IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF AUGUST, 2024

R

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 12339 OF 2023

BETWEEN:

1. SRI B S SURESH
   S/O B M SUBBANNA,
   AGED ABOUT 51 YEARS,
   R/AT NO.765, HAL 2ND STAGE,
   INDIRANAGAR,
   BENGALURU - 560 038
   (PRESENTLY MEMBER OF LEGISLATIVE
   ASSEMBLY FROM HEBBALA CONSTITUENCY)

2. SRI PRADOOSH DHANRAJ
   S/O DHANRAJ,
   AGED ABOUT 45 YEARS,
   R/AT NO.28, 1ST MAIN, 9TH MAIN,
   NEAR SSMV PARK, CTBED LAYOUT,
   3RD STAGE, BANASHANKARI,
   BENGALURU - 560 050

...PETITIONERS

(BY SRI. SANDESH J. CHOUTA, SENIOR ADV. FOR
SMT. LEELA P DEVADIGA, ADV.)

AND:

1. THE STATE OF KARNATAKA
   THROUGH INDIRANAGAR P S,
   REP. BY SPP OFFICE,
   HIGH COURT OF KARNATAKA,
   BENGALURU - 560 001

2. MR. G KRISHNASWAMY
   S/O NOT KNOWN
   AGED ABOUT 60 YEARS
   THE STATION HOUSE OFFICER
   FIRE STATION SOUTH FIRE STATION,
   RESIDENCY ROAD,
   BENGALURU - 560 025

…RESPONDENTS

(BY SRI. JAGADEESHA B.N., ADDL. SPP FOR R1 AND R2)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.56902/2019 PURSUANT TO FILING OF CHARGES SHEET DATED 20.05.2019 FILED BY THE Ist RESPONDENT INDIRANAGARA POLICE STATION PENDING ON THE FILE OF THE X ACMM AT MAYO HALL BENGALURU CITY FOR THE OFFENCE P/U/S.285 OF IPC AND SEC.25 OF KARANATAKA FIRE FORCE ACT 1964 IN SO FAR AS THE PETITIONER ARE CONCERNED.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioners - accused Nos.1 and 2 are before this Court calling in question the proceedings in C.C.No.56902/2019, registered for offence punishable under Section 285 of the IPC and Section 25 of the Karnataka Fire Force Act, 1964.

2. Heard the learned Senior counsel Sri.Sandesh J. Chouta, appearing for the petitioners and the learned Additional State Public Prosecutor appearing for the respondents.

3. The subject building is said to have been constructed in terms of the sanction plan and a completion certificate is also in place on 27.12.2005. It is a commercial complex. In a public interest petition before the Division Bench in W.P.No.38073/2010, a general direction was issued to the fire department to put in place preventive measures for

high rise buildings by issuance of a notification under Section 13 of the Karnataka Fire (Services) Force Act, 1964. Long thereafter, the first petitioner purchases the commercial complex on 05.02.2014 and in terms of the revised master plan, certain safety measures were taken in compliance with the Act, is the averment in the petition. The Fire Department is said to have inspected the premises on three dates. On 31.12.2017, 05.01.2018 and the last, on 31.01.2018. Later, on 02.04.2019, the Department registers the complaint before the jurisdictional police for offence punishable under Sections 285 and 336 of the IPC. The said registration of the crime was called in question before this Court in Crl.P.No.4604/2019. A co-ordinate Bench of this Court had granted an interim order of stay of all further proceedings on 09.09.2019. Long thereafter, on 11.10.2019, the Police filed a charge sheet before the concerned Court and the concerned Court registers the same as C.C.No.56902/2019. Summons was issued to the petitioners on 06.10.2023. It is then they realize that despite the subsistence of the interim order, a charge sheet was filed by the Police. The said petition was withdrawn and the present

petition was filed before the Court, after securing such liberty from the hands of this Court.

4. The learned Senior counsel would submit that for an offence punishable under Section 285 of the IPC, the maximum punishment is imprisonment upto six months or fine or both. In terms of Section 468 of the Cr.P.C., and even the Act, the limitation for filing the complaint is one year from the date of occurrence of the cause of action. He would contend that the last of inspection, was the cause of action. This was on 31.01.2018. The complaint comes to be registered on 02.04.2019, which is admittedly beyond one year, and beyond the limitation stipulated under the Act, as also the Bar under Section 468 of the Cr.P.C. The learned Senior counsel would further contend that none of the ingredients of Section 285 of the I.P.C., is met at the case at hand. He would submit that the issue of limitation in registering the complaint would cut at the root of the matter and therefore would submit that on these grounds, the petition should be allowed.

5. Per contra, the learned Additional State Public Prosecutor Sri.Jagadeesha B.N., would submit that last of the references in the complaint is on 02.04.2019. The complaint is preferred on 09.04.2018. He would therefore submit that it is within the period of limitation as prescribed under the Act and Section 468 of the Cr.P.C. He would contend that the first petitioner had not installed any safety equipment in the building. Therefore, it led to registration of the complaint. He would seek to place reliance upon the judgment of the co-ordinate Bench of this Court in the case of ***Mr.Ando Paul vs Mr.G.Ismail Musliyar***[1], to contend that cognizance is taken immediately after registration of the complaint. Therefore, it is within the period of limitation. In effect, it is his submission that Section 468 of the Cr.P.C., is to be reckoned from the date of taking of cognizance.

6. I have given my anxious consideration to the contentions of respective learned counsel and have perused the material on record.

[1] **Crl.R.P.No.2/2018**

7. The afore-narrated facts are not in dispute. The first petitioner comes in possession of the property on purchasing it, on 05.02.2014. An inspection of the property by the Fire Department, in terms of a direction, in a public interest petition, takes place on 31.12.2017, 05.01.2018 and on 31.01.2018. It is an admitted fact that there is no record with the respondents for any inspection taking place beyond 31.01.2018. Therefore, it can safely be held that last of the date of inspection or the date on which cause of action was arose on 31.01.2018. Therefore, the limitation even, if it is not prescribed under the Act, in terms of Section 468 of the Cr.P.C., it is six months. The complaint admittedly filed after 13 months, beyond one year. Therefore, on the period of limitation, the petition deserves to succeed. The submission of the learned Additional State Public Prosecutor, placing reliance upon judgment of the co-ordinate Bench in the case of ***Mr.Ando Paul vs. Mr. G.Ismail Musliyar*** (*supra*) is unacceptable. The co-ordinate Bench has held as follows:

> *"16. As regards taking cognizance is bad in law is concerned, learned counsel for the accused relied on the judgment of the Hon'ble Supreme Court in the case of*

PRADEED S WODEYAR, stated supra, the paragraph Nos.76, 84 and 91 referred by the learned counsel for the accused relating to taking cognizance on the basis of the police report and not on the basis of the private complaint. In the present case, the matter relating to taking cognizance after 8 years from the date of lodging the complaint for the offences which are punishable with simple imprisonment for 2 years or a fine or both, especially in non-cognizable offences. To deal with the said aspect, it is necessary to refer to Section 468 of the Code of Criminal Procedure, which reads thus:

> *"468. Bar to taking cognizance after lapse of the period of limitation.—(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.*
>
> *(2) The period of limitation shall be—*
>
> *(a) six months, if the offence is punishable with fine only;*
>
> *1. Provisions of this Chapter shall not apply to certain economic offences, see the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), s. 2 and Sch.192*
>
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
>
> *(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*
>
> *[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more*

> *severe punishment or, as the case may be, the most severe punishment.]"*
>
> *17. On careful reading of the above said provision, it makes it clear that cognizance should be taken within 3 years if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding 3 years. In the present case, a complaint is filed on 21.04.2001, cognizance taken on 12.08.2008.* ***Therefore, the order of taking cognizance is bad in law and the Trial Court and the Appellate Court should have considered the said aspect and recorded the acquittal. In my considered opinion, taking cognizance is bad in law.***"

The co-ordinate Bench proceeds on a footing that the limitation under Section 468 of the Cr.P.C., would be as on the date of taking of the cognizance of the offence. Conviction is set aside on the ground that cognizance was taken by the concerned court after seven years of registration of the crime and the offence was punishable upto 3 years.

8. I decline to follow the said order of the co-ordinate Bench (*supra*) for the reason that it runs counter to the judgments of the Apex Court in the case of ***Sarah Mathew vs.***

Institute of Cardio Vascular Diseases[2], where the Apex Court has held as follows:

> "***34.*** *Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term "cognizance" and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate.* ***Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons.***
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> ***35.*** *In this connection, our attention is drawn to the judgment of this Court in Sharadchandra Dongre [State of Maharashtra v. Sharadchandra Vinayak Dongre, (1995) 1 SCC 42 : 1995 SCC (Cri) 16] . It is urged on the basis of this judgment that by condoning the delay, the court takes away a valuable right which accrues to the accused. Hence, the accused has a right to be heard when an application for condonation of delay under Section 473 CrPC is presented before the court. Keeping this argument in mind, let us examine both the viewpoints i.e. whether the date of taking cognizance or the date of filing complaint is material for computing limitation.* ***If the date on which complaint is filed is taken to be material, then if the complaint is filed within the period of limitation, there is no question of it being time-barred.*** *If it is filed after the period of limitation, the complainant can make an application for condonation of delay under Section 473 CrPC. The court will have to issue notice to the accused and after*

[2] **2013 SCC Online SC 1043**

hearing the accused and the complainant decide whether to condone the delay or not. If the date of taking cognizance is considered to be relevant then, if the court takes cognizance within the period of limitation, there is no question of the complaint being time-barred. If the court takes cognizance after the period of limitation then, the question is how will Section 473 CrPC work. The complainant will be interested in having the delay condoned. ***If the delay is caused by the Magistrate by not taking cognizance in time, it is absurd to expect the complainant to make an application for condonation of delay. The complainant surely cannot explain that delay.*** *Then in such a situation, the question is whether the Magistrate has to issue notice to the accused, explain to the accused the reason why delay was caused and then hear the accused and decide whether to condone the delay or not. This would also mean that the Magistrate can decide whether to condone delay or not, caused by him. Such a situation will be anomalous and such a procedure is not known to law. Mr Luthra, learned ASG submitted that use of disjunctive "or" in Section 473 CrPC suggests that for the first part i.e. to find out whether the delay has been explained or not, notice will have to be issued to the accused and for the latter part i.e. to decide whether it is necessary to do so in the interest of justice, no notice will have to be issued. This question has not directly arisen before us. Therefore, we do not want to express any opinion whether for the purpose of notice, Section 473 CrPC has to be bifurcated or not. But, we do find this situation absurd. It is absurd to hold that the court should issue notice to the accused for condonation of delay, explain the delay caused at its end and then pass an order condoning or not condoning the delay. The law cannot be reduced to such absurdity. Therefore, the only harmonious construction which can be placed on Sections 468, 469 and 470 CrPC is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period. He would,*

however, be entitled to exclude such time as is legally excludable.

36. *The role of the court acting under Section 473 was aptly described by this Court in Vanka Radhamanohari [Vanka Radhamanohari v. Vanka Venkata Reddy, (1993) 3 SCC 4 : 1993 SCC (Cri) 571] where this Court expressed that this section has a non obstante clause, which means that it has an overriding effect on Section 468. This Court further observed that : (SCC p. 8, para 6)*

> *"6. … There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Criminal Procedure Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas, Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay."*

These observations indicate the scope of Section 473 CrPC. Examined in the light of legislative intent and meaning ascribed to the term "cognizance" by this Court, it is clear that Section 473 CrPC postulates condonation of delay caused by the complainant in filing the complaint. It is the date of filing of the complaint which is material.

37. *We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case.* ***A diligent complainant or the prosecuting agency which***

promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides, it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 CrPC would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. *(U.P. Power Corpn. Ltd. v. Ayodhya Prasad Mishra [(2008) 10 SCC 139 : (2008) 2 SCC (L&S) 1000] .)*

38. *The conclusion reached by us is reinforced by the fact that the Law Commission in Para 24.20 of its Forty-second Report, which we have quoted hereinabove, referred to Dau Dayal [Dau Dayal v. State of U.P., AIR 1959 SC 433 : 1959 Cri LJ 524] where the three-Judge Bench of this Court was dealing with a special Act i.e. the Merchandise Marks Act, 1889. Section 15 of the Merchandise Marks Act, 1889 stated that no prosecution shall be commenced after expiration of one year after the discovery of the offence by the prosecution. The contention of the appellant was that the offence was discovered on 26-4-1954 when he was arrested, and that, in consequence, the issue of process on 22-7-1955, was beyond the period of one year provided under Section 15 of the Merchandise Marks*

Act, 1889 and that the proceedings should therefore be quashed as barred by limitation. While repelling this contention, the three-Judge Bench of this Court observed as under : (AIR p. 435, para 6)

> *"6. It will be noticed that the complainant is required to resort to the court within one year of the discovery of the offence if he is to have the benefit of proceeding under the Act. That means that if the complaint is presented within one year of such discovery, the requirements of Section 15 are satisfied. The period of limitation, it should be remembered, is intended to operate against the complainant and to ensure diligence on his part in prosecuting his rights, and not against the court. Now, it will defeat the object of the enactment and deprive traders of the protection which the law intended to give them, if we were to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out. It will be an unfortunate state of the law if the trader whose rights had been infringed and who takes up the matter promptly before the criminal court is, nevertheless, denied redress owing to the delay in the issue of process which occurs in court."*

Though this Court was not concerned with the meaning of the term "taking cognizance", it did not accept the submission that limitation could be made dependent on the act of the Magistrate of issuing process. It held that if the complaint was filed within the stipulated period of one year, that satisfied the requirement. The complaint could not be thrown out because of the Magistrate's act of issuing process after one year."

The judgment in the case of ***Sarah Mathew*** (*supra*) is further followed, in the case of ***Amritlal vs. Shantilal Soni and Others***[3]***,*** where the Apex Court has held as follows:

> "***8.*** *Having heard the learned counsel for the parties and having perused the material placed on record, we have not an iota of doubt that the impugned order [Shantilal Soni v. State of M.P., 2019 SCC OnLine MP 7100] of the High Court deserves to be set aside, for it proceeds squarely contrary to the law declared by the Constitution Bench of this Court in Sarah Mathew case [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] .*
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> ***9.*** *In Sarah Mathew [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] , the Constitution Bench of this Court examined two questions thus : (SCC pp. 73-74, para 3)*
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> *"3. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:*
>
> *3.1. (i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?*
>
> *3.2. (ii) Which of the two cases i.e. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] or Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559 : 2004 SCC (Cri) 39] (which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar*

[3] **(2022) 13 SCC 128**

Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388]), lays down the correct law?"

10. *The Constitution Bench answered the aforesaid questions as follows : (Sarah Mathew case [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] , SCC p. 102, para 51)*

> *"51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559 : 2004 SCC (Cri) 39] which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] lays down the correct law. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC."*
>
> *(emphasis supplied)*

11. Therefore, the enunciations and declaration of law by the Constitution Bench in Sarah Mathew case [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] , do not admit of any doubt that for the purpose of computing the period of limitation under Section 468 CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. *The High Court has made a fundamental error in assuming that the date of taking cognizance i.e. 4-12-2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10-7-2012, well within the period of*

limitation of 3 years with reference to the date of commission of offence i.e. 4-10-2009."

In the light of the judgments of the Apex Court, I deem it appropriate to hold that it is not the date, on which the concerned Court, would take cognizance of the offence, but the date on which the complaint is preferred by the aggrieved person, as an illustration, if an incident has taken place on 01.01.2020 and if the alleged incident meets the ingredients of any offence punishable with maximum imprisonment of three years, the limitation under Section 468 of Cr.P.C., would come to an end on 31.12.2023, a complaint should be preferred on or before 31.12.2023. It is immaterial as to when cognizance can be taken by the concerned Court. In certain cases, cognizance would be taken years later that would be the act of the Court, that is not the purport of Section 468 of the Cr.P.C., which in unequivocal terms, bears interpretation at the hands of the Apex Court. The order of the co-ordinate Bench running counter to the judgments of the Apex Court quoted (*supra)* loses its precedential value to be followed. It is therefore, per *incuriam*. The Apex Court in the afore-quoted judgments,

would steer clear the issue projected in the case at hand. The very complaint was not entertainable.

9. The other submission of the learned Senior counsel is with regard to the facts not meeting the ingredients of Section 285 of the IPC. The said issue need not detain this Court for long or delve deep into the matter, as this Court in Crl.P.No.4507/2023, while considering Section 285 of the IPC has held as follows:

> ""*11. The other provision is Section 285 of the IPC. Section 285 of the IPC (supra) mandates rash or negligent act by any person so as to endanger human life, while dealing with fire or combustible matter knowingly or unknowingly. The Apex Court in the case of* ***GURUKANWARPAL KIRPAL SINGH v. SURYA PRAKASAM***[4]***,*** *has held as follows:*
>
> > *"The High Court further held that the essential requirement of Section 285 of IPC was that the accused must have done something with fire or any combustible matter in a rash and negligent manner to endanger human life.*
> >
> > *The FIR in the present case does not show anything done by the accused with fire or any combustible matter.* ***The act of recycling plastic waste material or supply of plastic waste material for recycling by the petitioner No.2 could not be said to be an act done with fire or any combustible matter.***
> >
> > ***The act of the respondents of supplying material for testing and the recycling plant could***

[4] SLP (Crl.) No.5485 of 2021 decided on 12-05-2022

> ***not be said to be a negligent or rash act done to endanger human life. Thus, the essential ingredients of the offence were absent.***
>
> *In our considered opinion, the well reasoned and well considered judgment of the High Court does not call for interference, more so, when the High Court has made it clear that the order would not come in the way of the respondent No.2 in instituting any civil proceedings against the petitioner in respect of any grievance, if permissible in law, which would then be considered and decided in accordance with law."*
>
> *(Emphasis supplied)*
>
> *The Apex Court affirms the findings of the High Court qua Section 285 of the IPC holding that the accused must have done something with fire or any combustible matter in a rash or negligent manner to endanger human life. The petitioner is not alleged to have done any such act or the driver of the lorry of the petitioner. The allegation is that, diesel was being transported in the diesel tanker for sale without invoice. This can hardly become an ingredient of the offence punishable under Section 285 of the IPC. Therefore, this becomes a fit case for exercise of jurisdiction of this Court under Section 482 of the Cr.P.C. to obliterate the crime at the stage of FIR itself, in tune with the postulates laid down by the Apex Court in the case of* ***STATE OF HARYANA v. BHAJANLAL***[5]*…***"**

10. On the aforesaid twin counts of the complaint being preferred beyond the period of limitation, and the fact that the alleged act does not meet the ingredients of Section 285 of the I.P.C., if further proceedings are permitted to continue, it would

[5] 1992 Supp.(1) SCC 335

become contrary to law and result in miscarriage of justice. Therefore, this becomes a fit case for exercise of this Court's jurisdiction under Section 482 of the Cr.P.C., to obliterate the crime.

11. For the aforesaid reasons, the following:

ORDER

i. The criminal petition is allowed; and

ii) The proceedings in C.C.No.56902/2019, pending on the file of the X Additional Chief Metropolitan Magistrate, Bengaluru, *qua* the petitioners, stand quashed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

KG
List No.: 2 Sl No.: 7