

(1999) 10 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Criminal M.M.O. No. 778 of 1998

H.H. Maharani Padmani Devi

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 29-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3), 160, 258

Penal Code, 1860 (IPC) — Section 174, 380

Citation : (2000) 1 ShimLC 216

Hon'ble Judges : Lokeshwar Singh Pant, J

Bench : Single Bench

Advocate : Abhilasha Kumari, Jagdish Vats, in Cr. M.P. No. 414/98, for the Appellant; J.K. Verma, Assistant A.G. for Respondents 1 and 2 and, for the Respondent

Judgement

Lokeshwar Singh Pant, J.—The above petition u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India, has been filed by the Petitioner seeking to quash First Information Report No. 75/84, registered in Police Station, Nahan; to restrain the Respondent-Deputy Superintendent of Police from proceeding further with the investigation of the said FIR and to quash the proceedings pending before the Court of Chief Judicial Magistrate, Nahan to prevent any further misuse of the process of law.

2. The Petitioner in this petition has alleged that she is the Maharani of Jaipur and also one of the two remaining legal heirs and the persons in possession of all the movable and immovable properties of his Highness the late Maharaja Rajendra Prakash of Sirmaur District of State of Himachal Pradesh. She stated that the Petitioner has been in possession, inter alia, of the Palace of Nahan since the demise of her father. The Petitioner also stated that she learnt from reliable sources that the Respondents had registered a First Information Report No. 75/84 on the basis of certain false complaints made by persons who were neither

the owners nor in possession of the properties, alleging theft of valuables from the Palace at Nahan. The Petitioner, as well as the other legal heirs of the late Maharaja, who are present owners alleged to have made representations to the Respondents, inter alia, pointing out that there was no theft at the Palace of Nahan as nothing had been removed from their possession. The Petitioner stated that the complaint was made by mischievous persons to unnecessarily harass her and the investigation confirms that there was no theft but the Respondents are persisting with the investigation of an offence which is alleged to have been occurred more than 15 years ago.

3. The facts of the case are that Maharaja Rajendra Prakash died on 6.11.1964. He was succeeded by his two widows, namely, H.H. Durga Kumari and Indira Devi, two daughters, by name, Kumari Nalini Devi and H.H. Padmini Devi, Petitioner herein, and Rajmata Mandalsa Devi, mother of late Maharaja, according to Hindu Succession Act, 1956. In 1965, a list of all the items kept in the Strong Room was prepared and all the valuable articles were duly partitioned among the legal heirs of late Maharaja Rajendra Prakash. On the death of Maharani Prem Lata Devi, who was not a legal heir of Late H.H. Maharaja Rajendra Prakash, the properties inherited by her from her mother late Rajmata Mandalsa Devi devolved upon Maharani Durga Kumari, Maharani Kumari Nalini Devi, Maharani Padmani Devi (Petitioner) and Maharaj Kumar Udai Prakash in equal shares as per the provisions of the Hindu Succession Act. The Petitioner alleged that one Sh. Jabbar Singh falsely claiming himself to be the General Attorney of Maharani Prem Lata Devi, sister of the late Maharaja, and one Sh. Mohammad Rehman, acting on behalf of Sh. Alark Singh, initiated a series of frivolous complaints/please before various judicial forays staking claims in the properties of his Highness the late Maharaja Rajendra Prakash of Sirmaur and their sole intention evidently is to misuse the process of law for their vested interests. Civil Suit No. 92 of 1987 was also filed by Sh. Alark Singh (whose so-called representative Sh. Mohammad Rehman is one of the complainants in these proceedings), for declaration, partition and rendition of accounts. The suit was dismissed by the learned Single Judge of this Court on 15.12.1993, holding that the Plaintiff could not lay any claim to the estate of late Maharaja Rajendra Prakash and the said judgment and decree came to be passed by this Court in view of the law declared by the Supreme Court. A copy of the judgment and decree has been filed and marked as Annexure-A to the petition.

4. The Petitioner alleged that Sh. Jabbar Singh falsely claiming himself to be the General Attorney of H.H. Prem Lata Devi and one Sh. Mohammad Rehman acting on behalf of Sh. Alarak Singh without proper authority, made a false and frivolous complaint in the police station at Nahan, alleging inter alia, that he had received a information that on 4/5th September, 1982, one Sh. P.S. Paul, (who at the material time was the constituted attorney of the Petitioner), along with 7-8 people removed valuables from the Palace premises and thereafter left Nahan on 5.9.1982. A copy of the complaint has been filed and marked as Annexure-B to the petition. According to the Petitioner, the Respondents could not take any

action on the basis of the complaint independently because the complaint did not disclose the occurrence of any cognizable offence and nor did the investigations reveal any such occurrence. The complainant was not in possession of the articles alleged to have been stolen. As evidence by the fact that complainant was not even aware of the contents of Strong Room of the Palace at Nahan and Sh. Alarak Singh had also filed an application under Order 26, Rule 9, CPC in the earlier Civil Suit No. 92/87 praying for the issuance of a Commission for preparation of inventory of all movable goods lying stocked in the Royal Palace at Nahan, locking the same for safe custody and further empowering such commission to enter upon the premises as they are in the control of the Petitioner and the said application came to be rejected by the learned single Judge vide order dated 6.11.1992.

5. The Petitioner alleged that the factual and true position of the property has been accepted by the legal heirs of H.H. Prem Lata Devi whose alleged representatives has filed one of the complaint with the Police Station at Nahan and duly attested affidavit in this regard sworn by Maharaja Udai Prakash of Chhota Udaipur-son of late Maharani Prem Lata Devi has been given to the Respondents and a copy of the affidavit has been placed on record and marked as Annexure-D. According to the Petitioner, from the narration of the entire facts, it is accepted and unassailable legal position that on the basis of the complaints alleged to have been filed in the police station, the complainants do not have any claims/rights to any movable and immovable properties kept in the Royal Palace at Nahan.

6. Complainant Sh. Jabbar Singh has moved an application in the court of learned Chief Judicial Magistrate, Nahan in the year 1984 and the trial Magistrate has passed an order u/s 156(3) of the Code of Criminal Procedure, 1974 directing the Respondents to register the case and consequently, a F.I.R. No. 75/84 registered on 29.6.1984. The police authorities at Nahan after investigation of the case, u/s 380 of the Indian Penal Code, came to the conclusion that no offence was made out in the F.I.R. The Petitioner has reproduced the contents of the complaint dated 8.9.1982 in para-6 of the petition.

7. After conducting the investigation on the said complaint of Sh. Jabbar Singh, the investigating officer submitted final report in April 1986 to the Court of Chief Judicial Magistrate at Nahan concluding that the locks of the Strong Room were found intact and the locks had not been opened since long and that there were no marks as to lead to the conclusion that there was any house breaking. The cancellation report was submitted to the Chief Judicial Magistrate, Nahan. A protest petition was thereafter filed by Sh. P.S. Saini, falsely claiming to represent H.H. Prem Lata Devi against the said cancellation report in the Court of Chief Judicial Magistrate and the trial Magistrate then passed an order dated 11.6.1986 u/s 156(3), Code of Criminal Procedure and directed the police authorities, Nahan to further investigate the matter. The Petitioner filed a

revision petition against the order of Chief Judicial Magistrate and the learned Additional Sessions Judge, Nahan accepted her petition and set-aside the order of the Chief Judicial Magistrate. According to the Petitioner, during the pendency of the revision petition before the Court of Additional Sessions Judge at Nahan, H.H. Prem Lata Devi, who was one of the persons, alleged to have lodged the complaint expired. Consequently, Sh. Alarak Singh and Jabbar Singh in their capacity as co-sharers of Maharaja Rajinder Prakash Medical Trust, made applications praying to be impleaded in those proceedings in place of H.H. Prem Lata Devi. However, both the applications were rejected. Consequently, suppressing the fact that Sh. Alarak Singh has on locus standi in the matter, he approached the High Court by way of Criminal Revision Petition No. 68/87, which was also dismissed. Sh. Alarak Singh approached the Hon'ble Supreme Court and his appeal was allowed on September 6, 1996 by setting aside the order of the Additional Sessions Judge as well as the High Court and restored the order of the Chief Judicial Magistrate, Nahan dated 11.6.1986, whereby the police was directed to make further investigation of the case. On the basis of the order of the Chief Judicial Magistrate, which was confirmed by the apex court, the Respondents started further investigation in the case. The Petitioner alleged that the complainants are only harassing the Petitioner and on 13.7.1998, Deputy Superintendent of Police Sh. Sunder Lal, visited the Palace at Nahan and threatened the representatives of the Petitioner to arrest them. Under the garb of investigating the matter, the Respondents as alleged by the Petitioner are insisting that the Petitioner should present herself at Nahan and open the Strong Room of the Palace, although it has been duly established that no purpose will be served by doing so. The Petitioner alleged that according to the complainants the theft had taken place about 15 years ago and now the Petitioner is being pressurised to open the locks and seals of the Strong Room of the Palace and the Respondents are not accepting the request of the Petitioner that nothing was stolen from her Strong Room but the Respondents are working at the behest of persons who are inimical towards her and that the investigation is only to harass and humiliate the Petitioner in her own Palace in respect of theft which had been denied by her and which relate to the properties belonging to her. The Petitioner also alleged that her apprehension is that the Respondents will not conduct the investigation impartially, in a fair manner and bona fide and her apprehension is confirmed when the Petitioner learnt from M.K. Udai Prakash that the investigating officer has misled the Court of the Chief Judicial Magistrate, Nahan for initiating the proceedings against the Petitioner u/s 174 of the Indian Penal Code, whereas the Petitioner has till date not been served with any notice u/s 160 of the Code of Criminal Procedure. The Petitioner alleged that even without any receipt of notice she had voluntarily assisted in the investigation in terms of her two letters dated 20.5.1998 and 22.7.1998, the contents of which have palpably been ignored by the Deputy Superintendent of Police concerned. The Petitioner alleged that when she learned about the investigating agency to misuse the process of law, immediately approached the Court of Chief Judicial Magistrate. On 7.8.1998, when the matter was listed before the learned

Magistrate and an application u/s 258, Code of Criminal Procedure was made Graying for discharge but vide its order dated 7.8.1998, the Chief Judicial Magistrate, in total violation of the established procedure of law and in complete violation of the principles of natural justice, refused to grant the Petitioner any hearing and issued bailable warrants against her. The Petitioner further stated that the entire investigations are tainted and are calculated to humiliate and harass her, who is a lady of High Standing and repute in society and, therefore, on the basis of these facts, the Petitioner has prayed that no case is made out u/s 380 of the Indian Penal Code which requires further investigation in the matter and no useful purpose will be served by allowing the Respondents to make further investigation in the case and on these premises, the Petitioner seeks to quash the First Information Report (F.I.R.), by way of this petition.

8. Notice of this petition was issued to the Respondents, who are the Secretary (Home) to the Government of Himachal Pradesh and the Deputy Superintendent of Police, Sirmaur District at Nahan. Counter on the affidavit of Sh. Sunder Lal, Deputy Superintendent of Police (HQ) at Nahan and the Investigating Officer of FIR No. 75/84 has been filed on behalf of both the Respondents. In their counter, three preliminary objections have been taken, namely, (i) that the Petitioner at this stage has no cause of action and locus standi whatsoever to maintain the present petition for quashing the F.I.R., in which names of the accused are yet to be ascertained, and the Petitioner was summoned by the investigating officer for the purpose of facilitating the investigation i.e. for opening the sealed lock of Strong Room of Royal Palace at Nahan and for its joint inspection; (ii) that the present petition is highly misconceived as the investigation in this case is being carried out strictly in accordance" with order/observations of the learned Chief Judicial Magistrate, Nahan which was upheld by the Hon"ble apex Court vide order dated 6.9.1996; and (iii) that as per the FIR, the place of occurrence is Strong Room of Royal Palace at Nahan, which is locked and sealed separately by co-sharers including the Petitioner and that despite repeated summons issued by the investigating officer, the Petitioner has not cared to visit the place of occurrence in order to facilitate the investigation of the case and this act and conduct of the Petitioner indicate that she is wilfully and intentionally hampering the lawful investigation of this case.

9. On merits, the Respondents have stated that the true facts of the case are that the case bearing FIR No. 75/84 was registered and being investigated under order dated 28.6.1984 of the learned Chief Judicial Magistrate, Nahan on the application of General Power of Attorney of Maharani Prem Lata Devi of Chhota Udaipur, who was also co-sharer of the property of late Maharaja Rajinder Prakash of Sirmaur State claiming through her mother Rajmata Mandalasa Devi, and no case has been registered and investigated on the application filed by General Power of Attorney of Kanwar Alark Singh. The Respondents have stated that the judgment of this Court in Civil Suit No. 92/87 is denied for want of knowledge and they have also stated that the said judgment was passed by the Court in respect of the claims of Kanwar Alarak Singh and not of heirs claiming

under Maharani Prem Lata Devi on whose behest the case was registered and is being investigated. The Respondents have specifically stated that the Petitioner had made a representation to the second Respondent-Deputy Superintendent of Police which could be taken notice only after discovering the necessary relevant data and collection of evidence by the Respondents which was possible only after ascertaining the circumstances and facts of the case, collection of evidence interrogation of accused persons, if any, and inspection of place of commission of alleged offence which was found locked and sealed by the apparent co-sharers. Respondents have also stated that the investigating officer summoned the Petitioner and Sh. Udai Prakash on 13.7.1998 to join the investigation at Royal Palace Nahan but the Petitioner and Sh. Udai Prakash deliberately disobeyed the directions of the learned Chief Judicial Magistrate to join the investigation. The Respondents further stated that they are duty bound to investigate the matter in accordance with law and to discover the mystery of removal of valuable articles from the Strong Room of Royal Palace, Nahan as alleged by the complainant. In order to complete the investigation, the 2nd Respondent directed the Petitioner and other apparent co-sharers who have laid claims to the property of late Maharaja Rajinder Prakash of Sirmaur to join the investigation and present themselves in the premises of Royal Palace at Nahan to facilitate the opening of Strong Room for verification of the existence of the valuable articles as alleged by the complainant and notices summoning the Petitioner and other co-sharers were issued by the Respondents and duly served on them but to no avail. On account of disobedience of the directions of the police, the 2nd Respondent initiated proceedings u/s 174, IPC against the Petitioner and the second Respondent is duty bound to perform his legal obligations in accordance with law against each and every person involved irrespective of the height at which he or she is placed in the society. The Respondents have also stated that the Petitioner was represented by her Advocate on 7.8.1998 before the learned Chief Judicial Magistrate, Nahan when the matter was listed for initiating proceedings u/s 174, IPC but the Petitioner did not appear personally on that day. The learned Magistrate issued Bailable Warrants to the Petitioner to make appearance in the Court on 19.9.1998 and against the said order, the Petitioner has filed the revision petition before the learned Additional Sessions Judge, Sirmaur at Nahan. The Respondents have categorically stated that the Petitioner is not an accused at this stage in the F.I.R. and she along with other co-sharers have been summoned as witnesses to join the investigation for the purpose of conducting investigation impartially and in all fairness to the parties involved in the proceedings. The Respondents have casegorically denied that the investigation has been conducted with sole intention to harass and humiliate the Petitioner at the instance of the complainant.

10. The Petitioner in her rejoinder to the counter of the Respondents has reasserted her apprehension that the Respondents are acting on the instigation of certain persons with vested interest without application of mind and the Respondents are deliberately delaying proper investigation in the matter with the

ulterior motive of humiliating and harassing her. The Petitioner reiterated that she has already produced sufficient material before the investigating agency to establish the fact that no offence whatsoever had been committed and after the submission of the final report, there has neither been any events which have transpired thereafter nor any events or facts or documentary evidence which have been discovered subsequently by the investigating officer, which warrant or justify a diametrical change in the previous report/findings of the police. The Petitioner alleged that in order to justify their illegal and arbitrary investigation, the Respondents are deliberately seeking to misinterpret the judicial pronouncements of the Court of Chief Judicial Magistrate and also of the Hon''ble Supreme Court of India.

11. Sh. Alarak Singh through his General Power of Attorney Roshan Lal Saini has filed an application u/s 482, Code of Criminal Procedure for his impleadment as intervener in the case which is registered as Cr. MP. No. 414 of 1998. The Petitioner has also filed reply to the said application challenging the locus standi of the applicant and seeking dismissal of the application.

12. I have heard Ms. Abhilasha Kumari learned Counsel for the Petitioner and Mr. J.K. Verma, learned Assistant Advocate General on behalf of the Respondents.

13. Ms. Abhilasha Kumari learned Counsel vehemently contended that whatever property the Petitioner had inherited from Maharaja Rajinder Prakash of Sirmaur State, she had kept the valuables in Royal Palace at Nahan and no theft of the said property has been committed by any one from the Strong Room and as such no complaint has been made by her to any authority. She next contended that whatever property was inherited by Rajmata Mandalsa Devi mother of Maharani Prem Lata Devi of Chotta Udaipur, was kept by her at Dehradun and no property belonging to her was lying in place or Strong Room and, therefore, the complainant has no locus standi to file the complaint for the theft of the property of Maharani Premlata Devi after the death of her mother Rajmata Mandalsa Devi. She further contended that Mohammad Rehman the self-styled General Power of Attorney of Kanwar Alark Singh has no title or interest in the property kept in the Strong Room at Royal Palace at Nahan and, therefore, he has no locus standi to file the complaint and whatever property is lying in the Strong Room that exclusively is owned and possessed by the Petitioner. The learned Counsel also contended that from the investigation conducted so far by the police, it is not established that whose property was stolen from the Strong Room and who was the owner of the said property whereas on the contrary, it is established on record that whatever valuable articles are lying in the Strong Room at Royal Palace Nahan, the entire property belongs to the Petitioner and she has not made any complaint to the authority concerned that any theft had been committed of her property from the Strong Room. According to the learned Counsel, the investigating officer appears to have been misled by the complainant and treating the property in the Strong Room belonging to all the co-sharers of late Maharaja Rajinder Prakash. The learned Counsel further contended that the

investigation if, allowed in the case will amount to defeat the ends of justice and will give undue advantage to those persons who are bent upon to unnecessarily harass and humiliate the Petitioner and if the investigating officer is permitted to open the Strong Room of the Royal Palace at Nahan, the entire exercise will amount to invasion in the house of the Petitioner and that the entire exercise of the investigation is purely academic and the order of the Chief Judicial Magistrate does not mean that the investigating officer should make out a case u/s 380, I.P.C. The learned Counsel next contended that the contents of the F.I.R. are cryptic and very vague and no cognizable offence is alleged to have been committed by any person who is likely to be made an accused in the present case and, therefore, the ingredients of Section 380, IPC have not been made out by the complainant in the First Information Report.

14. Per contra, the learned Assistant Advocate General contended that the further investigation has been conducted by the Respondents on the directions of the learned Chief Judicial Magistrate, Nahan and the said order was upheld by the apex Court and, therefore, the investigating officer is under legal duty and obligation to comply with the directions of the learned Chief Judicial Magistrate and the Hon"ble apex Court. He contended that the Petitioner has been summoned as a witness to cooperate with the investigating officer and she has not been as yet made an accused, therefore, the present petition for quashing of the First Information Report is not maintainable.

15. I have given my due consideration to the rival contentions of the learned Counsel for the parties. The factual position relevant for the decision of the case has been elaborately noticed in the earlier part of the judgment. It is not in dispute that on the basis of the FIR No. 75/84 lodged at Police Station, Nahan on the complaint of Jabbar Singh, u/s 380, IPC being General Power of Attorney of H.H. Prem Lata Devi, the then investigating officer conducted the investigation and found that no case was made out against any person on the basis of the said complaint and consequently, cancellation report was submitted to the Magistrate concerned. Sh. Jabbar Singh made an application before the Chief Judicial Magistrate, Nahan, u/s 156(3) of the Code of Criminal Procedure which came to be decided by the learned Chief Judicial Magistrate on 11.6.1986 vide order marked Annexure-F placed on record by the Petitioner. The concluding para of the order of the learned Chief Judicial Magistrate at Nahan reads as under:

Keeping in view the aforesaid detailed discussion and the observation made by their Lordships of the Hon"ble Supreme Court, the police is directed to make further investigation into the case. The police file along with copy of this order be sent to the Superintendent of Police Sirmaur, District Nahan and the order sheet be retained in the office. So far the protest petition is concerned, it be tagged with the F.I.R. of the case.

Announced in the open Court. June 11, 1986 (Sd/- Kiran Agarwal) Chief Judicial Magistrate, Sirmaur District, Nahan, H.P.

16. Against the impugned order of the learned Chief Judicial Magistrate, as admitted by the Petitioner herself, revision petition was filed before the learned Additional Sessions Judge, Nahan and the learned Additional Sessions Judge allowed the revision petition by setting aside the order of the learned Magistrate. It appears that Kanwar Alarak Singh filed Criminal Revision Petition No. 6,8/87 in this Court against the judgment and order dated 20.6.1987 of the Court of Additional Sessions Judge, Solan District at Nahan in Criminal Revision No. 7-N/10 of 1986, which was dismissed by the Court on 17.5.1995. Against the order/judgment of this Court, Kanwar Alark Singh filed Criminal Appeal No. 1662/96 against Sh. Udai Prakash and State of H.P. in the Hon"ble Supreme Court of India which came up for hearing and was decided on 6.9.1996 vide order placed on record as Annexure-RB by the Respondents. The judgment and order of the Hon"ble Supreme Court reads as under:

Criminal Appeal No. 1662 of 1996.-

The Appeal above-mentioned being called on for hearing before this Court on the 6th day of September, 1996, upon perusing the record and hearing Counsel for the appearing parties herein, Respondent No. 1 not appearing though served THIS COURT in view of its decision in State of Bihar and Another Vs. J.A.C. Saldanha and Others, and for the reason stated in its Order DOTH in allowing the appeal ORDER:

THAT the judgment and Order dated 17th May, 1995 (ML) of the High Court of Himachal Pradesh in Criminal Revision No. 68 of 1987 and as well as the judgment and Order dated 20th June, 1987 of the Court of Additional Sessions Judge, Solan and Sirmaur District at Nahan, Himachal Pradesh in Criminal Revision No. 7-N/10 of 1986 be and are hereby set aside and the Order dated 11th June, 1986 of the Court of Chief Judicial Magistrate, Nahan in case No. 6614 of 1986 be and is hereby restored.

17. Thus, their Lordships of the apex Court upheld the order of the learned Chief Judicial Magistrate, Nahan dated 11.6.1996 whereunder the police was directed to make further investigation into the case and on the basis of the said order, the second Respondent has been authorised by the State of H.P. to make further investigation in the case which he has under taken to do so. The investigating officer has been calling all the parties who have installed their claims in the property alleged to have been kept in the Strong Room of the Royal Palace, Nahan being co-sharers. Admittedly, there is no allegation made against the Petitioner in the complaint that she had stolen some valuable articles from the Strong Room and thereby committed the offence of theft. The investigating officer has been summoning the complainant and other alleged co-sharers to find out as to whether any theft had been committed in the Strong Room of the Royal Palace and until and unless the Strong Room is opened by the Petitioner who claims herself to be the owner in possession of the valuable articles kept in the Strong Room, the investigating officer cannot make any further progress in the investigation. The Respondent-Deputy Superintendent of Police, who is the

investigating officer of the case has been conducting the investigation under the orders of the competent Court and the earlier investigation which resulted in submission of the cancellation report is now of no help and assistance to the Petitioner as the said report was not accepted by the competent Criminal Court and the learned Chief Judicial Magistrate, Nahan passed the order on 11.6.1986 directing to make further investigation u/s 156(3) of the Code of Criminal Procedure.

18. The allegations of the Petitioner that the investigating officer Respondent No. 2, herein, has been unnecessarily harassing and humiliating the Petitioner at the instance of the complainant are not found substantiated from the materials placed on record by the Petitioner. The investigating officer is conducting the investigation as directed by the competent Court of law and not on his own whims and fancies, and he has to comply the orders and directions of the Courts and without examining the material witnesses during the investigation to find out the truthfulness of the complaint, the investigating officer cannot proceed further with the investigation and for completing the investigation, the presence of the Petitioner is required by him to associate him for conducting the investigation in a smooth and proper manner. The claim of the Petitioner that she is the sole owner and in possession of the valuables kept in the Strong Room of the Royal Palace, Nahan cannot be decided by this Court in these proceedings and she can project all her defenses available to her before the investigating officer during the course of the investigation. I do not consider it just and appropriate to express any opinion on the merits of the case and the ownership of the rights of the parties in the property kept in the Strong Room of the Royal Palace at Nahan and shall confine myself to the legal proposition as to whether this Court in exercise of the discretionary powers u/s 482, Code of Criminal Procedure read with Article 227 of the Constitution is justified in quashing the FIR and restraining the investigating officer from proceeding further with the investigation of the case. So far investigation of the case is concerned, as already noticed herein-above, it has been re-started by the investigating officer on the directions of the learned Chief Judicial Magistrate, whose order has been upheld by the apex Court and the Petitioner's prayer for stopping the further investigation cannot be accepted in these circumstances.

19. The moot question which arises for consideration is whether in the circumstances of the case, the Petitioner has rightly approached this Court u/s 482, Code of Criminal Procedure read with Article 227 of the Constitution of India and, into, whether the Petitioner is entitled to the reliefs sought for by her in these proceedings. I have, thus, to examine the power of this Court under Article 227 of the Constitution and Section 482 of the Code of Criminal Procedure in the light of the well settled position of law by the Hon"ble Supreme Court of India in a number of decisions.

20. It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others Vs. Ch. Bhajan Lal and others,

the apex Court examined the extraordinary powers under Article 226 and also the inherent powers u/s 482, Code of Criminal Procedure of the High Court which their Lordships said could be exercised by the High Court either to prevent the abuse of the process of any Court of law or otherwise to secure the ends of justice their Lordships have laid down certain guidelines (AIR page 629 para-108), which are extracted as under:

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- (5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

21. While laying down the guidelines extracted hereinabove, where the Court will exercise jurisdiction under Article 226 of the Constitution and also the inherent powers u/s 482, Code of Criminal Procedure it was also said that these guidelines could not be inflexible or laying rigid formulae to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under article

227, the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature.

22. Ms. Abhilasha Kumari learned Counsel for the Petitioner has mainly relied upon the guidelines Nos. 1, 2, 3, 5 and 7 of the judgment to contend that in the facts and circumstances of the present case, the contents of FIR do not prima facie constitute a cognizable offence justifying further investigation by the police officer and there is no sufficient ground for proceeding against the Petitioner in this case. She contended that continuance of the investigation further will amount to miscarriage of justice, harassment and humiliation of the Petitioner and, therefore, the court is empowered to quash the same in the teeth of the express guidelines of the apex Court in the judgment of *State of Haryana v. Bhajan Lal* (supra).

23. I have considered the ratio of other judgments of the apex Court. In *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, their Lordships of the Supreme Court while dealing with the powers and jurisdiction of the High Court, held that it is settled that the High Court can exercise its power of judicial review in criminal matters, under Article 227. The power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. It has also been held that Article 227 confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. Their Lordships proceeded to hold that the powers conferred on the High Court have no limits but more the power more due care and caution is to be exercised while invoking these powers, and when the exercise of powers could be under Article 227 or Section 482 of the Code, it may not always be necessary to invoke the provisions of Article 226, (page 758 (SCC) para 22). Their Lordships of the apex Court also taken into consideration various other judgments of the apex Court, namely, *Waryam Singh and Another Vs. Amarnath and Another*, ; *Waryam Singh and Another Vs. Amarnath and Another*, and *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, to consider the scope of Article 227 of the Constitution and the power and jurisdiction of the High Court to exercise such jurisdiction over the subordinate Courts and Tribunals.

24. Ms. Abhilasha Kumari learned Counsel for the Petitioner placed reliance on *Binay Kumar Singh and others Vs. State of Bihar*, in which their Lordships of the Supreme Court held that cryptic information from somebody who does not disclose any authentic knowledge about commission of cognizable offence would not be sufficient to register an FIR. According to the learned Counsel in the present case the FIR is cryptic and does not disclose the commission of any offence which warrants further investigation. As noticed above, the investigation in the present case has been ordered by the Chief Judicial Magistrate and the said order has been upheld by the apex Court and the second Respondent is directed to proceed with the investigation in compliance with the orders of the

competent court. Unless the investigation is allowed to continue, it will not be possible for the investigating officer to ascertain whether any theft had been committed from the Strong Room of the Royal Palace, Nahan and if so, who is the culprit and without further progress of the investigation, the investigating officer will not be in a position to record his finding about the genuineness and truthfulness of the complaint on the basis of which FIR came to be lodged in the police station. The guidelines on which reliance has been placed by the learned Counsel for the Petitioner in *State of Haryana v. Bhajan Lal* (supra), will not be of any help and assistance to the Petitioner at this stage as she has not been found to be an accused but as categorically stated by the Respondents in their counter-affidavit and during the course of the hearing that the Petitioner has been summoned only as a "witness in this case and not as an accused.

25. The apex Court in catena of judgments has relied upon its earlier judgment in *State of Haryana v. Bhajan Lal* (supra) and has given a word of caution to the High Courts not to interfere in the investigation of the case by the police at the initial stage and/or not to quash the FIR except in the rarest of the rare cases. I may have an advantage to refer a few of the judgments of the apex Court at this stage. In *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, their Lordships of the Supreme Court held that mere allegations of mala fide against informant and investigating officer, cannot be basis for quashing proceedings under Article 226 of the Constitution of India. It has also been held that if the investigating officer while acting bona fide rules out certain documents as irrelevant and that fact is not a ground to assume that the investigating officer acted mala fide. In *State of T.N. Vs. Thirukkural Perumal*, their Lordships held that the High Court while exercising powers u/s 482, Code of Criminal Procedure to quash FIR and criminal proceedings should exercise such power sparingly keeping in view the guidelines laid down by the Supreme Court in various decisions, and the High Court was not justified in evaluating the genuineness and reliability of allegations made in the FIR or complaint on the basis of evidence collected during the investigation. In *Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another*, the scope and powers of the High Court u/s 482, Code of Criminal Procedure have been retired in the teeth of the guidelines laid down by the Supreme Court in *State of Haryana v. Bhajan Lal*'s case and their Lordships reiterated that the High Court was not justified in quashing the FIR and complaint under Article 226 of the Constitution of India. In *State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others*, their Lordships of the Supreme Court observed that at the stage of quashing a first information report or complaint, the High Court u/s 482, Code of Criminal Procedure read with Article 227 of the Constitution is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. In *Mushtaq Ahmad Vs. Mohd. Habibur Rehman Faizi and others*, their Lordships of the Supreme Court while setting aside the impugned order of the High Court of Allahabad, whereunder a criminal proceedings instituted against the accused were ordered to be quashed at the initial stage under inherent jurisdiction of

Section 482, Code of Criminal Procedure proceeded to hold that the High Court was not justified in quashing the complaint by considering rival versions and entering into debatable area of deciding which of the versions was true. In *State of Kerala and Others Vs. O.C. Kuttan and Others*, their Lordships of the Supreme Court again reiterated that the powers of the High Court u/s 482, Code of Criminal Procedure and Article 227 of the Constitution should be exercised very sparingly with circumspection in rarest of rare cases and the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in FIR or complaint. Their Lordships again proceeded to hold that at the initial stage, it is not possible for the Court to shift material or to weigh the materials and then come to the conclusion one way or the other. Their Lordships also made it clear that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power, as the case may be and allow the law to take its own course. Again in *Rajesh Bajaj Vs. State NCT of Delhi and Others*, their Lordships of the apex Court held that if averments in complaint prima facie make out a case for investigation the High Court cannot quash the complaint merely because one or two ingredients of the offence have not been stated in detail and quashing of complaint on the ground that the complaint disclosed a commercial or money transaction was not justified. The judgment of *State of Haryana v. Bhajan Lal* (supra), was again relied upon by their Lordships while setting aside the judgment of the Delhi High Court, whereunder the FIR was quashed against the accused before the completion of the investigation by the police.

26. In the light of the well settled position of law enumerated hereinabove, I am of the view that the Petitioner could not make out a case for quashing the FIR No. 75/84 lodged in Police Station, Nahan on 29.6.1984 at this stage in the facts and circumstances noted in the earlier part of the order and no relief sought for can be granted to the Petitioner in these proceedings at this initial stage of the investigation. However, the Respondents are directed to expedite the progress of the investigation in accordance with law since the FIR pertains to the year 1984 and more than 15 years have elapsed from the date of registration of the case and till date no fruitful result has been achieved by the investigating officer.

27. No other point has been urged by learned Counsel for the parties on either side.

28. For the aforesaid reasons, the petition fails and shall stand dismissed accordingly. However, it is made clear that any observations made in this order will not prejudice the case of the parties either during the investigation or before the competent court of law.

Cr. M. Ps. Nos. 314/98, 138/99 & 80/99.

29. All these applications are disposed of and the interim order dated 25.9.1998 staying further proceedings in Criminal Case No. 143/4/98, titled *State v. Alarak Singh*, pending in the Court of Chief Judicial Magistrate, Nahan and other

proceedings, if any, arising out of the FIR No. 75/84 shall stand vacated.

Cr. M.P. No. 414/98

30. The present application filed by Kanwar Alarak Singh through his General Power of Attorney u/s 482, Code of Criminal Procedure seeking to be impleaded as party-intervener in these proceedings shall also stand disposed of without expressing any opinion on the question of his locus standi to file the said application, in view of the dismissal of the main petition of the Petitioner.

The summoned records of the Magistrate concerned shall be remitted to the said court immediately by the Registry.