State of Haryana and Others

Vs

Bhajan Lal and Others

Civil Appeal No.5412 of 1990

(S.R. Pandian, K. Jayachandra Reddy JJ)

21.11.1990

JUDGMENT

S. RATNAVEL PANDIAN J

1. Leave granted.

2. "The king is under no man, but under God and the law" - was the reply of the Chief Justice of England, Sir Edward Coke when James-I once declared "Then I am to be under the law. It is treason to affirm it" - so wrote Henry Bracton who was a Judge of the King's Bench.

3. The words of Bracton in his treatise in Latin "quod Rex non debat esse sub homine, sed sub Deo et Lege". (That the king should not be under man, but under God and the law) were quoted time and time again when the Stuart kings claimed to rule by divine right. We would like to quote and requote those words of Sir Edward Coke even at the threshold.

4. In our democractic polity under the Constitution based on the concept of 'Rule of law' which we have adotped and given to ourselves and which serves as an aorta in the anatomy of our democratic system. THE LAW IS SUPREME.

5. Everyone whether individually or collectively is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be.

6. The heated and lengthy argument advanced in general by all the learned counsel on the magnitude and the multi-dimensional causes of corruption and also about the positive and constructive remedial measures and steps to be taken for its eradication has necessitated us to give a brief exordium about its perniciousness, though strictly speaking, we would be otherwise not constrained to express any opinion on this.

7. At the outset we may say that we are not inclined to make an exhaustive survey and analysis about the anatomy, dimensions and causes of corruption. It cannot be gainsaid that the ambiguity of corruption is always associated with a motivation of private gain at public expense.

8. Though the historical background and targets of corruption are reviewed time after time; the definitional and conceptual problems are explored and the voluminous causes and consequences of corruption are constantly debated throughout the globe, yet the evils of corruption and their

autonarcotic effect pose a great threat to the welfare of society and continue to grow in menacing proportion. Therefore, the canker of the venality, if not fought against on all fronts and at all levels, checked and eradicated, will destablize and debilitate the very foundations of democracy; wear away the rule of law through moral decay and make the entire administration ineffective and dysfunctional.

9. Mere rhetorical preaching of apostolic sermons listing out the evils of corruption and raising slogans with catch-words are of no use in the absence of practical and effective steps to eradicate them; because 'evil tolarated is evil propagated'.

10. At the same time, one should also be alive to cases where false and frivolous accustaions of corruption are maliciously made against an adversary exposing him to social ridicule and oblique with an ulterior motive of wreaking vengeance due to past animosity or personal pique or merely out of spite regardless of the fact whether the proceedings will ultimately culminate into conviction or not.

11. We would like to make it clear that the above exordial note is given without casting any aspersion against any of the parties to the present proceedings or touching the individual merit of the case.

12. The relevant facts giving rise to this appeal, though have been set out in great detail in the impugned judgment of the High Court, have to be recapitulated in order to enable us to give our own reasons for the findings which we will be arriving at on the interpretation of certain provisions of the Criminal Procedure Code ('the Code' for short) and of the Prevention of Corruption Act, 1947 ('the Act' for short).

13. This appeal by grant of special leave is directed by the appellants, namely, the State of Haryana and two others assailing the judgment dated 8-9-1989 of a Division Bench of the High Court of Punjab and Haryana rendered in Writ Petition No. 9172/87 ((1990)8 Punjab Legal Reports & Statues 62) quashing the entire criminal proceedings inclusive of the registration of the Information Report and directing the second respondent, Mr. Dharam Pal to pay the costs to the first respondent, Ch. Bhajan Lal.

14. Ch. Bhajan Lal was a Minister in l977 when Ch. Devi Lal was the Chief Miniser of Haryana State and he, became the Chief Minister of the State of Haryana in 1982-87. During the initiation of this criminal proceeding in question, he was the Union Minister for Environment and Forests, Government of India.

15. In the general election to the legislative assembly of the State of Haryana in June 1987, Smt. Jasma Devi, the wife of Ch. Bhajan Lal contested from Adampur constituency on being sponsored by the Congress (1) party as against the second respondent, Mr. Dharam Pal who was a nominee of the Lok Dal. Mrs. Jasma Devi was successfully elected. Dharam Pal presented an election petition calling in question the election of Smt. Jasma Devi on a variety of grounds. Ch. Devi Lal, the third respondent in this appeal who was the second respondent in the writ petition also contested on Lok Dal's ticket and became successful. Thereafter Ch. Devi Lal became the Chief Minister of the State of Haryana in 1987. It seems that after the general election there were a number of criminal proceedings between the parties one of which being a criminal prosecution against Dharam Pal under Section 307, IPC registered in Adampur police station. On account of the political rivalry and the institution of a number of criminal cases and counter cases there was bad blood between Ch.

Bhaj an Lal on the one hand and Ch. Devl Lal on the other.

16. While it was so, on 12th November 1987 Dharam Pal presented a complaint before Ch. Devi Lal making certain serious allegations against Bhajan Lal, a brief note of which is given below:

> Before 1969 Ch. Bhajan Lal was a man of ordinary means and did not have any definite source of income, but after he was inducted in the Cabinet as a Minister and particularly after he became the Chief Minister of the -State, he accumulated huge properties worth crores of rupees in the names of his family members, relations and persons close to him by misusing his power and position and also by undervaluing the market price and all those transactions are benami in character. In the complaint, Mr. Dharam Pal has given the details citing 20 independent allegations, alleging that a palatial house is being constructed at Hissar at the cost of about Rs. 50 lakhs and that extensive lands at various places have been purchased either in the name of his wife, Jasma Devi, or in the names of his sons Kuldip and Chander Mohan or benami in the names of his relations etc. and that two petrol pumps valuing about Rs. 5 lakhs have been installed in the name of his wife, and that certain shops have been constructed etc. Besides these allegations, it is said that Bhajan Lal has acquired several other properties either in his name or in the names of his benamidars such as shares in the cinemas of Sirsa and Adampur, besides owning trucks, cars etc. and is possessing gold, silver and diamond ornaments valuing about Rs. 5 crores. The accumulation of all those properties in the shape of buildings, land, shares and ornaments etc., is far beyond his legal means and, therefore, an investigation should be directed and appropriate action be taken against Ch. Bhajan Lal.

17. On the complaint presented by Dharam Pal, the Officer on Special Duty (OSD) in the Chief Minister's Secretariat made an endorsement on 12-11-1987 in Hindi, the translation of which reads "C. M. has seen. For appropriate action" and marked the same to the Director General of Police (DGP), who in turn made an endorsement on 12-11-1987 itself reading "Please look into this; take necessary action and report" and marked it to the Superintendent of Police (S.P.), Hissar. The said complaint along with the above endorsements of OSD and DGP was put up before the S.P., the second appellant on 21-11-1987, on which date itself the S.P. made his endorsement reading "Please register a case and investigate".

18. The SHO (the third appellant) registered a case on the basis of the allegations in the complaint under Sections 161 and 165 of the Indian Penal Code and Section 5 (2) of the Act on 21-11-1987 itself at 6.15 p.m. and took up the investigation. On the foot of the First Information Report (F.I.R.) the following endorsement has been made:

> "Police proceeding that the S. P., Hissar after registering the case on the above application has ordered to investigate the case. That FIR u/ Ss. 161, 165, IPC. 5-2-1947 P. C. Act has been registered at P. S. Sadar, Hissar. An Inspector, along with constables Sumer Singh 700, Randhir Singh 445, Sattar Singh 47 proceeded to the spot. Constables Sumer Singh 700, and Randhir Singh 445 were handed over one rifle along with 50 cartridges each and copy of the FIR as a special report is being sent. through Head Constable Bhaktawar Singh, 602 at the residence of Illaqa Magistrate and other offices.

Tara Chand,

Inspector,

Police Station, Sadar."

19. The third petitioner (SHO) after forwarding a copy of the first information report to the Magistrate and other officers concerned, himself took up the investigation and proceeded to the spot accompanied by three constables of whom two constables were handed over one rifle each and 50 cartridges.

20. While the matter stood thus, the first respondent filed the Writ Petition No. 9172/ 87* under Articles 226 and 227 of the Constitution of India seeking issuance of a writ of certiorari quashing the first information report and also of a writ of prohibition restraining the petitioners herein from further proceeding with the investigation. It is stated that the High Court granted an ex parte stay which was thereafter made absolute.

* Reported in (1990) 8 Punjab Legal Reports & Statutes 62.

21. Initially 3 separate written statements were filed before the High Court, one by Inspector Kartar Singh (on behalf of the State of Haryana, the S. P. and S. H. 0. who were respondents 1, 3 and 4 in the writ petition and who are the appellants herein); another by respondent No. 2 Ch. Devi Lal (who is the third pro forma respondent in this appeal) and the third one by respondent No. 5 in the writ petition (who is the complainant and the second respondent in this appeal). Subsequently realising that Kartar Singh was not competent to file the written statement on behalf of the State, SP and SHO in terms of the Rules of Business, separate written statements one by the then S. P. Lakhi Ram and another by Inspector Tara Chand (who registered the case) were filed on 14-7-1988. However no written statement was filed on behalf of the State of Haryana. The High Court before which several contentions were raised by the respective parties examined each of the allegations in detail in the light of the explanatory and denial statement which according to the High Court has not been either explained or denied by the State and rejected the plea of the appellants 2 and 3 submitting that it is wholly premature to say anything with regard to the truthfulness or otherwise of the allegations and observed as follows:

> 1. "��.. it is clear that the allegations made are just imaginary and fantastic."
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> 2. "���his (respondent No. 2 Dharam Pal) sole object in putting complaint Annexure P-9 was to set the machinery of the criminal law in motion against the petitioner without verifying the truth or otherwise of his own allegations before levelling them against the petitioner in the complaint Annexure P-9 and that he was solely depending upon the fishing enquiry which may be undertaken by the police in the course of its investigation without being himself possessed or known to or seen any material or documents justifying his allegations of benami purchases, or undervaluation of property allegedly purchased bythe petitioner.".
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> 3. "Allegations obtaining in Annexure P-9 are, therefore, the outcome of a desperate, frustrated mind....."
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> 4. "Irresponsible manner in which indiscriminate allegations have been levelled by Dharam Pal, respondent No. 5 against the petitioner in Annexure P-9 is patent from the assertions made in respect of benami ownership of house No. 1028, Friends

Colony, New Delhi by the petitioner."

5. "Respondent No. 5 appears to have made these allegations only to curry favour with respondent No. 2 and to avenge his own insult of defeat in elections against the petitioner's wife. The charges levelled in' the complaint Annexure P-9 by respondent No. 5 against the petitioner are, therefore, all groundless."

6. "It was only the S. P. Lekhi Ram and the Inspector Tara Chand both. of whom filed their individual written statements on July 14, 1984 more than eight months after the filing of the writ in December 1987, who tried to be more loyal to the king than the king himself and in turn respectively ordered the registration of the case against the petitioner and proceeded to the spot (God knows which one and for what purpose) with duly armed constabulary. Mala fides, if at all these can be attributed are attributable to S. P. Lekhi Ram and Inspector Tara Chand but not to Chaudhary Devi Lal, Chief Minister Haryana arrayed as respondent No. 2 in the writ petition."

22. With regard to the contention of nonapplication of mind on the part of the police officials, the High Court held thus:

"It thus appears that the allegation regarding applications of mind by the S.H.O. Inspector Tara Chand of Police Station, Sadar, Hissar has been made only because the S. P. was feeling shallow under his feet�� that all was not well with them and both of them were feeling cold under their feet as to who amongst them would take the odium upon himself for having done something which was in fact not done by either of them. Faced against the wall, they felt compelled on 14-7-1988 to put in hotchpotch affidavits aforesaid which do not indicate any application of mind by either one of them, much less the Superintendent of Police, Hissar, who was obliged in law to do so."

23. Finally after making reference to various decisions of this Court and in particular to State of West Bengal v. Swapan Kumar Guha, (1982) 3 SCR 121 : (AIR 1982 SC 949); the High Court concluded that the allegations do not constitute a cognizable offence for commencing the lawful investigation and granted the relief as prayed for and mulcted the fifth respondent with the costs of the writ petition. In the penultimate paragraph of its judgment, the learned Judges cited a historical event, namely, a challenge made by Poras before Alexander about which we will express our view at the appropriate place of this judgment. The appellants on being aggrieved by the impugned judgment of the High Court has preferred the present appeal. At this juncture we would like to point out that one Chhabil Dass, a third party has filed an application accompanied by an affidavit praying to implead him as a party and stating that he has got sufficient materials to substantiate the allegations averred in the complaint of the second respondent. As the applicant Chhabil Dass was not a party to the proceedings before the High Court, his application is rejected.

24. Mr. Rajinder Sachar, the learned senior counsel along with the learned Advocate-General of Haryana State assisted by Mr. Mahabir Singh appeared for the appellants whilst Mr. R. K. Garg, the learned senior counsel appeared for the second respondent, Dharam Pal on whose complaint the impugned first information report had been registered and the investigation was commenced. Mr. K. Parasaran, the learned senior counsel along with Mr. P. Chidambaram, the learned senior counsel assisted by Mr. Gopal Subramaniam appeared on behalf of the first respondent. Mr. Rajinder Sachar and Mr. R. K. Garg made a cascade of vitriolic comments on the reasons assigned and the

conclusions drawn therefrom by the High Court and assailed the impugned judgment by making a frontal brunt asseverating that the instances of corruption cited in the complaint by Dharam Pal which are in the increase both in volume and virulence, though so far hidden from the public view, and those allegations taken either individually or collectively, unerringly and irrefragably constitute a cognizable offence warranting firstly the registration of a case as contemplated under Section 154(1) of the Code and secondly imperatively demanding a thorough investigation in compliance with the various statutory provisions particularly Secs. 156, 157, 159 etc. falling under Chapter XII of the Code. According to them, the High Court has no justification in riding its chariot over the track of investigation and thereby obliterating the same and the High Court in doing so has committed a grave and substantial illegality by quashing the First Information Report and the further proceedings of the investigation.

25. Mr. Parasaran vehemently urged that the impugned judgment is a well considered and well reasoned one and hence there can be no justification for this Court in dislodging the unassailable conclusion. According to him, the deep rooted political animosity and rivalry that Ch. Devi Lal had entertained on account of his failure in his attempt to become the Chief Minister of Haryana State in 1978 and 1982 which (sic) in with hot weather had uplifted the subterranean heat resulting in the outpourings of character assassination against Ch. Bhajan Lal. The complainant, Dharam Pal who suffered a shameful defeat in the general election held in 1988 at the hands of Jasma Devi, wife of Ch. Bhajan Lal and who is a stooge in the hands of Ch. Devi Lal is used as an instrument to present this complaint containing false and scurrilous allegations.

26. All the learned counsel appearing for all the parties took much pain and advanced their eloquent arguments with the aid of a series of decisions of this Court, but occasionally punctured with inflamed rhetoric and surcharged with emotions. In addition to their oral arguments they also filed written submissions. We after carefully and assiduously examining the contentions and countercontentions advanced by all the parties both on the legal and factual aspects and after scrupulously scanning the materials placed on record and examining the written arguments submitted by the parties, would like to deal with those contentions seriatim.

27. Before discussing which of the submissions ought to prevail, we shall in the foremost deal with the legal principles governing the registration of a cognizable offence and the investigation arising thereon. Section 154 (1) is the relevant provision regarding the registration of a cognizable offence and that provision reads as follows:-

> "Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

28. The above sub-section corresponds to Section 154 of the old Code (Act of 1955) and also to Section 154 of the Code of Criminal Procedure of 1882 (Act X of 1882) except for the slight variation in that expression 'local Government' had been used in 1882 in the place of 'State Government'. Presently, on the recommendations of the 41st Report of the Law Commission, the sub-sections (2) and (3) have been newly added but we are not concerned with those provisions as they are not relevant for the purpose of the disposal of this case except for making some reference at the appropriate places, if necessitated. Section 154(1) regulates the manner of recording the First

Information Report relating to the commission of a cognizable offence.

29. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined under Section 2(c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer in charge of a police station" (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime or a case.

30. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of a Section 154 (1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested on him and to register a case on the information of a cognizable offence, reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Seetion 154 of the Code.

31. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1) (a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1) (a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness' or 'credibility' of, the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the 'word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act XXV of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act X of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced into writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1955 which word is now used in Sections 154, 155, 157 and 190 (c) of the present Code of 1973 (Act 11 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a First Information Report is that there must be an information and that

information must disclose a cognizable offence.

32. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

33. In this connection, it may be noted that though a police officer cannot investigate a non-cognizable offence on his own as in the case of cognizable offence, he can investigate a non-cognizable offence under the order of a Magistrate having power to try such noncognizable case or commit the same for trial within the terms under Section 155 (2) of the Code but subject to Section 155(3) of the Code. Further, under the newly introduced sub-section (4) to Section 155, where a case relates to two offences to which at least one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are non-cognizable and, therefore, under such circumstances the police officers can investigate such offences with the same powers as he has while investigating a cognizable offence.

34. The next key question that arises for consideration is whether the registration of a criminal case under Section 154(1) of the Code ipso facto warrants the setting in motion of an investigation under Chapter XII of the Code.

35. Section 157(1) requires an Officer in charge of a Police Station who 'from information received or otherwise' has reason to suspect the commission of an offence - that is a cognizable offence which he is empowered to investigate under Section 156, to forthwith send a report to a Magistrate empowered to take cognizance of such offence upon a police report and to either proceed in person or depute anyone of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot, to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. This provision is qualified by a proviso which is in two parts (a) and (b). As per clause (a) the Officer in charge of a Police Station need not proceed in person or depute a subordinate officer to make an investigation on the spot if the information as to the commission of any such offence is given against any person by name and the case is not of a serious nature. According to clause (b), if it appears to the Officer in charge of a Police Station that there is no sufficient ground for entering in an investigation, he shall not investigate the case. Sub-section (2) of Section 157 demands that in each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1) of Section 157, the Officer in charge of the Police Station must state in his report, required to be forwarded to the Magistrate his reasons for not fully complying with the requirements of sub-section (1) and when the police officer decides not to investigate the case for the reasons mentioned in clause (b) of the proviso, he in addition to his report to.the Magistrate, must forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause the case to be investigated. Section 156(1) which is to be read in conjunction with Section 157(1) states that any Officer in charge of a Police Station may without an order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of the concerned police station would have power to enquire into or try under provisions of Chapter Xlll: Section 156(3) vests a discretionary power on a Magistrate empowered under S. 190 to order an investigation by a police officer as contemplated in Section 156(1). It is pertinent to note that this provision does not empower a Magistrate to stop an investigation undertaken by the police. In this context, we may refer to an observation of this Court in State of Bihar V. J. A. C. Saldanha (1980) 1 SCC 554 at page 568 : (AIR 1980 SC 326 at p. 334)

extending the power of the Magistrate under Section 156(3) to direct further investigation after submission of a report by the investigating officer under Section 173(2) of the Code. The said observation reads thus:-

> "The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can he exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8)."

36. The above two provisions - that is Sections 156 and 157 of the Code are followed by Sec. 159 which empowers a Magistrate, on receipt of a report forwarded by the police under Section 157 to direct an investigation or if he thinks fit, at once to proceed or depute any Magistrate subordinate to him to proceed, to hold a preliminary enquiry into, or otherwise to dispose of, the case in the manner provided in the Code. The expression "on receiving such a report" evidently refers to the receipt of a report contemplated in Section 157(2), because the question of directing an investigation by the Magistrate cannot arise in pursuance of the report referred to under sub-section (1) of Section 157 intimating that the police officer has proceeded with he investigation either in person or by deputing any one of his subordinate officers. This Court in S. N. Sharma v. Bipen Kumar Tiwari (1970) 3 SCR 946: (AIR 1970 SC 786) while interpreting the scope of Section 159 of the Code has stated thus (at p. 788 of AIR):

> "This Section first mentions the power of the Magistrate to direct an investigation on receiving the report under Section 157, and then states the alternative that, if he thinks fit, he may at once proceed, or depute any Magistrate subordinate to him to proceed to hold a preliminary enquiry into, or otherwise to dispose of, the case. On the face of it, the first alternative of directing an investigation cannot arise in a case where the report itself shows that investigation by the police is going in accordance with Section 156. It is to be noticed that the second alternative does not give the Magistrate an unqualified power to proceed himself or depute any Magistrate to hold the preliminary enquiry. That power is preceded by the condition that he may do so, "if he thinks fit". The use of this expression makes it clear that Section 159 is primarily meant to give to the Magistrate the power of directing an investigation in cases where the police decide not to investigate the case under the proviso to Section 157(1), and it is in those cases that, if it thinks fit, he can choose the second alternative."

37. The Privy Council in Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18 while dealing with the statutory right of the police under Sections 154 and 156 of the Code within its province of investigation of a cognizable offence has made the following observation:

> "..... so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has bepen shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable

> crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those stautory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal P. C. to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then."

38. Justice D. A. Desai speaking for the Bench in State of Bihar v. J. A. C. Saldanha (AIR 1980 S C 326) (albeit) while dealing with the powers of investigation of a police officer as contemplated in Section 156 of the Code of Criminal Procedure has stated thus (at pp. 337-338 of AIR):

> "There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognisance of the offence under Section 190 of the Code its duty comes to an end."

39. See also Abhinandan v. Dinesh (1967) 3 SCR 668: (AIR 1968 SC 117).

40. The core of the above sections namely 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate, that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within which the domain of the investigating agencies over which the Courts cannot have control and have no power to stiffle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

41. We shall now examine as to what are the requirements to be satisfied by an Officer in charge of a police station before he enters into the realm of investigation of a cognizable offence after the stage of registration of the offence under Section 154(1). We have already found that the police have under Section 154(1) of the Code a statutory duty to register a cognizable offence and thereafter rider Section 156(1) a statutory right to investigate any cognizable case without requiring sanction of a Magistrate. However, the said statutory right to investigate a cognizable offence is subject to the fulfilment of prerequisite condition, contemplated in Section 157(1). The condition is that the

officer in charge of a police station before Proceeding to investigate the facts and circumstances of the case should have "reason to suspect" the commission of an offence which he is empowered under Section 156 to investigate. Section 135 of the Code of Criminal Procedure of 1861 (Act XXV of 1861) required the police officer on receipt of a complaint or information constituting any of the offences specified in column 3 of the schedule annexed to that Act should proceed with the investigation, but this Code did not require the condition of entertaining the reason to suspect the commission of an offence before commencing the investigation. Subsequently, in the Code of Criminal Procedure of 1872 a provision, namely, Section 114 which was more or less similar to the present Section 157(1) was introduced which provision required the police officer to have "reason to suspect" the commission of a cognizable offence before he proceeded to investigate the facts and circumstances of the case. Thereafter in the Code of Criminal Procedure of l882 a provision, namely, Section 157 which was identical to that of the present Section 157 except for some variations in the latter part of that Section was introduced which provision also required the police officer to have "reason to suspect" the commission of a cognizable offence. May it be noted that the Law Commission of India in its 41st report expressed its opinion that Section 157 did not call for any amendment.

42. The expression "reason to suspect" as occurring in Section 157(1) is not qualified as in Section 41 (a) and (g) of the Code, wherein the expression, "reasonable suspicion" is used. Therefore, it has become imperative to find out the meaning of the words "reason to suspect" which words are apparently clear, plain and unambiguous. Considering the context and the object of the procedural provision in question, we are of the view that only the plain meaning rule is to be adopted so as to avoid any hardship or absurdity resulting therefrom and the words are used and also to be understood only in common parlance. We may, in this behalf, refer to a decision of the Privy Council in Pakala Narayanaswami v. Emperor AIR 1939 PC 47 at pages 51-52 wherein Lord Atkin said as follows:

> "When the meaning of the words is plain, it is not the duty of Courts to busy themselves with supposed intentions�. It, therefore, appears inadmissible to consider the advantages or disadvantages of applying the plain meaning whether in the interests of the prosecution or accused."

43. The word 'suspect' is laxically defined in Webster's Third International Dictionary as follows:

> Suspect - to look up at, suspect; the act of suspecting or the condition of being suspected..to have doubts of; be dubious or suspicions about; (2) to imagine (one) to be guilty or culpable on slight evidence or without proof (3) to imagine to be or be true, likely or probable; have a suspicion, intimation or inkling of.

44. In Corpus Juris Secondum (Vol. 83) at page 923 the meaning of the word 'suspect' is given thus:

> "The term 'suspect' which is not technical, is defined as meaning to imagine exist; have some, although insufficient, grounds for inferring; also to have a vague notion of the existence of, without adequate proof; mistrust; surmise. It has been distinguished from 'believe'".

45. In the same volume, the expression "suspicion" is defined at page 927 as follows:

> "The act of suspecting or the state of being suspected; the imagination, generally of

> something ill; the imagination of the existence of something without proof, or upon very slight evidence, or upon no evidence at all.. ."

46. In words and phrases (permanent Edition 40A) at page 590, the word 'suspicion'is defined thus :'Suspicion' implies a belief or opinion as to guilt based on facts or circumstances which do not amount to proof. Scaffide v. State 254 NW 65 1. The state of mind which in a reasonable man would lead to inquiry is called mere 'suspicion'. Stuart v. Farmers' Bank of Cuba city, 117 NW 820.

47. Again at page 591 the said word is expounded as follows:

> "The word suspicion' is defined as being the imagination of the existence of something without proof, or upon very slight evidence, or upon no evidence at all. Cook v. Singer Sewing Mach. Co., 32 P 2d 430,431, 138 Cal App 418."

48. See also (1) Emperor v. Vimlabai Deshpande, AIR 1946 PC 123; (2) United States v. Cortez (1981) 66 Law Ed 2d (United States Supreme Court Reports) page 621 at age 628 (11 A (3); and (3) Dallison v. Caffery (1954) 2 All ER 610.

49. One should not lose sight of the fact that Section 157 (1) requires the police officer to have reason to suspect only with regard to the commission of an offence which he is empowered under Section 156 to investigate, but not with regard to the involvement of an accused in the crime. Therefore, the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the First Information Report as well in the Annexures, if any, enclosed and any attending circumstances which may, not amount to prool. In other words, the meaning of the expression "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise. In this connection, we would like to recall an observation of this Court made in State of Gujarat v. Mohanlal J. Porwal (1987) 2 SCC 364 at p. 369 : (AIR 1987 SC 1321 at p. 1323) while interpreting the expression 'reasonable belief'. It runs thus:

> "Whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with an over indulgent eye which sees no evil anywhere within the range of its eyesight. The circumstances have to be viewed from the experienced eye of the officer who is.well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances."

50. See also Pukhraj v. D. R. Kohli 1962 (Supp) 3 SCR 866: (AIR 1962 SC 316):

51. Resultantly, the condition precedent to the commencement of the investigation under Section 157(1) of the Code is the existence of the reason to suspect the commission of a cognizable offence which has to be, prima facie, disclosed by the allegations made in the first information laid before the police officer under Section 154(1).

52. In State of West Bengal v. Swapan Kumar Guha (AIR 1982 SC 949) (albeit) Chandrachud, C.J. while agreeing with the judgment of Justice A. N. Sen with which judgment Justice Vardarajan also agreed, has expressed his view in his separate judgment on the above point under discussion as follows (at p. 958 of AIR):

> "the position which emerges from these decisions and the other decisions which are discussed by brother A. N. Sen is that the condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfattered discretion to commence investigation under Section 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F. I. R., prima facie, discloses the commission of such offence."

53. As pointed out in the earlier part of this judgment, Section 157(1) is qualified by a proviso which is in two parts (a) and (b). Clause (a) of the proviso is only an enabling provision which we are not very much concerned. However, clause (b) of the said proviso imposes a fetter on a police officer directing him not to investigate a case where it appears to him that there is no sufficient ground in entering on an investigation. As clause (b) of the proviso permits the police officer to satisfy himself about the sufficiency of the ground even before entering on an investigation, it postulates that the police officer has to draw his satisfaction only on the materials which were placed before him at that stage, namely, the first information together with the documents, if any, enclosed. In other words, the police officer has to satisfy himself only on the allegations mentioned in the first information before he enters on an investigation as to whether those allegations do constitute a cognizable offence warranting an investigation.

54. From the above discussion, it is pellucid that the commencement of investigation by a police officer is subject to two conditions, firstly, the police officer should have reason to suspect the commission of a cognizable offence as required by S. 157(1) and secondly, the police officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause (b) of the proviso to Section 157(1) of the Code.

55. The next point for consideration is whether Section 157 of the Code gives the police officers carte blanche drawing no legal bounds in the province of investigation and whether the powers of the police officers in the field of investigation are wholly immune from judicial reviewability.

56. The above questions have been examined by the Courts on several occasions and they have by judicial pronouncements carved out an area, limited though it be, within which the legality of the exercise of powers by police officers in the realm of investigation and yet be subjected to judicial reviewability and scrutiny and the immunity enjoyed by the police officers is only a conditional immunity. The Privy Council in Nazir Ahmed's case (AIR 1945 PC 18) (albeit) though has ruled that it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province has provided an exception to that above observation to the effect that if no cognizable offence or no case of any kind is disclosed, the police would have no authority to undertake the investigation.

57. This Court on several occasions has expressed its concern for personal liberty of a citizen and also has given warning about the serious consequences that would flow when there is non-observance of procedure by the police while exercising their unfettered authority. Gajendragadkar, J. speaking for the Bench in R. P. Kapur v. State of Punjab (1960) 3 SCR 388 at page 396: (AIR 1960 SC 866 at p. 870) states as follows:

> "It is of utmost importance that investigation into criminal offence must always be

> free from any objectionable features or infirmities which may legitimately lead to the grievance of the accused that the work of investigation is carried on unfairly and with any ulterior motive".

58. Krishna lyer, J. in Nandini Satpathy v. P. L. Dani (1978) 2 SCC 424 at p. 430 (AIR 1978 SC 1025 at p. 1030) has expressed his view thus:

> "..... a police officer who is not too precise, too sensitive and too constitutionally conscientious is apt to trample under foot the guaranteed right of testimonial tacitness."

59. Bhargava, J. speaking for the Bench in S. N. Sharma v. Bipen Kumar Tiwari (AIR 1970 SC 786 at p. 78 1 9) (albeit) has stated thus :

> "It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in Section 159 of the Code."

60. Mathew, J. in his majority judgment in Prabhu Dayal Deorath v. The District Magistrate, Kamrup (1 974) 2 SCR 12 at page (AIR 1974 SC 183 at p. 199) while emphasising the preservation of personal liberty has expressed his view thus:

> "We say, and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. Observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of the personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law."

61. Chandrachud, C.J. in Swapan Kumar Guha's case (AIR 1982 SC 949) while examining the power of a police officer in the field of investigation of a cognizable offence has affirmed the view expressed by Mathew, J. and observed as follows (at p. 958 of AIR):

> "There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code."

62. The sum and substance of the above deliberation results to a conclusion that the investigation of

an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. Needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathamable cosmos. Any recognition of such power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy.

63. Heretofore, we have dealt with the intendment of the various statutory provisions relating to the registration of the First Information Report, the statutory duty cast on the police officers to investigate the cognizable offences, the authority of the police officers in the field of investigation and the circumscribed limits imposed on such authority in the conduct of investigation.

64. The central issue involved for scrutiny is whether the order of the Court in quashing the First Information Report and the proceeding of the investigation is legally sustainable and if not, to what extent the said order suffers from legal infirmity.

65. Mr. K. Parasaran forcefully contended that the allegations averred in the complaint even if taken at their face value and accepted in its entirety do not constitute an, offence demanding either the registration of a case or commencement of an investigation; that it would be manifestly unjust to allow the procedure of criminal law to be proceeded with against Ch. Bhajan Lal and that the High Court on a proper appreciation of the material placed before it has come to a correct and indisputable conclusion based on the logical reasonings that no offence is disclosed and no case is made out. According to him the allegations of corruption wrapped in a cocoon of ambiguity, falsity and vagueness demonstrate only the personal and old political rivalry that existed over a period between Ch. Devi Lal and Ch Bhaian Lal rather than constituting a criminal offence.

66. Reverting to the severe critical charges levelled against the validity of the impugned judgment and the recrimination made on behalf of Ch. Bhajan Lal, we shall at the threshold anatomize the reasons imputed by the High Court for quashing the First Information Report in the back drop of the legal principles enunciated in the preceding part of this judgment.

67. The complainant Dharam Pal has cited as many as 20 instances in his complaint with an exordial note that Ch. Bhajan Lal before 1969 was only, a man of ordinary means without having any definite source of income and that he after becoming a Minister and then as Chief Minister, accumulated enormous property worth crores of rupees under shady transactions inclusive of benami transactions in the names of his family members, relatives and persons close to him by misusing his power and position. Added to that in the final part of the complaint he has alleged

> "Besides this, Bhajan Lal has other properties in his name or benami like shares in

cinemas of Sirsa and Adampur, trucks and cars at Adampur and Hissar and Fatehbad, petrol pump at Agroha Mor and is possessing gold, silver and diamond ornaments valued about Rs. 5 crores which are far beyond the legal means of Ch. Bhajan Lal."

68. Both in the Writ Petition (Writ Petition No. 9172/87) (1990) 8 Punjab Legal Reports Statutes 62) filed before the High Court as well in the counter affidavit filed before this Court, Ch. Bhajan Lal (the first respondent herein) has, attempted to answer those allegations levelled against him by (1) giving a detailed account revealing a chronicle of the old political rivalry that existed between him on the one hand and Ch. Devi Lal and Dharam Pal on the other and a brief summary of a spate of criminal cases in which the parties to this proceeding and their men embroiled and (2) offering an explanation to some of the allegations and emphatically abjuring the rest. In support of his assertions made on oath in the counter affidavit, he has enclosed all annexures. An additional affidavit has been filed by Dharam Pal by way of amplification alleging that Bhajan Lal is constructing a palatial house .worth about Rs. 50 lakhs, the built-in area of which is not less than 21,100 sq. ft.

69. During the course of the hearing of the case, an unnumbered interlocutory application in the Special Leave Petition enclosed with a copy of an unnumbered Writ Petition (Civil) of 1988 preferred before the High Court of Delhi by M/ s. Bhanu Steels Pvt. Ltd., D- 1028, New Friends Colony, New Delhi was filed on behalf of Dharam Pal for establishing two facts namely (1) that the finding of the High Court relating to the Instance No. 12 in the complaint alleging that the house No. D-1028, New Friends Colony valuing about Rs. 75 lakhs has been bought under benami transaction, holding 'this one glaring instance shows how the mala fide and false First Information Report is recorded against the petitioner' is falsified and (2) that Bhanu Steels Pvt. Ltd. had entered into an agreement of sale dated 22-9-1988 with Mrs. Roshni Bishnoi (who is the 7th respondent in the said Writ petition and who is none other than the daughter of Ch. Bhajan Lal) in respect of the above property namely D-1028, New Friends Colony, New Delhi for a consideration of Rs. 40 lakhs'plus unearned increase payable to the D.D.A. which at present effective rates work out to Rupees 14,05,515/-.

70. Mr. Chidambaram took a strong objection stating that these untested allegations are introduced only to prejudice the Court and, therefore, the Court should refrain from considering these allegations. We may straightway say that we do not take note of these new allegations as we are not called upon at this stage to embark upon an enquiry whether the allegations in the First Information Report are reliable or not and thereupon to render a finding whether any of the allegations is proved. These are matters which can be examined only by the concerned Court after the entire materials are placed before it on a thorough investigation.

71. As pointed out earlier no counter was filed before the High Court on behalf of the first appellant (the State of Haryana), but only the second and third appellants filed separate written statements at a later stage mainly contending that it is wholly premature to give any reply with regard to the averments made in the Writ Petition. The High Court went in detail of the motive alleged by Ch. Bhajan Lal and then examined the allegations in the light of the untested explanation and denial made by Bhajan Lal and finally concluded that "the charges levelled in the complaint Annexure P-9 by respondent No. 5 against the petitioner are, therefore, all groundless." Since we. have already reproduced some of the,observations of the High Court in the earlier portion of this judgment, it is unnecessary to reproduce them in this connection. The impugned judgment spells out that the learned Judges of the High Court had felt that the non-filing of a written statement by a competent authority of the State Government by way of reply to the averments made in the Writ Petition is a

serious flaw on the part of appellants and as such the averments of Ch. Bhajan Lal should be held as having disproved the entire crimination alleged in the F.I.R. The above view of the High Court in our opinion is neither conceivable nor comprehensible. Further no adverse inference could be drawn on the mere non-filing of a written statement by the State of Haryana in cases of this nature especially when the matter relates to serious disputed facts, yet to be investigated. As rightly pointed out by Mr. Rajinder Sachar the stage is premature and as such the Government could not be expected to have in its possession all the details in support of the allegations made in the complaint before any enquiry or investigation is launched and completed. Similarly, the appellants 2 and 3 who are only police officials also cannot be expected to give a detailed reply to the averments made in the Writ Petition when the investigation has not at all proceeded with. It will be appropriate to refer to a decision of this Court in State of Bihar v. J.A.C Saldanha (1 980) 1 SCC 554 at page 574: (AIR 1980 SC 326 at p. 339) wherein this Court has disapproved the exercise of the extraordinary power of the High Court in issuing a prerogative writ quashing the prosecution solely on the basis of the averments made in the affidavit in the following words:

> "The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its due from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more."

72. It is true that some of the allegations do suffer from misty vagueness and lack of particulars. Further as urged by Mr. Parasaran, there are no specific averments that either Ch. Bhajan Lal or his relations and friends had no source of income to accumulate the properties now standing in their names and that Ch. Bhajan Lal showed any favour to them by misusing his official power. In our considered view, these are all matters which would be examined only during the course of investigation and thereafter by the court on the materials collected and placed before it by the investigating agencies. The question whether the relations and friends of Ch. Bhajan Lal have independently purchased the properties out of their own funds or not also cannot be decided by the Court at this stage on the denial statement of Bhajan Lal alone.

73. While Mr. Rajinder Sachar and Mr. Garg took much pain to show that the reasons given by the High Court in respect of each of the instances are not legally sustainable, Mr. Parasaran submitted a tabular statement by listing out each of the instances of the alleged corruption indicted in the complaint the explanation given in the Writ Petition as well as in the counter affidavit related thereto and the reply in the rejoinder and urged that the allegations in the F.I.R. are nothing but a conglomeration of calumny and falsehood. As the entire matter stands only at the stage of the registration of the case and the investigation has not at all proceeded with on account'of the order of stay granted by the High Court, we do not.intend or propose to examine the truth or otherwise of each of the instances in snippet form and thereafter string them together and express any opinion either way, since in our view any such opinion may affect the case of either party or cripple the course of investigation.

74. An argument was advanced by Mr. Parasaran submitting that the proposition of law laid down by this Court in Swapan Kumar Guha's case (AIR 1982 SC 949) (albeit) holding that "the legal position appears to be that if an offence is disclosed, the Court will not normally interfere with an investigation into the case" clearly shows that this Court has carved out an area wherein the Courts can interfere in.criminal proceedings at any stage if circumstances so warrant and quash the same.

Based on the above proposition of law, he states that as the allegations in the present case which demonstrably show to be speculative and false the judgment of the High Court quashing the proceedings has to be sustained. In our considered view, this submission cannot be countenanced for the reasons - firstly we, at this premature stage, are unable to share the view expressed by the High Court that the charges levelled against Ch. Bhajan Lal are all groundless and secondly Swapan Kumar Guha's case cannot be availed of by the first respondent as the question that came up for determination was entirely different. The facts in Swapan Kumar Guha's case were as follows:

75.Sanchaita Investments, a partnership firm was carrying on business as financiers and investors and in its business the firm accepted loans or deposits from the general public for different periods repayable with interest, giving option to the depositors for premature withdrawal. The firm was carrying on its business on a very extensive scale. While so, the Parliament passed the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. On 13-12-1980, the Commercial Tax Officer, Bureau of Investigation, lodged a complaint of violation of the said Act by the firm which the police on the ground that the amount in excess of 12% interest so paid showed that the Money Circulation Scheme was being promoted and conducted for the making of quick and / or easy money. Two of the partners were arrested. Thereafter the firm and its two partners filed the Writ Petition in the High Court challenging the validity of the First Information Report and the proceedings arising out of the same. The question for consideration was as to whether the First Information Report prima facie disclosed the offence under Section 4 read with Section 3 of the Act of 1978 in the light of the requirement of Section 2(c) of the Act defining the expression "Money Circulation Scheme". This Court examined that question with reference to the facts therein and ultimately held that the allegations did not attract the provisions of Act of 1978. The question that arises for consideration in the present case is not the one as in Swapan Kumar Guha's case (AIR 1982 SC 949).

75. The High Court while quashing the impugned proceedings has made certain sweeping remarks by using the expression 'imaginary and fantastic', 'the fishing enquiry', 'outcome of a desperate and frustrated mind'. Except expressing our view that those remarks are not warranted, we refrain from making any more comment.

76. Mr. Parasaran made a mordacious criticism articulating that the impassioned and impetuous police officers in order to show their loyalty to the third respondent. Ch. Devi Lal had over-stepped their permissible limits in taking a rash decision in Registering the F.I.R. and commencing the investigation and that the said First Information Report bears on its face 'the stamp of hurry and want of care'. He, in this connection, drew our attention to an observation of the High Court which reads thus:

> "Over zealous police officers, who tried to be more loyal to the king i.e. respondent No. 2 than the king himself however fell into the trap laid by respondent No. 5 and ordered registration of the case and its investigation without any clue....."
>
> (Respondents 2 and 5 mentioned in the above observation are Ch. Devi Lal and Dharam Pal respectively).

78. In a perfect system of prevention and detection of crimes, undeniably the paramount duty of a police officer to whom the commission of a cognizable offence is reported, is to register a case without causing any delay and promptly commence the investigation without perverting or subverting the law. When such is the accepted principle, can it be said that the police officers in the instant case have over-zealously taken a hasty decision by misusing their positions in registering the

case and commencing the investigation? To answer this query, let us recapitulate some salient facts on this aspect. The complainant, Dharam Pal, represented the corpplaint on 12-11-1987 before Ch. Devi Lal whose officer on special duty marked it to the DGP on the same day. The DGP sent it with his endorsement dated 12-11-1987 to the S. P. Hissar, who received it on 21-11-1987. The S. P. on the same day made the endorsement "Please register a case and investigate". In the affidavit filed before the High Court, the S. P. has stated that as there were serious allegations of corruption against Ch. Bhajan Lal in the complaint constituting a prima facie case under Section 5(2) of the Act, he made his endorsement on the same day and marked it to the SHO under his signature and that he, then, summoned the SHO and handed over the complaint to him and the SHO also went through the contents of the complaint and was of the opinion that a prima facie case under Section 5(2) of the Act and under Sections 161 and 165, IPC has been made out and that the SHO took the complaint and left for his station for further necessary action. The SHO in his affidavit filed before the High Court has corroborated the version of the S. P. in its entirety. The conduct of the SHO indicates that he without losing any time registered the case and commenced the investigation by proceeding to the 'spot' accompanied by armed constables. The allegations in the complaint over the period commencing from 1969 and ending with 1986 as noted in the F. I. R. Be it noted that by June 1987, Ch. Devi Lal became the Chief Minister. The complaint was presented by Dharam Pal nearly 5 months after Devi Lal became the Chief Minister.

79. The gravamen of the accusation is that Ch. Bhajan Lal has amassed huge assets by misusing his ministerial authority earlier to 1986 which assets are disproportionate to his known and licit sources of income. It has been repeatedly pointed out that mere possession of any pecuniary resources or property is by itself not an offence, but it is the failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitutes the offences within the ambit of Sec. 5(1)(e) of the Act. Therefore, a police officer with whom an investigation of an offence under Section 5(1)(e) of the Act is entrusted should not proceed with a preconceived idea of guilt of that person indicted with such offence and subject him to any harassment and victimisation, because in case the allegations of illegal accumulation of wealth are found during the course of investigation as baseless, the harm done not only to that person but also to the office, he held will be incalculable and inestimable.

80. In this connection it will be appropriate to recall the views expressed by Mitter, J. in Sirajuddin v. State of Madras (1970) 3 SCR 93 1: (AIR 1971 SC 520) in the following words (at p. 526 of AIR):

> "Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general..... The means adopted no less than the end to be achieved must be impeccable."

81. Mudholkar, J. In a separate judgment in State of Uttar Pradesh v. Bhagwant Kishore Joshi (1964) 3 SCR 71 at p. 86: (AIR 1964 SC 221 at p. 227) while agreeing with the conclusion of Subba Rao, J. (as he then was) has expressed his opinion stating:

> "In the absence of any prohibition in the Code, express or implied, I am of opinion

> that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it."

82. We are in agreement with the views, expressed by Mitter, J. and Mudholkar, J. in the above two decisions.

83. Now coming to the present case, we regret to note that the SP seems to have exhibited some over-enthusiasm, presumably to please 'some one' and had directed the SHO to register the case and investigate the same even on the very first day of the receipt of the complaint from the DSP, in whose office the complaint was lying for nearly 9 days. This unprecedented over-enthusiasm shown by the S.P., without disclosing the reasons for making an order eritrusting the investigation to the SHO who is not a designated officer under Section 5A(I), about which we shall advert to in detail in the ensuing part of the judgment, really shocks ones' sense of justice and fair play even though the untested allegations made in the complaint require a thorough investigation. Still, it is an inexplicable riddle as to why the S.P. had departed from the normal rule and hastily ordered the S.H.O. to investigate the serious allegations, levelled against a former Chief Minister and a Minister in the Cabinet of the Central Government on the date of the registration of the case. However, this conduct of the S.P. can never serve as a ground for quashing this F.I.R.

84. The nagging question that comes up for examination more often than not is under what circumstances and in what categories of cases, a criminal proceeding can be quashed either in exercise of the extraordinary powers of the High Court under Article 226 of the Constitation of India or in the exercise of the inherent powers of the High Court under Section482 of the Code. This question has often been hotly debated before this Court and various High Courts. Though in a series of decisions, this question has been answered on several occasions by this apex Court, yet the same still comes up for consideration and is seriously agitated.

85. Mr. Rajinder Sachar and Mr. R. K. Garg vehemently attacked the judgment under appeal contending that the High Court in the exercise of its extraordinary jurisdiction under Article 226 should not have interfered with the unbridled, power of the police officals and quashed the entire proceedings from the stage of the registration of the case especially when the allegations made in the complaint impliedly constitute offences both under the Prevention of Corruption Act and the Indian Penal Code and this unjustifiable interference is in clear violation of the principles laid down by this Court in a host of decisions. In support of their submissions, they drew our attention to a catena of decisions, of which we will presently refer to a few.

86. The Judicial Committee in its oftquoted decision, namely, King Emperor v. Khwaja Nazir Ahmed (AIR 1945 PC 18) (albeit) though strongly observed that the diciary should not interfere with the police in matters which are within their province, has qualified the above statement of law by saying,

> "No doubt, if no cognizable offence is disclosed, and still more, if no offence of any kind is disclosed, the police would have no authority to undertake an investigation."

90. The above observation shows that an investigation can be quashed if no cognizable offence is disclosed by the F.I.R.

91. Gajendragadkar, J. speaking for the Court while considering the inherent powers of the High Court in quashing the First Information Report under Section 561-A of the old Code (corresponding

to Section 482 of the new Code) in R. B. Kapur v. The State of Punjab (cited above (1960) 3 SCR 338: (AIR 1060 SC 866 at p. 869) at page 393 made the following observation:

> "Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person."

92. In the case of State of West Bengal v.S. N. Basak (1963) 2 SCR 52: (AIR 1963 SC 447) the accused therein contended that the statutory power of investigation given to police under Chapter XIV of the Code is not available in respect of an offence triable under the West Bengal Criminal Law Amendment (Special Courts) Act 1949 and that being so, the investigation undertaken by the police was without jurisdiction. The Court while negativing that contention and holding that the application filed by the accused under Section 439 and S. 561-A of the old Code was liable to be dismissed, observed that the statutory powers given to the police under Sections 154 and 156 of the Code to investigate into the circumstances of an alleged cognizable offence without authority from a magistrate cannot be interfered with by the exercise of power under Section 439 or under the inherent power conferred by Sec. 561-A of the old Code. But in that case, no question arose as to whether the allegations in the FIR disclosed any offence at all.

93. In S. N. Sharma v. Bipen Kumar Tiwari (AIR 1970 SC 786) (supra), a First Information Report was lodged naming an Additional District Magistrate (Judicial) as a principal accused. His application under Section 159 of the Code asking that the Judicial Magistrate should himself conduct a preliminary enquiry was dismissed. However, the Court has pointed out thus: (at p. 789 of AIR)

> "lt appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate, cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot.be a ground for holding that such a power must be read in Section 159 of the Code."

94. In Hazari Lal Gupta v. Rameshwai Prasad (1 972) 1 SCC 452 at page 455 : (AIR 1972 SC 484 at p. 486), this Court has stated thus:

> "In exercising jurisdiction under S. 561 -A of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or contiuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is 'reliable or not'. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code, the High Court does not

> interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code."

95. In Jehan Singh v. Delhi Administration (1974) 3 SCR 794: (AIR 1974 SC 1146), the application filed by the accused under Sec. 561-A of the old Code for quashing the investigation was dismissed as being premature and incompetent on the finding that prima facie, the allegations in the FIR, if assumed to be correct, constitute a cognizable offence.

96. This Court in Amar Nath v. State of Haryana (1977) 4 SCC 137 : (AIR 1977 SC 2185) has pointed out that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject matter and that when there is an express provision, barring a particular remedy the Court cannot resort to the exercise of inherent powers.

97. In this connection Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551 : (AIR 1978 SC 47) may be referred to, as this Court has explained the principle, laid down in Amar Nath's case in somewhat modified and modulated form.

98. In Kurukshetra University v. State of Haryana (1977) 4 SCC 451 : (AIR 1977 SC 2229) on which Mr. Rajinder Sachar has placed strong reliance, Chandrachud, J., as he, then was, while disapproving the quashing of a First Information Report at premature stage has expressed his view as follows: (Para 2)

> "It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a First Information Report. The Police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any Court in pursuance of the F. I. R. It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."

99. The Supreme Court in State of Bihar v. J. A. C. Saldanha, (AIR 1980 SC 326 (supra) examined the question whether, when the investigation was in progress, the High Court was justified in interfering with the investigation and prohibiting or precluding further investigation in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. On the facts of that case, this Court set aside the order of the High Court quashing the order of the Magistrate in postponing the consideration of the report submitted to him till the final report of completion of further investigation, directed by the State Government was submitted.to him and held that the High Court in exercise of its extraordinary jurisdiction committed a grave error in giving the direction virtually amounting to mandamus to close the case before the investigation was complete.

100. See also Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala(1983) 1 SCC 9: (AIR 1983 SC 158).

101. The classic exposition of the law is found in State of West Bengal v. Swapan Kumar Guha, (AIR 1982 SC 949) (cited above). In this case, Chandrachud, CJ in his concurring separate judgment has stated that "if the FIR does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or

received". Justice A.P. Sen who wrote the main judgment in that case with which Chandrachud, CJ and Varadarajan, J. agreed has laid. the legal proposition as follows: (at pp. 971 and 972 of AIR)

> "���.the legal position is well-settled. The legal position appears to be that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted���.. Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the Court zealously guards them and protects them. An investigation is carried on for the purpose of Gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed ������." Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case..... If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.

102. But in the above case, this Court as we have pointed out earlier, quashed the proceedings on the ground that the allegations made in the complaint did not constitute an offence within the ambit of the provisions of the Act under which the respondents/ accused therein were prosecuted.

103. Fazal Ali, J. reiterating his earlier view in Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi 1976 (supp) SCR 123 : (AIR. 1976 SC 1947) wherein he has given certain category of cases in which an order of the Magistrate issuing process against the accused can be quashed or set aside and further stating that the same principle laid down in that decision would apply mutatis mutandis to a criminal complaint also, has explained the position of law in Pratibha Rani v. Suraj Kumar (1985) 2 SCC 370 at page 395 : (AIR 1985 SC 628 at p. 642) as follows:

> "It is well settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482, Cr. P.C. to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to

examine the correctness or otherwise of the allegations."

104. Speaking for the Bench, Ranganath Mishra, J. as he then was in Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre (1988) 1 SCC 692: (AIR 1988 SC 709) has expounded the law as follows: (at p.711 of AIR)

> "The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into considertion the special facts of a case also quash the proceedings even though it may be at a preliminary stage."

105. Venkatachaliah, J. in State of Bihar v. Murad Ali Khan (1988) 4 SCC 655: (AIR 1989 SC 1) has stated that the jurisdiction under Section 482 of the Code has to. be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allega'ions in the complaint are likely to be established by evidence or not.

106. See also Talab Haji Hussain V. Madhukar Purshottam Mondekar 1958 SCR 1226 : (AIR 1958 SC 376); L. U. Jadhav V. Shankarrao Apasaheb Pawar (1983) 4 Scc '231 at page 240 : (AIR 1983 SC 1219 at . 1224) and J. P. Sharma v. Vinod Kumar Jain and others (1986) 3 SCC 67: (AIR 1986 SC 833).

107. Mr. Parasaran, according to whom the allegations in the present case do not make out an offence, drew our attention to a recent judgment of this Court in State of U.P. V. V. R. K. Srivastava (1989) 4 SCC 59 : (AIR 1989 SC 2222) to which one of us (S. Ratnavel Pandian, J.) was a party. In that case, it has been ruled that if the allegations made in the FIR, taken on the face value and accepted in their entirety, do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed. The principle laid down in this case does not depart from the proposition of law consistently propounded in a line of decisions of this Court and on the other hand it reiterates the principle that the court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the FIR, do not constitute an offence and that it depends upon the facts and circumstances of each particular case.

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or 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 a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F. I. R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the oncerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

110. lt may be true,as repeatedly pointed out by Mr. Parasaran, that in a given situation, false and vexatious charges of corruption and venality may be maliciously attributed against any person holding a high office and enjoying a respectable status thereby sullying his character, injuring his reputation and exposing him to social ridicule with a view to spite him on account of some personal rancour, predilections and past prejudices of the complainant. In such a piquant situation, the question is what would be the remedy that would redress the grievance of the verily affected party? The answer would be that the person who dishonestly makes such false allegations is liable to be proceeded against under the relevant provisions of the Indian Penal Code - namely under Section 182 or 211 or 500 besides becoming liable to be sued for damages.

111. Reverting to the present case, the allegations made in the complaint, in our considered opinion, do clearly constitute a cognizable offence justifying the registration of a case and an investigation thereon and this case does not fall under any one of the categories of cases formulated above calling for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. litself.

112. It was then urged by Mr. Parasaran with a considerable force and insistence that the entire proceedings against Ch. Bhaj an Lal on account of the acrimonious political rivalary is vitiated either on being tainted with a mala fides or due to lack of bona fide and, therefore, the judgment impugned quashing the entire proceedings should not be interfered with. Much reliance was placed in support of the above submission on three decisions, namely (1) S. Pratap Singh v. State of Punjab (1964) 4 SCR 733: (AIR 1964 SC 72); (2) State of Haryana v. Rajendra Sareen (1972) 2 SCR 452: (AIR 1972 SC 1004); and (3) Express Newspapers Pvt. Ltd. v. Union of India 1985 (supp) 3 SCR 382: (AIR 1986 SC 872).

113. We went through the entire materials very scrupulously but we are not persuaded to hold that the allegations of mala fides or lack of bona fide are substantiated and hence the decisions cited in this behalf cannot be availed of. It may not be out of place to mention here that when the third respondent, Ch. Devi Lal in the SLP was given up from the array of parties by the appellant, no objection was raised on behalf of Ch. Bhajan Lal. In fact, the learned Judge of the High Court before whom a similar contention was raised has rightly negatived that contention and held that the plea of mala fide as against Ch. Devi Lal is not available. Hence there is no merit in this contention.

114. No doubt, there was no love lost between Ch. Bhajan Lal and Dharam Pal. Based on this strained relationship, it has been then emphatically urged by Mr. K. Parasaran that the entire allegations made in the complaint due to political vendetta are not only scurrilous and scandalous but also tainted with mala fides, vitiating the entire proceeding. As it has been repeatedly pointed out earlier the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case, that is, on 21-11-1987. The evidence has to be gathered after a thorough investigation and placed before the Court on the basis of which alone the Court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. At this stage, when there are only allegations and recriminations but no evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, we are unable to see any force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides. Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity, that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. In this connection, the following view expressed by Bhagwati, CJ in Sheonandan Paswan v. State of Bihar (1987) 1 SCC 288 at page 318: (AIR 1987 SC 877 at p. 891) may be referred to

> "It is a well established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."

Beyond the above, we do not wish to add anything more.

115. It was again contended that mala fides are writ large on the extra-ordinary interest evinced by the police officers and the hasty direction given by the S. P. Needless to say that the question of

mala fide exercise of power will assume significance only if an authority acts for unauthorised purpose. The proper test to be applied in such a case is as to what is the dominant purpose for which the power is exercised. The principle of dominant purpose is explained in the following decisions:

> (1) The King v.Minister of Health (1929) l K. B. 619; (2) Rex v. Brighton Corporation ex parte Shoosmith (1907) 96 LT 762; (3) Earl Fitzwilliam's Wentworth Estate Co. Ltd. v. Minister of Town and Country Planning (1951) 2 K. B. 284; and (4) P. V. Jagannath Rao v. State of Orissa (1968) 3 SCR 789 : (AIR 1969 SC 215).

116. Applying the test, laid down in the above decisions to the present case, we are of the opinion that the dominant purpose of registration of the case and the intended follow up action are only to investigate the allegations and present a case before the Court, if sufficient. evidence in support of those allegations are collected but not to make a character assassination of Ch. Bhajan Lal and their relatives. Therefore, we are not able to see any substance in this submission.

117. We have, so far,made a detailed and searching analysis on the legal issues with regard to the statutory duty of an officer-incharge of a police station in registering the First Information Report and commencing the investigation thereon as well the principles relating to the exercise of extra-ordinary and inherent powers of the High Court in quashing either the FIR or the entire criminal proceedings as the case may be; and bearing in mind the enunciation of law, we have given our anxious consideration and careful thought to all the contentions made by all the learned counsel with considerable force and emphasis. The resultant and inescapable logical conclusion which we unreservedly arrive at is that the order of the High Court quashing the First Information Report, viewed from any angle, cannot be sustained both on the question of law and facts. Consequently, we set aside that part of the judgment of the High Court quashing the First Information Report.

118. Lastly,a fervent,but inexorable plea was made requesting this Court to take judicial notice of the fact that the Justice Jaswant Singh Commission, appointed to enquire into the allegations of disproportionate assets of Ch. Bhajan Lal through corrupt means found that these allegations were baseless. Both Ch. Devi Lal and Dharam Pal in their affidavits filed before the High Court have stated that the allegations in the FIR are quite different from those which was the subject matter of enquiry before the Justice Jaswant Singh Commission. Be that as it may, we are not inclined to give any finding one way or other merely on the report of the Justice Jaswant Singh Commission by taking judicial notice of the same.

119. During the course of the hearing of this appeal as we have entertained a doubt as to the validity of the statutory power of the Inspector of Police, the third appellant herein who is not a designated officer to investigate this case registered under Section 5(2) of the Act (presumably Section 5(1) (e) read with Section 5(2)) and under Sections 161 and 165, IPC in the teeth of the mandatory provisions of Section 5A and in the light of the observations of this Court made in H. N. Rishbud and Inder Singh v. The State of Delhi (J955) 1 SCR 1150: (AIR 1955 SC 196) and State of Madhya Pradesh v. Mubarak Ali 1959 Supp. (2) SCR 20 1: (AIR 1959 SC 707), all the learned counsel addressed their arguments on this point at the instance of this Court. Though initially, it was submitted on behalf of the State (the first appellant herein) that the order of the S.P. dated 21-11-1987 directing the Inspector to investigate the case would fall within the purview of the provisos to Section 5A, subsequently two Government orders issued by the Government of Haryana - one dated 25-7-1975 authorising all the Inspectors of Police under the administrative control of the Inspector General of Police, Haryana, to investigate offences under Section 5 of the Act and another dated 19th April 1988 authorising all the Inspectors of Police posted in the Chief Minister's Flying Squad,

Haryana, Chandigarh for the purpose of the first proviso to Sec..5A (1) of the Act. It is pertinent to note that both the government orders were issued in exercise of the powers, conferred by the first provisos to sub-section (1) of Section 5(A) of the Act.

120. Section 5X (1) of the Act with the relevant provisos reads thus:

> "Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) no police officer below the rank,-
>
> a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
>
> b) in the presidency towns of Calcutta and Madras, of an Assistant Commissioner of Police;
>
> c) in the presidency town of Bombay of a Superintendent of Police; and
>
> d) elsewhere, of a Deputy Superintendent of Police,
>
> shall investigate any offence punishable under Section 161, Section 165 or Section 165A of the Indian Penal Code (45 of 1860) or under Section 5 of this Act without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:
>
> Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:
>
> Provided further that an offence referred to in clause (e) of sub-section (1) of Section 5 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

121. Section 5A of the Act as it originally stood, was inserted by the (Second Amendment) Act 58 of 1952 based on the recommendations of the Committee of Members of Parliament under the chairmanship of Dr. Bakshi Tek Chand. The said section as it stands now was substituted by Act 40 of 1964, the main object of which is to protect the public servant against harassment and victimisation. (See The State of M. P. v. Mubarak Ali (AIR 1959 SC 707) (albeit). In A. C. Sharma v. Delhi Administration (1973) 3 SCR 477: (AIR 1973 SC 913), Dua, J. said that the scheme of this provision is for effectively achieving the object of successful investigation into the serious offences mentioned in Section 5 of the Act without unreasonably exposing the public servant concerned to frivolous and vexatious proceedings. A Constitutional Bench of this Court in A. R. Antulay v. R. S. Nayak (1984) 2 SCR 914 at page 941 : (AIR 1984 SC 718 at p. 732) has observed that "Section 5A is a safeguard against investigation of offences by public servants, by petty or lower rank police officer. "

122. According to Section 5A, notwithstanding anything contained in the Code, no police officer below the rank specified in clauses (a) to (d) of Section 5A (1), shall investigate any offence punishable under Sections 161, 165 or 165A of the IPC or under Section 5 of the Act without the order of a Presidency Magistrate or a Magistrate of the first class as the case may be or make arrest

therefor without a warrant. There are two provisos to that section. As per the first proviso, if a police officer not below the rank of an Inspector of Police is authorised by the State Government, either by general or special order, he may investigate any such offence without the order of a Magistrate or make arrest therefor without a warrant. According to the second proviso, an offence referred to in clause (e) of sub-section (1) of Section 5 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

123. It means that a police officer not below the rank of an Inspector of Police authorised by the State Government in terms of the first provisos can take up the investigation of an offence referred to in clause (e) of Section 5 (1) only on a separate and independent order of a police officer not below the rank of a Superintendent of 'Police. To say in other words, a strict compliance of the second proviso is an additional legal requirement to that of the first proviso for conferring a valid authority on a police officer not below the rank of an Inspector of Police to investigate an offence falling under clause (c) of Section 5(1) of the Act. This is clearly spelt out from the expression "further provided" occurring in the second proviso.

124. A conjoint reading of the main provision, 5A(1) and the two provisos thereto, shows that the investigation by the designated police officers is the rule and the investigation by an officer of a lower rank is an exception.

125. It has been ruled by this Court in several decisions that Section 5A of the Act is mandatory and not directory and the investigation conducted in violation thereof bears the stamp of illegality but that illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the Court for trial and where the cognizance of the case has in fact been taken and the case is proceeded to termination the validity of the proceedings with the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby. See (1) H. N. Rishbud and Inder Singh v. State of Delhi (AIR 1955 SC 196) (supra); (2) Major B. G. Barsay v. State of Bombay (1962) 2 SCR 195: (AIR 1961 SC 1762); (3) Munna Lal v. State of Uttar Pradesh (1964) 3 SCR 88: (AIR 1964 SC 28); (4) S. N. Bose v. State of Bihar (1968) 3 SCR 563 : (AIR 1968 SC 1292); (5) Muni Lal v. .Delhi Administration (1971) 2 SCC 48: (AIR 1971 SC 1525) and (6) Khandu Sonu Dhobi v. State of Maharashtra (1972) 3 SCR 510 : (AIR 1972 SC 958). However, in Rishbud's case and Muni Lal's case, it has been ruled that if any breach of the said mandatory provision relating to investigation is brought to the notice of the Court at an early stage of the trial, the Court will have to consider the nature and extent of the violation and pass appropriate orders as may be called for to rectify the illegality and cure the defects in the investigation.

126. Coming to the facts of the present case under consideration, the investigation did not proceed and could not be proceeded with, since the High Court by an interlocutory order restrained the investigation even at the initial stage, i. e. on the date when Rule Nisi was issued in the Writ Petition. Therefore, it is the appropriate stage for examination of the question as to whether the necessary requirements contemplated under Section 5A (1) in permitting the Inspector of Police, are strictly complied with or not.

127. For the proper understanding of the reasoning which we would like to give touching the question of the validity of the authority of the third appellant, we would like to reproduce the Government order dated 26th July 1975 which reads as follows:

"HARYANA GOVERNMENT

HOME DEPARTMENT

ORDER

No. 4816-3H-75/22965

The 26th July 1975

> Conferred by the first proviso to sub-seetion (1) of Section 5A of the Prevention of Corruption Act, 1947, the Governor of Haryana hereby authorises all the Inspectors of Police under the administrative control of the Inspector General of Police, Haryana to investigate offences under Section 5 of the said Act.

S. D. Bhandari

Secretary to Government, Haryana

Home Department"

128. The subsequent Government Order dated 19-4-1988 is on the same line of the above Government Order.

129. On the strength of the above Government Order of 1975, it has been rightly contended that the third appellant (Inspector of Police), though not a designated officer has been legally authorised by the State Government in exercise of its powers under the first proviso of Section 5A(1) to investigate the offences falling under Section 5 of the Act, namely, the offences enumerated in clauses (a) to (e) of Section 5(1) of the Act.

130. Now what remains for consideration is whether there is any valid order of the S. P. permitting the third appellant to investigate the offence falling under clause (e) of subsection (1) of Section 5. As we have already mentioned in the earlier part of this judgment, the S. P. (the second appellant) has given the one word direction on 21-11-1987 'investigate'. The question is whether the one word direction 'investigate' would amount to an 'Order'within the meaning of second proviso of Section 5 A (1).

131. In H. N. Rishbud's case (supra) ((1955) 2 SCR 1150) at page 1165:(AIR 1955 SC 196 at p. 205) while examining the order of a Magistrate contemplated under Sec. 5A(I), it has been observed:

> "When a Magistrate is approached for granting such permission he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The, granting of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy underlying it. In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such re-investigation as may be called for, wholly or partly.....

132. The above dictum has been approved in Mubarak Ali's case (AIR 1959 SC 707), the facts of

which disclose that the District Magistrate before whom an application was submitted by the Sub-Inspector seeking permission under Section 5A passed the order reading "permission granted". Subba Rao, J. as he then was while speaking for the Bench disapproved such casual order and expressed that the Magistrate did not realise the significance of this order giving permission but only mechanically issued the order and stated thus:

> "..... in a case where an officer rather than the designated officer, seeks to make an investigation, he should get the order of a Magistrate empowering him to do so before he proceeds to investigate and it is desirable that the order giving the permission should ordinarily, on the face of it, disclose the reasons for giving the permission."

133. Hegde, J. in S. N. Bose's case (AIR 1968 SC 1292) following the maxim in Mubarak Ali's case (AIR 1959 SC 707) has expressed his opinion in the following words:

> "It is surprising that even after this Court pointed out the significance of Section 5A in several decisions there are still some Magistrates and police officers who continue to act in a casual manner. It is obvious that they are ignorant of the decisions of this Court."

134. The conspectus of the above decisions clearly (show?) that the granting of permission under Section 5A authorising an officer of lower rank to conduct the investigation is not to be treated by a Magistrate as a mere matter of routine, but it is an exercise of his judicial discretion having regard to the policy underlying and the order giving the permission should, on the face of it, disclose the reasons for granting such permission. It is, therefore, clear in the light of the above principle of law that the Superintendent of Police or any police officer of above rank while granting permission to a non-designated police officer in exercise of his power under the second proviso to Section 5A(1), should satisfy himself that there are good and sufficient reasons to entrust the investigation with such police officer of a lower rank and record his reasons for doing so; because the very object of the legislature in enacting Section 5A is to see that the investigation of offences punishable under Section 161, 165 or 165A of Indian Penal Code as well as those under Section 5 of the Act should be done ordinarily by the officers designated in clauses (a) to (d) of Sec. 5A(1). The exception should be for adequate reasons which should be disclosed on the face of the order. In this connection, it is worthy to note that the strict compliance with Section 5A(I) becomes absolutely necessary, because Section 5A(1) expressly prohibits police officers, below certain ranks, from investigating into offences under Sections 161, 165 and 165A, IPC and under Section 5 of the Act without orders of Magistrates specified therein or without authorisation of the State Government in this behalf and from effecting arrests for those offences without a warrant. See also A. C. Sharma v. Delhi Administration (AIR 1973 SC 913) (supra).

135. In the present case, there is absolutely no reason, given by the S. P. in directing the SHO to investigate and as such the order of the S. P. is directly in violation of the dictum laid down by this Court in several decisions which we have referred to above. Resultantly, we hold that the third appellant, SHO is not clothed with the requisite legal authority within the meaning of the second proviso to Section 5A(1) of the Act to investigate the offence under clause (e) of Section 5(1) of the Act.

136. There is also one more legal hurdle which the prosecution has to overcome in entrusting this investigation with the SHO. As has been repeatedly mentioned the case under consideration is not

only registered under Section 5(2) but also under Secs. 161 and 165, IPC. The Government Order authorises the Inspector of Police of Haryana State to investigate only the offences falling under Section 5 of the Act. Therefore, the SHO who has taken up the investigation of the offences inclusive of those under Sections 161 and 165, IPC is not at all clothed with any authority to investigate these two offences, registered under the IPC, apart from the offence under Section 5(2) of the Act. When Mr. Sachar was confronted with this legal issue, he tried to extricate himself from this situation saying that the prosecution would approach the Magistrate of the first class for obtaining an order under See. 5A(1) authorising SHO to investigate the offences under the provisions of the IPC. However, as the question relating to the legal authority of the SHO is raised even at this initial stage, we feel that it would be proper and also desirable that the investigation, if at all to be proceeded with in the opinion of the State Government, should proceed only on the basis of a valid order in strict compliance with the mandatory provision of Section 5A(1).

137. From the above discussion, we hold that (1) as the salutary legal requirement of disclosing the reasons for according the permission is not complied with; (2) as the prosecution is not satisfactorily explaining the circumstances which impelled the S. P. to pass the order directing the SHO to investigate the case; (3) as-the said direction manifestly seems to have been granted mechanically and in a very casual manner, regardless of the principles of law enunciated by this Court, probably due to blissful ignorance of the legal mandate, and (4) as, above all, the SHO has got neither any order from the Magistrate to investigate the offences under Sections 161 and 165, IPC nor any order from the S. P. for investigation of the offence under Section 5(1)(e) of the Prevention of Corruption Act in the manner known to law, we have no other option, save to quash that order of direction, reading "investigate" which direction suffers from legal infirmity and also the investigation, if any, so far carried out. Nevertheless, our order of quashing the direction of the S. P. and the investigation thereupon will not in any way deter the first appellant, the State of Haryana to pursue the matter and direct an investigation afresh in pursuance of the F.I.R., the quashing of which we have set aside, if the State so desires, through a competent police officer, clothed with the legal authority in strict compliance with Section 5A(1) of the Act.

138. The learned Judges of the High Court before parting with their conlcusions not being "able to resist temptation" of making an observation with a textual passage which is more or less suggestive of an advice have expressed as follows.

> "Besides what has been said and observed above, before parting with this case, we have not been able to resist the temptation of saying that every politician in Haryana may be the Chief Minister or otherwise, should not while holding office act on the maxim,'Everything is fair in love and war' but should be sanguine and careful to mete out to his predecessor, a treatment in the words of Porus, uttered while in chains, on being brought before Alexander the Great, 'a treatment which a king should mete out to another king' because it is often said 'as you sow, so shall you reap'."

139. Mr. Rajinder Sachar and Mr. R. K.Garg submitted with strong intensity of conviction that the above observation of the learned Judges should not be countenanced because if such observations, especially in the context of this case receive judicial recognition, it will lead only to the catastrophe of our democratic system to the detriment of the welfare of the country and if such observations are accepted then every successor Government should bury its head like an Ostrich thereby freely allowing the malfeasance and misfeasance of the former government to go unnoticed, un-rectified and the offenders unpunished. According to them there is absolutely no material for holding that there was any campaign of vilification for political gain based on personal animus by the successor

Government as against the outgoing Government, particularly when the criminal proceedings are initiated by an individual.

140. To buttress their submission, they relied on the following decisions dealing with similar contentions attacking the institution of criminal proceedings characterising them as the outcome of political vendetta. Those observations being - (1) P. V. Jagannath Rao v. State of Orissa (1968) 3 SCR 788 : (AIR 1969 SC 215); (2) Krishna Ballabh Sahay v. Commissioner of Enquiry (1969) 1 SCR 387 : (AIR 1969 SC 258); (3) Sheonandan Paswan v. State of Bihar (1983) 1 SCC 438 : (AIR 1983 SC 194); (4) Sheonandan Paswan v. State of Bihar (1987) 1 SCC 288: (AIR 1987 SC 877); and (5) A. R. Antulay v. R. S. Nayak (1988) 2 SCC 502 : (AIR 1988 SC 1531).

141. It would be appropriate to refer to the observation made by this Court in two of the above decisions.

142. In Krishna Ballabh Sahay's case (1969 (1) SCR 387) at page 393 : (AIR 1969 SC258 atp. 261) Hidayatullah, C.J. speaking for the Constitutional Bench has pointed out:

> "It hardly needs any authority to state that the inquiry will be ordered not by the Minister against himself but by some one else. When a Ministry goes out of office, its successor may consider any glaring charges and may, if justified, order an inquiry. Otherwise, each Ministry will become a law unto itself and the ccrrrupt conduct of its Ministers will remain beyond scrutiny."

143. In A. R. Antulay's case (1988 (2) SCC 602) at page 673: (AIR 1988 SC 1531 at p. 1561), Sabyasachi Mukharji, J. (as he then was) speaking for himself and two other learned Judges expressed his opinion on a similar issue in the following words:

> "..... we must remind ourselves that purity of public life is one of the cardinal principles which must be upheld as a matter of public policy. Allegations of legal infractions and criminal infractions must be investigated in accordance with law and procedure established under the Constitution. Even if he has been wronged, if he is allowed to be left in doubt that would cause more serious damage to the appellant. Public confidence in public administration should not be eroded any further. One wrong cannot be remedied by another wrong."

144. We feel that the following observation made by Krishna lyer, J. in State of Punjab v. Gurdial Singh (1980) 1 SCR 1071 (AIR 1980 SC 319) may be recapitulated in this connection, that being:

> "If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not regicidal."

145. In the light of the above decisions of this Court, we feel that the said observations made in the impugned judgment are unwarranted and the historical anecdote is out of context and inappropriate. We are afraid if such a view is to be judicially accepted and approved, then it will be tantamount to laying down an alarming proposition that an incoming Government under all circumstances, should put its seal of approval to all the commissions and omissions of the outgoing Government ignoring even glaring lapses and serious misdeeds and the deleterious and destructive consequences that may follow therefrom. Hence we are constrained to express our disapproval since the text, tenor and tone of the above observations leave us with the feeling that such misplaced sympathy indicated therein appears to have considerably weighed with the learned Judges in taking the extreme step in

quashing the First Information Report. We do not like to make any more comment except saying that as we have pointed out in our exordial note, in our democratic polity where the 'Rule of Law' reigns, no one - however highly placed he may be - can claim immunity, much less absolute immunity from the law, but he is always under the law.

In Summation:

146. We set aside the judgment of the High Court quashing the First Information Report as not being legally and factually sustainable in law for the reasons aforementioned; but, however, we quash the commencement as well as the entire investigation, if any, so far done for the reasons given by us in the instant judgment on the ground that the third appellant (SHO) is not clothed with valid legal authority to take up the investigation and proceed with the same within the meaning of Section 5A(1) of the Prevention of Corruption Act, as indicated in this judgment. Further we set aside the order of the High Court awarding costs with a direction that the said costs is payable to the first respondent (Ch. Bhajan Lal) by the second respondent (Dharam Pal).

147. In the result, the appeal is disposed of accordingly but at the same time giving liberty to the State Government to direct an investigation afresh, if it so desires, through a competent Police Officer empowered with valid legal authority in strict compliance with S. 5A(1) of the Act as indicated supra. No order as to costs.

Order accordingly.

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