State of Bihar and another

Vs

P.P. Sharma and another

Criminal Appeals Nos. 527-28 of 1990

(Kuldip Singh, K. Ramaswamy JJ)

02.04.1991

JUDGEMENT

KULDIP SINGH, J.:-

1.The Bihar State Co-operative Marketing Union Limited (BISCOMAUN) (hereinafter called'BISCO) is an apex body operating in the State of Bihar. It is a federation of Co-operative Societies and its primary-function is to supply fertiliser to farmers through its depots and godowns numbering about 550, spread-over the State of Bihar.

2. Shri P. P. Sharma, IAS took over as Managing Director of BISCO on May 26, 1986 and continued to hold the said office till June 14, 1987. From December, 31, 1986 to June 14, 1987 he was also Secretary, Department of Co-operative, Government of Bihar and Registrar, Co-operative Societies, State of Bihar. G. D. Mishra was working as Advisor to BIS.CO during 1986-88. He resigned from the said post on August, 1988. It may be mentioned that one Tapeshwar Singh was the Chairman of BISCO during the above said period.

3. M/s. Rajasthan Multi Fertiliser Pvt. Ltd., Udaipur, Rajasthan (hereinafter called the 'firm') was holding a Certificate of Registration issued on August 8, 1985 by the Director of Agriculture, Bihar. It is alleged that a letter dated August 19, 1986 was addressed by the firm to the Managing Director of BISCO offering to supply fertiliser of specified grade and quality at Rs. 2,550/- per MT plus local taxes. It may be mentioned that the State of Bihar had issued a notification dated July 14, 1984 fixing the prices for different grades of fertilisers. The price of thd grade offered by the firm was fixed at Rs. 2,559/- per MT under the said notification. The firm sent another letter on October 5, 1986 repeating its offer contained in its. earlier letter. The offer of the firm was accepted and G. D. Mishra, on November 22, 1986, placed an order with the firm for the supply of 2,500 MT of fertiliser (NPK 15 : 15 : 71/2) at Rs. 2509.50 per MT. Thereafter G. D.Mishra placed further order with the firm on December, 19, 1986 for additional supply of 408 MT of fertiliser on the same terms. The firm supplied 2916 MT of fertiliser to BISCO. The total price to be paid to the firm was Rs.73,16,244/-. Rs.23.02 lac was paid on December 18, 1986. Thereafter Rs. 30.96 lac was paid on January 22, 1987. Thus a total sum of about Rs. 54/ - lac was paid to the firm. The samples of the fertiliser supplied by the firm were got tested by BISCO from Rajendra Agriculture University, Pusa which were found to be standard.

4. It is the admitted case of the parties that the fertiliser supplied by the firm could not be sold to the farmers and huge stock kept on lying in the godowns of BISCO for long time. The BISCO was manufacturing "Harabahar" brand of fertiliser at its two factories. It was ultimately decided by the BISCO that the fertiliser which was supplied by the firm and which was lying in the godowns

unsold be used as raw material for the manufacture of "Harabahar" fertiliser. The fertiliser was thereafter shifted from various godowns of BISCO to its two factories for conversion into "Harabahar".

5. The reports received from the State Laboratory, Mithapur showed the fertiliser supplied by the firm to be substandard. Majority of the samples sent to the laboratory for testing were found to be substandard. It is alleged that G. D. Mishra on behalf of BISCO wrote a letter dated October 13, 1987 to the firm requesting to take back the sub-standard fertiliser from eight depots mentioned in the said letter.

6. Shri R. K. Singh, IAS took over the charge as the Managing Director of BISCO on December 29, 1988. The management of BISCO was superseded by an order of the State Government dated July 30, 1988 and R. K. Singh was appointed as an Administrator.

7. On September 1, 1988 R. K. Singh sent a written report to the Station House Officer, Police Station, Gandhi Maidan, Patna on the basis of which a case under Ss. 409, 420, 468, 469, 4711 120B, I.P.C. and 7 of the Essential Commodities Act was registered against eight persons including Tapeshwar Singh, P.P. Sharma and G. D. Mishra. Four other accused persons are the directors of the firm and the fifth one is alleged to have forged the test report given by the Rajendra Agricultural University, Pusa. It would be useful to reproduce the First Information Report (hereinafter called 'FIR') hereinafter:

"First Information Report.

Bihar State Co-operative Marketing Union Ltd. Biscomaun Bhawan, West Gandhi, Maidan, Patna-800 001.

Ref. No. AD/c-70 1-9-1988

The Officer Incharge,

Patna Kotwali P. S.

BISCOMAUN is an institution in the Cooperation Sector and one of its main business activities is to purchase fertilisers and to sell it through its depots to the farmers of the State. It owns two factories - one at Tilrath and the other at Jasidih, which produce mixutre fertiliser. It is marketed in the brand name of 'Harabahar'.

In course of checking of the stock of fertilisers lying in the various godowns of BISCOMAUN and position of raw materials in the factories, 'it was detected that huge quantity of unsold 'Suraj Brand N. P. K.' mixture fertiliser was lying in the depots of BISCOMAUN which was being sent to the fetiliser factories of BISCOMAUN to be used as raw material in the manufacture of 'HARABAHAR' (mixture fertiliser). On perusal of the relevant files, it transpired that 'Suraj Brand N.P.K.' was purchased from a private firm namely M/s. Rajashtan Multi Fertiliser Pvt. Ltd., Udaipur (Rajasthan). It is also evident from the relevant records that the entire transaction for the purchase of the Suraj Brand N. P. K.'from the said firm and its utilisation in the manufacture of HARABAHAR was fraudulent and a conspiracy for wrongful gain to M/s. Rajasthan Multi Fertiliser Pvt. Ltd. and erstwhile Chairman of BISCOMAUN, Sri Tapeshwar Singh and some officers responsible for the purchase of said substandard fertiliser and wrongful loss to the institution as well as the farmers of the State of Bihar". The facts in brief are as follows:

> The said firm M/ s. Rajasthan Multi Fertilisers Pvt. Ltd. wrote a letter to the Chairman, BISCOMAUN enclosing its previous letter to the Managing Director, BISCOMAUN, tating therein that they were manufacturing fertilisers under the brand name of 'Suraj Brand N.P.K. (15 : 15 : 71/2) mixture.fertilisers and they should be favoured with orders for supply of the same to BISCOMAUN. They quoted the selling rate asRs.2,550/-per M. T. plus taxes. The letter was not received in the normal course in the office, but was handed over direct to the then Chairman. It is also to be noted that the said letter was not in response to any advertisement of BISCOMAUN inviting offers.

The Chairman endorsed this letter to Managing Director. This letter was not allowed to come down to the office for examination in the normal course. On this letter, the then Advisor (Rehabilitation) Shri G. D. Mishra initiated the file at his own level and put up a proposal from his own level for the purchase of the said fertiliser from the said firm. He has mentioned in his note that the question of purchase had been discussed between himself and the Chairman and Managing Director. It is clear that the proposal for purchasewas put up in pursuance to that discussion, after the meeting of minds had taken place.to order the purchase. .Nobody else in the organisation was taken into confidence about this proposal. Even the advice of Finance was not taken.

This proposal initiated by Shri G. D. Mishra, Adviser (Rehabilitation) was endorsed by the then Managing Director, Shri P. P. Sharma, for the approval of the Chairman and the proposal was approved by the Chairman.

> "No tenders were called for nor any steps were taken to ascertain the competitive prices of similar type of fertiliser. Even the quality of the fertiliser was not tested before issuance of purchase order. All this was done in extreme haste. "

The proposal was accepted on 20-11-1986, and the adviser (Rehabilitation) through his letter dated 22-11-1986 placed an order for supply of 2,500 mts. of fertiliser to the firm.

One of the conditions of the purchase was that the said fertilisers will contain nutrient value in proportion 15: 15: 7 1/ 2 and if it was found that the nutrient value is less than the above, the consignment will be rejected. The chemical examination was to be done either in the laboratory of BISCOMAUN or any other laboratory approved.by the State/Central Government. Contrary to this condition, the chemical examination of the fertiliser is said to have been carried out by one Dr. S. N. Jha, Associate Professor of Soil Science, Rajendra Agriculture University. It is also not clear from the records that by whom the samples were collected and sent to the said expert. According to Fertiliser Control Order, 1957, the sample must be collected by the Fertiliser Inspectors of the State Government and an analysis must be conducted in the laboratory of the State/Central Government, Dr. Jha reported that the samples analysed by him was of the proper grade and standard containing nutrient in the proportion of 15 : 15 : 71/2.

The said fertiliser was distributed to the different depots of BISCOMAUN. Against the decision to purchase 2,500 mts. The then Adviser (Rehabilitation) Shri G. D. Mishra gave despatch instruction for 2916 mts. to the said firm. It needs to be pointed out that the said Rajasthan Multi Fertilisers Pvt. Ltd. had no E.C,A. Allocation for sale of their product in Bihar. Even then, the management of BISCOMAUN placed orders for supply of fertilisers with this company.

When the sales of the fertiliser commenced, samples were taken from various depots in the normal

course by the fertiliser Inspectors, who are officers of the Agriculture Department throughout the State and sent to the authorised laboratories for chemical examination. The analysis revealed that the said fertiliser was spurious and of substandard quality and lacking in nutrient value. Copies of the result of the chemical analysis are enclosed. The samples were taken from BISCOMAUN depots of Benibad, Gangaiya, Bochaha, Dholi, Sakra, Mainapur (all from Muzaffarpur) Bihta, Bakhtiarpur, Karbighaiya (Patna), (Jahanabad).

As per the terms of purchase, the said spurious fertiliser was to be taken back by the manufacturer at their own cost. Accordingly, the then Adviser (Rehabilitation) wrote to the firm that the said fertilisers from the following depots be taken back (Arwal, Mainapur, Sakra, Dholi, Benibad, Gangaiya and Bihta). It is to be noted that wherever the samples of fertiliser were analysed they were found to be substandard. Therefore, the natural presumption was that the entire lot of the said fertiliser was spurious. Therefore, either the entire lot should have been returned or the entire lot tested. Instead of this, the fertiliser from only the depots from which the samples were taken were directed to be returned. 'This was a mala fide act on the part of the Adviser (Rehabilitation) Shri G. D. Mishra, with an intention to cause wrongful gain to the supplier and wrongful. loss to the Biscomaun as well as to the farmers of the State. As a matter of fact, he allowed sale of spurious substandard fertiliser to the farmers of the State from the depots, wherefrom samples were not taken.'

There was undue haste in making payment. The said Rajasthan Multi-Fertilisers Pvt. Ltd. was paid Rs. 23.02 lacs vide sanction dated 17-12-1986. The payment was released in spite of the fact that it was pointed out in Challans Nos. 206 and 209 by the Depot Manager that the Fertilisers were not in granulated form and the bags were nonstandard. A further proposal for payment was put up in December-January, 1986-87. Again it was pointed out by the Accountant that the test report was not received. It was also again pointed out that the supplies were made in un-standard bags. The Adviser, (Rehabilitation) Shri G. D. Mishra overruled this objection and recommended to the Managing Director that not only the said bill of Rs. 13.07 lacs be paid but also two bills of Rs. 12.03 lacs and Rs. 5.83 lacs, which had not been examined by the accounts also be paid. This was in January, 1987. So in fact the fertiliser Company was paid Rs. 23.02 + Rs. 30.94 lacs in January, 1987 itself. In all, out of the total bill (after deducting shortage) of Rs. 65,53,642.11, Rs. 53,97,277.32 had been paid to the company.

The reports of the fertiliser being substandard started coming from May, 1987. On the 2nd May, 1987, the PEO, Bihta informed that the said Suraj Brand fertiliser was found substandard on chemical analysis. On 1st of June, 1987, the Director of Agriculture wrote to Biscomaun informing Biscomaun that the samples of the said fertiliser taken from Minapur, Bihta, Arwal and Sakru were found to be substandard and spurious. On 18-5-1987, the Regional Officer, BISCOMAUN, Gaya had reported that the sample of the said fertiliser taken from Arwal Depot by the Agriculture Officer and tested is spurious.

When reports of the chemical analysis by the State Laboratory started coming in and it was found that the said fertiliser was spurious and substandard, the then Management of Biscomaun made a conspiracy to consume the spurious fertiliser instead of returning it to the manufacturer and claiming back the money paid.

It has been clarified above that as per the terms of the purchase, the entire fertiliser of Suraj Brand ought to have been returned to the company and refund taken. Instead of this, in order to cause wrongful gain to the company and wrongful loss to Biscomaun and the then Management, as well as

to remove the evidence of the stock of spurious fertilisers, the then Management of Biscomaun took a decision to reprocess old stock of fertiliser in the two factories of Biscomaun at Tilrath and Jasidih. It was proposed to the Board that these fertilisers in the stock of Biscomaun depot, which were very old and difficult to sell should be used in these two factories for manufacture of Harabahar. This proposal was put up to the Board in March, 1987. The Board approved this proposal.

It is to be noted that the Board only approved the proposal to reprocess the old stock and as the stock of Suraj Brand was not old one, again to suit their end, a proposal was mooted before the Executive Committee in May, 1987 to reprocess all the stock lying in depots, which was approved. The Executive Committee could not modify the decision taken by the Board of Directors. The said Suraj Brand fertiliser could not be said to be an old stock because it was purchased only in December, 1986. Apart from that, as soon as the fertiliser was proved to be substandard by the State laboratory, Biscomaun should have recovered the amount paid to the Company.

However, on the said Executive Committee decision, the management of Biscomaun along with old stock of fertiliser also started transferring the said Suraj Brand fertiliser to the two factories so that it could be converted into Harabahar and consumed. It is to be noted that out of 2900 mts., 2,500 mts. had remained unsold by June, 1987. Stocks proved to be spurious and substandard were transferred to the Biscomaun factories at Tilrath and Jasidih for being converted into Harabahar. The said Suraj Brand material from Benipad, Bochaha, Gangaiya (Muzaffarpur) from where samples have been taken and fertiliser proved to be spurious were transferred to the fertiliser factories. It is clear that the entire reprocessing gimmik was a conspiracy to cause unlawful gain to the said Rajasthan Multi-Fertilisers Pvt. Ltd. and unlawful personal gain to the persons involved by consuming spurious fertilisers supplied by them thereby also causing wrongful loss to Biscomaun and the farmers of the State. Not only that the aforesaid serious offences were committed, but the provisions of Fertiliser Control Order, 1957 were also violated by supplying spurious and substandard fertilisers.

It is, therefore, manifest from aforesaid facts that the then Chairman, Sri Tapeshwar Singh, Managing Director Shri B. P. Sharma, Shri G. D. Mishra had entered into a criminal conspiracy with Shri O. P. Agrawal, M. D. Narayan Lal Agrawal, Banshi Lal Agrawal and Gopal Lal Agrawal, Directors of Rajasthan Multi Fertilisers Pvt. Ltd., and thus Biscomaun was cheated of Rs. 53,97,277.32.

8. Tapeshwar Singh and P. P. Sharma accused persons filed Writ Petition 289 of 1988 on September 29, 1988 before the Patna High Court with a prayer that the First Information Report be quashed. The petition was adjourned to different dates on the request of the counsel for the petitioners. Meanwhile the investigation in the case was completed by the police and two police reports, one under S. 7 of the Essential Commodities Act and the other under various sections of the I.P.C., were submitted before the Competent Court in October, 1988. The Special Judge, Patna heard the arguments of the parties on various dates between January, 9, 1989 and January 31, 1989 on the question as to whether there was sufficient material in the police-reports to take cognizance of various of fences projected therein. On January 31, 1989 the learned Special Judge concluded the arguments and reserved the orders.

9. Tapeshwar Singh filed Criminal Miscellaneous Petition in the High Court on February 17, 1989. The High Court stayed further proceedings in the Court of Special Judge, Patna. P. P. Sharma filed writ petition 90 of 1989 in Patna High Court on March 17, 1989 praying for quashing of the First Information Report and the police-reports. The High Court admitted the writ petition on March 31,

1989 and stayed further proceedings in the Court below. On July 6, 1989 P. P. Sharma withdrew writ petition 289 of 1988. G. D. Mishra filed writ petition 228 of 1989 on August 23, 1989 which was ordered to be heard with writ petition 90 of 1989. Tapeshwar Singh withdrew writ petition 289 of 1989.

10. The High Court heard the arguments in writ petitions 90 and 228 of 1989 from November 1, 1989 to February 8, 1990. The Bench consisting of S. H. S. Abdi, S. Hoda, JJ. allowed the writ petitions by its judgment dated April 5, 1990 and quashed the FIR and the criminal proceedings against the accused petitioners. These appeals are against the judgment of the High Court via Special Leave Petitions. In Criminal Appeals Nos. 525-26/ 90 Shri Girija Nandan Sharma, S. P., C.I.D., Patna, the investigating officer and in Criminal Appeals Nos. 523-24/90 Shri R. K. Singh the informant, are also the appellants along with the State of Bihar.

11. Mr. P. P. Rao and Mr. Kapil Sibal, learned senior advocates appearing for the appellants have contended that the High Court in the exercise of its extraordinary jurisdiction committed a grave error in taking into consideration the affidavits and documents filed along with the writ petitions. The counsel contended that the High Court virtually usurped the jurisdiction of the Magistrate/Special Judge by appreciating the affidavits and documents produced before it and reaching conclusions contrary to the charge-sheets (police reports) submitted by the police. According to the learned counsel two police reports under S. 173, Cr. P.C. had already been filed in the Court and in fact after hearing the parties at length, on the question of cognisance, the learned Special Judge had reserved the orders. The counsel contended that the High Court was not justified in quashing the proceeding at the stage when the Special Judge was seized of the matter and was in the process of appreciating the material contained in the police reports.

12. The learned counsel took us through the FIR and other material disclosed in the police-reports to show that prima facie offence is made out against the respondents. It is contended that the allegations in the above documents, if taken as correct, disclose the commission of a cognisable offence by the respondents.

13. The learned counsel for the parties have taken us through the judgment of the High Court which runs into about two hundred pages. Long back in R. P. Kapur v. State of Punjab (1960) 3 SCR 388 : (AIR 1960 SC 866) this Court circumscribed the jurisdiction of the High Courts to quash criminal proceedings in a given case. The law on the subject is clear and there is no scope for any ambiguity. The High Court noticed a score of decisions of this Court with abounded quotes therefrom and yet failed to see the settled legal position on the subject. The High Court fell into grave error and acted with patent illegality in quashing the criminal proceedings on the basis of the findings which are wholly wayward.

14. The High Court on appreciation of the documents produced before it by the respondents came to the following conclusions :

> 1. The documents annexures 3, 4, 5, 6, 7, 11,15,16,17,18,19,20,21/1,22,22/1,24,25, 26 and 39 (hereinafter called, 'the annexures') which were produced before the High Court as annexures to the writ petitions, were not taken into consideration by the Investigating Officer. On appreciation of the annexures it was found that no prima facie offence was made out against the respondents.
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> 2. The informant R. K. Singh was biased against the respondents. It was found that

the annexures', being part of BISCO-records, were to the knowledge of R. K. Singh, he closed his eyes to the facts contained in these documents and acted in mala fide manner in lodging the FIR against the respondents on false facts.

3. The prosecution was vitiated because Shri G. N. Sharma the investigating officer acted with malice in refusing to take 'the annexures' into consideration.

4. The order granting sanction under S.197, Cr. P.C. in respect of P. P. Sharma was illegal.

5. No case under Essential Commodities Act was made out from the police report and other documents on the record:

15. The finding that no prima facie offence was made out against the respondents was reached by the High Court on the following reasoning:

> "We are always conscious of the legal position and the various pronouncements of the courts in India that disputed questions of facts cannot be decided on the basis of affidavits. But when some documents have been brought on the record which are official records, which were in possession of the Biscomaun and so in the possession of the informant himself and further when in the replies neither the informant nor the I /O nor any officer of the State Government has challenged the correctness of those documentary material so they are at present not disputed and when it appears from the argument and the notes given by the learned counsel for the opposite party that Annexures 1, 2, 9, 10, 12 and 13 have been considered by the I /O and they formed part of the records of the investigation except annexure-I which was seized during the investigation and formed part of the criminal proceedings. Annexures 3, 4, 5, 6,7, 11, 15, 16, 17, 18, 19, 20, 20/1, 22, 22/1, 24, 25, 26 and 39 which have been referred to earlier and dealt with, do not appear to have been considered by the I.. O. nor any reference about these have been made in the arguments by the learned counsel for the opposite party which apparently have non-considered and non-disputed and when those documents themselves demonstrate that no prima facie offence is made out on the face value of those materials, then the criminal prosecution should not be allowed to continue and so it should be quashed."

16. It is thus obvious that 'the annexures' were neither part of the police-reports nor were relied upon by the investigating officer. These documents were produced by the respondents before the High Court along with the writ petitions. By treating 'the annexures' and affidavits as evidence and by converting itself into a trial court the High Court pronounced the respondents to be innocent and quashed the proceedings. The least we can say is that this was not at all a case where High Court should have interfered in the exercise of its inherent jurisdiction. This Court has repeatedly held that the appreciation of evidence is the function of the criminal courts. The High Court, under the circumstances, could not have assumed jurisdiction and put an end to the process of investigation and trial provided under the law. Since the High Court strongly relied upon "the annexures" in support of its findings, we may briefly examine these documents.

17. Annexure 3 is a government notification dated October 10, 1986 wherein 5 types of fertilisers have been specified which could be purchased or manufactured in the State of Bihar. Annexure 4 is a certificate of registration dated March 31, 1986 in favour of the firm registering it as wholesale

dealer in the State of Bihar under the Fertilisers (Control Order, 1957. Annexure 5 dated July 29, 1986 is the renewal of the said certificate. Annexure 6 dated November 16, 1985 is the certificate given to the firm by the Assistant Director (Agriculture) quality control, Udaipur, Rajasthan to the effect that samples of fertilisers taken from its factory were standard. Annexure 7 dated August, 1986 is the letter from Agriculture Department, Bihar to the Agriculture Department, Rajasthan showing that the firm's registration was renewed up to March 31, 1989 and it was granted permission to import the specified grades of fertiliser into the State of Bihar. Annexure 11 dated October 23, 1986 is the letter from G. D. Mishra to Director, Agriculture, Bihar asking his opinion regarding suitability of the fertiliser to be purchased from the firm at Rs. 2,550/- per M. T. Annexure 15 dated December 19, 1986 is the letter from G. D. Mishra to the firm asking the firm to supply 408 M. T. of fertiliser. Annexure 16 dated May 5, 1987 contains the proceedings of the marketing committee of BISCO held on April 16, 1987 wherein memorandum of sale and purchase of fertiliser for the year 1986-87 was approved. Annexure 17 dated February 18, 1985 is the letter from R. K. Singh as District Magistrate, Patna to Agriculture Production Commissioner, Patna which discloses that R. K. Singh had got samples of Essential Commodities tested from Rajendra Agriculture University. Annexure 18 dated March 23, 1987 is the memorandum prepared by P. P. Sharma for the Board of Directors of BISCO suggesting that the fertiliser purchased from the firm be sent to BISCO factories as raw-material. This was suggested because the fertiliser was not being sold in spite of reduction of price and huge stock and money was blocked. Annexure 19 is the record of the proceedings of the meeting of Board of Directors of BISCO dated March 23, 1987 approving Managing Director's suggestion that fertiliser be sent to BISCO factories as raw material to be converted as 'Sada Bahar'. Annexure 20 dated May 21, 1987 is the memorandum prepared by P. P. Sharma for Executive Committee of BISCO regarding manufacture of 'Hara Bahar' fertiliser by the BISCO factories. Annexure 20/1 18 copy of the proceedings of the Executive Committee meeting held on May 21, 1987 regarding manufacture of 'Hara Bahar'. Annexure 22 is the document showing that P. P. Sharma handed over charge of the office of the Managing Director. to Sanjay Srivastava on June 15, 1987. Annexure 22/ 1. is the document showing that P.P. Sharma assumed charge as Managing, Director of BISCO on May 26,1986. Annexure 24 dated October 13, 1987 is the letter by Mishra to the firm asking it to take back the substandard fertiliser from 8 depots mentioned therein. Annexure 25 is the letter dated May 15, 1987 from Project Manager of BISCO factory to Mishra, wherein the proposal for consumption of fertiliser to manufacture 'hara bahar' was detailed. It was also stated that the process of manufacture would be viable. Annexure 26 is a letter from the firm to the BISCO showing that the firm would help converting fertiliser into 'hara bahar' and would meet the transport, handling and processing cost. Annexure 39 is the case diary prepared by the investigating officer.

18. Taking the documents into consideration the High Court drew the inference that the firm was a registered one, it had a licence from the State of Bihar which gave monopoly to the firm to sell fertiliser throughout the State of Bihar, it was not necessary to invite tenders, the firm gave valid offer to sell which was accepted and the correspondence addressed to the office of BISCO was initially dealt with at the lower level and after getting reports from concerned authorities and after having full discussion at all levels the purchase of fertiliser from the firm was approved by the highest authority including the committee of the BISCO. The High Court further inferred that the rates offered were less than the rates approved by the State of Bihar, that the samples were got tested from the Rajendra Agriculture University, that the decision to manufacture 'hara bahar' by reprocessing the fertiliser purchased from the company was approved by the committee and the Board of BISCO, and the said reprocessing had yielded profits to the BISCO. On the basis of these inferences the High Court came to the conclusion that the criminal proceedings against the

respondents were not justified.

19. Mr. Kapil Sibal on the other hand has contended that the material collected during the investigation prima facie show the involvement of the respondents in the commission of the crime. The learned counsel has highlighted the following material on the record to support his contention :

1. The licence of the firm to manufacture fertiliser was cancelled and the firm was not in a position to manufacture fertiliser at the relevant time when the BISCO placed orders with the firm. This assertion is supported by referring to para 48 of the case diary.

2. Letter dated August 19, 1986 alleged to have been written by the firm to BISCO was in fact never received by the BISCO. The letter has been marked to special officer fertiliser. Mr. Sibal has taken us through para 15 of the case diary where the Special Officer, Fertiliser has alleged to have stated that he never dealt with the file and he did not know anything about the deal. The contention is that the said letter was introduced into the file to show that the deal was not abrupt but there was prolonged correspondence.

3. Mr. Sibal took us through the note of Mr. G. D. Mishra dated November 14, 1986 which was approved by P. P. Sharma and Tapeshwar Singh on November 20, 1986. The note was a recommendation for the purchase of fertiliser from the firm. Mr. Sibal stated that in paras 7 and 8 of the note it has been wrongly mentioned that the brand of fertiliser being purchased from the firm was recommended in the meeting of Field Officers held on October 25, 1986. According to him there is no record of any such meeting. Further Mr. Sibal read para 8 of the note and stated that the demand in the State was of Suphla 15: 15: 15 type of fertiliser but G. D Mishra in his note wrongly stated that the said brand was not available and by saying so Mishra falsely made out a case for the purchase of fertiliser brand 15: 15:71 / 2.

4. Mr. Sibal read para 9 of the note of G.D. Mishra dated November 14, 1986 and stated that Mishra recommended payment to the firm within 10 days of the receipt of the challan whereas the firm in its letter had indicated payment within 30 days.

5. The testing of the fertiliser was to be done either by the State or the Central Laboratory. Mr. Sibal took us through the case diary showing that G.D. Misra did not get the samples tested from the State laboratory on the ground that the State laboratory was out of order. According to him the reason given by G. D. Mishra was found to be false as the material in the case diary shows that the laboratory was functioning.

6. The respondents placed order for the supply of fertiliser to the firm on the basis of the report from the Rajendra Agriculture University showing that the fertiliser was of standard quality. Mr. Sibal has taken us through the case diary and the police record showing that a statement under S.164, Cr. P.C. of Shri S. N. Jha Associate Professor, Rajendra Agriculture University was recorded which allegedly states that no fertiliser came for testing to the Rajendra Agriculture University and no such report was given. The report was on the letterhead of the Prof. S. N. Jha which he denied in his statement. Mr. Sibal stated that there is a prima facie evidence to show that the test

report given by Rajendra Agriculture University was forged and fabricated. According to the allegations on the record the actual forgery was done by accused P.N. Sahu.

7. The result of the samples of the fertiliser supplied by the firm sent to the Central Laboratory show that 8 out of 11 samples were found substandard.

8. Mr. Sibal contends that 8 out of 11 samples having been found to be substandard the whole of the fertiliser was to be returned to the firm but instead it was decided to reprocess the fertiliser by treating it to be raw material for the manufacture of 'hara bahar'.

9. Mr. Sibal contends that 23 lacs were paid to the firm on December 18, 1986 in spite of the objection raised by the accounts department on December 16, 1986. According to him further 30 lacs were paid on January 22, 1987 in spite of the fact that by that date the sample results from the central laboratory showing the fertiliser to be substandard had been received.

10. According to Mr. Sibal material has come during investigation to show that the fertiliser purchased from the firm was being sold in retail market at a much lesser price of Rs. 2000/- per MT.

20. We do not wish to express any opinion on the rival contentions of the parties based on their respective appreciation of material on the record. We have quoted "the annexures", the inferences drawn by the High Court and the, factual assessment of Mr. Sibal, only to show that the High Court fell into grave error in appreciating the documents produced by the respondents along with the writ petitions and further delving into disputed questions of facts in its jurisdiction under Article 226/227 of the Constitution of India.

21. We have gone through the entire material on the record carefully and we are unable to agree with the High Court that there was any ground to hold that the prosecution against the respondents was initiated as a result of any malice on the part of the informant or the investigating officer. There is no material at all to show that prior to the lodging of the FIR there was any enmity between the respondents and the informant/ investigating officer. In fact there is nothing on the record to show that the investigating officer G.N. Sharma was even known to the respondents. Mr. R. K. Jain learned counsel for one of the respondents has invited our attention to various facts on the record and has vehemently argued that the mala fides on the part of informant and the investigating officer are writ large on the facts of the case.

22. The question of mala fide exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for an unauthorised purpose. There is no material whatsoever in this case to show that on the date when the FIR was lodged by R. K. Singh he was activated by bias or had any reason to act maliciously. The dominant purpose of registering the case against the respondents was to have an investigation done into the allegations contained in the FIR and in the event of there being sufficient material in support of the allegations to present the charge-sheet before the court. There is no material to show that the dominant object of registering the case was the character assassination of the respondents or to harass and humiliate them . This Court in State of Bihar v. J.A.C.Saldhana, (1980) 2 SCR 16: AIR 1980 SC 326, has held that when the information is lodged at the police station and an offence is registered, the mala fides of the

informant would be of secondary importance. It is the material collected during the investigation which decides the fate of the accused person. This Court in State of Haryana v. Ch. Bhajan Lal, 1990 (4) J.T. SC 655, permitted the State Government to hold investigations afresh against Ch. Bhajan Lal in spite of the fact that prosecution was lodged at the instance of Dharam Pal who was enimical towards Bhajan Lal.

23. The informant, being in a peculiar position having lodged the accusation is bound to be looked down upon by the accused-persons. The allegations of mala fide, therefore, against the informant based on the facts after the lodging of the FIR are of no consequence and cannot be the basis for quashing the proceedings. As regards the investigating officer, he has wide powers under the Criminal Procedure Code. He has to perform his duties with the sole object of Investigating the allegations and in the course of the investigation he has to take into consideration the relevant material whether against or in favour of the accused. Simply because the investigating officer, while acting bona fide, rules out certain documents as irrelevant, it is no ground to assume that he acted mala fide. The police-report submitted by the investigating officer has to pass through the judicial scrutiny of a Magistrate, at the stage of taking cognisance. Although the accused person has no right to be heard at that stage but in case the accused person has any grouse against the investigating officer or with the method of investigation he can bring to the notice of the Magistrate his grievances which can be looked into by the Magistrate. When the police report under S.1 73, Cr. P. C. has to go through the judicial scrutiny it is not open to the High Court to find fault with the same on the ground that certain documents were not taken into consideration by the investigating officer. We do not, therefore, agree with the High Court that the FIR and the investigation is vitiated because of the mala fide on the part of the informant and the investigating officer. We may, however, notice the factual-matrix on the basis of which the High Court has reached the findings of mala fide against the informant and the investigating officer. The High Court based the findings against the informant R. K. Singh on the following materials:

1. R. K. Singh, a comparatively junior officer had twice served under P. P. Sharma as Asstt. Magistrate, Gaya and as Sub-Divisional Officer at Jamui.

2. Within 10 days of taking over as Managing Director of BISCO he sent proposal for initiating surcharge proceedings against Shri P.P. Sharma which was rejected by the then Registrar. R. K. Singh revived the proposal when later on he took over the charge as Registrar.

3. R. K. Singh deliberately violated Government instructions dated November 17, 1986 requiring prior approval of the Administrative department before initiating criminal proceedings against a Government officer.

4. R. K. Singh did not hand over the relevant files and papers of BISCO to the investigating officer for more than a week in order to gain time to tamper/destroy/forge the BISCO files. He continued to direct the investigating officer throughout the investigation. Even affidavit was filed by the investigating officer on his behalf.

5. The documents in possession of R.K. Singh were such that any reasonable and fair minded person would not have filed the FIR. He acted mala fide in ignoring the documents and lodging the FIR.

6. R. K. Singh got the sanction for prosecution of P. P. Sharma issued on the last date of arguments before the Special Judge although earlier the investigating officer had stated that sanction was not required.

7. R. K. Singh filed affidavit denying the allegations of mala fide in the High Court. He appeared through counsel and contested the proceedings throughout.

8. In a letter to Chief Secretary, Bihar after the lodging of FIR R.K. Singh referred to P.P. Sharma as "gutter rat" and "common crockery thief ".

24. Mala fades on the part of the investigating officer G. N. Sharma have been found by the High Court on the following facts :

1. The investigating officer deliberately allowed the informant to withhold the relevant files of BISCO for more than a week after lodging the FIR.

2. The investigating officer adopted a threatening posture toward P. P. Sharma from the very beginning. Instead of interrogating him the investigating officer demanded that P.P. Sharma, should give his 'safai bayan' (defence statement).

3. P. P. Sharma gave the investigating officer a copy of the writ petition along with the annexures. The annexures were relevant documents from the records of State Government and BISCO. The investigating officer refused to take those documents into consideration on the ground that they were irrelevant. The documents could have shown the innocence of the respondents.

4. The investigating officer did not obtain the sanction of the State Government before submitting the police-report. He mentioned in the case diary that no sanction for prosecution under S. 197, Cr. P. C. was required. The sanction under S. 15A of the Essential Commodities Act was also not obtained.

25. We have given our thoughtful consideration to the facts enumerated above. We are of the view that the High Court was not justified in reaching a conclusion from the above facts that R.K. Singh and G. N. Sharma acted in a biased and mala fide manner in lodging the FIR and conducting the investigation. We are intentionally not entering into any discussion in respect of the facts mentioned above. Suffice it to say that no reasonable person on the basis of the facts stated above can come to the conclusion as drawn by the High Court.

26. Dr. Shankar Ghosh and Mr. R.K. Jain, learned counsel appearing for the respondents have vehemently supported the findings of the High Court to the effect that the composite order granting sanction under S. 197, Cr.P.C. and S. 15-A of the Essential Commodities Act was vitiated because of non-application of mind on the part of the competent authority. The relevant part of the sanction order is as under :

"Whereas after going through the papers and case diary, available in the Department of Personnel and Administrative Reforms Department File No. 1/A-3/89 endorsed to the Law Department. State Government is satisfied that under Sections 409/420/467/ 471/120 of Indian Penal Code (Act 45 of 1860) and in violation of provision of Fertiliser Control Order 1985 under S.7 of the Essential Commodities Act, prima facie case is made out to start prosecution against the accused Shri P.P. Sharma,

I.A.S. Chairman, Sone Command Development Agency, the Managing Director, Biscomaun, Patna in the Gandhi Maidan P. S. Case No. 970/ 88....."

"And, therefore, in the exercise of the powers conferred under S. 197, Cr.P.C. 1973 (Act Fert. II of 1974) and under S. 15 of the Essential Commodities Act 1955 prosecution has been sanctioned under Sections 409/420/ 467/468/471/120 and under S. 7 of the Essential Commodities Act."

27. The sanction under Section 197, Cr.P.C. is not an empty formality. It is essential that the provisions therein are to be observed with complete strictness. The object of obtaining sanction is that the authority concerned should be able to consider for itself the material before the investigating officer, before it comes to the conclusion that the prosecution in the circumstances be sanctioned or forbidden. To comply with the provisions of S. 197 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is desirable that the facts should be referred to on the face of the sanction. Section 197 does not require the sanction to be in any particular form. If the facts constituting the offence charged are not shown on the face of the sanction, it is open to the prosecution, if challenged, to prove before the court that those facts were placed before the sanctioning authority. It should be clear from the form of the sanction that the sanctioning authority considered the relevant material placed before it and after a consideration of all the circumstances of the case it sanctioned the prosecution.

28. In the present case the investigation was complete on the date of sanction and police reports had been filed before the Magistrate. The sanctioning authority has specifically mentioned in the sanction order that the papers and the case diary were taken into consideration before granting the sanction. Case diary is a complete record of the police investigation. It contains total material in support or otherwise of the allegations. The sanctioning authority having taken the case diary into consideration before the grant of sanction it cannot be said that there was non-application of mind on the part of the sanctioning authority. It is nobody's case that the averment in the sanction order to the effect that case diary was taken into consideration by the competent authority is incorrect. We, therefore, do not agree with the finding of the High Court and set aside the same.

29. The findings of the High Court that no offence is made out against the respondents under the Essential Commodities Act is also based on the appreciation of 'the annexures' and other disputed facts on the record and as such is untenable for the reasons already indicated above.

30. We have reproduced the FIR lodged by R.K. Singh. It is indisputable that assuming the facts contained in the FIR to be correct, prima facie offence is made out against the respondents. We have also gone through the police reports and the case diary which have been annexed along with the counter filed by the respondents. We are satisfied that the High Court acted with patent illegality in quashing the FIR and the prosecution against the respondents.

31. Finally, we are at a loss to understand as to why and on what reasoning the High Court assumed extraordinary jurisdiction under Article 226/227 of the Constitution of India at a stage when the Special Judge was seized of the matter. He had heard the arguments on the question of cognisance and had reserved the orders. The High Court did not even permit the Special Judge to pronounce the orders.

32. The Directors of the firm who are also accused persons in this case had approached the Rajasthan High Court for the quashing of the FIR and prosecution against them. The Rajasthan High

Court dismissed the writ petition with the following order :

> "Sri Bhandari states that in this matter Chalan has already been filed in court. The writ petition has, therefore, become infructuous. The writ petition is dismissed as having become infructuous. No order as to costs."

33. The above order was brought to the notice of the Patna High Court but the High Court refused to be persuaded to adopt the same course. We are of the considered view that at a stage when the police report under S. 173, Cr.P.C. has been forwarded to the Magistrate after completion of the investigation and the material collected by the investigating officer is under the gaze of judicial scrutiny, the High Court would do well to discipline itself not to undertake quashing proceedings at that stage in exercise of its inherent jurisdiction. We could have set aside the High Court judgment on this ground alone but elaborate argument having been addressed by the learned counsel for the parties we thought it proper to deal with all the aspects of the case.

34. We, therefore, allow the appeals, set aside the judgment of the High Court and dismiss the writ petitions filed by the respondents before the High Court.

K. RAMASWAMY, J

35. Investigation of a crime is not of a routine duty, in particular in intractable terrains of high places committed with dexterity and sophistication. The unfounded threat of mala fides or bias often deter a sincere and dedicated investigator to make indepth investigation causing catastrophic incursion on the effectivity to connect the offender With crime which would serve the detractor's purpose. The attempt to avail writ remedy on this score is on the ascending scale. The incalculable damage of interference would be on the efficacy of rule of law and maintaining order in the society. This anxiety made me to probe deep into the scope of interference under Art. 225 and express my views, though I am in full agreement with my learned brother.

36. Since my learned brother stated the facts in extenso, they bear no repetition. To focus on the questions stemmed from the findings of the High Court, I state only few facts thus :

The Bihar State Co-operative Marketing Union (for short 'the BISCOMAUN') is the sole purchaser and distributor of fertilisers to the farmers in the State through its depots situated at different parts of the State. When the BISCOMAUN is at the brink of liquidation due to mismanagement, the State Government superseded its Board of Directors on July 30, 1988 and appointed R.K. Singh, I.A.S. as its Administrator and Managing Director. During the course of the discharge of his duties, he noted financial irregularities committed by P.P. Sharma, the then Managing Director (the first respondent), Ganesh Dutt Misra, the then Advisor (the second respondent) and Tapeshwar Singh, the then Chairman of BISCOMAUN and laid the information before the Station House Officer, Gandhi Maidan Police Station, Patna on September 1, 1988. Shorn of the details the substratum of the accusations made against them is that they conspired with the Rajasthan Multi Fertilizers Private Limited (for short 'the Company') through its partners named therein to cause wrongful gain to the Company and wrongful loss to the BISCOMAUN and the farmers to purchase substandard fertilizers by name 'Suraj' brand. In furtherance thereof the Chairman received applications directly from the Company and without routing through the official channel and without inviting tenders from open market, the contract was finalised. The prevailing retail price of 'Suraj' brand of the

Company itself was Rs. 2,000/ - per M.T., but contracted to purchase at Rs. 2,509.50 per M.T. In terms of the contract the Company had to supply granulated mixed fertilisers with full bags, which would be subjected o chemical analysis in the laboratory either of the BISCOMAUN or the State or Central Government. If the fertilizers were found to be of substandard, the same were to be taken return of at the Company's expenses. On test if fertilizers were found to be standard one, payment was to be made at a specified rate within 30 days. Sharma placed orders with the Company to supply 2500 MTs. of fertilizers. Fertiliziers' Inspectors were to have the fertilizers tested in terms of the Fertilizers Control Order. Instead, the agent of the Company had taken the fertilizers for chemical examination in Rajendra Agricultural University, Bihar. The report said to have been given by Dr. S.N. Jha, Associate Professor of Soil Science of the University, was fabricated by one S.N. Sahoo, an Assistant in the department who is one of the accused; payments were made in undue haste and further order to supply of 450 M.Ts. was made by G. D. Misra. Only 459 M.Ts. in total was sold out. When the reports were being received from depots that the fertilizers supplied were substandard and spurious and the bags do not contain the full weight, instead of returning the stock, a resolution was obtained from the Managing Committee to convert unsold old stock as Harbahar. When a specific request for conversion of the stock supplied by the Company for conversion as Harbahar was turned out by the Managing Committee, yet the resolution was fraudulently used to destroy the evidence of supply of substandard and spurious fertilizers and converted into Harbahar and fabricated the records in furtherance thereof. These in substance are the accusations punishable under Ss. 409,420,467,468 and 471 read with S. 120B of the Indian Penal Code and S. 7 of the Essential Commodities Act and the Fertilizer Control Order. G. N. Sharma, Addl. Superintendent of Police, C.B.C.I.D. investigated into and collected the evidence and filed two chargesheets, one under the relevant provisions of the Indian Penal Code and the other under S. 7 of the Essential Commodities Act before the Special Judge, Economic Cases and the Chief Judicial Magistrate, Patna in chargesheets Nos. 102 and 103 of 1988 respectively but the cognizance of the offence is yet to be taken. My learned brother referred the findings of the High Court to quash the F.I.R. and the charge-sheets and the contentions of the counsel on either side. Hence I am omitting them except to refer to some of them wherever it is necessary.

37. Undoubtedly, the arms of the High Court are long enough, when exercises its prerogative discretionary power under Art. 226 of the Constitution, to reach injustice wherever it is found in the judicial or quasi-judicial process of any Court or Tribunal or authority within its jurisdiction. But it is hedged with self imposed limitations. When and under what circumstances would a High Court be justified to quash the charge-sheet even before cognizance of the offence was taken by the criminal court is the crucial question, in particular on mala fides of the complaint or investigating officer and on merits.

38. To appreciate the respective contention, it is necessary to have before us the operational spectrum from the relevant provisions in the Code of Criminal Procedure, 1973, for short "the Code". Section 2(n) of the Code and S. 40 of the Indian Penal Code defined the term "Offence". Offence means any act or omission which includes a thing made punishable under the Indian Penal Code, or any special or local laws with imprisonment for a term of six months of upwards whether with or without fine. Therefore, an act or omission or a thing made punishable by the Penal Code or under any special or local law is an offence punishable under the relevant law. S. 154 Chap. XII of the Code, contemplates laying of information of cognizable offences either orally or in writing to an officer of a police station who is enjoined to reduce it into writing, if made orally or under his direction and the substance thereof entered in the book kept in the Police Station in the manner prescribed by the State Government. The Officer in charge of the police station is prohibited to investigate only into non-cognizable cases without an order of the Magistrate concerned under S.

155(2). But if the facts disclose both cognizable and non-cognizable offence, by operation of sub-sec. (4) of S. 155 the case shall be deemed to be cognizable case, and the police officer shall be entitled to investigate, without any order of the Magistrate, into non-cognizable offence as well. Section 156 gives statutory power to a competent police officer or a subordinate under his direction to investigate into cognizable offences. In cases of cognizable offences receipt or recording of a first information report is not a condition precedent to set in motion of criminal investigation. Section 157 provides the procedure for investigation. If the police officer in charge of the Police Station, on receipt of information or otherwise, has reason to suspect the commission of a cognizable offence and is empowered to investigate into, he shall proceed in person or shall depute one of his subordinate officers not below the rank of the prescribed officer to the spot to investigate the facts and circumstances and if necessary to take measures for the discovery and arrest of the offender. The provisos (a) and (b) thereof give power, in cases of minor offences to depute some other subordinate officer or if the investigating officer is of the opinion that there is no sufficient ground for entering on investigation he shall not investigate the case.

39. Investigation consists of diverse steps - (1) to proceed to the spot; (2) to ascertain the facts and circumstances of the case; (3) discovery and arrest of the suspected offender; (4) collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons including the accused and the reduction of their statements into writing if the officer thinks fit (Sec. 161, Cr. P. C.); (b) the search of places and seizure of things necessary for the investigation to be proceeded or at the trial (Sec. 165, Cr.P.C. etc.); and (c) recovery of the material objects or such of the information from the accused to discover, in consequence thereof, so much of information relating to discovery of facts to be proved. (Sec. 27 of the Indian Evidence Act).

40. On completion of the investigation, if it appears to the investigator that there is 276 sufficient evidence or reasonable ground to place the accused for trial, the investigating officer shall forward to the Court a report in that regard along with the evidence and the accused, if he is in the custody to the Magistrate. If on the other hand he opines that there is no sufficient evidence or reasonable grounds connecting the accused with the commission of the offence he may forward the report to the Magistrate accordingly. The Magistrate is empowered to consider the report and on satisfying that the accused prima facie committed the offence, take cognizance of the offence and would issue process or warrant to the accused, if on bail, to appear on a date fixed for trial or to commit him for trial to the Court of session. It is not incumbent upon the Magistrate to accept the report of the investigating officer that there is no sufficient evidence or reasonable ground to connect the accused with the commission of the crime; he may direct further investigation or suo motu the investigator may himself submit supplemental charge-sheet under S. 173(8) if he subsequently becomes aware of certain facts or itself or through a sub-ordinate Magistrate to make further enquiry or to take cognizance of the offence upon consideration of the material so placed before him and take further steps as aforesaid Then only proceedings in a criminal case stands commenced. Taking cognizance of the offence is conterminous to the power of the police to investigate in the crime. Until then there is no power to the Magistrate except on a private complaint in a cognizable/non-cognizable offence to direct the police to investigate into the offence. The Magistrate is not empowered to interfere with the investigation by the police. In King Emperor v. Khawaja Nazir Ahmad, 71 Ind App 203, the Judicial Committee of the Privy Council held that "the functions of the judiciary and the police are complementary, not overlapping" and "the Court's functions begin when a charge is preferred before it, and not until then". In Jamuna Chaudhary v. State of Bihar, (1974) 3 SCC 774, this Court held :

> "The duty of the investigating officer is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction, but to bring out

the real unvarnished truth".

41. The only duty cast on the investigation is to maintain a diary of his investigation, which is known as "Case Diary" under S. 172 of the Code. The entries in the case diary are not evidence nor can they be used by the accused or the Court unless the case comes under S. 172(3) of the Code. The court is entitled for perusal to enable it to find out if the investigation has been conducted on the right lines so that appropriate directions, if need be given and may also provide materials showing the necessity to summon witnesses not mentioned in the list supplied by the prosecution or to bring on record other relevant material which in the opinion of the Court will help it to arrive at a proper decision in terms of S. 172(3) of the Code. The primary duty of the police, thus is to collect and sift the evidence of the commission of the offence to find whether the accused committed the offence or has reason to believe to have committed the offence and the evidence available is sufficient to prove the offence and to submit his report to the competent Magistrate to take cognizance of the offence.

42. In S. N. Sharma v. Bipen Kumar Tiwari, (1970) 3 SCR 945 : (AIR 1970 SC 786), this Court held that S. 159 primarily meant to give to the Magistrate the power to direct an investigation in cases where the police decides not to investigate the case under provision to S. 157 (1) and it is in those cases that, if he thinks fit, he can choose to enquire into it by himself or direct the subordinate Magistrate to enquire into and submit a report. Section 159 intends to give a limited power to the Magistrate to ensure that the police investigate into cognizable offence and do not refuse to do so for certain limited cases of not proceeding with the investigation of the offence. The Code gives to the police unfettered power to investigate all cases where they suspect a cognizable offence has been committed. In an appropriate case an aggrieved person can always seek a remedy by invoking the power of the High Court under Art. 226 of the Constitution. If the Court could be convinced that the power of investigation has been exercised by a police officer mala fide, a mandamus can be issued restraining the investigator to misuse his legal powers. The same view was reiterated in State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554, wherein this court held that unless extraordinary cases of gross abuse of power by those in charge of the investigation is made out, the Court should be quite loath to interfere at the stage of investigation. A field of activity is reserved for police and the executive. This Court also noted that it is a clear case of usurpation of jurisdiction by the High Court, that vested in the Magistrate to take or not to take cognizance of the case on the material placed before him. The High Court committed grave error by making observations on seriously disputed questions of facts taking its clue from affidavit, which of such a situation hardly provides any reliable material. This Court also noted that the interference or direction, virtually amount to a mandamus to close the case before the investigation is complete. State of West Bengal v. Sampat Lal, (1985) 1 SCC 317 at p. 336 para 26, this court held that the court has residuary power to give appropriate directions to the police when the requirements of law are not being complied with and investigation is not being done properly or with due haste and promptitude.

43. Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala, (1983) 1 SCC 9, this Court found that clear averments have been made regarding the active role played by the accused respondents and the extent of their liability, it cannot be said that complaint was vague and that the High Court was absolutely wrong in holding that the allegations in paragraph 5 therein were vague. Accordingly the order of the High Court quashing the proceedings under S. 482 was set aside.

44. In Abhinandan Jha v.Dinesh Mishra, (1967) 3 SCR 668 : (AIR 1968 SC 117), this Court held, preceding introduction of S. 173(8) of the Court that the Magistrate cannot direct the police to submit a chargesheet and compel the police to form a particular opinion on investigation and to

submit a report according to such opinion. If the police submits a report that there is no case made out for sending up the accused for trial, the Court itself may take cognizance of the offence on the basis of the report and the accompanying evidence if it is found that there is sufficient evidence to proceed further or itself conduct or direct the subordinate Magistrate to make further enquiry to take action under S. 190 etc. Thus, it is seen that in an appropriate case where after registering the crime if no expeditious investigation for unexplained reasons was done the Magistrate or the High Court, on satisfying the grounds, may direct completion of the investigation within a reasonable time.

45. In Nazir Ahmed's case (supra) the Judicial Committee held that the functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with due observance of law and order is only to be obtained by leaving each to exercise its own functions.

46. The Code demarcates the field of investigation exclusively to the executive to be vigilant over law and order. Police officer has statutory power and right as a part to investigate the cognizable offence suspected to have been committed by an accused and bring the offender to book. In respect thereof he needs no authority from a Magistrate or a Court except to the extent indicated in subs. (3) of S. 156, the superintendence sparingly over the investigation and the matters incidental thereto, like enlarging the accused on bail or to secure his presence for further investigation; to record judicial confession under S. 164 of the Code or to conduct identification parade of the accused or the articles of crime or recording dying declaration under S. 32 of Evidence Act.

47. The investigating officer is the arm of the law and plays pivotal role in the dispensation of criminal justice, and maintenance of law and order. The police investigation is, therefore. the foundation stone on which the whole edifice of criminal trial rests - an error in its chain of investigation may result in miscarriage of justice and the prosecution entails with acquittal. The duty of the investigating officer, therefore, is to ascertain facts, to extract truth from half-truth or grabbled version, connecting the chain of events. Investigation is a tardy and tedious process. Enough power, therefore, has been given to the police officer in the area of investigatory process, granting him or her great latitude to exercise his discretionary power to make a successful investigation. It is by his action that law becomes an actual positive force. Often crimes are committed in secrecy with dexterity and at high places. The investigating officer may have to obtain information from sources disclosed or undisclosed and there is no set procedure to conduct investigation to connect every step in the chain of prosecution case by collecting the evidence except to the extent expressly prohibited by the Code or the Evidence Act or the Constitution. In view of the arduous task involved in the investigation he has been given free liberty to collect the necessary evidence in any manner he feels expedient, on the facts and in given circumstances. His / her primary focus is on the solution of the crime by intensive investigation. It is his duty to ferret out the truth. Laborious hardwork and attention to the details, ability to sort out through mountainous information, recognised behavioural patterns and above all, to coordinate the efforts of different people associated with various elements of the crime and the case are essential. Diverse methods are, therefore, involved in making a successful completion of the investigation.

48. From this perspective, the function of the judiciary in the course of investigation by the police should be complementary and full freedom should be accorded to the investigator to collect the evidence connecting the chain of events leading to the discovery of the truth, viz., the proof of the commission of the crime. Often individual liberty of a witness or an accused person is involved and inconvenience is inescapable and unavoidable. The investigating officer would conduct indepth investigation to discover truth while keeping in view the individual liberty with due observance of

law. At the same time he has a duty to enforce criminal law as an integral process. No criminal justice system deserves respect if its wheels are turned by ignorance. It is never his business to fabricate the evidence to connect the suspect with the commission of the crime. Trustworthiness of the police is the primary insurance. Reputation for investigative competence individual honesty of the investigator is necessary to enthuse public confidence. Total support of the public also is necessary.

49. The focal point from the above background is whether the charge-sheets are vitiated by the alleged mala fides on the part of either of the complainant R. K. Singh or the Investigating Officer G. N. Sharma. In Judicial Review of Administrative Action by S. A. deSmith, 3rd Edn. at p. 293 stated that " the concept of bad faith in relation to the exercise of statutory powers comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred. His intention may be to promote another public interest or private interest. A power is exercised malaciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. The administrative discretion means power to being administratively discreet. It implies authority to do an act or to decide a matter on discretion". The administrative authority is free to act in its discretion if he deems necessary or if he or it is satisfied of the immediacy of official action on his or its part. His responsibility lies only to the superiors and the Government. The power to act in discretion is not power to act ad arbitzarium. It is not a despotic power, nor hedged with arbitrariness, nor legal irresponsibility to exercise discretionary power in excess of the statutory ground disregarding the prescribed conditions for ulterior motive. If done it brings the authority concerned in conflict with law. When the power was exercised mala fide it is undoubtedly gets vitiated by colourable exercise of power.

50. Mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive; and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

52. Public administration cannot be carried on in a spirit of judicial detachment. There is a very wide range of discretionary administrative acts not importing an implied duty to act judicially though the act must be done in good faith to which legal protection will be accorded. But the administrative act de hors judicial flavour does not entail compliance with the rule against interest and likelihood of basis. It is implicit that a complainant when he lodges a report to the Station House Officer accusing a person of commission of an offence, often may be a person aggrieved, but rarely a pro bono publico. Therefore, inherent animosity is licit and by itself is not tended to cloud the veracity of the accusation suspected to have been committed, provided it is based on factual

foundation.

53. In Sirajuddin v. State of Madras, (1970) 2 SCR 931 : (AIR 1971 SC 520), this Court held that before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amounts to serious misdemeanour or misconduct, there must be suitable preliminary enquiry into the allegations by a responsible officer. Lodging a First Information Report without enquiry against an officer occupying a top position in a department would do incalculable harm not only to the officer in particular but to the department he belongs to, in general. Enquiry Officer must not act in any preconceived idea of guilt of the persons whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting the measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable. The aim of Code is to secure a conviction if he can do by use of utmost fairness on the part of the Officer investigating into the crime before lodging a charge-sheet. The reason is that no one should be put to unnecessary harassment on a trial unless there are good and substantial reasons for holding it. On the facts in that case the Court found that before lodging the First Information Report the Investigating Officer suborn the witnesses and obtained statements under S. 162 under their signature and also induced the witnesses of self-incriminating from prosecution. That conduct on the part of the Investigating Officer was found to be unfair. In this case no such allegation has ever been made against the Investigating officer or the Administrator.

54. In State of U.P.v .B.K. Joshi,(1964) 3 SCR 71, Mudholkar, J. in a separate but concurring judgment at pages 86 and 87 held that even in the absence of any prohibition in the Code, express or implied, a preliminary enquiry before listing the offence was held to be desirable. In this view, though it was desirable to have preliminary inquiry done, the omission in this regard by the Administrator or to obtain administrative sanction before laying the First Information Report would at best be an irregularity, but not a condition precedent to set in motion the investigation into the offences alleged against the respondents.

55. It is a settled law that the person against whom mala fides or bias was imputed should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his / her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R. K. Singh and G. N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them. Nothing has been alleged, nor brought to our notice that preceding laying the complaint before the police, R. K. Singh, had any personal animosity against the respondents. Nothing has also been brought to our notice, nor alleged either in the High Court or in this Court that after his filing the complaint he had any say in the investigation conducted by the Investigating Officer or exercised any pressure to investigate the case in any particular way to secure the conviction of the respondents. The only allegation relied on by the High Court is that R. K. Singh before laying the First Information Report did not look into certain documents or did not deliver them up for a week to the Investigating Officer. Had he considered things would be favourable to the respondents and that no administrative sanction was obtained. That by itself in our considered view would not lead to any irresistible conclusion that R. K. Singh was actuated with any personal bias or mala fides against Sharma or Dutt. At the most it may be said that he had not properly exercised his discretion before laying the complaint. Equally no personal bias was alleged to the Investigating Officer nor found in this regard by the High Court. The ground on which reliance was placed and found acceptable to the High Court is that when the documents said to be favourable to

the respondents were brought to his notice, he did not investigate into those facts on the ground of being "irrelevant". Free from bias is an integral pat, of the principles of natural justice. When bias was imputed to be existed, he ought not to take part in a decision making process. Police Officer has a statutory duty to investigate into the crime suspected to have been committed by the accused, by collecting necessary evidence to connect the accused with the crime. Investigator exercises no judicial or quasi-judicial duty except the statutory function of a ministerial nature to collect the evidence. With his expertise, skill or knowledge he has to find whether the accused committed the offence alleged against. If the accused is aware that the Investigating Officer was personally biased against him, it is his primary duty to bring it to the notice of the higher authorities or the Court at the earliest of the circumstances or on the grounds on which he believed that the Investigating Officer is actuated with malice and impartial investigation cannot be had. If he allows the Investigating Officer to complete the investigation and the report submitted, it amounts to his waiving the objection and he would not be allowed to impeach the charge-sheet on the ground of the alleged bias or mala fides. Moreover, the Investigating Officer would be available to cross-examination at the trial of the case and it would be open to the accused to elicit from the Investigating Officer necessary circumstances or grounds to throw doubt on the impartiality of the Investigating Officer and must establish its effect on the prosecution evidence adduced at the trial. It is for the Court to consider how far it has affected materially the result of the trial. The evidence collected during investigation would be subject to proof as per Evidence Act and tested by cross-examination. The reasoning of the Courts below that if an authority does not act impartially or in good faith then a rasonable mind can definitely infer the bias for reason best known to the authorities is too wide a statement of law in the context of police / Investigating Officer.

56. In state of Bihar v. J. A. Saldana, AIR 1980 S C 326: (1980) 1 SCC 554, it was held that though mala field or bias of an informant is of a secondery importance if at the trial impeccable evidence disclosing the offence has been brought on record.

57. Equally the finding of the High Court that the mala fides of the Investigating Officer was established by him subsequent conduct, of his participation in the writ proceedings in our view, is obviously illegal. When the investigation was subject matter of the challenge in the Court, it would be obvious that the investigator alone is to defend the case; he has to file the counter-affidavit and to appear in the proceedings on behalf of the State. No exception should be taken to this course and under no circumstances it should be deduced to be a mala fide act. Undoubtedly when it was brought to the notice of the Investigating Officer of the existence of certain documents that throw doubt on the complicity of the accused, it would be, salutary that he would also investigate into those aspects vis-a-vis the evidence in his possession to find whether they would throw any doubt on the commission of the offence alleged or otherwise. The omission to investigate into those aspects, by no stretch of imagination would be inferred to be a mala fide act. It may be a bona fide opinion. Undoubtedly, this Court held that mala fides on the part of the complainant would be a factor to be gone into. But no decided case that a charge-sheet was held to be vitiated by mala fides due to omission to exercise statutory power was brought to our notice. The allegation of mala fide and bias more often made easily, than proved. Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism. Ethics can be defined as the practical normative study of the rightness and wrongness of human conduct. The police investigator faces the most frequent and immediate ethical pressure. Despite many a stress associated with the enforcement and investigation functions, the investigator must adapt a professional and uncompromising attitude. Rather than succumbing to unethical logic and engaging in unprofessional means to justify a seemingly desirable and, the investigator should realise that no conviction is worth sacrificing one's personal and professional integrity. The allegation of mala fides cause deep

incursion on the psychic attitude to uncover the crime and on the effectivity of the investigation. The threat of mala fide would deter an honest and efficient Investigating Officer to probe an in depth investigation into the crime. The result would be that the crime remains undetected and injury is irremediable to the society. Criminal becomes emboldened and people lose faith in the efficacy of law and order. Therefore, before countenancing such allegation of mala fides or bias it is salutary and an onerous duty and responsibility of the Court, not only to insist upon making specific and definite allegations of personal animosity against the Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the Court.

58. It is undoubted that no one should unnecessarily be harassed or face an ordeal of criminal trial unless sufficient materials are collected during the investigation disclosing the crime committed . The Investigating Officer is not to act on a pre-conceived idea of guilt of the accused. The Investigating Officer is expected to gather the entire material, so that the truth or falsehood of the accusation may be found by the Court at the trial. The Investigating Officer is expected to investigate justly and fairly, but the evidence collected at the investigation is not be all and end all. At the stage of trial the opportunity is wide open to the accused to cross-examine the witness and if he deems necessary to adduce the defence evidence and to test the veracity of the evidence collected during the investigation.

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused. Equally reporting the commission of a crime to the Station House Officer cannot be held to be a colourable exercise of power with bad faith or fraud on power. It may be honest and bona fide exercise of power. There are no grounds made out or shown to us that the first information was not lodged in good faith. State of Haryana v. Bhajanlal, (1990) 4 JT 655 (SC), is an authority for the proposition that existence of deep seated political vendetta is not a ground to quash the F.I.R. Therein despite the attempt by the respondent to prove by affidavit evidence corroborated by documents of the mala fides and even on facts as alleged no offence was committed, this Court declined to go into those allegations and relegated the dispute for investigation. Unhesistatingly I hold that the findings of the High Court that F.I.R. gets vitiated by the mala fides of the Administrator and the charge-sheets are the results of the mala fides of the informant or investigator, to say the least, is fantastic and obvious gross error of law.

60. The contention of Sri R. K. Jain, the learned Sr. Counsel is that when the evidence collected during the investigation was not unimpeachable, the prosecution and continuance of the proceedings are only a step in the process of harassment to the respondents, offending their right to life and livelihood enshrined under Art. 21 of the Constitution. The question is whether, the impugned actions would offend Article 21 of the Constitution. Article 21 assures every person right to life and personal liberty. The word personal liberty is of the widest amplitude covering variety of rights which goes to constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme law, the Constitution. The investigator must be alive to the mandate of Art. 21 and is not empowered to trample upon the personal liberty arbitrarily, though the Code gives unfettered power to investigate into the suspected cognizable offence imputed to an accused. The gravity of the evil to the community resulting from anti-social activities or commission of the grave crime by itself would not give carte blanche right or power to the investigator to invade the personal liberty of a citizen except in accordance with the procedure established by law and the Constitution. The observance of

the procedure, therefore, is an assurance against wanton assaults on personal liberty.

61. An Investigating Officer who is not sensitive to the constitutional mandates may be prone to trample upon the personal liberty of a person when he is actuated by mala fides. But as stated the accused at the earliest should bring to the notice of the Court of the personal bias and his reasonable belief that an objective investigation into the crime would not be had at the hands of the investigator by pleading and proving as of fact with necessary material facts. If he stands by till the chargesheet was filed, it must be assumed that he has waived his objection. He cannot turn down after seeing the adverse report to plead the alleged mala fides. Equally laying the information before the Station House Officer of the commission of cognizable crime merely sets the machinery of the investigation in motion to act in accordance with the procedure established by law. The findings of the High Court, therefore, that the F. I. R. chargesheet violates the constitutional mandate under Art. 21 is without substance.

62. The next question is whether the charge-sheets became illegal for obtaining sanction after filing them in the Court and under what circumstances. Section 197(1) reads thus :

> "Prosecution of Judges and public servants - (1) when any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -
>
> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government ;
>
> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

Other sub-sections are not relevant. Hence omitted.

63. Similarly S. 15-A of the Essential Commodities Act reads thus :

> "Prosecution of public servants. Where any person who is a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty in pursuance of an order made under S. 3, no Court shall take cognizance of such offence except with the previous sanction :
>
> (a) of the Central Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of the Union ;
>
> (b) of the State Government in the matter of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of the State."
>
> The emphasis laid in both the sections is that no Court shall take cognizance of

> offence against a public servant alleged to have committed while acting or purported to act in the discharge of official duty, except with previous sanction of the appropriate Government. The object behind prior sanction is to prevent malicious, vexatious and unnecessary harassment to a public servent by laying false or frivolous accusation or prosecution. In other words Ss. 197(1), 15-A and related sections intended to immune a public servant who discharges his duties honestly and diligently from the threat of prosecution. Honest discharges of public duty would impinge adversely of the interests, acts or omissions of private persons who would be prone to harass in criminal proceedings and prosecution to demoralise a public servant.

64. The nexus between the discharge of the public duty and the offending act or omission must be inseparable. The obvious reason is to balance the public good and efficiency of the performance of the public duty by a public servant and the legitimate and bona fide grievance of an aggrieved person. Sometimes while discharging or purported to discharge the public duty, the officer may honestly exceed his limit or pass an order or take a decision which may later be found to be illegal, etc. Therefore, the prior sanction by the appropriate Government is an assurance to a public servant to discharge his official functions diligently, efficiently and honestly without fear or favour, without having haunt of later harassment and victimization, so that he would serve his best in the interest of the public.

65. The offending act must be integrally connected with the discharge of duty and should not be fanciful or pretended. If the act complained of is directly, and inextricably connected with the official duty, though it was done negligently, or in dereliction of duty or in excess thereof, Section 197 and similar provisions operate as a canopy against malicious, vexatious or frivolous accusation or prosecution at the hands of the aggrieved persons. It is well settled law that public servant can only be said to act or purported to act in the discharge of his official duty if his act or omission is such as to lie within the scope of his official duty. It is not every offence committed by a public servant that requires sanction for prosecution, nor even every act done by him while he actually engaged or purported to have engaged under colour of his official duty that receives protection from prosecution. If questioned he must claim that he had done by virtue of office and it is inextricably connected with the duty. Sanction then would be necessary, irrespective of whether it was in fact a proper discharge of his duty or not is a matter of defence on merits, which would be considered at the trial and could not arise at the time of grant of sanction which must precede taking cognizance of the prosecution. Therefore, there must be reasonable connection between the acts complained and discharge or purported discharge of the official duty the act or omission must bear such a relation to the duty. that the accused could lay reasonable nexus but not a pretended or fanciful claim that he did it in the course of the performance of his duty. It is no part of the duty of a public servant to enter into conspiracy; to fabricate the records; falsification of the accounts; fraud or misappropriation or demand and acceptance of illegal gratification though the exercise of power gives him an occasion to commit the offences. In K. Satwant Singh v. State of Punjab, (1960) 2 SCR 89 : (AIR 1960 SC 266), this Court held that the act of cheating or abatement thereof has no reasonable connection with the discharge of the official duty or that he did so in the course of performance of his duty. The same was reiterated in Harihar Prasad v. State of Bihar, (1972) 3 SCC 89.

66. In S.B. Saha v. Kochar,(1980)ISCR 111 this Court held that offence under Ss. 409 and 120B cannot be held to have been committed while acting or purporting to act in the discharge of the official duty and have no reasonable connection and bear no direct connection or inseparable link

with the duty as a public servant. The official status must have furnished the accused an opportunity or occasion to commit the alleged criminal acts.

67. It is equally well settled that "before granting sanction the authority or the appropriate Govt. must have before it the necessary report and the material facts which prima facie establish the commission of offence charged for and that the appropriate Government would apply their mind to those facts". The order of sanction only is an administrative act and not a quasi-judicial nor a lis involved. Therefore, the order of sanction need not contain detailed reasons in support thereof as was contended by Sri Jain. But the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard. The question of giving an opportunity to the public servant at that stage as was contended for the respondents does not arise. Proper application of mind to the existence of a prima facie evidence of the commission of the offence is only a precondition to grant or refuse to grant sanction. When the Govt. accorded sanction, S. 114(e) of the Evidence Act raises presumption that the official acts have been regularly performed. The burden is heavier on the accused to establish the contra to rebut that statutory presumption. Once that is done then it is the duty of the prosecution to produce necessary record to establish that after application of mind and consideration thereof to the subject the grant or refusing to grant sanction was made by the appropriate authority. At any time before the Court takes cognizance of the offence the order of sanction could be made. It is settled law that issuance of the process to the accused to appear before the Court is sine qua non of taking cognizance of the offence. The emphasis of S. 197(1) or other similar provisions that "no Court shall take cognizance of such offence except with the previous sanction" posits that before taking cognizance of the offence alleged, there must be before the Court the prior sanction given by the competent authority. Therefore, at any time before taking cognizance of the offence it is open to the competent authority to grant sanction and the prosecution is entitled to produce the order of sanction. Filing of charge-sheet before the Court without sanction per se is not illegal, nor a condition precedent. A perusal of the sanction order clearly indicates that the Govt. appears to have applied its mind to the facts placed before it and considered them and then granted sanction. No evidence has been placed before us to come to a different conclusion. Accordingly we hold that the High Court committed manifest error of law to quash the charge-sheets on those grounds.

68. The another crucial question is whether the High Court, in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution would interfere and quash the charge-sheet. The High Court found that the documents relied on by the respondents / accused were not denied by the State by filing the counter-affidavit. Therefore, they must be deemed to have been admitted. On that premise the High Court found that there is no prima facie case was made out on merits and chances of ultimate conviction are "bleak". The Court is not passive spectator in the drama of illegalities and injustice. The inherent power of the Court under Art. 226 of the Constitution of India is permitted to be resorted to. When the documents relied on by the respondents "demonstrate that no prima facie offence is made out on the face value of those materials, then the criminal prosecution should not be allowed to continue and so it should be quashed", and "in such a situation and circumstances the petitioners who had got a right under the Constitution for the protection of their liberty have rightly approached this Court and this Court in these circumstances has no option but to grant the relief by quashing the F.I.R. and both the charge-sheets". Accordingly it quashed them. If this decision is upheld, in my considered view startling and disastrous consequence would ensue. Quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to "killing a still born child". Till the criminal Court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions

against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand on accused for trial amounts to pre-trial of a criminal trial under Article 226 or 227 even before the competent Magistrate or the Sessions Court takes cognizance of the offence. Once the proceedings are entertained the further proceedings get stayed. Expeditious trial of a criminal case is the cardinal rule. Delay feeds injustice to social order and entertaining writ petitions would encourage to delay the trial by diverse tricks. It is not to suggest that under no circumstances a writ petition should be entertained. As was rightly done by Rajasthan High Court in this case at the instance of the directors of the company, wisdom lies to keep the hands back and relegate the accused to pursue the remedy under the Code. In several cases this Court quashed the criminal proceedings on the sole ground of delay. In a case, F.I.R. filed in 1954 for violation of the provisions of the Customs Act and Foreign Exchange Regulation Act as challenged in the Allahabad High Court. It was deliberately kept pending in the High Court and in this Court till 1990. The accusation was violation of law by named persons in the name of nonexisting firm. The F. I. R. was quashed in the year 1990 by another Bench to which I was a Member solely on the ground of delay. He achieved his object of avoiding punishment. This would show that an accused with a view to delay the trial, resorts to writ proceedings, raises several contentions including one on merit as vehemently persisted by Sri Jain to consider this case on merits and have the proceedings kept pending. The result would be that the people would lose faith in the efficaty of rule of law. Documents relied on by the respondents are subject to proof at the trial and relevancy. If proved to be true and relevant that they may serve as a defence for the respondents at the trial. The State quite legitimately and in my view rightly did not choose to file the counter-affidavit denying or contradicting the version of the respondents, in those documents. The commission of offence cannot be decided on affidavit evidence. The High Court has taken short course "in annihilating the still born prosecution" by going into the merits on the plea of proof of prima facie case and adverted to those facts and gave findings on merits. Grossest error of law has been committed by the High Court in making pre-trial of a criminal case in exercising its extraordinary jurisdiction under Art. 226. After the charge-sheet was filed, the F.I.R. no longer remains sheet anchor. The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court. It is not the case that no offence has been made out in the chargesheets and the First Information Report. It is, therefore, not necessary to consider all the decisions dealing with the scope of the power of the High Court either under S. 482, Cr. P.C. or Art. 226 of the Constitution to quash the First Information Report.

69. The decision of this Court, strongly relied on namely, State of West Bengal v. Swaran Kumar, (1982) 3 SCR 121, is of no assistance to the respondents. In that case it was found that the First Information Report did not disclose the facts constituting the offence.

70. Madhaorao J. Scindhia v. Sambhaji Rao, (1988) 1 SCC 592 : (AIR 1988 SC 709), also does not help the respondents. In that case the allegations constitute civil wrong as the trustees created tenancy of Trust property to favour the third party. A private complaint was laid for the offence under S. 467 read with S 34 and S. 120B, I.P.C. which the High Court refused to quash under S. 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offences were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. This Court found thus :

> "The Court cannot be utilized for any oblique purpose and where in the opinion of 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 consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage."

Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the Court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under S. 482 or Art. 226 to quash the proceedings or the chargesheet. In Sirajiddin's case the Madras High Court and this Court, though noticed serious infirmity committed in the course of investigation by the investigating officer did not quash the charge-sheet.

71. I am constrained to hold that the learned Judges have committed gravest errors of law in quashing the F.I.R. and charge-sheets. Since the proceedings are yet to start I decline to go into the merits of the respective contentions, though vehemently argued by Shri R. K. Jain, on merits, and Kapil Sibal in rebuttal since expressing any view either way would gravely prejudice the case of the accused or the prosecution. The appeals are allowed with no order as to costs.

Appeals allowed.

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