Himachal Pradesh Cricket Association vs The State Of Himachal Pradesh on 2 November, 2018

Equivalent citations: AIRONLINE 2018 SC 403

Author: A.K. Sikri

Bench: A.K. Sikri, Ashok Bhushan, Ajay Rastogi

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1258-1259 OF 2018

HIMACHAL PRADESH CRICKET ASSOCIATION & ANR. ...

VERSUS

STATE OF HIMACHAL PRADESH & ORS. .....

WITH

WRIT PETITION (CRIMINAL) NO. 135 OF 2017

JUDGMENT

A.K. SIKRI, J.

Two FIRs are the subject matter of these appeals. One FIR No. 12 of 2013 dated August 01, 2013 is under Sections 406, 420, 120B of the Indian Penal Code, 1860 (IPC) and Section 13(2) of the Prevention of Corruption Act, 1988 (PC Act) has been registered against the appellants herein as well as some other persons. Second FIR No.14 of 2013 dated October 03, 2013 is under Section 17:25:31 IST Reason:

> 447 read with Section 120B of the IPC, Section 3 of Prevention of Damage to Public Property Act, 1984 and Section 13(2) of the PC Act. The appellants filed petitions under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the High Court of Himachal Pradesh for quashing of the said FIRs. These petitions have been dismissed by the High Court vide common judgment dated April 25, 2014. That judgment is impugned in the instant appeals. When the Special Leave Petitions (out

of which these appeals arise) were filed, notice thereof was issued on January 5, 2015 and stay of further proceedings was also granted in the case arising out of the said FIRs which are pending before the Special Judge, Kangra, Dharamshala, Himachal Pradesh. That stay has been extended from time to time and is, therefore, continuing.

2) During the pendency of these proceedings, investigation was completed. On the day judgment was pronounced by the High Court, the chargesheets were filed in the Court of Special Judge. After the filing of the said chargesheets, the appellants have also filed Writ Petition (Criminal) No. 135 of 2017 in this Court seeking quashing of these chargesheets. Both these proceedings were clubbed and heard together which we propose to dispose of by this common judgment.

3) Appellant No. 1 is a Cricket Association of Himachal Pradesh which was initially registered as a Society under the Societies Registration Act, 1860 vide Registration Certificate dated June 08, 1990. On September 15, 2001, appellant No. 1 made an application for allotment of land to develop and construct the world class cricket stadium and consequently, the Commissioner-cum-Secretary (Education) granted permission for transfer of land to the Himachal Pradesh Youth Services and Sports Department with certain conditions. A lease deed dated July 29, 2002 was executed between appellant No.1 and respondent No. 1 through Director, Himachal Pradesh Youth Services and Sports Department for the said land at Village Mouja and Tehsil Dharamshala, District Kangra for construction of an international cricket stadium which was duly constructed. On July 14, 2005, a not for profit company in the name of Himalayan Players Cricket Association was incorporated under Section 25 of the Companies Act, 1956. Name of this company was changed to Himachal Pradesh Cricket Association on August 31, 2005.

4) Purusant to a proposal to host international cricket matches at Dharamshala, the International Cricket Council inspected the cricket infrastructure being developed at Dharmashala by appellant No. 1 and, inter alia, observed that the quality of accommodation left much to be desired. Need for some more facilities and hotel accommodation of desired quality was specifically stressed.

5) Having regard to this report, the appellants decided to construct a club house on the leased land. There was also a parcel of idle land in the middle of the land allotted for the stadium. Appellant No.1 towards this end made a request to the Director, Youth Services and Sports for allotment of additional land adjacent to the stadium admeasuring 720 square metres, vide its letter dated July 03, 2008. Since it was Gram Panchayat land, consent thereof was also needed for its allotment to the appellant No.1. Appellant No.1, thus, approached the Gram Panchayat. Pursuant to meetings between the office bearers of appellant No. 1 and Gram Panchayat, members of Uparali Dhari Development Division, Dharamshala, the said Gram Panchayat issued no objection for allotment of the land. Proposal of appellant No. 1 for allotment of additional land was mooted with the authorities as well. Respondent No. 1 vide letter dated November 16, 2009 took up the matter with the ACS-cum-FC Revenue to the Government of Himachal Pradesh for approval to lease out government land in Mohal Kand Mauja Khanyara, Tehsil Dharamshala, District Kangra, measuring in 3-28-06 hectare in favour of appellant No. 1. Respondent No. 1 granted approval to lease out the aforesaid land in favour of appellant No. 1 vide letter dated November 16, 2009 which was conveyed vide letter dated November 18, 2009. As a result, lease deed was executed between appellant No. 1

and respondent No. 1 for lease of the said land situated at Mohal Kand Mauza Khanyara, Tehsil Dharmashala.

6) Club house was constructed at the stadium premises at Dharamshala under the name and style of "Aveda HPCA Club House". Completion Certificate was issued on March 10, 2011 and was certified complete in all aspects as per approved plan of the Executive Officer, Municipal Council, Dharamshala. The Town and Country Planning Department, Dharamshala also issued no objection certificate dated March 15, 2011 for use of part of the infrastructure of cricket stadium as club house for cricket activities. Respondent No. 1 also approved the tariff for availing the accommodation facilities of the club house vide its letter dated September 08, 2011.

7) The Board of Control for Cricket in India (BCCI) granted permission to the Himachal Pradesh Cricket Association to convert itself from a "not for profit" society to a "not for profit" company during its annual general meeting held on September 19, 2011. A majority of cricket associations throughout the country have been converting themselves from a not for profit society to a not for profit company registered under the Companies Act, 1956 in order to ensure better and transparent management of their affairs.

Realising that unless world class accomodation was available for the teams playing at the stadium and the officials concerned accompanying such teams, the venue at Dharamshala that was being painstakingly developed by the appellant No. 1 from its own funds would be grossly underutilised and the State would lose out in hosting cricket matches, appellant No. 1 and its office bearers began working out a method to construct a world class motel for such purposes.

Appellant No. 1 realized that if the use of the same was restricted only to usage during match days for use of teams and their officials, the same would not be commercially viable. As the terms of the lease may not be technically wide enough to cover this allied infrastructure being developed for the game of cricket, vide its letter dated December 24, 2011, appellant No. 1 wrote to the respondent to request it to permit commercial activity on the said land on even non match days and amend the lease terms accordingly. The above letter was forwarded by the District Magistrate to the Principal Secretary (Revenue), Government of Himachal Pradesh and the Principal Secretary (Revenue), Government of Himachal Pradesh issued no objection for execution of a supplementary lease enabling commercial activity on the additional land at Kandi provided that the lease money was charged in accordance with the Lease Rules, 2011. A supplementary lease deed was executed between the appellant No.1 and the State of Himachal Pradesh enabling use of the additional land commercially. Necessary permissions for development on the said land were obtained including for commercial hotel. The hotel constructed under the name and style of "The Pavilion" obtained registration with the Tourism Department of the State and Tariffs, etc. were also fixed by the said Department on September 26, 2012. In the meantime, on September 22, 2012 resolution was passed by the appellant No. 1 company to take over the assets and liabilities of the society. Agreement dated October 01, 2012 was also executed between the Himachal Pradesh Cricket Association (the society) and Himachal Pradesh Cricket Association (the Company) to enable the Society to convert itself into a Company. Accordingly, the Society was converted into a Company and the Himachal Pradesh Cricket Association stood converted from a society to a not for profit company registered under the

Companies Act, 1956 and the Registrar of Companies was informed of the same in due course.

8) Within a couple of months, from the aforesaid developments, there was a change of political executive in the State of Himachal Pradesh pursuant to the elections of legislative assembly. According to the appellants, with the change of political power, tirade against the appellants started by the new Government. In fact, even during the election campaign, the Congress (I) had published a 'Congress Chargesheet' wherein serious allegations were levelled against the appellants. The appellants department sprung into action and started seeking information from the appellants on various aspects, though this information was already available with the State Government. A formal FIR No. 12 of 2013 dated August 01, 2013 was registered which, according to the appellants, is the result of the said 'Congress Chargesheet'. In fact, some time before that, a complaint under Section 156(3) Cr.P.C. was made by one Vinay Sharma against appellant No. 1 and its office bearers in which orders were passed by Special Judge, Kangra on July 02, 2013 directing the police authorities to investigate the said case and submit the report to it. Thus, two parallel proceedings were started.

9) Further allegation of the appellants is that investigation was personally monitored by respondent No. 2 herein who was the Chief Minister at that time. He had also made various public statements from time to time that he was interested in taking over the entire function of the Cricket Association and its assets. According to the appellants, at the behest of respondent No. 2, even the Registrar of Societies, Himachal Pradesh issued notice dated September 7, 2013 on the issue of formation of company under Section 25 of the Companies Act, 1956 and taking over the assets of the society. Against this notice, Writ Petition No. 7593 of 2013 was filed wherein the High Court passed the orders keeping in abeyance the allegations raised in the notice dated September 7, 2013 of the Registrar of Societies.

10) Another FIR No. 14 of 2013 dated October 03, 2013 came to be registered against the appellants and others alleging commission of offences under Section 447 read with Section 120B of the IPC, Section 3 of the Prevention of Damage to Public Property Act, 1984 and Section 13(2) of the PC Act. Many other actions were taken by the respondents, which according to the appellants, were mala fide moves, reference whereto shall be made at the appropriate stage. At this juncture, the appellants filed petition under Section 482 of Cr.P.C. on January 06, 2014 seeking quashing of FIR No. 12 of 2013 which stands dismissed vide impugned judgment dated April 25, 2014.

11) The High Court in the impugned judgment has taken note of catena of judgments of this Court pertaining to powers of the High Court within the scope of Section 482 of Cr.P.C. Thereafter, it has observed that after lodging of the FIR, investigation has been conducted and the material collected during investigation discloses that 18 persons made accused in the aforesaid FIR are prima facie involved in the commission of offences. On this ground, it has brushed aside the argument of the appellants that it was a case of vengeance, political vendeta and mala fide. The High Court has also observed that allegations of mala fide based on the facts after lodging of the FIR are of no consequence and cannot be the basis for quashing the proceedings. For this purpose, it has referred to the judgment of this Court in State of Bihar & Anr. v. P.P. Sharma & Anr.1. It has also observed that even otherwise, the file does not disclose at this stage how it is the case of mala fide. In the opinion of the High Court, in such circumstances, merits of the case is to be tested during trial

inasmuch as FIR and Final Report of Investigating Agency discloses that case for trial is made out. As the power under Section 482 Cr.P.C. is to be exercised carefully, cautiously and in rarest of rare cases, keeping in mind the law laid down by this Court, the High Court refused to quash the proceedings. We may also record here that one of the submissions of the appellants before the High Court was that appellant No. 2 and other persons are not public servants and, therefore, provisions of PC Act could not be invoked against them. This argument has also been found to be unmerited on the ground that some of the accused persons arrayed with the appellants are public servants and also that allegation in the 1 1992 Supp (1) SCC 222 FIR is that all these accused persons has the conspiracy and wrongful gain to themselves and wrongful loss to the State, in the process, the officials misused their position to show favour to other accused persons.

12) Mr. Patwalia, learned senior counsel appearing for the appellants, at the outset, drew the attention of this Court to the fact that M/s. Subhash Ahluwalia, Subhash Negi, Ajay Sharma, Deepak Sanan and T.G. Negi, who are the IAS Officers, were associated with the grant of three leases. They were the main persons who took active part in deciding that the three leases should be granted to the appellants and on that basis, final decision was taken. However, as far as these Officers are concerned, prosecution sanction has either been denied or they have not been prosecuted at all. Likewise, Mr. Gopal Chand, who belongs to Himachal Pradesh Administrative Service, was arrayed as one of the accused person, but in his case also, the sanction though given earlier stood withdrawn. He has even been promoted to IAS cader. Mr. Patwalia submitted in tabular form status of Officers who have allegedly conspired with the appellants, which is as under:

> Sl. Name of Officer Post at the time of Role as per FIR Sanction No. alleged offence
> FIR No. 12 of 2013 dated 01.08.2013 under Sections 406/420/120B IPC and Section 13(2), Prevention of Corruption Act 1 Subhash IAS, Director-cum- Sh. Subhash
> Ahluwalia, at Not Charged Ahluwalia Special Secretary, the time of grant of lease
> Youth Services and of the Government Land (Not enough
> Sports Department, to HPCA for the evidence of Government of construction of Cricket malafide
> Himachal Pradesh. Stadium had ignored the intention).

			rules and had not mentioned the provisions of Lease Rules, 1993 in his noting. Further, Sh. Subhash Ahluwalia was a signatory to the Lease Deed dated 29.07.2002.	
2	Subhash Negi	IAS, Secretary, Youth Services and Sports Department, Government of Himachal Pradesh	Sh. Subhash Negi, at the time of grant of lease of the Government Land to HPCA for the construction of Cricket Stadium had ignored the rules and had not mentioned the provisions of Lease Rules 1993 in his noting.	No (N ev ma in

3	T.G. Negi	IAS, Principal Secretary, Youth Services and Sports Department, Government of Himachal Pradesh.	Sh. T.G. Negi made no efforts to reject the notings of accused Sh. Ajay Sharma and instead forwarded the same for approval of the Chief Minister.	No (N ev ma in
4	Ajay Sharma	IAS, Director-cum-Special Secretary, Youth Services and Sports Department, Government of Himachal Pradesh.	In 2008, then Chief Minister P.K. Dhumal marked the application of HPCA for permission of construction of Club House and its commercial use to Sh. Ajay Sharma and asked him to prepare the proposal for the same. Sh. Ajay Sharma, by abusing his official position proposed for permission to the HPCA with the approval of the Chief Minister. The land was leased only for construction of cricket stadium and not club house. Sh. Ajay Sharma, by abusing his office in criminal conspiracy with HPCA, contrary to the terms and conditions of the lease deed has provided undue benefit to the HPCA and loss to the State Government.	Pr sa de Ce Go on 2 Pr sa wi th Go on 09
5	Deepak Sanan	IAS, Principal Secretary-cum-Financial Commissioner, Revenue Department, Government of Himachal Pradesh.	Sh. Deepak Sanan issued NOC for the commercial use of Government land which was leased to HPCA for the construction of Hotel Pavilion by reversing the earlier decision of Council of Minister. Sh. Deepak Sanan also notified the Lease Rules, 2011, on the basis of which	Pr sa de Ce Go on 25 Pr sa wi th

			supplementary lease was executed, in accordance with Rule 9.	Go on 09
6	Gopal Chand	HPAS, Additional Secretary, Revenue Department, Government of Himachal Pradesh	Sh. Gopal Chand had recommended for the commercial use of land leased to HPCA in Mohal Kand and marked the file to Sh. Deepak Sanan, whereas under Schedule	Pr sa gr 03 wi th Go
			20 of the Business Rules, on he could have recommended the matter to be taken to the Cabinet.	03.08. Promo IAS.

FIR No. 14 of 2013 dated 03.10.2013 under Sections 447/120B IPC, Section 3 of the Prevention of Damage to Public Property Act, 1984 and Section 13(2) of the Prevention of Corruption Act 7 K.K. Pant IAS, Deputy On 14.03.2008, Sh. K.K. Prosecution Commissioner, Pant chaired a meeting sanction Kangra, Himachal with other accused, declined by Pradesh without following due Central procedure and without Government having any statutory on power for doing so, for 27.03.2015.

reallocation of Type IV, UGC accommodation in the possession of the Education Department and the presumptions drawn in the meeting were made with the intention to give undue advantage to HPCA. Sh. K.K. Pant overlooked the report regarding condition of building.

8	P.C. Dhiman	IAS, Principal Secretary, Education Department, Government of Himachal Pradesh	Sh. P.C. Dhiman issued NOC to the Department of Youth Services and Sports, contrary to the recommendations/ conditions of the Director, Higher Education, and without mentioning the disposal of building in accordance with rules/norms and recovery costs from HPCA.	Pr sa de Ce Go on 24
9	Devi Chand	Executive Engineer, Devi Chand Chauhan,		Prosecu

Chauhan	Dharamshala Division, HPPWD	while working as Executive Engineer (Civil), Dharamshala, HPPWD Division forwarded the report sent by the then SDO Sub-Division No. 1, Dharamshala, regarding dilapidated condition of Type IV accommodations, without following procedure as laid down by the Government of India, Central Public Works Department Code, whihc led two illegal demolition of two storied building (Type IV accommodation) of the Education Department existing adjacent to the present Cricket Stadium gate, which was an eyesore to the HPCA and alleged to be a security threat to the players. Thus, the motive of the Executive Engineer was to intentionally give an advantage to HPCA thereby misusing his official position.	sanctio declined Departme Secretar but recommen d by the Chief Minister Virbhadr Singh. Hence, prosecut sanction granted 23.09.20 and 15.10.20 (FIR 14/13 da 03.10.20

13) Thus, the Government Officers who have granted lease are not

been prosecuted. He, thus, submitted that the main Government functionaries were left out which shows that the Government wanted to protect its own Officers but, at the same time, roped in the appellants and others because of political enmity.

14) Dilating on the aforesaid plea, namely, the entire prosecution is due to political vendetta, without any legal basis, Mr. Patwalia submitted that the genesis of the prosecution starts with the failed attempt by the then State Government to take over appellant No. 1 in the year 2005 under the provisions of the HP Sports (Registration, Recognition and Regulation of Associations) Act, 2005 due to the interim protection granted by the Himachal Pradesh High Court on May 18, 2005. This Act was subsequently repealed. According to him, in view of the repeated interference by State Governments in the internal affairs of autonomous cricket associations, the BCCI has informally encouraged such member associations to re-register themselves as not for profit charitable Section

25 Companies under the Companies Act, 1956, as amended, for better legal compliances, transparency and to avoid interference in internal affairs by State Governments. Accordingly, various member associations of the BCCI have converted themselves to Section 25 not for profit charitable companies governed by the provisions of the Companies Act, 1956. Appellant No. 1 also followed the suit as a result of aforesaid mandate of the BCCI. Accordingly, a not for profit company in the name of Himalayan Players Cricket Association was incorporated under Section 25 of the Companies Act, 1956. On August 31, 2005, the said Company was permitted to change its name to Himachal Pradesh Cricket Association and was issued a fresh certificate of incorporation. During this process, the HP Sports (Registration, Recognition and Regulation of Associations) Act, 2005 stood repealed and no further steps were taken in the interregnum to convert the society to a section 25 company. Thereafter, on September 19, 2011, the BCCI took up the pending request of appellant No. 1 to permit it to convert itself to a Section 25 not for profit company and granted the same. Pursuant to the permission by the BCCI, amendments were carried out by the members at the AGM of the appellant No. 1 on September 22, 2012 resolving to convert the appellant No. 1 society to a Section 25 Company. Accordingly, an agreement was executed on October 01, 2012 converting the society to a Section 25 Company and informing the Registrar of Companies of the same. On October 31, 2012, appellant No. 1 now registered as a Section 25 Company under the Companies Act, 1956 informed the Registrar of Societies of the State of Himachal Pradesh of the change in the memorandum and rules of the appellants. Further, on November 02, 2012, once again the intimation regarding change in status of appellant No. 1 from a not for profit society to a not for profit company was given to the Registrar of Societies, State of Himachal Pradesh. Thus, from October 01, 2012, appellant No. 1 has been existing as a Company with due intimation to the State of Himachal Pradesh paying its lease rent and taxes in accordance with law. He also argued that the effect of such statutory conversion from a firm to a company by statutory provisions for income tax purposes has been considered by the Bombay High Court in the case of Commissioner of Income Tax, Mumbai v. Texspin Engg. and Mfg. Works, Mumbai2 and Punjab & Haryana High Court in the case of Commissioner of Income Tax (Central), Ludhiana v. M/s. Rita Mechanical Works, Ludhiana3 wherein it has been held as under:

> "There is a difference between vesting of the property, in this case, in the limited company and distribution of the property. On vesting in the limited company under Part IX of the Companies Act, the properties vest in the company as they exist. ...
>
> “In the present case, we are concerned with a partnership firm being treated as a company under the statutory provisions of Part IX of the Companies Act. In such cases, the company succeeds the firm. Generally, in the case of a transfer of a capital asset, two important ingredients are: existence of a party and a counter-party 2 (2003) 263 ITR 345 3 (2012) 344 ITR 544 and, secondly, incoming consideration qua the transferor.
>
> In our view, when a firm is treated as a company, the said two conditions are not attracted. There is no conveyance of the property executable in favour of the limited company. It is no doubt true that all properties of the firm vest in the limited company on the firm being treated as a company under Part IX of the Companies Act,

> but that vesting is not consequent or incidental to a transfer. It is a statutory vesting of properties in the company as the firm is treated as a limited company. On the vesting of all the properties statutorily in the company, the cloak given to the firm is replaced by a different cloak and the same firm is now treated as a company, after a given date. ..."

15) On the aforesaid basis, submission of Mr. Patwalia was that conversion of a not for profit society to a not for profit charitable company which is expressly permitted by law cannot be construed as a crime. The assets - in the present case leased land remain as they are. In fact, the appellants have constructed a world class stadium and a world class hotel on the leased premises. Importantly, the State Government continues to remain the owner of the land and has the power under the leases to cancel the same for violation of terms and conditions of the lease.

16) It was highlighted by him that on the midnight of October 26, 2013, the State Government had cancelled the leases and forcibly dispossessed the appellants from the leased lands. However, on November 05, 2013, the Himachal Pradesh High Court strictured the State Government and ordered status quo ante and handed over the possession of the leased lands to the appellants. The State Government thereafter accepted this order and withdrew the cancellation of lease notices on November 19, 2013. Subsequently, another notice dated May 23, 2015 was issued seeking cancellation of the leases which too stands withdrawn on August 09, 2018. At present, there are no proceedings pending for cancellation of the leases.

17) Mr. Patwalia argued that there were specific allegations of mala fide against respondent No. 2 from the very inception of these proceedings about how he first caused the FIR to be registered and thereafter interfered in the investigations, by being head of the SIT. He also further stated that the conduct of respondent No.2 from opposing the present appeals after having filed a counter affidavit in the present matter stating that he was not a necessary party and it was not his job to defend the prosecution, depicts mala fides on his part. This, according to him, was sufficient to quash the FIR as investigation was tainted. In support, he referred to the case of Union of India & Ors. v. Sushil Kumar Modi & Ors.4 wherein this Court held as under:

> "4. ...The agencies concerned must bear in mind and, if needed, be reminded of the caution administered by Lord Denning in this behalf in R. v. Metropolitan Police Commr. [(1968) 1 All ER 763 : (1968) 2 WLR 893 : (1968) 2 QB 118] Indicating the duty of the Commissioner of Police, Lord Denning stated thus: (All ER p. 769) "I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, ... I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or

> must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone." ...There can hardly be any doubt that the obligation of the police in our constitutional scheme is no less."

18) Mr. Patwalia referred to various documents placed on record and contended that they would ex facie show that administrative decisions were taken at various levels and by variou departments by the concerned officers prior to sanction of leases in favour of appellant No.1. Therefore, no wrong, much less culpable wrong, 4 (1997) 4 SCC 770 was committed by the appellants and others. He specifically referred to the allegation that there is no provision of grant of lease at a token rate of Re.1/- per month under the applicable lease rules. His response was that this argument is completely fallacious. The leases of the appellants were granted under the H.P. Lease Rules, 1993. The appellants wanted to set up a cricket stadium with allied world class infrastructure to enable the ICC to grant international games to Himachal Pradesh and, thus, were eligible for grant of lease under Rule 4(vii) - public purpose in the interest of the development of the State. The appellants were also eligible for grant of larger areas under Rule 5 in terms of the exemption provided therein. In fact, the decision to lease the land at token rate of Re.1/- per month for construction of cricket stadium was a well thought out administrative decision by the State Government in the interest of the State and has admittedly put Dharamshala on the world map. This decision was taken by the State Cabinet after considering the advice and presentation from the officers concerned. RTI documents in the possession of the appellants record the decision of the Cabinet dated May 27, 2002 as under:

> Government of Himachal Pradesh General Administration Department (Confidential & Cabinet) Subject: Leasing out of Government land for the construction of International Cricket Stadium at Dharamshala to H.P. Cricket Association on usual terms and conditions. The above proposal was discussed by the Cabinet in its meeting held on 27.5.2002 and the decision arrived at thereon is reproduced below:-
>
> "The Cabinet approved the propsoal regarding lease rates. Advantages of the Project explained by the AD were considered and it was decided that land be leased out at token rate of Re.1/- per month for a period of 99 years."

The implementation report of the above decision may please be sent to this Department within a fortnight from the receipt of this communication.

Sd/-

Addl. Secretary (GAD)"

> 19) Further, Rule 8 provides for lease amount to be paid. At the time of grant of lease, the appellant being a society had to pay lease amount under Rule 8(1)(ii) at 8% of the latest highest market value of the land leased or double the average market value of five years whichever is less. The proviso to Rule 8(1) empowers the State Government

to reduce the lease amount in deserving cases and reads as under:

"8(1) Lease Amount. - (1) The lease amount (fresh or renewal of existing lease) shall be charged from the eligible institutions and persons per annum as under:-

.....

Provided that the State Government may reduce the amount for special reasons in deserving cases."

Therefore, the State Government took a conscious decision in exercise of its powers under the proviso to Rule 8(1) of the H.P. Lease Rules, 1993 and granted the lease at a token rate of Re.1/- per month.

20) Based on the aforesaid material and circumstances highlighted by Mr. Patwalia, his submission was that no case was made out against the appellants and others, for prosecuting them under criminal law, much less under the provisions of PC Act and the High Court in its impugned judgment has totally glossed over these aspects by limiting the exercise to copiously quoting various judgments and on that basis, dismissing the petitions of the appellants, without any discussion as to how principles contained in those judgments is applicable in the instant case.

21) He also submitted that in the facts of the present case, simply because chargesheet has been filed thereafter and the order taking cognizance has been passed would not mean that the appellants cannot prosecute these cases. He submitted that even the chargesheet and cognizance order has been challenged by filing Writ Petition (Criminal) No. 135 of 2017 which, according to him, is maintainable having regard to the fact that the appeals arising out of petitions under Section 482 of Cr.P.C. are pending in this Court and those events happened during the pendency of these proceedings. He referred to the the cases of Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat & Ors. 5 and Monica Kumar & Anr. v. State of Uttar Pradesh & Ors.6, wherein it is held that this Court has inherent power to quash FIR, chargesheet, charges etc. in exercise of powers under Articles 32, 136 and 142 to do complete justice in a cause or matter pending before it and that there is no restriction on this power of the Court. According to him, the present is not a case where the appellants are alleging that a judicial order is in violation of their fundamental rights. The present is a case where the appellants have pleaded that:

(i) there is no criminal act on their part and the facts do not disclose any offence;

(ii) all Officers who processed the case of the appellants are not prosecuted;

5 (1991) 4 SCC 406 6 (2008) 8 SCC 781

(iii) two Officers Subhash Ahluwalia and T.G. Negi who processed the case of the appellants were made Principal Secretary to CM and Advisor to CM, respectively, by the respondent No. 2 and were not prosecuted;

(iv) there is no criminal act on the part of the officers and they performed their appropriate administrative duties due to which sanction stands declined by the Central Government and the CVC;

(v) leases were validly granted as per proper procedures and in accordance with lease rules;

(vi) FIR was registered on the basis of "Congress Chargesheet";

(vii) investigation was personally supervised by the respondent No. 2;

(viii) chargesheet filed is the outcome of this tainted investigation;

(ix) prosecution is mala fide and vexatious to settle personal political scores;

(x) even otherwise the State Government continues to remain owner of the land which is on lease and on which the appellants have constructed assets worth above 150 crores;

(xi) these assets are for use of the public of the State and are being used as such. Further, filing of chargesheet and an order taking cognizance is not a final judicial order. It is a preliminary process in criminal law and is open to challenge in higher judicial fora such as this Court.

22) Last submission of the learned senior counsel was that, in any case, at best the matter could have been subject matter of a civil dispute between the appellants and the respondents but has mala fidely been given the cloak of a criminal proceeding to harass the appellants with a mala fide prosecution. The salutary principle of law, viz. Actus Reus Non Facit Reum Nisi Mens Sit Rea has been erroneously ignored by the High Court and he cited the case of C.K. Jaffer Sharief v. State7 and R. Balakrishna Pillai v. State of Kerala8. He also pleaded that, in another politically motivated case by respondent No. 2, the same view has been taken by the Himachal Pradesh High Court in the case of A.N. Sharma v. State of H.P. (Cr. MMO No. 134/2015) against which Special Leave Petition filed by the State Government stands dismissed by this Court.

7 (2013) 1 SCC 205 8 (2003) 9 SCC 700

23) He, thus, concluded his argument with the submission that case was clearly covered by the judgments of this Court in State of Haryana & Ors. v. Bhajan Lal & Ors.9 and Vineet Kumar & Ors. v. State of Uttar Pradesh & Anr.10

24) Insofar as respondent No. 1 i.e. State of Himachal Pradesh is concerned, learned Advocate General submitted that State has already taken a decision not to continue with these criminal proceedings. He, in fact, supported the case of the appellants and submitted that State has no objection if these proceedings are quashed. However, there was a strong opposition on behalf of respondent No. 2 to the relief sought by the appellants and refutation of the arguments advanced by the appellants.

25) Mr. Anoop George Chaudhary, learned senior counsel appearing for the respondent No. 2, submitted that the Special Leave Petition was infructuous ab initio inasmuch as chargesheet was filed against 18 accused persons out of whom only appellant No. 2 had sought quashing thereof. It was further submitted that, in any case, on the very day of passing impugned judgment by the High Court i.e. April 9 (1992) Supp. (1) SCC 335 10 (2017) 13 SCC 369 25, 2014, the Investigating Agency filed the challan under Section 173 Cr.P.C. and on perusal thereof, the Special Court took cognizance vide order dated September 06, 2014 and issued summons to the accused persons. Therefore, the Special Leave Petition had, in any case, had become infructuous because of the aforesaid developments. He also submitted that insofar as appellant No. 1, namely, Himachal Pradesh Cricket Association is concerned, it was not arrayed as accused person; no challan was filed against it and, therefore, no cognizance was also taken.

26) Rebutting the allegations of mala fide, he submitted that because of the irregularities committed in the allotment of land etc. by the then Government, it was one of the issue in the Assembly Elections in the year 2012 and the Congress had complained against the aforesaid irregularity by stating the same with the preparation of 'Congress Chargesheet'. That would not mean that it was out of political vendetta. In fact, the misdeeds of earlier Government was exposed. In any case, after 2012 elections, when the earlier Government did not come back to power, inquiry was ordered to the affairs of appellant No. 1 which was conducted by the Anti-Corruption Bureau (ACB). As a result of said inquiry, FIR was registered which culminated in filing of the challan as prima facie case was made out by collecting requisite material. He also referred to the Constitution Bench judgment in the case of Lalita Kumari v. Government of Uttar Pradesh & Ors.11 as per which preliminary inquiry before registering an FIR should be conducted to ascertain whether the information received, reveals any cognizable offence. He submitted that due procedure was followed in accordance with the said judgment.

27) On merits, Mr. Chaudhary submitted that on the basis of final report and consequently the cognizance order a clear case of cheating/fraud criminal breach of trust/criminal misconduct/usurpation of public land worth crores of rupees/loss to state exchequer is made out against the accused persons. Hence, no cogent grounds exist for quashing of criminal proceedings. Reliance in this regard has been placed upon a judgment rendered by this Court in Indian Oil Corporation v. NEPC India Ltd. & Ors.12:

> "12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to 11 (2014) 2 SCC 1 12 (2006) 6 SCC 736 quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 :
>
> 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3

SCC 259 : 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

28) Dubbing the allegations of mala fide against respondent No. 2 as frivolous, it was argued that the High Court has rightly found no merit therein. In any case, argued the learned senior counsel, the High Court rightly observed that once the chargesheet is filed, such a plea becomes redundant as held in State of A.P. v. Golconda Linga Swamy and Anr.13 and Umesh Kumar v. State of Andhra Pradesh & Anr.14. The learned senior counsel also questioned the 13 (2004) 6 SCC 522 14 (2013) 10 SCC 591 move on the part of State Government to withdraw the case in question. It was argued that no fresh ground or subsequent aspect has emerged or come in public domain for doing the same

and, therefore, such course of action was not permissible as held in State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. 15, Andhra Pradesh Dairy Development Corporation Federation v. B. Narasimha Reddy & Ors.16 and State of Himachal Pradesh v. Nishant Sareen17. Moreover, argued the learned senior counsel, the only procedure prescribed in law was to take the route of Section 321 of Cr.P.C. which has not happened in the instant case.

29) Replying to the arguments of the appellants that it was a civil dispute, Mr. Chaudhary argued that FIR/Final Report clearly depicts that there is sufficient evidence of cheating, criminal breach of trust/criminal misconduct, conspiracy and destruction of evidence against the accused persons, therefore, it was not merely a civil case and, thus, the authorities have rightly registered the FIR and filed criminal proceedings. He also argued that at the time of cognizance, there was sanction for prosecution against all public 15 (2011) 8 SCC 737 16 (2011) 9 SCC 286 17 (2010) 14 SCC 527 servants (wherever applicable) and even if sanction is subsequently withdrawn, it would not impact trial. It was further submitted that in the case of two remaining accused i.e. Ajay Sharma and Deepak Sanan, challan was not presented for want of sanction under PC Act, as the permission seeking sanction was pending with Union Home Ministry though sanction for IPC offences was granted by State Government. The prosecution sanction against Gopal Chand, an HCS Officer was initially granted but later on withdrawn without there being any change of circumstance. The necessity of non- grant/requirement of prosecution sanction can be decided by trial court during the course of trial and it is not a ground for Himachal Pradesh Cricket Association to seek quashing of entire prosecution.

30) The learned senior counsel also defended non-prosecution of Ajay Sharma and Deepak Sanan, two IAS Officers. He specifically pointed out that allegations in the chargesheet against appellant No.2 which, according to him, disclosed that prima facie case was established against him and, therefore, there was no reason to quash the chargesheet.

31) Insofar as Writ Petition (Criminal) No. 135 of 2017 is concerned, it was argued that such a writ petition was not maintainable under Article 32 of the Constitution, more so, when order of cognizance had not been challenged at all. Support from the judgments in Ujjam Bai v. State of U.P.18, Naresh Shridhar Mirajkar & Ors. v. State of Maharashtra & Anr.19 and Northern Corporation v. Union of India & Ors.20 was taken in this behalf. He reiterated that there were serious allegations against the accused persons and, therefore, no case for quashing of the chargesheet/challan was made out.

32) Before we undertake the exercise of deliberating on the arguments of the counsel for the parties and reach our conclusions, it would be in the fitness of things to recapitulate the events in brief with focus on the allegations of alleged criminality which have been fastened upon the appellants and others. Appellant No. 1 was initially registered as a Society under the Societies Registration Act, 1860 in the year 1990. It is now a not for profit company incorporated under Section 25 of the Companies Act, 1956. One of the allegations 18 (1963) 1 SCR 778 19 AIR 1967 SC 1 20 (1990) 4 SCC 239 pertains to the so-called illegalities committed in the conversion of the society into deemed company under Section 25 of the Companies Act, 1956. Be that as it may, the Society, after its formation, had applied for land at Village Mauja and Tehsil Dharamshala, District Kangra for

construction of an international cricket stadium. A proper lease was executed between appellant No. 1 and the State of Himachal Pradesh through Director, Himachal Pradesh Youth Services and Sports Department. It happened more than 16 years ago. In respect of this lease, the allegation is that it was executed at a monthly rent of Re.1/- which was allegedly done to favour the appellants. Admittedly, proviso to Rule 8 of the Rules empowers the State Government to adopt such a course and decision to this effect was taken after due deliberations at a very high level, keeping in view the necessity of such a stadium in the State, which did not have any cricket stadium.

33) After the allotment of the land to appellant No. 1, it constructed cricket stadium thereupon. Appellant was desirous of making a world-class cricket stadium which could host international cricket matches as well. For this purpose, it submitted proposal to the ICC. The ICC got the stadium and playground inspected through Mr. Alan Hurst, it's match referee. He inspected the stadium and submitted his report dated September 20, 2007. The venue was not approved, at that stage, for hosting international matches. A perusal of the report submitted by the said referee would disclose that there were no adequate hotel facilities in the area and, therefore, 'tour support was lacking'. Two hotels were shown to Mr. Hurst and it was found by him that each of them were at substantial distance from the ground. Moreover, the facilities in the said hotels were also not adequate. Notwithstanding the same, insofar as the cricket ground is concerned, the match referee had lauded it for its quality and settings. It can be seen from the general comments/recommendations/conclusions in his report and the relevant portion whereof reads as under:

> "This ground has one of the best settings imaginable. The people involved in its development have been innovative and are passionate and visionary. They have done a great job so far in getting this ground to where it is and should be congratulated and encouraged. I have no doubt that with adequate finances, in the near future, this ground can become one of the best in the country. The idea of having a 'hotel' as an integral part of the ground with dual use as corporate boxes during games is not new, however, the circular restaurant planned for the top, with 360 deg views of the Himalayas and surrounding area will make it unique. Having said this, I believe that at this stage there is still a lot of work to be done that relates to its suitability for staging International cricket. I am informed that sufficient finance has recently been obtained to complete everything, and further work is now underway. I have listed below the issues I still have concerns with and things that need to be changed. If all of these things are addressed, I would have no hesitation in recommending this ground as suitable as an International ODI venue. The administrators have ensured me that all of these things will be addressed with urgency. They are extremely keen to get into the BCCI ground rotation system as soon as possible."

34) It is clear from the above that Mr. Hurst was of the view that the cricket ground at this picturesque place with scenic beauty can be transformed into one of the best cricket grounds in the country, which would be suitable for international events if the deficiencies pointed out therein are taken care of. Apart from providing other facilities to improve the infrastructure (which could be easily taken care of), main concern was to have a hotel as an integral part of the ground with the

dual use as corporate boxes during the game. Because of the above, appellant No.1 felt need to construct a club house on the lease land and also seek allotment of some other land for the purpose of construction of a hotel, keeping in view the observations contained in the aforesaid inspection report. Accordingly, it sent request for promotion to construct a club house on the lease land which was accorded by respondent No.1 through Directorate of Youth Services and Sports on June 23, 2008 subject to completing all the formalities.

35) As far as construction of hotel is concerned, the case of the appellants is that there was a parcel of idle land in the middle of the land alloted for the stadium and for allotment of this land, request was made to the Director, Youth Services and Sports. This land belongs to Gram Panchayat. Gram Panchayat issued no objection for the allotment of land on September 14, 2009 pursuant to which respondent No.1 granted approval to lease out this land in favour of appellant No.1 on November 16, 2009 and the lease deed was also executed on December 14, 2009. Thereafter, for the purpose of hotel, additional land was given.

36) Pertinently, insofar as this lease deed is concerned, since the land was to be used for commercial purpose, namely, the club house, it provided rental at commercial rate i.e. the market rate which the appellant No.1 was supposed to pay. After the execution of the lease, club house was constructed and the Town and Country Planning Department, Dharamshala also issued No Objection Certificate for the use of part of infrastructure of cricket stadium as club house for cricket activities. It is also pertinent to mention that Principal Secretary (Revenue), Government of Himachal Pradesh issued no objection for execution of supplementary lease enabling commercial activities on additional land provided that lease money was charged in accordance with the Lease Rules, 2011. This led to execution of supplementary lease deed dated June 23, 2012 on which commercial hotel was constructed after obtaining requisite permissions.

37) From the aforesaid events, following aspects can be culled out:

> Appellant No.1 has been given lease of land on which cricket stadium was constructed and thereafter lease for additional land meant for club house and also supplementary lease for commercial activity i.e. the hotel. It is only in respect of the land which is meant for cricket stadium that rental of Re.1/- per month was agreed to be charged by invoking proviso to Rule 8. Thus, it is not contrary to law. State of Himachal did not have any cricket ground, much less State of art cricket ground. It is, for this reason, that the land was given on lease for the purpose of constructing the cricket ground, which may become pride of Himachal Pradesh, at nominal rental. Insofar as lease in respect of club house and supplementary lease for commercial activity (i.e. hotel) is concerned, the lease money has been fixed in accordance with Lease Rules, 2011, namely, at commercial rates. There can hardly be any element of criminality in the afofresaid allotments inasmuch as six very senior officers in the State Government (four of them of IAS Cadre and one belongs to Himachal Pradesh Administrative Service) who had examined the matter and only after their approval, the allotments were made. There is no culpability attributed to them, which is a very crucial factor.

38) What is more important is that the matter was looked into by Director-cum-Special Secretary, Youth Services and Sports Department as well as Secretary, Youth Services and Sports Department and it is only after the examination of the proposal by them and their final approval, lands in question were allotted.

39) The respondents have submitted status report before the High Court, pursuant to the directions issued by it. As per the said status report as well as the FIRs, allegations against the appellants and others who are arrayed as accused persons are that appellant No.2 along with other accused indulged in illegal activities. It is alleged that Shri R.S. Gupta, the then Deputy Commissioner, had prepared report ignoring the report of Divisional Forest Officer who had assessed the value of trees at Rs.50 lakhs at that time, thereby causing wrongful loss to the Government. Further, one Shri Deepak Sanan, the then Revenue Secretary, provided a helping hand to the accused persons for granting permission to set up and run a commercial hotel and the matter was not taken to the Cabinet which was in violation of Schedule 20 of H.P. Rules of Business. It is also alleged that Himachal Pradesh Cricket Association Society was merged into a company just to prevent the State Government from controlling it. These are the main allegations.

40) Insofar as other allegations are concerned, two Officers, namely, Shri R.S. Gupta and Shri Deepak Sanan are implicated. While doing so, other senior Officers who took active part in decision making have not been touched.

41) In the two FIRs, seven IAS Officers, one Officer belonging to Himachal Pradesh Administrative Service and one Executive Engineer, Dharamshala Division in Himachal Pradesh PWD Department played their significant role at one stage or the other.

Interstingly, in the FIRs, these nine Officers were also implicated and specific role attributed to them which has been already mentioned in the tabulated format while recording the arguments of Mr. Patwalia. This would demonstrate that insofar as Mr. Subhash Ahluwalia (IAS), Director-cum-Special Secretary, Youth Services and Sports Department is concerned, allegation against him was that he ignored the rules and did not mention the provisions of Lease Rules, 1993. He was also signatory to lease deed dated July 29, 2002. It is important to mention that entire FIRs proceed on the basis that appellants conspired with these Officers, among others. The imputation against Mr. Subhash Ahluwalia is that in fixing the rent at Re.1/- per month, he not only ignored the rules and did not even mention in his noting thereby implying that he was party to the alleged conspiracy. Similar allegations are against other eight persons as well alleging their role at different stages. Notwithstanding the same, three Officers, namely, Subhash Ahluwalia, Subhash Negi and T.G. Negi were not even charged on the purported ground that there were not enough evidence and mala fide intention. In respect of Mr. Ajay Sharma, Central Government had declined the sanction. Though, State Government had accorded the sanction for prosecution earlier but it has also later withdrawn. Same is the position in respect of Deepak Sanan. Mr. Gopi Chand, who belongs to HPAS, though the prosecution sanction was granted earlier, in his case also, not only prosecution

sanction was withdrawn by the State Government, he has even been promoted to IAS Cadre. In case of Mr. K.K. Pant and Mr. P.C. Dhiman, other IAS Officers, prosecution sanction is declined. This leaves us only Mr. Devi Chand Chauhan, Executive Engineer, Dharamshala Division in PWD, though in his case also, prosecution sanction was earlier rejected but subsequently granted on the recommendation of the then Chief Minister. There are two Gram Panchayat members, who had issued no objection for allotment of land for club house, who have been prosecuted. These three Officers are public servants who remain as accused persons. This Court gets an impression that in the entire conspiracy story put up by the prosecution, high Government officials are deliberately let off and very junior Officers were become scapegoat in order to ensure that a case under PC Act survives in respect of appellants as well who are not public servants. Even otherwise, when the aforesaid eight persons are not charged or proceeded against for want of prosecution, this lends support to the allegations of the appellants in imputing motives for their prosecution.

42) This Court, on a 360° scanning of the matter, arrives at the conclusion that the elements of criminal intent or criminal acts are lacking. Following factors do stand established from record:

(i) there is no criminal act on their part and the facts do not disclose any offence;

(ii) none of the officers who processed the case of the appellants are not prosecuted;

(iii) two Officers Subhash Ahluwalia and T.G. Negi who took active part in the decision making were made Principal Secretary to CM and Advisor to CM, respectively, by respondent No. 2 and were not prosecuted;

(iv) As per the prosecution, there is no criminal act on the part of the officers and they performed their appropriate administrative duties due to which sanction stands declined by the Central Government and the CVC. That itself is sufficient to absolve others from any criminal prosecution;

(x) even otherwise the State Government continues to remain owner of the land which is on lease and on which the appellants have constructed assets worth above 150 crores;

(xi) these assets are for use of the public of the State and are being used as such. Further, filing of chargesheet and an order taking cognizance is not a final judicial order. It is a preliminary process in criminal law and is open to challenge in higher judicial fora such as this Court.

43) Insofar as conversion of Society into not for profit company under Section 25 of the Companies Act, 1956 is concerned, it was obviously done as per the mandate of BCCI. There can hardly be an element of criminality therein. This Court fails to understand as to how any criminal intent can be attributed in merging the said society into a company, that too, to prevent the State Government from controlling it, which is the motive attributed by the respondents themselves. It rather shows the

intent of the State Government which wanted to grab the control of the Cricket Association. Such a tendency on the part of the State authorities is condemned by a Committee headed by former Chief Justice R.M. Lodha and approved by this Court. If at all, this is a reflection upon the State Government. It also lends credence to the submission of the appellants that when the State Government fail to achieve the aforesaid purpose, it went after the appellants. If at all, the subject matter was a civil dispute between the appellants and the respondents.

44) We may also mention that record reveals that respondent No.2 personally supervised the investigation. However, we are eschewing the discussion as to whether chargesheet is result of mala fide or political vendetta, since we feel that, ex facie, no case of cheating/fraud or criminal breach of trust is made out. However, at the same time, it would be necessary to point out that in the proceedings filed by the appellants under Section 482 Cr.P.C., respondent No.2 was impleaded as the allegations of mala fides were attributed to him. Since, we are not looking into these allegations, respondent No.2 does not have much role to play in these proceedings. That apart, respondent No.2 has filed counter affidavit stating that he is not a necessary party and it is not his job to defend the prosecution. Having regard to the stand taken by the respondent No.1 not to prosecute these cases, even otherwise, no purpose would be served in continuing with these proceedings.

45) In view of our aforesaid discussion, argument of respondent No.2 that the appeals have become infructuous cannot be accepted.

46) We are conscious of the scope of powers of the High Court under Section 482 of Cr.P.C. The inherent jurisdiction is to be exercised carefully and with caution and only when exercise is justified by the tests specifically laid down in the Section itself. Further, inherent power under this provision is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily. If the trial is allowed to linger when prima facie it appears to the Court that the trial could likely to be ended in acquittal. It is, for this reason, principle which is laid down by catena of judgments is that the power is to be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. However, whenever it is found that the case is coming within the four corners of the aforesaid parameters, the powers possessed by the High Court under this provision are very wide. It means that the Court has to undertake the exercise with great caution. However, the High Court is not to be inhibited when the circumstances warrant exercise of such a power to do substantial justice to the parties. This provision has been eloquently discussed in Bhajan Lal's case which has become locus classicus.

Principle Nos. (i) and (ii) of Indian Oil Corporation are, therefore, become applicable. The entire subject matter has been revisited in a recent judgment in Vineet Kumar and some of the discussion

therein which takes note of earlier judgments is reproduced below:

> "26. A three-Judge Bench in State of Karnataka v. M. Devendrappa [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] had the occasion to consider the ambit of Section 482 CrPC. By analysing the scope of Section 482 CrPC, this Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the Court has power to prevent abuse. It further held that Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The following was laid down in para 6:
>
> (SCC p. 94) "6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."
>
> 27. Further in para 8 the following was stated: (Devendrappa case [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] , SCC p. 95) "8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it

> relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]." In the instant case, the High Court simply noted those judgments which put a note of caution in exercising the powers under Section 482 Cr.P.C. to quash such proceedings and dismissed the petition with a shallow examination of the case, thereby glossing over the material facts (which are noted hereinabove) and failing to examine that these pertinent aspects were sufficient to demonstrate that no criminal case was made out, particularly when all the concerned officers, who had taken the decision, were let off on the ground that they had not committed any wrong.

47) As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stands vitiated.

48) As a consequence, criminal appeals are allowed thereby setting aside the impugned judgment of the High Court, allowing the petition filed by the appellants under Section 482 Cr.P.C. and quashing the FIR No. 12 of 2013 dated August 01, 2013 under Sections 406, 420, 120B of the IPC and Section 13(2) of the PC Act and FIR No.14 of 2013 dated October 03, 2013 under Section 447 read with Section 120B of the IPC, Section 3 of Prevention of Damage to Public Property Act, 1984 and Section 13(2) of the PC Act. In view thereof, writ petition also stands disposed of accordingly.

No order as to cost.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN)
NEW DELHI;

NOVEMBER 02, 2018.