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XI K.K. LUTHRA MEMORIAL MOOT COURT, 2015

Before

The Supreme Court of Tomorrowland

FERRERO WILLIAMS.....APPELLANT

v.

STATE OF TOMORROWLAND.....RESPONDENT 1

ULTRA HOUSE MAFIYA.....RESPONDENT 2

[MEMORIAL ON BEHALF OF RESPONDENTS]

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STATEMENTS OF FACTS

A. BACKGROUND

1. Mr. Ferrero Williams is the owner of ‘Get Lucky Group’, the biggest corporate entity of Tomorrowland, doing business in several sectors, including real estate, luxury tourism etc. The growth of Mr. Ferrero Williams has long been criticized by a Boomtown based activist group ‘The Ultra House Mafiya’ (*hereinafter* UHM), headed by Mr. Chivas. UHM has been contending that the government of Tomorrowland is in the cahoots of GLG.

2. During an interview in June 2015, broadcasted on national television, Mr. Ferrero Williams responded to the allegations of UHM and termed it as a conspiracy and ensured the nation about his integrity and responsibility for the successful organisation of the One World Games (*hereinafter* OWG).

B. ONE WORLD GAMES

3. For the first time in history of the continent Westeros, an event of such magnitude was being organised. Tomorrowland emerged as a dark horse in the bid for hosting. As a practice for such an event, Ministry of Sports of the Government of Tomorrowland sanctioned the building of the One World Games village to house athletes from all over the world and decided to form a five membered Overseeing Committee (*hereinafter* OC) headed by Mr. T. Lannister which would be responsible for construction of the entire village based on world class standards. Considering the sophistication of the construction and realising that GLG Constructions is the only domestic company capable of constructing such a structure, a contract was signed between the OC and GLG Constructions.

4. With less than four months to go, Mr. Janujaz, a reporter of international acclaim, reported that a mass protest took place against the death of labourers and the presence of large scale corruption in the construction of the village was alleged. It further reported that the construction was running behind the schedule. Mr. Ferguson, President, International Committee said that Tomorrowland was further behind schedule more than any host nation since 1975, even though it has had the most time to prepare. Tomorrowland was warned by them that failing to accelerate the construction in two weeks will amount to shifting of the venue to some other country.

C. OWG SCAM

5. On December 20th, 2015, T. Lannister called Mr. Williams and asked him to meet the deadline at any cost. Mr. Williams was travelling abroad and therefore transferred the call to

Mr. Peter Bailish, Vice-President, GLG Constructions. During the course of the call, Mr. Bailish blackmailed Mr. T. Lannister and made demands of \$8 million which Mr. T. Lannister agreed to pay.

6. The Special Police of Tomorrowland had this call under surveillance. Special Police, on account of information, filed an Information Report and prepared to apprehend both the parties red handed during the exchange of money. The Special Police raided the office of GLG Constructions and arrested Mr. Bailish and Mr. Lannister, along with, \$ 7 million cash recovered in the raid from the private office of Mr. Bailish. This was termed as the ‘OWG scam’. In another article, Mr. Janujaz again attacked Mr. Williams and argued the involvement of Mr. Williams in the scam.

D. JUDICIAL PROCEEDINGS

7. Subsequently, on 10th January, 2016, a Conclusive Report was filed by the Special Police in the Boomtown Criminal Court, accusing Mr. Bailish and Mr. T. Lannister liable for the crime. Though no charges were pressed upon Mr. Williams on account of presence of no evidence. Though it was stated that he was the Managing Director of GLG Constructions and he had presenc in five meetings with Mr. Bailish and Mr. Lannister.

8. However, UHM filed an Objection Petition on the Report. UHM contested that Mr. Williams is also liable for the crime. In support of the allegation, UHM presented call details of Mr. T. Lannister which showed that after setting up the bribe with Mr. Bailish, he made a call to a private number of Mr. Williams. Boomtown Criminal Court, on January 30th, 2016, accepted the Objective Petition and made Mr. Ferrero Williams a party in the crime, applying the doctrines of alter ego and attribution.

9. On February 14th, 2016 the Supreme Court of Tomorrowland, considering the public outrage against the OWG scam, ordered that any prayer for relief, which may impede the trial, shall be heard by it.

10. Mr. Ferrero Williams has now petitioned before this Hon’ble Court against the order of Boomtown Criminal Court dated January 30th, 2016 and the order of Supreme Court of Tomorrowland dated February 14th, 2016. The matter is admitted and listed for hearing.

STATEMENT OF ISSUES

1. Whether the order dated 14th February 2016 passed by the Supreme Court of Tomorrowland is violative of Articles 3 and 6 of the Constitution Act of 1930?
2. Whether the order of the Boomtown Criminal Court making Ferrero Williams an accused in the OWG Scam was valid?
3. Whether UHM has any *locus standi* to participate, make submissions and give evidence in the case against Ferrero Williams?

WRITTEN PLEADINGS

A. THE ORDER DATED 14TH FEBRUARY 2016 PASSED BY THE SUPREME COURT OF TOMORROWLAND IS NOT VIOLATIVE OF ARTICLE 3 AND ARTICLE 6 OF THE CONSTITUTION ACT 1930

1. Supreme Court Does Not Fall Under The Purview Of ‘State’

[¶1.] It is well settled in law that, any challenge or petition, for violation of fundamental rights is enforced against the ‘State’.¹ Therefore it is necessary to consider the question of whether the Supreme Court, the order of which has been challenged, falls under the ambit of ‘State’ or not. It has been adjudged earlier that in common law jurisdictions, neither a smaller bench nor a larger bench of the Supreme Court can issue a writ to any other bench of Supreme Court.² It had been pointed out that the writ jurisdiction of the Supreme Court can be invoked only for the purpose of enforcing fundamental rights and no judicial order passed by any superior Court in judicial proceedings can be said to violate any of the fundamental rights under the Constitution.³

[¶2.] In view of various decisions made to consider the question in consideration, it is ruled that the superior courts of justice do not fall within the ambit of ‘State’ or other authorities against which violation of fundamental rights can be referred.⁴ The order of Supreme Court is not amenable to be corrected under writ jurisdiction under Article 25 of the Constitution Act of 1930 of Tomorrowland.

[¶3.] The counsel for the respondent humbly submits before this Hon’ble Court that the Supreme Court of Tomorrowland does not fall under the ambit of ‘State’ and therefore the order passed by the Supreme Court of Tomorrowland on 14th Feb 2016 is not subjected to be challenged on grounds of violation of fundamental rights.

2. The Order Of Supreme Court Was Not Violative Of Article 3 And Article 6 Of The Constitution Act 1930

[¶4.] It is submitted before this Hon’ble Court that the order dated 14th February 2016 passed by the Supreme Court is in accordance with the powers conferred to it in the Constitution Act of 1930.

¹ *Dwarkadas v. Board of Trustees*, AIR 1989 SC 1642; See also *American Communications Association v. Douds*, 339 US 382 (1950).

² *A.R. Antulay v. R.S. Nayak*, AIR 1988 SC 1531.

³ *Id.*

⁴ *Rupa Ashok Hurra v. Ashok Hurra*, AIR 2002 SC 1771.

2.1 There is no violation of equality by enforcement of Order

[¶5.] It is humbly submitted before this Hon'ble Court that every judicial decision must of necessity depend on fact and circumstances of the case, and any unnecessary application of law may not amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination.⁵ Since facts and circumstances in every case can hardly be same, equality before law cannot be invoked in matters of judicial discretion.⁶ This discretion extends to differential treatment where there exists a reasonable basis for such differentiation⁷ and treatment is not arbitrary.⁸

[¶6.] In the present case, the order seeks to provide speedy trial on day to day basis. The matter involves influential personalities who can vitiate the trial if trial is prolonged. Also, the matter has become significant as it involves larger public interest. The Supreme Court can exercise its discretion by enforcing such order as to fulfil its duty to provide speedy trial and protect larger public interest. Hence the intervention of Supreme Court of Tomorrowland was justified in furtherance of Public Interest.

2.2. The order of the Supreme Court was in accordance with due process of Law

[¶7.] It is humbly submitted before this Hon'ble Court that the idea that every man is entitled to a fair and impartial trial is the cornerstone of civilized government. The principle of due process seeks to guarantee fair treatment by constraining the actions of those with authority to rule. Due process is the element of the public legal order that most clearly symbolizes fair treatment.⁹

[¶8.] "Due process" does not prohibit change; procedure may be reformed to improve the service; to hold otherwise would be to deny every quality of the law and render it incapable of progress and improvement.¹⁰ Also, it is not necessary to due process that there be a right of appeal if the first proceeding complies with the requirements.¹¹

[¶9.] In the present matter before this Hon'ble Court, this Court is not interfering with the trial proceedings in any manner vide its order dated 14th February 2016. Instead, it is supervising and monitoring the progress of the trial so that speedy trial can be achieved¹²,

⁵ *Saghir Ahmed v. State of U.P.* (1955) 1 SCR 707.

⁶ *Jagmohan v. State of U.P.*, AIR 1973 SC 947.

⁷ *Ameeroonissa v. Mehboob*, AIR 1953 SC 91.

⁸ *Gulf Ry. V. Ellis*, (1897) 163 US 150.

⁹ Lauren B. Edelman, *Legal Environments and Organizational Governance: The Expansion of Due Process in the American Workplace*, 95(6) AM. J. SOCIOLOGY. 1401 (May, 1990).

¹⁰ *Hurtado v. California*, 110 U. S. 56 (1884); See also ABHINAV CHANDRACHUD, DUE PROCESS OF LAW, 74 (2011).

¹¹ Howard L. Bevis, *Due Process of Law*, 3 PUBLIC LAW 147, (1939).

¹² *Beavers v. Haubert*, (1905) 198 US 77, 87.

which is a facet of Article 6 of the Constitution Act of 1930. Thus, it cannot be said that the Order passed by Supreme Court is not in accordance with the due process of law.

2.3 Right to approach to the Court is not an absolute right

[¶10.] It is submitted that although, an accused or an aggrieved person, who genuinely apprehends an infringement of his/ her rights under Article 3¹³ read with Section 126¹⁴ to a fair trial and all that it comprehends, would be entitled to approach an appropriate writ court for challenging such violation.¹⁵ However this right is not absolute.

[¶11.] It has been held that the right to approach any court can be infringed *in lieu* of larger public interest and for better administration of trial.¹⁶ The accused persons holding the public office or a resourceful accused adopt dilatory tactics by plugging every possible loophole in the law through which the disposal of the case may be delayed. The co-operation of such accused will help the courts in quick conclusion of the trial. Any order passed by the Court with an object to check criminalisation in politics and also to warn people in public life not to indulge in criminal activities, is in *larger public interest*.¹⁷ In view of this, it cannot be held that there is violation of Article 3 of the Constitution Act of 1930. The Supreme Court can pass such order exercising its inherent power under Article 23 of Constitution Act of 1930.

3. The Power Of Article 23 Used By The Supreme Court Of India Was Correct And Just

3.1 There exists situation for doing 'complete justice'

[¶12.] It has been held that justice is a virtue which transcends all barriers. The wide definition of "justice" ensures that the Court can exercise its powers under Article 23 to do "complete justice" in a range of cases each decided by the Court based on its facts and circumstances. It lays down no limitations regarding causes or the circumstances in which the power is to be exercised. The exercise of such power is left completely to the discretion of the highest court.¹⁸ Also, Article 23 being a constitutional power cannot be limited or conditioned by any statutory provision.¹⁹

¹³ Constitution Act, §3 (1930).

¹⁴ Tomorowland Criminal Justice Code, §126.

¹⁵ *Sahara India Real Estate Corporation Ltd. and Ors. v. Securities and Exchange Board of India and Anr.*, 2012 CriLJ 4584.

¹⁶ *Yogendra Nandwana v.State of Rajasthan and Ors.* AIR 2006 Raj 73.

¹⁷ *Id.*

¹⁸ *S. Nagaraj v. State of Karnataka*, 1993 Supp (4) SCC 595, 618.

¹⁹ *Vinay Chandra Mishra, In re*, (1995) 2 SCC 584.

[¶13.] It has been adjudged that the powers exercisable under Article 55²⁰ and Section 126²¹ of Tomorrowland to approach High Court cannot be invoked so as to interfere with the order passed by the Supreme Court, in exercise of its constitutional powers under Article 23 of the Constitution Act, 1930. Any interference by the High Court or other inferior Court would defeat the purpose of speedy trial, for which order is passed by the Supreme Court of Tomorrowland in exercise of inherent powers.

3.1.1 Public interest is involved in the present case

[¶14.] It is humbly submitted before this Hon'ble Court that where larger public interest is involved, it is the responsibility of the Constitutional Court to assure judicial legitimacy and accountability. Public interest demands timely resolution of cases, while prolonged litigation undermines the public confidence and weakens the democracy and rule of law.²² Larger public interest should have precedence over the prayers of the petitioners, especially when this Court has safeguarded their rights and given freedom to them to move this Court through statutory and constitutional provisions.²³

[¶15.] In view of the above, it is submitted that the present matter is one involving public interest as the public is concerned with the proceedings in trial and the consequences it would have in relation to the ongoing protests in Tomorrowland. The spectacle referred as One World Games (OWG) is an international event which is of utmost importance in Tomorrowland caused a media frenzy in respect of the exchange of large amount of money being illegally exchanged. Also, the matter involved influential personalities like Mr. Ferrero Williams and the government officials of Tomorrowland. Thus, it is the duty of Supreme Court to adjudge the case via speedy trial so that the delay might not cause change in circumstances and fading away of evidences. The Supreme Court is supervising the trial proceedings without any personal interference, so that justice can be provided in least time. Therefore, the order passed by Supreme Court is valid in respect of the powers granted to it to provide complete justice.

3.2 The Supreme Court intended to provide Speedy trial

[¶16.] It has been held that the guarantee of Due process of law requires that the trial of the accused, who is presumed to be innocent, should be as speedy as the circumstances permit.²⁴

²⁰ Constitution Act, §25 (1930).

²¹ Tomorrowland Criminal Justice Code, §126.

²² *Shahid Balwa v. Union of India*, (2014) 2 SCC 687.

²³ *Id.*

²⁴ *Klopper v. N.Carolina*, (1967) 386 US 213.

It has been established that the right to a speedy trial is a fundamental right²⁵ implicit in Article 3 of the Constitution Act of 1930, because no procedure can be fair unless it ensures a speedy determination of the guilt of the accused.²⁶ Also, the powers of the Supreme Court under Article 23 of the Tomorrowland Constitution remain unfettered and create an independent jurisdiction to pass any order in public interest to do complete justice.²⁷

[¶17.] It is humbly submitted by the counsel that the order passed by Supreme Court is not in violation of provisions of the statute of Tomorrowland. The order is intended to further the right of speedy trial provided under Article 3 of the Constitution Act of Tomorrowland. It cannot be said that Article 23 of Tomorrowland Constitution has been exercised arbitrarily by this Court. The matter involves larger public interest which empowers the Court to use its inherent powers to provide complete justice only to complete the proceedings of the trial effectively.

3.3 Right to appeal of Appellant was not curtailed by the Supreme Court

[¶18.] The appellant has been given a right to approach the High Court under Article 55²⁸ and Section 126²⁹ of the Tomorrowland statutes. The laws of Tomorrowland has incorporated due process of law which encompasses deviation from normal procedure of law based on reasonable classification for limiting free access to Courts in terms of right to approach the Court.³⁰ Also, it has been adjudged that where larger public interest is involved in a matter and safeguards have been provided to the appellant by providing them remedy to approach a Court having jurisdiction over the matter, then the right to approach can be limited to that Court.³¹

[¶19.] The facts of the present matter clearly illustrates that the appellant can approach the Supreme Court of Tomorrowland under Article 24 and 25 of the Constitution Act of Tomorrowland in relation to any relief or prayer pertaining to the trial. Thus, the Court has not curtailed the right to appeal but limited it to itself in view of larger public interest and to dispose off the trial as soon as possible on a day to day basis.

²⁵ *Hussainara v. Home Secy. (I)*, AIR 1979 SC 1360.

²⁶ *Id.*

²⁷ *A.B. Bhaskara Rao v. Inspector of Police, CBI, Visakhapatnam*, AIR 2011 SC 3845.

²⁸ Constitution Act, §25 (1930).

²⁹ Tomorrowland Criminal Justice Code, §126.

³⁰ *Hurtado v. California*, 110 U. S. 56 (1884); See also 1 DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA, 1002 (8h ed. 2007).

³¹ *Shahid Balwa v. Union of India*, (2014) 2 SCC 687.

B. THE ORDER OF THE BOOMTOWN CRIMINAL COURT MAKING FERRERO WILLIAMS AN ACCUSED IN THE OWG SCAM WAS VALID

1. Boomtown Criminal Court Was Well Within Its Jurisdiction To Make Ferrero Williams An Additional Accused

[¶20.] It is humbly submitted before this Hon'ble Supreme Court that the Boomtown criminal court has made Ferrero Williams an additional accused for the offence of corruption under section 15 of the Corrupt Activities (Prevention and Punishment) Act. The Boomtown Criminal Court passed an order by invoking Section 199 of the Tomorrowland Criminal Justice Code in accordance with the laws to make Ferrero Williams an additional accused in the 'OWG Scandal', and hence such order is valid.

1.1 Boomtown Criminal Court can invoke section 199 in present case

[¶21.] It is humbly submitted before this Hon'ble Supreme Court that the Boomtown Criminal Court acted in accordance with law while invoking Section 199 of the Tomorrowland Criminal Justice Code. Section 199³² uses the word 'may' which gives discretionary power to the Court to make a person an additional accused. As per the provision of law, the court should take into account all the relevant evidences to make any person an additional accused and such discretionary power should be used with great care and caution.³³

1.1.1 Section 199 of Tomorrowland Criminal Justice Code has been invoked at correct stage

[¶22.] It is humbly submitted before this Hon'ble Court that the power of Section 199 of Tomorrowland Criminal Code can be exercised at the stage of inquiry or trial. The textual content of Section 199 of the Tomorrowland Criminal Justice Code is same as that of section 319(1) of the Code of Criminal Procedure, 1973 of the common law country India. In the Indian common law jurisdiction, the word inquiry mentioned under Section 319(1) of Code of Criminal Procedure is understood in terms of Section 2(g) of Code of Criminal Procedure. The expression 'inquiry' is of wide import and takes in every proceeding other than a trial.³⁴ An inquiry in Indian criminal jurisdiction commences on submission of police report (charge-sheet) by police.³⁵ In parlance with police report in India, the Special Police of

³² Tomorrowland Criminal Justice Code, §199.

³³ *Hardeep Singh and others v. State of Punjab*, (2014) 3 SCC 92.

³⁴ *Gulam Mod. Kabir Mohd. Mir v. State of Maharashtra*, 2008 CrLJ 2426 (Bom); See also RATANLAL AND DHEERAJLAL, THE CODE OF CRIMINAL PROCEDURE, 16 (19th ed. 2010).

³⁵ *Rabindra Rai v. State of Bihar*, 1984 CriLJ 1412 (Pat).

Tomorrowland has to submit Conclusive report under Section 105 of the Tomorrowland Criminal Justice Code.

[¶23.] The Indian Supreme Court held that after filling of charge-sheet, the court reaches the stage of inquiry and as soon as the court frames charges, the trial commences, and therefore the power under Section 319(1) of Code of Criminal Procedure can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgement.³⁶

[¶24.] It is contended before this Hon'ble Court that since trial has not yet commenced in the Boomtown Criminal Court and every proceeding which is done before the trial by the Court is considered as the stage of inquiry. Therefore, the Boomtown Criminal Court has exercised its power during the stage of inquiry as per the precedent of common law jurisdiction as Section 199 of Tomorrowland Criminal Code allows exercising of such power at the stage of inquiry. Therefore the order passed by Boomtown criminal court was passed at correct and appropriate stage.

1.1.2 The evidences available against Mr. Ferrero Williams are sufficient to constitute a prima facie case

[¶25.] It is humbly submitted before this Hon'ble Court that the word "evidence" has to be understood in its wider sense both at the stage of trial and at the stage of inquiry. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it.³⁷

[¶26.] In cases, where the evidence shows *prima facie* involvement of the accused in an offence, order summoning him was held proper.³⁸ *Prima facie* case and not evidence, is required for impleading a person as an additional accused.³⁹ The material available before the Court should disclose the complicity of the person in the commission of the offence during the course of any inquiry into or trial of an offence.⁴⁰

[¶27.] The term 'evidence' employed under Section 319 of Indian Code of Criminal Procedure does not necessarily mean only such evidence which constitutes legal and admissible evidence at trial.⁴¹ Here evidence means all such materials which can help court to apply its mind and can pass an order that there exists a *prima facie* case against any such

³⁶ *Hardeep Singh and others v. State of Punjab*, (2014) 3 SCC 92.

³⁷ JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW, 18 (3d ed. 1940).

³⁸ *Abdul Salem v. State of U.P.*, 2003 CriLJ 216 (218) (All).

³⁹ *Mohan Wahi v. State (CBI) New Delhi*, 1982 CriLJ 2040 (Del).

⁴⁰ *Hardeep Singh and others v. State of Punjab*, (2014) 3 SCC 92.

⁴¹ *Amratlal Devdanbhai Soni v. Director, Revenue Intelligence, Ahmedabad*, 1998 CrLJ 705 (Guj).

person. However the legality and admissibility of such evidences will be tested at the stage of trial.⁴²

[¶28.] It is contended before this Hon'ble Court that certain evidences were present before the court by filing objection petition by the UHM. Such evidences tend to show the involvement of Mr. Ferrero Williams in the commission of crime of Corruption. The Conclusive report provides that there were meetings (five in total) between T. Lannister, Mr. Ferrero Williams and Mr. Peter Bailish. Mr. Ferrero Williams transferred the call to Mr. Peter Bailish, who is an accused in the present case. He called Mr. Ferrero Williams on his phone and the call records approve that such phone number belongs to Mr. Ferrero Williams. Such chain of circumstances reveal that there is involvement of Mr. Ferrero Williams from the inception of crime and a *prima facie* case is made out against Mr. Ferrero Williams. Hence, the order passed by Boomtown Criminal Court to make Mr. Ferrero Williams an additional accused, on the basis of available records, is correct, legal and valid.

1.1.3 Genuineness of evidence is not a ground at the stage of Section 199 of the Code

[¶29.] It is humbly submitted that in the Common Law country India, primary requirement for application of Section 319 of Code of Criminal Procedure is availability of 'evidence' in contradiction from the police report and documents enclosed thereto, as contemplated by Section 173 of Code of Criminal Procedure.⁴³ The term evidence employed in the above Section of the code does not necessarily mean such evidence which constitutes legal and admissible evidence at the trial.⁴⁴ In order to proceed with summoning of a person as additional accused, the quality of evidence before the court should be such that the Court could even be hopeful that there is reasonable prospect of newly adduced accused being convicted.⁴⁵ The genuineness of the evidence is not the concern of the court and will be addressed at the stage of trial and not before that.

[¶30.] It is humbly submitted before this Hon'ble court that the Indian Courts have clarified that the genuineness of evidence will not be checked at the stage of making a person additional accused. In the instant case, there are certain materials on records such as call records, television pronouncements, conclusive report etc. which show that Mr. Ferrero Williams was involved in commission of offence of corruption. Therefore the Boomtown Criminal Court, in consideration of these evidences, made Mr. Ferrero Williams an additional

⁴² *Id.*

⁴³ *R.C. Kumar v. State of AP*, 1991 CrLJ 887, 891 (AP).

⁴⁴ *Amratlal Devdanbhai Soni v. Director, Revenue Intelligence, Ahmedabad*, 1998 CrLJ 705 (Guj).

⁴⁵ *Sanjib Ghose Roy v. G.S. Arora and Ors.*, 2008 CrLJ 1962 (Del).

accused and provided him the right to take any defence and challenge the admissibility of such evidence during the trial.

2. Court Can Disagree With The Conclusive Report

[¶31.] It is humbly submitted before this Hon'ble Court that the Special police of Tomorrowland is duty bound to submit conclusive report after completion of investigation. The Indian courts have pronounced that even though a person who had not initially been charge-sheeted, can also be added as an accused to face the trial.⁴⁶ It was held that in exercise of the powers under Section 319 of Code of Criminal Procedure, the court can add a new accused only on the basis of evidence adduced before it and not only on the basis of materials available in the charge sheet or the case diary.⁴⁷ The Indian Supreme Court has stated that there is nothing in the language of Section 319(1) of Code of Criminal Procedure from which it can be inferred that a person against whom the charge-sheet is not filed by the police, cannot be proceeded against.

[¶32.] Though, in the course of any inquiry or trial of any offence, if the court finds that such person has committed an offence, he could be tried together with the other accused.⁴⁸ There is no dispute to the legal proposition that, even if a person had not been charge-sheeted, he may come within the purview of the description of such a person to be summoned as an additional accused.⁴⁹

[¶33.] It is contended before this Hon'ble Court that the Boomtown Criminal Court has power to disagree with the conclusive report. Mr. Williams was not initially named in the conclusive report. The common law precedents provide a legal proposition that a Court has power to disagree with the police report if it finds that a *prima facie* case is made out against a person. Therefore the power exercised by the Boomtown Criminal Court against Mr. Ferrero Williams under Section 199 of Tomorrowland Criminal Justice Code was valid and cannot be challenged on the grounds that his name was not mentioned as an accused in the Conclusive report.

3. Theory Of Alter-Ego And Attribution Theory Is Applicable In The Present Case

[¶34.] It is humbly submitted before this Hon'ble Court that directors owe their companies a duty of good faith and duties of care and skill.⁵⁰ A directing mind and will of a corporation is

⁴⁶ *Lok Ram v. Nihal Singh and Anr.* AIR 2006 SC 1892.

⁴⁷ *Guriya @ Tabassum Tauquir and Ors. v. State of Bihar and Anr.*, AIR 2008 SC 95.

⁴⁸ *Suman v. State of Rajasthan and Anr.*, AIR 2010 SC 518.

⁴⁹ *Lal Suraj @ Suraj Singh & Anr. v. State of Jharkhand*, (2009) 2 SCC 696.

⁵⁰ Kathleen Van Der Linde, *The Personal Liability of Directors for Corporate Fault- An Exploration*, 20 S. AFR. MERCANTILE L. J. 440 (2008).

an alter ego of that corporation and his acts and liabilities will be attributed to the corporation.⁵¹ If a corporation is liable of an act, then it is implied that the directing mind and will of such corporation will also be liable because it was him who has committed the wrong.⁵²

3.1 Mr. Ferrero Williams was the directing mind and will of GLG Constructions

[¶35.] It is humbly submitted before this Hon'ble Court that the directing mind and will of the company is the usual criterion for identifying an individual within a company.⁵³ It has been held by the Lord Denning in his pronouncement that the directors and managers are the directing mind and will of the company, and the state of mind of these personnel is the state of mind of the company and is treated by law as such.⁵⁴ The directing mind and will of a company is found out by the factor of substantial controlling interest.⁵⁵ In the present facts and circumstances, Mr. Ferrero Williams was enjoying controlling interest and representing directing mind and will of the company.

3.1.1 Ferrero Williams was top level personnel of GLG Constructions

[¶36.] It is submitted before this Hon'ble Court that the personnel with whom the corporation is identified are those at the centre of corporate power.⁵⁶ The court of common law jurisdiction (Court of Appeal) held that the directing mind and will of the company would normally be the board of directors, the managing director and other superior officers of the company who carry the functions of the management and spoke and act for the company.⁵⁷

[¶37.] The Court sought to identify the mind of the company in a person who may be called an agent, directing will or the very ego and centre of the corporation.⁵⁸ The person to be identified with the company must be a directive rather than an executive agent or employee.⁵⁹ Only the directing mind of the company can be considered its 'alter ego'.⁶⁰

⁵¹ *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co.*, [1915] A.C. 705, 713 (H.L.).

⁵² *Id.*; See also Lan Luh Luh, *Company Officers and Attribution of Knowledge*, SINGAPORE J. LEGAL STUD. 420 (1994).

⁵³ *Tesco Supermarkets Ltd v. Natrass*, [1972] AC 153.

⁵⁴ *H.L. Bolton (Engineering) Company Ltd. v. T.J. Graham and sons Ltd.*, (1956) 3 All E.R. 624.

⁵⁵ *Id.*

⁵⁶ 7 HALSBURY'S LAWS OF ENGLAND, COMPANY AND PARTNERSHIP INSOLVENCY, ¶161 (4th ed. 2004).

⁵⁷ *Tesco Supermarkets Ltd v. Natrass*, [1972] AC 153; See also *Iridium India Telecom Limited v. Motorola Inc.*, (2011) 1 SCC 74.

⁵⁸ *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co.*, [1915] A.C. 705, 713 (H.L.); See also Gerard Conway, *The Criminal Character of a Company*, 7 IRISH STUDENT LAW REVIEW 25 (1999).

⁵⁹ Celia Wells, *Corporate Liability and Consumer Protection: Tesco v Natrass Revisited*, 57 MODERN L. REV. 817 (1994).

⁶⁰ *H.L. Bolton (Engineering) Company Ltd. v. T.J. Graham and sons Ltd.*, (1956) 3 All E.R. 624.

[¶38.] It is contended before this Hon'ble Court that Mr. Ferrero Williams was chairman cum Managing Director of the GLG Constructions and he also used to chair the meeting of its Board. The definition of managing director is exhaustive in nature and in order to be a managing director, one has first to be a director.⁶¹ Hence it can be concluded that Mr. Ferrero Williams was a directing mind and will of the company because he was a highly top level personnel of the company.

3.1.2 Ferrero Williams had control over the activities of the affairs of GLG Constructions

[¶39.] It is humbly submitted before this Hon'ble Court that those who control or manage the affairs of a company are regarded as embodying the company itself.⁶² A company's mind is the directors and managers who control what it does. The state of mind of these managers is the state of mind of the company and is treated by law as such.⁶³ A person may be said to be in control if it may fairly be said to think and act through him, so that his actions and intent are the actions and intent of the corporation.⁶⁴ Those personnel who are at the top of corporate hierarchy such as directors, superior officers or those to whom the board of directors have actually or ostensibly delegated management powers usually have control over the management and affairs of the company and they qualify as directing mind and will.⁶⁵

[¶40.] It is humbly submitted that the court of common law jurisdiction has held that controlling mind of the company should have *de facto* control over the affairs and management of the company.⁶⁶ Control is not merely majority control but domination over the activities such as finances, policy and business practice so that the corporate entity had no mind, will and existence of its own.⁶⁷ In Canada, liability is generally imposed on those persons who have charge, management or control of the corporation's activities or property, which occurs if they take an active role in the business or if they had a duty or opportunity to take preventive or corrective action but failed to do so.⁶⁸

⁶¹ *Bluett v. Stutchbury's Ltd.* (1908) 24 TLR 469 (CA).

⁶² Law Commission, *Legislating the Criminal Code Involuntary Manslaughter*, ¶6.27 (Law Com No. 237, 1996).

⁶³ *H.L. Bolton (Engineering) Company Ltd. v. T.J. Graham and sons Ltd.*, (1956) 3 All E.R. 624; See also SMITH & HOGAN, *CRIMINAL LAW*, 173 (6th ed. 1988).

⁶⁴ *Tesco Supermarkets Ltd v. Natrass*, [1972] AC 153.

⁶⁵ *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co.*, [1915] A.C. 705, 713 (H.L.); See also Frederic P Lee, *Corporate Criminal Liability*, 28 COLUM. L. REV. 185 (1928).

⁶⁶ *El Ajou v. Dollar Land Holdings*, [1994] 2 All ER 685; See also CHRIS SHEPHERD, *COMPANY LAW*, 94 (2d ed., 2001).

⁶⁷ *East Market Street Square v. Ty Corp Pizza*, 625 S.E.2d 191, 196 (N.C. Ct. App. 2006).

⁶⁸ J. Sarra & R. Davis, *Director and Officer Liability*, in *CORPORATE INSOLVENCY* (Markham and Vancouver eds., 2002).

¶41.] It is contended before this Hon'ble Court that Mr. Ferrero Williams is a key personnel of GLG construction and is placed on managerial and administrative posts of GLG Constructions. Being a Managing Director, Mr. Ferrero Williams was looking after the management of the GLG constructions and being a Chairman, he was enjoying his power to control and expand the activities of the GLG Constructions. Mr. Ferrero Williams was holding a key position in the company and because of such status and position Mr. T Lannister called him to enquire about the status of construction of games village. Therefore it is contended that Mr. Ferrero Williams was controlling the affairs of the GLG Constructions and hence representing controlling mind and will of the company.

3.1.3 Mens rea of director was present

¶42.] A criminal act generally requires some element of wrongful intent or other fault.⁶⁹ This is known as *mens rea* or guilty mind.⁷⁰ As per the common law principles, a corporation could have a mind capable of entertaining a criminal intent.⁷¹ It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person or somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation.⁷²

¶43.] In the present case Mr. Ferrero Williams, the Managing Director cum Chairman of the GLG Constructions, has the requisite *mens rea* to commit the crime. Intention literally means a conscious movement with knowledge of the circumstances.⁷³ The mental element should require proof that the accused has personal awareness and has himself perceived the relevant circumstances and consequences comprising of the *actus reus* of the offence.⁷⁴

¶44.] In the present case Mr. Ferrero Williams was the directing mind behind the whole act of bribing the Organising Committee. The fact that there were several meetings held between him, T. Lannister and Mr. Peter Bailish, in days preceding the filing of IR is reflective of the plan and decisive strategy for the commission of the crime, which was subsequently committed.

⁶⁹ GLANVILLE WILLIAMS, TEXT BOOK OF CRIMINAL LAW, 219 (2d ed. 1999).

⁷⁰ 14(2) THE DIGEST 17 (1993).

⁷¹ *Joplin Mercantile Co. v. United States*, 213 Fed. 926 (C. C. A. 8th, 1914); See also The HLR Association, *Criminal Liability of Corporations for Acts of Their Agents*, 60 HARV. L. REV. 284 (1946); See also *Standard Chartered Bank v. Directorate of Enforcement* (2005) 4 SCC 530.

⁷² *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co.*, [1915] A.C. 705, 713 (H.L.).

⁷³ GLANVILLE WILLIAMS, TEXT BOOK OF CRIMINAL LAW, 219 (2d ed. 1999).

⁷⁴ DAVID ORMEROD AND SMITH AND HOGAN, CRIMINAL LAW, 104 (13h ed., 2011).

3.2 The acts of Mr. Peter Bailish are attributable to Mr. Ferrero Williams under an ostensible authority

[¶45.] It had been held by Byles J that a principal is bound, not only by such acts of agent as are within the scope of agent's actual authority, but by such acts as are within the larger margin of an apparent or ostensible authority derived from the representations, acts, or default of the principal.⁷⁵ Ostensible authority comes about where the principal, by words or conduct, has represented that the agent has the requisite actual authority, and the party dealing with the agent has entered into a contract with him in reliance on that representation.⁷⁶

[¶46.] In the present case, Mr. Ferrero Williams has ostensibly delegated his authority to Mr. Peter Bailish when he transferred the call of Mr. T. Lannister to him, to deal with the business of GLG Constructions. This amounts in imparting ostensible authority to Mr. Peter Bailish for the commission of the act. Mr. Ferrero Williams being the principal is liable for the act of Mr. Peter Bailish and the act of Mr. Peter Bailish can be attributed to him.

C. THE ULTRA HOUSE MAFIYA HAS *LOCUS STANDI* TO PARTICIPATE, MAKE SUBMISSIONS AND GIVE EVIDENCES IN THE CASE AGAINST FERRERO WILLIAMS

[¶47.] Traditionally, the common law has taken a strict approach to the issue of *locus standi*.⁷⁷ The doctrine served as a 'gate-keeper' to deny access to judicial remedies to those whom the courts considered undesirable⁷⁸ and to ensure that the courts did not become the 'happy hunting ground of the busybody and the crank'.⁷⁹ The Indian Supreme Court has observed that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolete.⁸⁰

[¶48.] It is humbly submitted that where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or socially or economically disadvantaged position is not able to approach the Court for judicial redress, any member of the public acting *bona fide* and not out of any extraneous motivation may move the Court for

⁷⁵ *Totterdell v. Fareham Blue Brick and Tile Co. Ltd.*, (1866) LR 1 CP 674.

⁷⁶ *Armagas Ltd. v. Mundogas SA*, [1986] AC 717.

⁷⁷ Tomás Bailey, *Judicial Discretion in Locus Standi: Inconsistency Ahead*, 4 GALWAY STUDENT L. REV. 1 (2010).

⁷⁸ Carolan, *Locus Standi and the use of Incorporated Companies in Judicial Review Applications*, 20 IRISH L. TIMES 298 (2002).

⁷⁹ *Cahill v. Sutton*, [1980] I.R. 269, 277.

⁸⁰ *Akhil Bhartiya Soshit Karamchari Sangh (Railway) v. Union of India*, AIR 1981 SC 298.

the judicial redress of the legal injury or wrong suffered by such person or class of persons and the judicial process may be set in motion any public spirited individual or institution even by addressing a letter to the Court.⁸¹

[¶49.] The Ultra House Mafiya has filed an objective petition, under Section 195 of the Tomorrowland Criminal Justice Code, before the Hon'ble Boomtown Criminal Court, on account of dissatisfaction with the submitted conclusive report by the special police.

[¶50.] It is humbly submitted before this Hon'ble Court that *no locus is required to file Objection Petition [A.]*; and that *concept of locus standi is foreign to criminal jurisprudence [B.]*

1. That No Locus Is Required To File Objection Petition

[¶51.] The concept of objection petition in the Tomorrowland Criminal Justice Code is identical to the concept of protest petition in India. A protest petition is in the nature of a complaint and should be dealt with in accordance with the provision of chapter XVI of the Code.⁸² Protest petition is a medium through which a person can question the validity of the chargesheet filed by the investigation agency.⁸³

1.1 'Any Person' is eligible to file Objective Petition

[¶52.] Considering the fact that no restriction is attached with the word 'any person' in the statute, therefore no constraint can be applied on its interpretation and application.⁸⁴ In other words, the Hon'ble Apex Court of India clearly held that the apparently wide words 'any person' are qualified by the setting in which they occur and that 'any person' is to be understood as a third party.⁸⁵ While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint.⁸⁶

[¶53.] The fact that the phrase 'any person' is used in Section 195 allows the court to have a wide interpretation to the section. Considering the fact that no limitations can be attached to the term, therefore any question related to the requirement of locus by the Ultra House Mafiya for interjecting the proceeding by the virtue of a protest petition is baseless.

⁸¹ *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

⁸² *District Magistrate, F.C.I. v. Jayashankar Mund*, 1989 (3) Crimes 95, 99; *See also Kallu v. Shahid Ali*, 1995 CrLJ 3489 (All); *See also Veerappa v. Bhimaraddappa*, AIR 2002 Kant 1147.

⁸³ *Abhinandan Jha v. Dinesh Mihra*, AIR 1986 SC 117.

⁸⁴ *Public Prosecutor, Madras v. R. Raju*, AIR 1972 SC 2504.

⁸⁵ *The Oriental Insurance Company Limited v. Meena Variyal*, AIR 2007 SC 1609.

⁸⁶ *A.R. Antulay v. R.S. Nayak*, AIR 1984 SC 718.

1.2 Objective Petition is filed after the conclusion of investigation

[¶54.] Section 105 of the Tomorrowland Criminal Justice Code clearly laid downs that submission of conclusive report by the special police to the presiding judge connotes conclusion of investigation. Even after accepting final report cognizance of an offence may be taken upon a complaint or protest petition on the same or similar allegations of fact.⁸⁷

[¶55.] The Special Police filed the Conclusive Report on January 10th, 2016. Ultra House Mafiya filed the protest petition after the submission of the report. Therefore, procedurally there is no fault present in the process followed.

2. That Concept Of *Locus Standi* Is Foreign To Criminal Jurisprudence

[¶56.] It is humbly submitted before this Hon'ble Court that *Locus Standi* of the complainant is a concept foreign to criminal jurisprudence.⁸⁸ Any citizen can lodge a first information report or file a complaint and set the machinery of criminal law in motion and his *locus standi* to do so cannot be questioned. If the offence for which prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have locus to initiate a prosecution and also to resist the withdrawal of such prosecution, if initiated. The Hon'ble Supreme Court of India held that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions.⁸⁹

[¶57.] It is a well-recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary.⁹⁰ There is nothing in the Code showing an intention to confine the prosecution to the person directly injured.⁹¹

[¶58.] It is humbly submitted that the general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force is not merely an offence committed relation to the person who suffers harm but is also an offence against society.⁹² The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for

⁸⁷ *Munilal v. Naval Kishore*, 1985 CriLJ 437 (Pat); See also *Jamuna Shah v. Bhuban Chandra Kalita*, (2002) 1 Gau LR 267.

⁸⁸ *Sheo Nandan Paswan v. State of Bihar*, AIR 1987 SC 877.

⁸⁹ *Akhil Bhartiya Soshit Karamchari Sangh (Railway) v. Union of India*, AIR 1981 SC 298.

⁹⁰ *A.R. Antulay v. R.S. Nayak*, AIR 1984 SC 718.

⁹¹ *Vishwa Mittr v. O.P. Poddar*, AIR 1984 SC 5; See also *In Re: Ganesh Narayan Sathe*, (1889) 13 Bom 600;

See also *In Re: Keshavalal Jekrishna*, (1896) 21 Bom 536.

⁹² *A.R. Antulay v. R.S. Nayak*, AIR 1984 SC 718.

serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance.⁹³ If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary.⁹⁴ Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straitjacket formula of *locus standi* unknown to criminal jurisprudence, save and except specific statutory exception.⁹⁵

[¶59.] There is no provision either in the criminal jurisprudence which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence.⁹⁶

[¶60.] In the lights of the above argument, the respondent humbly pleads before the Hon'ble Court that any question related to the availability of *locus standi* by Ultra House Mafiya shall be dismissed without delay.

⁹³ *Manzoor Ali Khan v. Union of India*, AIR 2014 SC 3194.

⁹⁴ *Id.*

⁹⁵ *Dr. Subramanian Swamy v. Dr. Manmohan Singh*, AIR 2012 SC 1185.

⁹⁶ *Id.*

PRAYER FOR RELIEF

IT IS HUMBLY SUBMITTED BEFORE THE HON'BLE SUPREME COURT OF TOMORROWLAND THAT IN THE LIGHTS OF THE ABOVE ARGUMENTS, CASES AND AUTHORITIES CITED, THE RESPONDENTS HUMBLY PRAY BEFORE THE HON'BLE COURT:

1. To dismiss the petition of Mr. Ferrero Williams;
2. To hold that the order of the Supreme Court of Tomorrowland dated February 14th, 2016 is not violative of Articles 3 and 6 of the Constitution Act of 1930;
3. To hold that the order of Boomtown Criminal Court dated January 30th, 2016 is not erroneous in law;
4. To hold that Mr. Ferrero Williams is an accused in the OWG scam case;
5. To hold that UHM is free to participate, make submissions and give evidence in the trial of OWG scam case.

AND PASS ANY OTHER ORDER, DIRECTION, OR RELIEF THAT IT MAY DEEM FIT IN THE INTERESTS OF JUSTICE, FAIRNESS, EQUITY AND GOOD CONSCIENCE.

FOR THIS ACT OF KINDNESS, THE RESPONDENTS SHALL DUTY BOUND FOREVER PRAYS.

PLACE:

SD/-

DATE: -

COUNSELS FOR THE RESPONDENTS