B.K. Uppal vs State Of Punjab on 10 December, 2014

Author: Ashutosh Mohunta

Bench: Ashutosh Mohunta

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

Date of Decision : 10th December, 2014

1. CRA-S-3083-SB-2010 (O&M)

B.K. Uppal

.....

Versus

State of Punjab

..... Re

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2 CRA-S-2953-SB-2010

Surinder Pal Singh

.....

Versus

State of Punjab

..... Re

*****

3. Criminal Miscellaneous No.M-35269 of 2010 Surinder Pal Singh ..... Petitioner Versus State of Punjab ..... Respondent *****

4. Criminal Miscellaneous No. M-6309 of 2011 S. Chattopadhyaya ..... Petitioner Versus State of Punjab ..... Respondent ***** CORAM : HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA, ACTING CHIEF JUSTICE Present : Mr. R.S. Cheema, Sr. Advocate with Mr. S.S. Narula, Advocate for the appellant.

Mr. R.L. Batta, Sr. Advocate with Mr. Nikhil Batta, Advocate as Amicus curiae.

Ms. Manisha Gandhi, Addl. A.G., Punjab.

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1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest? ASHUTOSH MOHUNTA, ACTING CHIEF JUSTICE

1. This judgment will dispose of Criminal Appeal No. S- 3083-SB of 2010 (O&M) titled as B.K. Uppal Versus State of Punjab, Criminal Misc. No. M-6309 of 2011 titled as S. Chattopadhyaya Versus State of Punjab, Criminal Misc. No. M-35269 of 2010 and Criminal Appeal No. S-2953- SB of 2010 (O&M) both titled as Surinder Pal Singh Versus State of Punjab involving common questions of law and facts arising out of impugned judgment dated 01/10/2010 passed by Special Judge SAS Nagar, Mohali vide which the appellants herein have been ordered to be proceeded against under Sections 120-B, 182, 193, 211, 218 and 219 of the Indian Penal Code (in short the CODE) vide summoning order dated 26.10.2010 passed by SDJM, Mohali on a complaint filed under Section 340 Cr.P.C. before the Competent Court.

Since all the above four cases arise out of the same complaint and contain the same facts, therefore, for brevity facts have been taken from CRA-S-3083-SB-2010 titled B.K. Uppal vs. State of Punjab, which reads as under :-

> Sh. Balwant Singh son of Sh. Sukhdev Singh resident of Dehlwan, Tehsil Bhikhi, District Mansa filed a complaint to the then Chief Minister of Punjab alleging that Sh. Parkash Singh Badal and his family members including his wife Smt. Surinder Kaur Badal and his son Sh. Sukhbir Singh Badal had amassed huge assets during the term of Sh. Parkash Singh Badal as Chief Minister of Punjab from 1997-2002. The said complaint was marked to Chief Director Vigilance Bureau, Punjab for 'Investigation and Report". The Chief Director Vigilance Bureau, Punjab in order to investigate the matter directed registration of FIR No. 15 dated 24.6.2003 under Sections 420,467, 471, 120-B of IPC and Section 13(1) read with 12(2) of Prevention of Corruption Act, 1988 and accordingly the same was registered at Police Station Flying Squad-I, Mohali by SSP Vigilance Bureau Punjab. Shri Surinder Pal Singh (hereinafter referred to as Investigating Officer), himself took up investigation of the case and made an endorsement on the FIR to this effect.
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> The Investigating Officer for the purpose of investigation constituted teams, associated witnesses whose statements were recorded and also obtained warrants for conducting search and inspection of properties belonging to Shri Parkash Singh Badal and his family members, as well as their associates. The task of search and inspection of various properties was entrusted to different officers. In order to oversee the investigation done by the Investigating Officer, the Chief Director Vigilance Bureau appointed two officers of the rank of D.I.G. Police, Vigilance Bureau, Punjab as supervising officers. B.K. Uppal was appointed as Supervising Officer (hereinafter referred to as "appellant") to oversee the investigation pertaining to the assets of Badal family in India while Shri S. Chatopadhya, D.I.G. was to oversee the properties allegedly held by Badal Family outside India. Detailed investigation

was carried out by the officers of the rank of S.P., D.S.P., XEN's, S.D.O., Architects Surveyors, auditors and others who were employees of Punjab Government, most of whom were on deputation with the Vigilance Bureau, Punjab, besides private evaluators.

While conducting search and inspection, videography / photography was also done in order to avoid any distortions.

Properties held by Badal Family were evaluated by the experts and evidence with regard to their income was collected. The properties were inspected and evaluated twice in order to ascertain the accuracy of the assessment. The Investigating Officer prepared a challan on the basis of documentary evidence collected during the due course of investigation in the form of accounts statements, disclosed income, property assessment and recorded statements of all relevant witnesses. The said challan was forwarded to the concerned District Attorney who along with his team, perused the challan and after vetting, approved the same. The Investigating Officer approached the government for the grant of sanction against the accused Shri Parkash Singh Badal which was granted by the Speaker, Punjab Legislative Assembly. After completing all formalities viz. Prepsenting the challan, the same was put up by the Investigating Officer before the appellant Sh. B.K. Uppal, who certified the correctness of challan in capacity of Supervising Officer and granted formal approval to put up the same in Court as per the law.

Thereafter, the matter was taken up by the Special Court Ropar, who finding a prima facie case against the accused Sh.

Parkash Singh Badal, Smt. Suriinder Kaur Badal, Sh. Sukhbir Singh Badal and their other associates, charged them for offences under Sections 420, 467, 468, 471, 120-B IPC and Section 7/8/9/13 (1) read with Section 13(2) of the Prevention of Corruption Act, 1988 vide order dated 05.06.2007.

In order to prove its case, the Public Prosecutors examined only 59 witnesses out of a total of 138 witnesses cited in the challan, and closed the prosecution evidence. Thereafter, the learned trial Court summoned some more witnesses on its own in order to draw a just conclusion in the matter.

Out of 59 witnesses examined by the prosecution, about 35 witnesses did not support the prosecution's story. Even court witnesses did not reveal the complete facts known to them. The Investigating Officer Shri Surinder Pal Singh examined as PW-57 did not stand by his own investigation and the final report submitted by him under Section 173 Cr.P.C. Other high-ranked officers also resiled from their respective statements. D.I.G. Gurinder Pal Singh, PW-52, S.P. Harminder Singh, PW-17 and Jit Singh, PW-50, backed out from their statement made under section 164 Cr.P.C. before Illaqa Magistrate. Even Public Prosecutor apparently failed to examine and

> cross-examine the witnesses properly. In fact, he permitted the witnesses to resile despite glaring infirmities and false-hood in their statements made in the court. He did not even put forward the videography/photography conducted before the court.

Learned trial Court while placing reliance on the depositions made by the witnesses and other evidences produced before it, went ahead to acquit the accused for want of concrete and reliable evidence.

Court of Special Judge, Mohali vide judgment dated 01.10.2010 by expressing its anguish observed that the appellant Sh. B.K. Uppal as well as Shri Surinder Pal Singh conspired with each other to give false information in the challan so as to mislead the court, to proceed further against the accused. They have also fabricated evidence for the purpose of using the same in judicial proceedings and being public servants have prepared false records as well as wrong reports in such a manner so as to cause injury to the accused.

The Court, thus, proceeded to initiate institution of a criminal complaint against the appellant as well as the Investigating Officer under Sections 120-B, 182, 193, 211, 218 and 219 IPC.

In order to prove the allegations levelled against Shri Parkash Singh Badal as Chief Minister of State of Punjab regarding the abuse of his official position in drawing various illegitimate benefits, the Investigating Officers examined Sarv Shri G.S. Wassan Executive Engineer (Irrigation), Buland Singh Virdi, Superintending Engineer (Drainage), Anil Kumar Batta, Harbans Singh, Bohar Singh, Junior Engineer (Irrigation), Satish Kumar Gupta, Executive Engineer (PWD, B&R), Surjit Singh Kalsi, Rajinder Singh SDE (Irrigation) and Vijay Kumar, Junior Engineer (Drainage) under Section 161 Cr.P.C. But none of them supported the case of prosecution during the trial and were declared hostile. When learned Public Prosecutors confronted them with the statements allegedly made by them, they all denied to have made any such statements. However, it was stated by them that they were called to the office of Vigilance Bureau, Punjab, Chandigarh, by the Investigating Officer, where they were harassed, pressurised and used unparliamentary language to make statements against Shri Parkash Singh Badal and their signatures were obtained on some papers under threat by the appellant accompanied with the Investigating Officer.

During the course of trial, not only the witnesses denied the factum of statements made under Section 161 Cr.P.C. but the Investigating Officer when examined as PW-57 also denied the factum of statements of these witnesses recorded by him hereinbefore. The Investigating Officer in his examination-in-chief stated that the statements of these witnesses were recorded by the appellant and the same were passed over to him for his signatures. However, the appellant when examined as PW-59, denied this fact. Therefore, neither the Investigating Officer nor the appellant owned the recording of statements of the above referred witnesses.

The appellant relied on the valuation reports of Orbit Resort Pvt. Ltd. Gurgaon, Balasar Farm House, Kothi No. 256, Sector-9, Chandigarh, with regard to the possession of the assets disproportionate to the disclosed sources of income and expenditure in excess to the income. For proving the expenditure incurred on Continental Hatchery Pvt. Ltd. Pallanpur and repayment of

loan against the said properties, 12 witnesses were examined to prove these assessment reports. The witnesses were also examined to prove the assessment of the value of Metro Plaza, SCO No. 54-55, Sector 9, Chandigarh. Mandeep Singh produced the bank record showing that the building in question was taken on rent in the year 1996 and Sh. Bhupinder Singh proved the date of auction of the site and the share of Badal's to the extent of 25% in the whole building. In order to prove the charges of disproportionate assets, the appellant obtained the orders for search and inspection of the property belonging to Badal Family from learned Illaqa Magistrate, Kharar along with the permission to prepare videography/photography of the said properties. For this purpose, technical team was constituted which carried out the said inspection and prepared the required memos. However, the valuation report prepared by the said team has not been brought on record. The Investigating Officer when examined as PW-57 has stated that the Technical Team presented the report to the appellant who had disapproved the same. Later on, another team of private valuers and Govt. officer was constituted who allegedly inspected the properties (hereinbefore mentioned) on 1.11.2003, 2.11.2003 and 3.11.2003. It is pertinent to mention that on 29.10.2003, the appellant had made an application to learned Illaqa Magistrate, Kharar, for the grant of permission to re-inspect the properties in question so as to give final touch to the valuation report. The said application was allowed. But the Investigating Officer did not disclose to the court that the previous valuation reports have been discarded and the properties were required to be re-inspected and re-evaluated by the new team. On the basis of the report prepared by the new team, the value of the Orbit Resort was shown as ` 108,70,30,000/- as against the value declared by the appellant of ` 51,53,68,000/-. Likewise the value of Kothi No. 256, Sector 9, Chandigarh was shown as ` 2,11,60,000/- as against declared value of ` 95,82,458/- and the value of Balasar Farm House was shown `3,74,00,000/- as against declared value of ` 1,39,54,874/-. On the basis of the said report, it was alleged and submitted in the challan that the true value of the assets of Badal Family was much more than the value disclosed by them in their Income Tax returns.

Shri K.S. Bhinder, the then Executive Engineer (PW-2) stated that he had prepared a valuation report when he visited these properties accompanied with other officials. The appellant refused to accept the report when it was presented to him. Thereafter Shri Gagandeep Singh, an Architect, prepared a report and they were asked to put their signatures on the same. Though they had put their signatures on the same on asking but denied the factum of visiting the respective properties on 1.11.2003, 2.11.2003 and 3.11.203. However, when he was confronted with the statements made by him before the Investigating Officer, he denied this fact but admitted his signatures on the report were put by him without report having been shown to him. It was told to him that report will be shown to him later on. However, neither the report was shown to him, nor the copy of the report was supplied to him.

Shri R.K. Garg, Executive Engineer when examined as PW-3 admitted his visit to the properties in question in July 2003 to workout estimate of costs of irrigation components installed at the properties and submitted his estimates to the Investigating Officer. But he along with his team was made to put signatures on the report prepared by the private valuer. He admitted his visit to Balasar Farm House in November 2003 but denied his visit to Kothi No. 256, Sector 9, Chandigarh and Orbit Resorts Pvt. Ltd., Gurgaon. He stated that all these reports were got signed from him and other team members by the Investigating Officer and the appellant without disclosing the contents

of the reports. Similarly, other witnesses also deposed that the reports prepared by them were discarded by the Investigating Agency and they all were made to put signatures on the report prepared by the Vigilance Bureau Officers. Their signatures were obtained by pressuring them and on the pretext that reports will be shown to them later on but, however, the said reports were never shown to them. The said reports were purported to be based on expert opinion of technical persons. The said reports were fabricated by the Investigating Officer and the appellant. As per report under Section 173 Cr.P.C., the said reports were produced by Sh. J.S. Nanda (Executive Engineer) before the Investigating Officer which was taken by him in his possession. The said memo purports to bear the signature of Sh. J.S. Nanda and Inspector Harbhajan Singh and the same was prepared by Investigating Officer. However, the Investigating Officer in his examination-in-chief stated that the reports pertaining to aforementioned properties were handed over to him by the appellant on 7.11.2003. He further stated that statements of the members of technical team, who re-inspected the properties in question, were dictated by the appellant to his Reader. He had signed the statements under the pressure of the appellant. When the Investigating Officer was recalled for clarification, he stated that his statement before the Court is correct but the memos were prepared to give legal shape before bringing the expert reports on record. It was also enquired from him that after getting reports from the appellant why he did not re-examine the members of the technical team on his own, instead of putting signatures on the statements passed over to him. The appellant in his examination-in-chief stated that he was not involved in the inspection of properties conducted in June/July 2003. However, later on, it was decided by the Headquarter that there is a need to conduct second survey and he was deputed for the same. When the appellant was cross-examined, he stated that he can't give any comments on the correctness of the reports prepared in November, 2003, as reports were received in his office and he handed over the same to the Investigating Officer. It is, thus, apparent that none of them was ready to take the responsibility of having recorded the statements of the technical team under section 161 Cr.P.C.

The valuation report of Orbit Resorts, Gurgaon bears the signatures of 15 persons, but the inspection memo bears the signatures of only 7 persons. As per the statements of the appellant and perusal of Inspection memos, the persons who had put their signatures on the said memo had actually finalised the report. Therefore, as per the said memo, the other persons who had signed the report were not present during the inspection and the assessment report was not finalised in their presence. Amazingly, report does not bear the signatures of Sh. A.K. Goyal, whereas, the inspection memo bears his signature.

Similarly, the valuation report of Kothi No. 256, Sector 9, Chandigarh bears the signatures of 12 members of technical team but the inspection memo bears the signatures of only 7 experts. Therefore, as per the said memo, the other persons who had signed the report were not present during the inspection and they were not having any role in finalising the report.

Similarly, the valuation report of Balasar Farm House bears the signatures of 15 members of technical team but the memo bears the signatures of only 7 experts. Therefore, as per the said memo, the other persons who have signed the report were not present during the inspection and they too were not having any role in finalising the report and their signatures were obtained under threat and pressure. Even two court witnesses, namely, Bharat Shah and Sunderpal Mitro stated

that their signatures on the report were obtained by appellant under misrepresentation and fraud.

As per the valuation report of S.C.O. No. 54-55, Sector 9, Chandigarh, the value of the said building was assessed at ` 64,46,199/- taking period of construction of the building during 1997-2000. Sh. Jagmohan Singh Nanda (PW-5) stated that period of construction from 1997-2000 was taken on the instructions of the Investigating Officer because if building had been constructed prior to 1997, then the rates of relevant period could have been applied for assessing the value of the building which would have affected the validity of the report. During the cross-examination of Sh. V.K. Garg (PW-7), he stated that the approximate value of the cabins and the other fixtures was half of the total value of property and the same was included in the assessment report. He further stated that a part of building is on rent with Corporation Bank and the remaining part has been divided into cabins and the same is on rent with other concerns. Shri Mandeep Singh, Manager, Centurion Bank (PW-26) stated that an account was opened in 1996 for the deposit of rent pertaining to SCO No. 54-55, Sector 9, Chandigarh which makes it clear that building was constructed prior to 1996. CW-78 Sh. Bhupinder Singh stated that his wife, brother, sister-in-law and Gagandeep Grewal are co-owners of SCO No. 54-55, Sector 9, Chandigarh with Sh. Parkash Singh Badal. They had purchased the property in open auction in 1993. When CW-78 was cross-examined, he clarified that Sh. Parkash Singh Badal along with his wife and son jointly own 25% share in the said building. However, the appellant had included the total value of the said property in the name of Badal Family.

It is stated in the challan that Badals' exaggerated their agricultural income in the income tax returns so as to convert their black money into white money. The prosecution claimed that Smt. Surinder Kaur Badal does not own any agricultural land in her name. However, Sh. Gurdev Singh, Revenue Patwari Halqa Balasar (CW-

62) deposed that Smt. Surinder Kaur Badal is recorded as owner of 98 Kanals of agricultural land but it has falsely been alleged in the challan that she does not own any agricultural land.

The appellant produced the report of Sh. S.K. Srivastava (Chartered Accountant) (CW-95) in order to prove the case against Badal Family. His report was made a part of the challan. CW-95 stated that he was never asked by the appellant to prepare any analysis report after examining the income tax and wealth tax returns of Badal Family. Though he admitted his signatures on the said report but stated that he had not given the said report. He further stated that he was engaged as consultant by the Vigilance Bureau in June/July 2003 for 4 months. He was just asked to put his signatures on the report but was not allowed to go through the papers.

It is on the hollowness of evidence qua the appellants they have filed the present appeals for quashing of impugned complaint on the ground that there is no conclusive material to proceed against them in the matter.

Learned counsel for the appellant vehemently argued that before starting the process of complaint against the appellant, no enquiry whatsoever, as required under Section 340 Cr.P.C. was ever conducted and the appellant has been straightway roped in without following the procedure laid

down in the Code. In support of this contention, reliance is placed on judgments delivered by the Hon'ble Supreme Court in Pritish vs. State of Maharashtra and others, AIR 2002 SC 236 and K. Karunakaran vs. T.V. Eachara Warrier, AIR 1978 SC 290. It is argued that the process has been initiated only on the basis of bald and hollow observations of the Court, though there was absolutely no material to substantiate such observations.

Learned counsel further argued that in the present case perjury was not established to be deliberate against the accused/appellant and hence, no sanction should be granted when chances of the prosecution to end the trial in conviction of the accused are equal to nil. It is not just and fair to punish the delinquent only on the basis of some inaccuracy. Reliance in this regard is placed on the judgment delivered by the Apex Court in Dr. S.P. Kohli vs. The High Court, AIR 1978 SC 1753, wherein it was held that prosecution for perjury should be sanctioned where it appears to be deliberate and conscious leading to probable or likely conviction.

Learned counsel further argued that charge of fabrication based on statements recorded under Section 161 Cr.P.C. cannot be tried under Section 340 Cr.P.C., inasmuch as, the statements under Section 161 Cr.P.C. cannot be treated as evidence, as has been so held by the Apex Court in Omkar Namdeo vs. Second Addl. S.J., AIR 1997 SC 331.

Learned counsel further argued that the appellant was only assigned the task of supervising the investigation and, hence, he was only discharging his official duties in the capacity of a supervisor and any act of bona fide error or omission, if any, on the part of such an officer could not result in his prosecution. In this regard he placed reliance on judgments of the Hon'ble Supreme Court in State of Orissa vs. Ganesh Chandra Jew, AIR 2004 SC 2179 wherein it is observed that once it is established that the act or omission was done by the public servant while discharging his duty, then the scope of it being official should be construed so as to advance the objective of the section in favour of the public servant and in Rakesh Kumar Mishra vs. State of Bihar, AIR 2006 SC 820, wherein it has been observed that the policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without any reasonable cause.

Learned counsel for the appellant next contended that the impugned complaint could not have been filed by the State. If at all, any complaint was required to be filed, it could be filed by the Presiding Officer as Section 340 Cr.P.C. clearly contemplates that complaints can be filed by the Presiding Officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf. In the present case, the complaint has been filed by the Ahlmad of the Court and that too using the name of "State". "Ahlmad' of the Court cannot be treated at par with an officer of the Court as specified in Section 340 Cr.P.C.

Per contra, learned State counsel as well as amicus curiae controverted the arguments raised on behalf of the appellant. The main plank of argument of learned counsel was that appellant had pressurised the witnesses to make false statements in court and forged the material evidence which resulted in the acquittal of accused. Learned counsel contended that appellant was under a legal obligation to conduct a fair, impartial and thorough investigation into the matter, but they abdicated

this responsibility by fabricating false evidence and record to the benefit of the accused persons.

Learned State counsel and amicus curiae further argued that there was no necessity to obtain sanction under Section 197 Cr.P.C. and it is the prerogative of the Court to initiate criminal proceedings in such matters. It is contended that in an offence affecting administration of justice, there is no necessity of giving opportunity of hearing before filing the complaint and court can form an opinion to file complaint under Section 340 Cr.P.C. without any preliminary enquiry, if it appears to the Court that an offence has been committed and there is sufficient material against the accused to result in conviction. It was also argued that no doubt a Public Prosecutor has to discharge a wider set of duties than to merely ensure that the accused is punished but present is the case where is sufficient evidence against the accused which necessitated the Presiding Officer to file a complaint against the appellant to uphold the majesty of law.

I have heard Ld. counsel for the appellants, Ld. State Counsel as well as the amicus curiae appointed in the case by this Court and has gone through the records of the case.

Dealing with the case of appellant BK Uppal [Criminal Appeal No. 3083-SB of 2010] and Surinder Pal Singh [Criminal Appeal No.2953-SB of 2010 and Criminal Misc. No. 35269-M of 2010] and the submissions made by the counsel, the following questions emerge for consideration of this Court:-

> 1. Whether the Ld. Trial Court could have ordered filing of the complaint under Section 340 Cr.P.C.

against the appellants without following the procedure and rigours applicable thereto?

2. Whether the present complaint is maintainable in the absence of sanction for prosecution of the appellants under Section 197 Cr.P.C.?

3. Whether the complainant Rajeev Verma (Almhad of the Court) can be termed as an officer authorised by the Court for initiating proceedings against the appellants under section 340 Cr.P.C. on behalf of the State?

4. Whether the perjury purportedly committed, appears to be deliberate and conscious so as to lead to conviction of the appellants in the present case?

5. Whether statements of the witnesses recorded under Section 161 Cr.P.C. can be treated as a ground for launching proceedings under Section 340 Cr.P.C. against the appellants?

6. Whether the appellants have committed any act or deliration in duty while supervising the work of investigation under the facts and circumstances of the present case?

Taking up the 1st question, it has come on record that no inquiry was conducted before ordering filing of the complaint against the appellants in the present case as per the mandate laid down under section 340 Cr.P.C. Only on the basis of presumption and the fact that the witnesses resiled from

their statements and were declared hostile during the course of trial, it was concluded that the appellants have failed to investigate the case in a proper manner and thus have rather acted in an arbitrary and illegal manner. Without there being any evidence of perjury against the appellants, it was concluded by the trial Court that they have fabricated false evidence and record and thereafter presented the same alongwith the challan. In this backdrop, it was held by the trial Court that there is no necessity of conducting a separate inquiry under section 340 Cr.P.C. as both the appellants had been examined in this case.

In my considered opinion the said conclusion drawn by the trial Court under the facts and circumstances of the present case is wishful exaggeration of thought as the bare mandatory provision of Section 340 Cr.P.C. cannot be bypassed on the basis of the same. Merely by ordering institution of a complaint against the appellants without conducting a fact finding inquiry as contemplated under section 340 Cr.P.C., does not meet and satisfy the requirements of the provisions of the said section. The said complaint as per procedure has to go through the rigours of relentless trial where the parties would lead their independent respective evidences and controverting each others' case exhaustively without any reservation. In a regular trial, there is no constraint on a person complained against to have ample opportunity to defend himself and produce all materials to show that no offence as alleged has been committed or made out against him. Asking a person to face criminal trial without affording an opportunity to him in terms of Section 340 Cr.P.C., is not only against the principles of natural justice but also against criminal jurisprudence. The Hon'ble Supreme Court of India in the case of K.Karunakaran vs. T.V. Eachara Warrier and another, AIR 1978 SC 290, it has been held thus:-

> "21. At an enquiry held by the court under Section 340(1) Cr.P.C., irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.
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> 22. The party may choose to place all its materials before the court at that stage, but if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the Court.
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> 23. In this case the High Court came to the conclusion in the enquiry that Shri Karunakaran's first affidavit of 31st March, 1977 filed on 4th April, 1977, contained a false statement to the effect that he had no knowledge that Rajan was in police custody at any time and that "he could not have believed it to be true." It is only on that basis that the High Court held that an offence under Section 193, I.P.C. was prima facie made out. Having regard to the second affidavit of 22nd May, 1977 and for some other reasons recorded by it the aforesaid statement in that behalf was considered by the High Court as "deliberately"

made.

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25. An enquiry when made under Section 340 (1) Cr.P.C. is really in the nature of affording a locus paenitentiae to a person and if at that stage the court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence." In the case of Pritish versus State of Maharashtra and others [2002 (1) SCC 253] it has been held by their Lordships in paragraph No. 9 as under:-

> "Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.
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> In view of the facts and law noticed hereinabove, it is concluded that it was imperative for the trial Court to conduct a prima facie fact finding inquiry into the conduct and act of the appellants so as to come to a conclusion as to whether they had acted in good faith or in an arbitrary or favouritist manner under the facts and circumstances of the present case in scuttling the entire investigation so as to shield the real culprits. In the absence of any such fact finding inquiry having been conducted in the present case as contemplated under section 340 Cr.P.C., the present complaint instituted by Ahlmad of the Court on behalf of the State cannot be sustained against the appellants.
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> Now coming to the 2nd question as to whether the present complaint is maintainable in the absence of sanction for prosecution as contemplated under Section 197 Cr.P.C. against the appellants, it is evident from the record that no such sanction was obtained or sought for by the prosecution against the appellants in the present case before instituting the present complaint against them. Before proceeding further, it is necessary to cull out Section 197 Cr.P.C.:-

"197. (1) When any person who is or was a Judge or Magistrate or Public Servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction :-

(a) in the case of person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Govt.

(b) in the case of person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the State, of the State Govt.

The Hon'ble Supreme Court of India dealing with the aforesaid provision in the case of Chajoo Ram versus Radhey Shyam and another, AIR 1971 SC 1367 has held thus:-

"7.The prosecution for perjury should be sanctioned by courts,only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems somewhat mechanical and superficial: it does not reflect the requisite judicial deliberation : it seems to have ignored the fact that the appellant was a Panch and authorized to act as such and his explanation was not implausible. The High Court further appears to have failed to give requisite weight to the order of the District Magistrate which was confirmed by the Sessions Judge, in which it was considered inexpedient to initiate prosecution on the charge of alleged false affidavit that the appellant had not acted as Sarpanch during the period of the stay order. The subject matter of the SATYAWAN charge before the District Magistrate was substantially the same as in the present case. Lastly, there is also the question of long lapse of time of more than ten years since the filing of the affidavit which is the subject matter of the charge. This factor is also not wholly irrelevant for considering the question of expediency at initiating prosecution for the alleged perjury. In view of the nature of the alleged perjury in this case this long delay also militates against expediency of prosecution. And then by reason of the pendency of these proceedings since 1962 and earlier similar proceedings before the District Magistrate also the appellant must have suffered both mentally and financially. In view of all these circumstances we are constrained to allow the appeal and set aside the order directing complaint to be filed."

Further the said ratio of law laid down in Chajoo Ram's case (supra) has been followed and approved by the Hon'ble Supreme Court of India in the case of Dr. S.P. Kohli versus The High Court of Punjab and Haryana, AIR 1978 SC 1753 and in its latest decision in the case of Ashok Kumar Aggarwal Versus Union of India and others, AIR 2014 SC 1020.

Three Judges Bench of the Hon'ble Supreme Court of India in the case of R.K. Pardhan Versus State of Sikkim [criminal appeal No. 1118 of 2000 decided on 24.07.2001 has held in paragraph No. 15 as under:-

> "15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required....."

In the present case the prosecution has miserably failed show that there is reasonable connection between the act complained of and the discharge of official duty by the appellants. Section 197 Cr.P.C. specifies that as far as public servants are concerned, the cognizance of any offence, by any Court, is barred unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The said aspect has authoritatively been dealt with by the Hon'ble Supreme Court of India in the case of State of Orissa and others Versus Ganesh Chandra Jew, AIR 2004 SC 2179(1), as under:-

> 9. At this juncture, we may refer to P. Arulswami v.

State of Madras (AIR 1967 SC 776), wherein this Court held as under:

> "... It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

10. ..... So far public servants are concerned the cognizance of any offence, by any Court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no Court shall take cognizance of such offence except with the previous sanction". Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the Court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black's Law dictionary the word 'cognizance' means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance it means taking notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty."

Thus use of the expression single 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power by the Court to take cognizance of any offence is absolute and complete. However, this protection has certain limitation and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely cloaked for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be sufficient ground to deprive the public servant from the protection. The justification for the protection conferred under Section 197 Cr.P.C. is laid down in-extenso by the Hon'ble Supreme Court of India in the case of State of MP Vs. MP Gupta [2004 (2) SCC 349] wherein it was held that it is in the interest of public to see that official acts do not lead to needless or vexatious prosecution. It should be left to the government to determine from the point of view, the question of expediency of prosecuting any public servant. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty.

Further the Hon'ble Supreme Court of India in the case of Rakesh Kumar Mishra Versus State of Bihar and others, AIR 2006 Supreme Court 820(1) has held in paragraph No. 6 as under:-

> "6. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection

> between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the SATYAWAN public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

Thus, from a conspectus of aforesaid decisions, in my considered opinion, it is clear that for claiming protection under Section 197 of the code, it has to be shown by the prosecution that there is a reasonable connection between the act complained of and the discharge of official duty. In the present case, since the prosecution has miserably failed to prove the act complained of viz-a- viz discharge of official duty by the appellants, therefore the present complaint is not maintainable in view of the provisions of Section 197 Cr.P.C. in the absence of sanction.

That leads me to the 3rd question as to whether the Ahlmad of the Court can be termed as an officer of the Court for launching proceedings under Section 340 Cr.P.C. against the appellants. In the present case, the complaint dated 25.10.2010 has been filed by Rajiv Verma being attached as an Ahlmad to the Court of Sh. Rajender Aggarwal, Special Judge, SAS Nagar, Mohali in the capacity of an "OFFICIAL OF THE COURT".

Under Chapter 8 of the High Court Rules and Orders, Vol-III, powers to take cognizance has been laid down in Part A- Offences Affecting the Administration of Justice, which are culled out herein below:-

> "1. Under section 195 of the Code of Criminal Procedure, no Court can take cognizance of the offences mentioned in that section, except on the complaint in writing of the public servants or Courts mentioned in the section. The institution of

proceedings does not now depend on the discretion of a private individual as was the state of law before the amendment of this section by Act XVIII of 1923.

2. Sections 476 and 479-A are supplementary to Section 195. The Civil, Revenue or Criminal Courts can take action either suo motu or on application. The power to make a complaint is conferred on the Court and not on the particular officer who presides over the Court. Consequently the successor of a Magistrate or Judge is competent to direct prosecution in respect of an offence committed before his predecessor. (Vide I.L.R 4 Lahore 58 and section 559 of the Code).

3. The main point which the Court has to consider in initiating proceedings under section 476 of the Code is whether it is expedient in the interests of justice that an inquiry should be made and a complaint filed (vide, 1954 Supreme Court Reports 1144). The mere fact that there is reason to believe that an offence has been committed is not sufficient to justify a prosecution. It is equally well settled that prosecution should not be ordered unless a prima facie case is made out and unless there is a reasonable chance of conviction. It must be borne in mind in this connection that indiscriminate institution of prosecution does not promote the "interests of justice" as failure of such cases is apt to encourage rather than discourage the offences. Section 476 of the Code gives the Court power to make a preliminary inquiry and this power should he freely used. Notice should ordinarily be given to the persons concerned and any explanation and evidence given by them should be carefully considered before ordering prosecution."

It was thus the argument of the Ld. counsel for the appellants that the impugned complaint could not have been filed by the Ahlmad of the Court being cloaked as an 'Officer of the Court' on behalf of the State and that if it all, any complaint was required to be filed, it could only have been filed by the Presiding Officer. Reliance in this regard is placed on Section 340 Cr.P.C. which is culled out herein below:-

"Section 340 in The Code Of Criminal Procedure, 1973 in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section," Court" has the same meaning as in section 195."

In view of the unambiguous provisions envisaged under Section 340 Cr.P.C., there is no power or authorisation bestowed upon an Ahlmad of the Court to act as an 'Officer of the Court' so as to launch proceedings in relation to the offences committed under the said chapter and thus in my considered opinion under the facts and circumstances of the present case, I have no hesitation to hold that Rajiv Verma, Ahlmad attached to the Court of Rajender Aggarwal, Special Judge, SAS Nagar, Mohali under the cloak of an 'Officer of the Court' on behalf of the State was neither competent nor authorised to institute the complaint in its present form against the appellants and, accordingly, the present complaint is held to be not maintainable.

Answering the 4th question framed hereinabove, it has been argued by the Ld. counsel for the appellants that for initiating proceedings qua perjury, the Court must be prima facie satisfied that the evidence on record is sufficient and complete so as to probably lead to conviction of the accused-appellants. In the present case there is nothing on record to show that the appellants deliberately and wilfully scuttled the investigation in the present case and forced the witnesses to turn hostile. It is not so the case of the prosecution either. Just because the witnesses have turned hostile in the present case and have not supported the version recorded under section 161 Cr.P.C. before the Court, the same cannot be made a ground to punish the appellants in the present case. All procedures and formalities were carried out and followed during investigation of the present case pertaining to amass wealth and disproportionate assets of Badal family. There is no evidence on record that the appellants indulged in fabricating false evidence and record. From the observations of the trial Court it appears that had the case not failed on account of witnesses turning hostile in the

same, probably neither the appellants nor the investigation in the present case would have been called in question. It is just because the case having failed on account of trustworthy evidence, the appellants have been ordered to be proceeded against and prosecuted for dereliction of duties in the present case. This to my mind cannot be permitted, as the same would not only deter a public servant/police officer to impartially and in a fair and free manner investigate a case properly but would also send a wrong signal to the society who look forward upon the government machinery to cater to their day-to-day needs and turmoil. The Hon'ble Supreme Court of India in Chajoo Ram's case (supra) has dealt with precisely the same situation in paragraph No.7, which is reproduced herein above in the preceding Paras.

The Hon'ble Supreme Court of India in the case of Har Gobind and others Versus State of Haryana, AIR 1979 SC 1760, has held that in the absence of exact offence committed by the appellant having been disclosed in the complaint and a clear-cut finding viz. the same by the Court, the complaint cannot be sustained and thus is hereby quashed.

Thus, it cannot be presumed by any stretch of imagination that the allegations purportedly made in the complaint against the appellants were sufficient and complete so as to lead to their conviction in the present case for the offence of perjury especially in the absence of any finding to that effect by the trial Court and hence the impugned complaint as well as the summoning order deserves to be quashed. Ordered accordingly.

That takes me to the 5th and 6th question which I intend to answer collectively. It has been argued before me that the charge of fabrication based on statements recorded under section 161 Cr.P.C. cannot be tried under section 340 Cr.P.C. in as much as the statements made under sections 161 Cr.P.C. cannot be treated as evidence. It has further been argued that the appellants were only assigned the task of supervising the investigation and hence they were only discharging their official duties in the capacity of supervisors and any act of bona fides or omission, if any, on the part of such an officer could not result in his prosecution.

The Hon'ble Supreme Court of India in the case of Omkar Namdeo Jadhao and others Versus Second Additional Sessions Judges, Buldana and others, AIR 1997 SC 331 has held thus:-

> "3. It is seen that the observation made by the Sessions Judge, as confirmed by the of Bombay High Court, Nagpur Bench in the impugned judgment dated 10.3.1992 made in Criminal Application No.20/91 is based on 161 statements recorded during the investigation. Admittedly, no evidence has been recorded. The court should not come to the conclusion on the basis of 161 statements which are not evidence. It can be used at the trial only for contradictions or omissions when the witness was examined. Nor it could be contradicted by looking at the physical features of the witnesses even before they are examined. The Additional Sessions Judge had discharged them concluding that the police officers had fabricated the record. It would appear that the learned Sessions Judge had overstepped his jurisdiction in recording a finding, while looking at the physical features of the accused, that the police had fabricated the record. The High Court has also not properly considered the matter while going into

the question regarding discharge of the accused for other offences. Under these circumstances, we hold that in view of the finding recorded by the Sessions Judge of fabrication of the record and that the case is false one, issuance of notice under Section 340, Cr.P.C. is wholly unjustified. The said order of the Sessions Judge is accordingly quashed.

In the case of Dr. SP Kohli Versus The High Court of Punjab and Haryana, AIR 1978 SC 1753, the Hon'ble Supreme Court observed as under:-

"19. The notice besides being not happily worded is laconic. It does not satisfy the essential requirements of law. Nor does it specify the offending portions in the appellant's lengthy statement which in the opinion of the High Court were false. In cases of this nature, it is highly desirable and indeed very necessary that the portions of the witness's statement in regard to which he has, in the opinion of the Court, perjured himself, should be specifically set out in or form annexure to the notice issued to the accused so that he is in a position to furnish an adequate and proper reply in regard thereto and be able to meet the charge."

Further in the case of State of Orissa Versus Ganesh Chandra Jew (supra), the Hon'ble Supreme Court held in paragraph No. 12 as under:-

"It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H. C. Bhari (AIR 1956 SC 44) thus :

> "The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty ... there must be a reasonable connection between the act and the discharge of official duty; the act must bear, such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

Ld. State Counsel as well as the amicus curiae have failed to refute and effectively rebut the very basic ground of attack launched by the appellants' counsel that no procedure, as prescribed under Section 340 Cr.P.C., has been followed in the present case. They have also failed to substantiate the observations of the Trial Court made in the case relating to disproportionate assets of Badal family. There is nothing on record to comprehend that if the alleged acts or omission on the part of the appellants were deliberate and conscious and the State was highly confident of conviction of the appellants in the same, then what stopped the State machinery to proceed in the matter in accordance with the prescribed procedure. The Ld. State Counsel as well as the amicus curie have also failed to bring on record any material to throw light on the fact that the appellants were the sole investigating officers responsible for investigation in the principal case and were not assigned the work and task of supervising the investigation in league with other officers. Even no inquiry as contemplated under Section 340 Cr.P.C. was held to substantiate the veracity of allegations made against the appellants.

In view of the attending facts and circumstances, ratio of the law laid down herein above and applying the same to the facts and circumstances of the present case, I am of the considered view that the present complaint as well as the summoning order deserves to be quashed as it is not proved on record, either it is even not the case of the prosecution that the appellants have acted or omitted to act in a biased and partial manner so as not only to scuttle the entire investigation in the present case but also to defeat the process of law by not supervising the investigation in the present case properly. For reasons beyond the control, if the prosecution witnesses have not supported the case and have turned hostile, the same cannot be made a ground available to the Court to order initiation of proceedings under Section 340 Cr.P.C. against them. This to my mind, is certainly not the scope and ambit of the said section especially in the absence of any evidence on record to that effect.

As an upshot of the discussion made here-in-above, the appeals bearing Nos. S-3083-SB-2010 and S-2953-SB-2010 preferred by the appellants are allowed and the impugned order is set aside. As a result of decision in aforementioned appeal and for the reasons recorded therein Criminal Misc. No. 35269 of 2010 is also allowed and as a sequel thereto impugned complaint No. 32 dated 25.10.2010 as well as summoning order passed thereto dated 26.10.2010 along with all consequential proceedings arising therefrom against the appellants are hereby quashed.

Now coming to the case of S. Chattopadhyaya [Criminal Misc. No. M-6309 of 2011], though no complaint or prosecution has been ordered to be initiated against him by invoking the provisions of Section 340 Cr.P.C. by the Ld. Trial Court vide the impugned judgment dated 01.10.2010, however observation with regard to his conduct has been made in the same in paragraph No.64, against

which he has preferred the said petition for expunction of the said strictures.

Chattopadhyaya, the then DIG was entrusted with the investigation of foreign properties owned by Badals in the present case. For doing the needful, he travelled around the foreign countries at the expenses of the state exchequer and prepared source report. However he did not submit the investigation report despite having all documentary evidence available with him. Accordingly, it was observed that Mr Chattopadhyaya did not discharge his duties in a proper manner and failed to conduct investigation in a satisfactory manner.

It was argued by Ld. counsel representing Mr Chattopadhyaya that the said strictures have been passed without giving opportunity of hearing to the petitioner. He further argued that the Ld. trial Court erred in recording that the appellant was the investigating officer. In fact he was only entrusted with investigation of overseas property and investments of Badals in the present case which he duly carried out and submitted his report to the investigating officer-Sh. Surinder pal Singh. All the foreign trips were duly approved and sanctioned by the state and thus it is prayed that the strictures made against him in para No.64 of the impugned judgment, deserves to be expunged.

I have heard the Ld. counsel for the appellant and have gone through the record of the case pertaining to him.

The appellant was merely appointed as a supervising officer to investigate and look into the overseas properties and investments of Badals. From the record it is apparent that he duly carried out the search function and also prepared a source report qua the same. All his foreign visits were duly sanctioned and approved by the competent authority and therefore no malafides or dereliction of duty can be cast upon him and, thus, in view of the same I am of the considered opinion that the strictures having been passed against him by the Trial Court are wholly uncalled for and unwarranted under the facts and circumstances of the present case and are accordingly expunged and the petition filed by him is allowed.

(ASHUTOSH MOHUNTA) ACTING CHIEF JUSTICE 10th December, 2014 'SP'