permission of the police, and therefore, is valid.[72]

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[64] Jacobson v. United States, 503 U.S. 540.
[65] Alejandro Vega v. United States, 102 F.3d 1301.
[66] John W. Thornton, *supra* note 57.
[67] R.D. Bohet, Ex-Dy. Supdt. Gr.-I, Central Jail v. Lt. Governor of Delhi, Govt. of NCT of Delhi, CAT (Principal Bench), Decided On: 24.11.2006 (Unreported).
[68] GRAEME R. NEWMAN, U.S. DEP'T OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, STING OPERATIONS 3 (Oct. 2007).
[69] *Id.* at 1.
[70] Dawn Bormann, *25 Indicted in Drug Sting*, K. AN. CITY STAR, Jan. 31, 2009.
[71] Robert H. Langworthy, *Do Stings Control Crime? An Evaluation of a Police Fencing Operation*, 6 JUST. Q. 27 1989.
[72] Refer Moot Problem, ¶ 10.

**[I.D .3]** ***The evidence obtained by such sting operation is admissible.***

It is humbly submitted that the judgment in *Kuruma v. Reginam*,[73] went a long way in giving sanction to such sting operations and thereby making the evidences collected through them, admissible in the court of law. In the present matter, the sting operation was valid and therefore, the videotape evidence obtained through it is admissible.

Even if at all, it is presumed that the sting operation conducted was invalid, then also the evidence is admissible as in the case of *Pushpadevi M. Jatia v. M.L. Wadhawan*,[74] position was made clear by the Hon'ble Supreme Court of India where it had observed that court need not concern itself with the method by which the evidence in question was obtained.[75] In criminal action[76] if such evidence and the "the fruit of the poisonous tree are suppressed", "the criminal is to go free because the investigation agency is at fault."[77]An unconstitutional method by which evidence is obtained does not affect its admissibility.[78] The constitution does not expressly answer whether evidence obtained in violation thereof is admissible.[79]

**[I.D .4]** ***Journalist did not act as an agent provocateur.***

It is submitted that in the present case the journalist was not an 'agent provocateur' because the accused was not induced or lured in anyway, thus, there was no self-incrimination as the facts clearly indicate that there was a casual conversation between the journalist and the accused. No threat or inducement had been used. There has even been some judicial support for the acceptability of a degree of persistent importuning of drugs dealers.[80] The argument has been that a display of persistence is expected of prospective purchasers and that the dealers will often refuse to sell in its absence.[81] In the case of *R v. Sang*,[82] House of Lords had observed that the factum of provocation, entrapment and exclusion of evidence can be over looked if the prejudicial effect of such act is out of proportion of its evidentiary

[73] (1955) 1 All E.R. 236 at 239.
[74] AIR 1987 S.C. 1748 : 1987 Cr. LJ. 1999 : (1987) 3 SCC 367
[75] Barindra Kumar Ghose v. Emperor, I.L.R. (1910) 37 Cal. 467.
[76] People v. Cahan, 282 P. 2d 905 (1955).
[77] People v. Defore, 242 N.Y. 13.
[78] JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW 34-35, 38 (Vol. VII, Wolters Kluver (India) Pvt. Ltd. 2008).
[79] Section 38(1)(a) and 36(1), Bill of Rights.
[80] R v. Loosely [2001] UKHL 53.
[81] Eric Colvin, *Controlled Operations, Controlled Activities and Entrapment*, (2002) 14 BOND LR.
[82] (1979) 2 All E.R. 1222, 1230-1231.

value.[83] In the instant matter, if at all, all these factors were present, the evidence could not be disregarded because the videotape evidence holds significant evidentiary value.

**[I.D.5]** ***Defence of entrapment cannot be availed.***

It is respectfully submitted that the House of Lords in *R v. Loosely*,[84] stressed that a multiplicity of factors need to be taken into account while deciding whether the accused had been entrapped or not. McHugh J in *Ridgeway*[85] observed that, to avoid the label of entrapment, the manner in which an offence was induced would have to be 'consistent with the ordinary temptations and stratagems that are likely to be encountered in the course of criminal activity.'

Secondly, the selection of a target for investigation should be proper.[86] Lamer CJ said that it is entrapment to provide 'an opportunity to persons to commit an offence without reasonable suspicion or acting *malafides*[87] and thirdly, the impropriety should not involve disproportionate unlawfulness between an offence committed in order to obtain evidence and the offence for which evidence is sought.[88] Therefore, in the instant matter, there may have been a conversation about making the prohibited substance available to the journalist by Dr. Ibrahimovic, there was no entrapment when he was caught in his laboratory after he had initiated the process of manufacture of meth[89]. Thus, the entrapment defense can't be pleaded.

*In present case as there is presence of requisite actus rea and mens rea, & conviction is supported by evidence produced, hence, it can be concluded that verdict of trial court is reasonable as required by Section 385 2[AA] of Polkranian Crimial Procedure Code 2006, and therefore the appeal is liable to be dismissed.*

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## CONTENTION II. THERE IS NO INTERFERENCE BY POLKRANIAN INC. IN ADMINISTRATION OF JUSTICE.

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[83] Ridgeway v. The Queen (1995) 184 CLR 19.
[84] [2001] UKHL 53.
[85] Ridgeway v. The Queen (1995) 184 CLR 19.
[86] R v. Mack, [1988] 2 SCR 903.
[87] R v. Barnes, [1991] 1 SCR 449.
[88] Ridgeway v. The Queen (1995) 184 CLR 19.
[89] Refer Moot Problem, ¶ 8.

**[II.A]** ***Polkranian Times Inc. is within the constitutional limits in its impugned publications.***

The freedom of the press does not include the freedom to interfere with the administration of justice, but it does have the freedom to aid to the administration of justice. Or in other words, it is free till the extent the 'reasonable restrictions' allow it.[90]

Mahatma Gandhi in his autobiography has stated that one of the objectives of the newspaper is to understand the proper feelings of the people and give expression to it, another is to arouse among the people certain desirable sentiments; and the third is to fearlessly express popular defects. It, therefore, turns out that the press should have the right to present anything which it thinks fit for publication.[91] Freedom of the press today means absence interference by the state with the Press, except in so far as it is authorized by the Constitution and by law which is constitutionally valid.[92] The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic country cannot make responsible judgments.[93] This freedom of expression of a citizen must, therefore, include a right to receive information from any source,[94] 'without interference by public authority'.[95]

This freedom extends to the discussion and publication of views relating to 'all issues about which information is needed to enable the members of society to cope with the exigencies of the period',[96] and is not necessarily confined to 'political' or 'public' affairs.[97] In *D.N. Prasad v. Principal Secretary to the State of Andhra Pradesh, Home and Courts*[98] it was observed that it must be said to the credit of press that it has played a pivotal role at various challenging and testing times and Investigative Journalism undertaken by it, had important instances which were otherwise unnoticed.

Thus, in the instant matter the press is only exercising the abovementioned freedom and its rights in informing the public about the matter which involves a Nobel Prize winner chemist accused for an attempt of sale and purchase of psychotropic substances.[99] All the T.V.

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[90] Section 36 (1), Bill of Rights.
[91] DURGA DAS BASU, LAW OF THE PRESS 7(5th ed. 2010).
[92] *Id.* at 11.
[93] Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, AIR 1985 SC 515.
[94] Cf. Article 19, Universal Declaration of Human Rights.
[95] Cf. Article 10(1), European Convention on Human Rights.
[96] Thornhill v. Alabama, (1950) 310 US 88 (102).
[97] *Id.*
[98] 2005 (3) ALT 451.
[99] Refer Moot Problem, ¶ 12.

programmes and news articles are nothing but publications in public interest for a country that has an evident escalating drug problem[100].

**[II.A]** ***Polkranian Times Inc. & its officers could not be charged of contempt of court.***

**[II.A.I]** ***There is no interference in the administration of justice.***

It is humbly submitted that if democracy means government by the people themselves – whether directly or through representatives elected on the basis of public issues, - the people must be allowed freedom to discuss public issues and to express their judgment.

Hence, even though as citizens they must abide by orders of public officers, laws passed by the Legislature or judgments pronounced by the Courts, they must, at the same time, remain free, as 'the people', to criticize the competence of or orders made by public officers, the policies involved in legislative measures and the merits of judicial decisions.[101]

Lord Diplock has laid down three requirements of "*due administration of justice*." These are: *first,* that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; *secondly,* that they should be able to rely upon obtaining in the courts the arbitrament which is free bias against any party and whose decision will be based upon those facts only that have been provided in evidence adduced before it in accordance with the procedure adopted in the courts of law; and *thirdly* that, once the dispute has been submitted to a court of law, they should be able to rely upon there being no usurpation by any other person of the function of that court to decide it according to law. Conduct which is to prejudice any of these requirements will be observed as Contempt of Court.[102]

The test to determine whether an act amounts to Contempt of Court or not is if it makes the functioning of judges impossible or extremely difficult? If it does not, then it does not amount to Contempt of Court, even if it is harsh criticism.[103] As observed by Lord Salmon in AG v. BBC[104]: "The definitions of 'Contempt of Court' have an unarguable historic basis, but it is nonetheless misleading. Its object is not to protect the dignity of the Courts but to protect the administration of justice."

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[100] Refer Moot Problem, ¶ 1.
[101] J.R. Parashar v. Prashant Bhushan, AIR 2001 SC Supp II 3395.
[102] A-G v. Times Newspaper Ltd., (1974) AC 273.
[103] Markandey Katju, *Contempt of Court: Need for a fresh look*, AIR 2007 Mar 33.
[104] *Id.*; (1980) 3 All ER 161.

In a fresh and modern democratic approach, like that in England, USA and commonwealth countries, is now required to do away with the old anachronistic view. Contempt jurisdiction is now very sparingly exercised in these countries. [105] The reason for that is the maturity of the judiciary. Since they realise that certain comments may be outspoken, but they are not worth giving the attention of the Court if they are not interfering in administration of justice. The T.V. shows or the newspaper reports in the Polkranian Times and Torresnik Today may have been published at the time when the matter was *subjudice,* but since they neither did interfere nor intended to interfere in the administration of justice but only exercising its democratic right, therefore they can't be said to have committed Contempt of Court. This is the sole reason that the trial court rejected the contempt application on the grounds that they were "without basis or substance"[106].

**[II.A.2]** ***There is no scandalizing of Judiciary by Media.***

It is further submitted that Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against a judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court.[107] Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.[108]

In the instant matter, the newspaper ran an editorial about the progress of the case and published a comment about the judge[109]. But that does not qualify for scandalizing the judiciary or Contempt of Court of any kind since it did not interfere in the administration of justice. The editorial was merely a report of the proceedings and a comment on the attitude of the judge. It is quite apparent that public criticism is essential to the working of democracy.[110] The democratic credentials of a state are judged today by the extent of the freedom the press enjoyed in the state. Douglas, J., of the USA Supreme Court observed that "acceptance by Government of a dissident press is a measure of the maturity of the nation."[111]

[105] Defence Secretary v. Guardian Newspapers, (1985) 1 AC 339.
[106] Refer Moot Problem, ¶ 19.
[107] R. v. Gray, (1900) 2 QB 36.
[108] Ambard v. Attorney-General of Trinidad, AIR 1936 PC 141.
[109] Refer Moot Problem, ¶ 15.
[110] Bennett Coleman v. Union of India, AIR 1973 SC 106.
[111] Terminiello v. Chicago, 337 US 1.

Moreover, the power to punish for scandalizing the Court is a weapon to be used sparingly and always with reference to the administration of justice[112] and not for vindicating personal insult to a Judge, not affecting the administration of justice.[113] As observed in a Canadian case,[114] "Freedom of discussion is essential to enlighten public opinion in a democratic state; it cannot be curtailed without affecting the right of the public to be informed though sources independent of the Government concerning matters of public interest."[115]

Therefore, in the instant matter, the editorial was in no way an attempt to scandalize the Court. It may have been an outspoken comment but if it would have constituted Contempt then the trial court would certainly not reject the application. Thus, the appeal should be dismissed.

**[II.B] POLKRANIAN INC. IS NOT PREJUDICING THE INVESTIGATION PROCESS AGAINST THE ACCUSED.**

Black's Law Dictionary defines 'prejudice' as "a preconceived judgment formed without a factual basis[116]. The role of courts is to provide justice, and it is justice which takes the most severe hit if an accused is already under a cloud of 'unjustified' suspicion. But it is humbly submitted that in the instant matter, even if the publications created any suspicion, it was certainly not 'unjustified'. The media reports were based on the conversations in the video clip where the accused had agreed on the fact that it was him only in the video and not anyone else[117]. Thus, the media was only exercising its well deserved freedom in airing the T.V. shows about the trial of Dr. Ibrahimovic.

The doyen of the Indian legal profession Nani Palkhivala observed: *"Freedom is to the Press what oxygen is to the human being; it is the essential condition of its survival. To talk of a democracy without a free press is a contradiction in terms. A free press is not an optional extra in a democracy[118]."*

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[112] Debi Prasad v. King Emperor, (1943) 48 CWN 44 (PC); Shamdasani v. Emperor, AIR 1945 PC 134; McLeod v. Aubyn, (1899) AC 549.
[113] Perspective Publications v. State of Maharashtra, AIR 1971 SC 221.
[114] Dionne v. City of Montreal, (1956) 3 DLR 727.
[115] Brij Bhushan v. State of Delhi, (1950) SCR 605 (619).
[116] BLACK'S LAW DICTIONARY, BRYAN A. GARNER 1299 (9th ed. 2004).
[117] Refer Moot Problem, ¶ 11.
[118] NANI. A. PHALKHIVALA, WE THE NATION-THE LOST DECADE, 291(1994).

It is humbly submitted that the law is settled on the fact that reports published during pending or *sub judice* matters should not prejudice the administration of justice.[119] But in the instant matter, as already pleaded above, the work of the media is for the 'public good' and is in no circumstances, prejudicing the proceedings.

The media here is only doing the work of informing the citizens. The freedom to receive and communicate information without interference is an important aspect of the freedom of speech and expression. Without adequate information, a person can't form an opinion.[120] The media with its different means, such as Investigative Journalism, Sting Operation etc. not only informs the citizens of the country, but also aids in the process of justice by providing corroborative evidence and at least giving the lead to the investigating authorities.

In a very recent Indian case of *Bhardwaj Media Pvt. Ltd. v. State*[121], where the media had broadcasted the video clips of a sting operation, where some members of Parliament were taking bribes. It was held by the court that when corruption of individuals in the institution is exposed, it gives an opportunity to authorities to take action against those who indulge in corruption and to clean its stables. Instead of expressing gratefulness to the persons who exposes corruption, if the state starts taking action against those who expose corruption, the corruption is bound to progress day and night.

Since the publications are the right of the media and the abovementioned facts prove that there was no interference in administration of justice, there arises no question of violation of any rights of the accused. The accused is being tried in an impartial court of law with all necessary steps taken by the state understanding the gravity of matter. The so called 'prejudicial' atmosphere as claimed by the accused is not 'unjustified' and has been created only due to his acts. Hence, it is submitted that there has been no denial of fair trial to the accused by the media.

Thus, in the instant matter, the T.V. shows are nothing but a means of the channel to aware the public and gather their opinion on a matter of national interest. The publications neither have any intention of causing any prejudice to the trial nor is it capable of. Precisely for the same reason the trial court did not find any basis in the contempt application and rejected the same.

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[119] R.K. Anand, *supra* note 43.
[120] BASU, *supra* note 91 at 35.
[121] 2008 146 DLT 108 (Del).

## PRAYER FOR RELIEF

Wherefore, in the lights of facts stated, issues raised, arguments advanced and authorities cited, it is most humbly prayed and implored before the Hon'ble Court of Appeals, that it may be graciously pleased to dismiss the appeals and declare that:

a) Dr. Ibrahimovic is liable for attempt of manufacture & sale of methamphetamine.

b) Contempt proceeding should not be initiated against Polkranian Times Inc., its CEO and Managing Editors of Polkranian Times & Torresnik Today.

And pass any other order that it may deem fit in the favour of accused in ends of equity, justice and good conscience,

*All of which is most humbly and respectfully submitted.*

**Place:** Torresnik, Polkraine s/d

**Date:** 15th/November/2012 COUNSELS FOR RESPONDENT