

(2016) 08 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Cr. MMO No. 37 of 2016

Himachal Pradesh Cricket Association	Vs	APPELLANT
State of H.P.		RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 441
Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2016) 4 RCRCriminal 209

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Randeep Rai, Senior Advocate, Vikrant Thakur, Harsh Bunker, Amit Kumar Dhumal, Rubina Virmani and Purshottam Chaudhary, Advocates, for the Appellant; Shrawan Dogra, AG, Parmod Thakur, Addl. AG and Neeraj K. Sharma, Dy. AG, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sharma, J.—The Commissioner-cum-Secretary (Education) vide letter dated 15.9.2001 granted permission for transfer of land to the Himachal Pradesh Youth Services and Sports Department with certain conditions. The petitioner-Company executed a lease deed through Director, Himachal Pradesh Youth Services and Sports Department for the construction of International Cricket Stadium. The land measuring 49118.25 sq. meters was leased out. The Stadium was constructed. The Dy. Superintendent of Police, SV & ACB, Dharamshala sent a communication to the Deputy Commissioner, Kangra at Dharamshala informing him that the investigation in case FIR No. 14/2013 dated 3.10.2013 registered under Sections 447, 120-B IPC and 3 PDP Act, Section 13(2) of P.C. Act was in progress and demarcation was required. The request was to direct the revenue department for demarcation of the land. The demarcation was carried out by the Tehsildar, Dharamshala on 14.11.2013. The communication was sent by the Tehsildar, Dharamshala to the Dy.

Superintendent of Police, SV & ACB, Dharamshala on 16.11.2013. According to the report, encroachment has been made on the land comprised in Kh. Nos. 3620/2826/1 measuring 216-25 sq. meters, 3618/2826 measuring 756-38 sq. meters, 3675/3547/3335 measuring 966-56 sq. meters and Kh. No. 460/207 measuring 414-20 sq. meters at Mohal Chelian. The Himachal Pradesh Cricket Association (hereinafter referred to as HPCA) was in possession of 45959-68 sq. meters of land. In lease deed No. 678 dated 29.7.2002, the land has been shown in Kh. Nos. 2826/1238/1, 3547/3335/1, 3547/3335/2/2, 3335/2 kita 5 measuring 49118-25 sq. meters. The Addl. Director General (SV & ACB), Shimla sent the communication to the Superintendent of Police, Kangra at Dharamshala on 20.2.2014 requesting him to register case under Section 447 IPC and get the matter investigated accordingly. Thereafter, case was registered under Section 447 IPC at PS Dharamshala. The In-charge, PS Dharamshala sent the communication to the Tehsildar, Dharamshala on 16.4.2014, requesting him to prepare para wise report of following documents qua relevant Kh. Nos. and hand over the same to the police for further investigation:

(i) In the report it is shown that HPCA has encroached upon Kh. Nos. 3620/2826/1 measuring 216.26 sq. meter, 3618/2826/1 measuring 756.28 sq. meter and 3675/3547/3335 min/1 measuring 966.56 sq. meter and if any case file has been prepared regarding this, attested copy of which will be handed over to the police.

(ii) Relevant documents and jamabandies of aforesaid Khasra numbers be prepared and handed over to the police.

(iii) If there has been aks tatima (field maps) of the aforesaid Khasra numbers, the same be handed over to the police."

2. The Tehsildar, Dharamshala sent a communication to in-charge PS Dharamshala on 9.6.2014 informing him that the report has been prepared after conducting the investigation at page 392 of the paper book. The In-charge PS Dharamshala sent a letter to the Tehsildar, Dharamshala, Distt. Kangra on 11.6.2014. The text reads as under:

"Reference to your office letter No. 769 dated 9.6.2014, it is submitted that HPCA has encroached upon the additional land comprised in Kh. No. 3618/2826, 3620/2838 and 3675/3647/3335 and in this regard separate files qua additional possession have not prepared. After the demarcation conducted on 14.11.2013 by the Tehsildar, tatima of encroached land along with original documents was stated to be sent to the SV & ACB. Hence, jamabandi, copy of tatima and demarcation report in respect of aforesaid khasra numbers be prepared and hand over to the police. Besides, it may be mentioned whether demarcation of the aforesaid khasra numbers can be carried out again or not. Apart this, it may be shown in the tatima as to on how much portion of aforesaid numbers the HPCA has made illegal possession."

3. The Tehsildar, Dharamshala informed the In-charge PS Dharamshala on

3.7.2014 that as far as re-demarcation is concerned, unless the higher authority does not direct review of old demarcation, re-demarcation could not be carried out. The Dy. Superintendent of Police, SV & ACB, Dharamshala has directed the Tehsildar, Dharamshala to issue khatoni, aks tatima and jamabandi for Kh. No. 460/307 situated in Mohal Chelian for early completion of investigation. The demarcation was carried out by Shiv Dev Singh, Tehsildar. His statement was recorded under Section 161 Cr.P.C. on 22.7.2014. According to his statement, in the demarcation Kh. No. 3620/2826/1 had been mentioned as "sahban" while correct Kh. No. is 3628/2838/1. In the demarcation report of the land measuring 414.20 sq. meter, situated at Mahal Chelian he failed to mention "sahban". Kh. No. 460/307 is owned by Gurmeet S/o. Gurpreet Singh. The investigation was completed and challan was put up in the Court and accused Anurag Thakur and Vishal Marwah were summoned vide order dated 7.11.2015 and 21.11.2015, respectively.

4. The basis of registration of FIR No. 57/2014 dated 8.4.2014 is the demarcation report dated 14.11.2013 carried out by Shiv Dev Singh, Tehsildar at page 389 of the paper book. According to the report, the HPCA has encroached upon Kh. Nos. 3620/2826/1 measuring 216.26 sq. meter, 3618/2826/1 measuring 756.28 sq. meter and 3675/3547/3335 min/1 measuring 966.56 sq. meter. However, as noticed herein above, Shiv Dev Singh, Tehsildar has admitted that the correct Kh. No. was 3628/2838/1 instead of 3620/2826/1. The fact of the matter is that this mistake has not been rectified by the Tehsildar. The statement made under Section 161 Cr.P.C. is not signed. Similarly, in his report dated 14.11.2013, he has mentioned that HPCA has encroached upon Kh. No. 460/307 but he has not mentioned that land is owned by Gurmeet S/o. Gurpreet Singh. The basis for registration of the FIR is the demarcation report dated 14.11.2013.

5. The Addl. Chief Secretary (Home), to the Government of Himachal Pradesh has filed the reply to the petition. The reply filed is vague and sketchy. The averments made in the petition have not been specifically denied. The gist of the reply filed is that the police has registered the case and the investigation has been carried out and the challan has been put up in the Court. The State should have filed the comprehensive reply traversing all the grounds mentioned in the petition. The reply has been filed by a responsible officer but the same is not in conformity with Order XIX of the Code of Civil Procedure.

6. Section 107 of H.P. Land Revenue Act reads as follows:

"(1) A Revenue Officer may, for the purpose of framing any record or making any assessment under this Act or on the application of any person interested, define the limits of any estate, or of any holding, field or other portion of an estate, and may, for the purpose of indicating those limits, require survey marks to be erected or repaired.

(2) In defining the limits of any land under sub-section (1) the Revenue Officer

may, cause survey marks to be erected on any boundary already determined by, or by order of any court, Revenue Officer or Forest Settlement Officer, or restore any survey marks already set up by, or by order of any court of any such officer."

7. The Financial Commissioner has issued detailed instructions for the demarcation under Chapter 10 of the H.P. Land Record Manual, 1992. The notification dated 16.7.2012 has substituted Chapter 10 of the H.P. Land Records Manual, 1992, notified on 3.12.1992. Para 10.1 of Chapter 10 provides that any co-sharer or a person having a legally established title of ownership or possession in a land may submit an application for demarcation to Assistant Collector of either grade with the court fee prescribed in the H.P. Court Fee Act, 1968 accompanied with a copy of latest Jamabandi, a copy of mutation sheet relating to which the application for demarcation has been filed if Khasra number has been subdivided, current settlement map (Musavi) of the land also showing adjoining khasra numbers or sub-divided khasra number, if any and process fee as prescribed under the rules. The Revenue Officer, before whom, an application for demarcation is preferred is required to register the application in the proper register, cause a note of the pending application is required to be entered in remarks column of the jamabandi. On conclusion of the demarcation proceedings, a note to this effect is to be recorded against the Khasra No./land which has been demarcated along with name of the applicant.

8. Para 10.2 specifically lays down that the applicant shall implead all persons who are co-sharers with him in the land of which demarcation is being sought. Besides, owners of land who are in possession of the adjoining plots of land are to be impleaded as necessary parties to the demarcation. Para 10.3 prescribes the authority competent to demarcate the land. Para 14.4 provides that if the boundary is in dispute, the person carrying out the demarcation should measure it from the Village map (musavi) prepared during the last settlement or revision as the case may be. The map so prepared shall include maps prepared by electronic methods e.g. GPS, ETS etc. In case of a map prepared on triangulation system of measurement following the conventional method of survey, he should demarcate the land in dispute with reference to three fixed points. Such fixed points will be the reference points (chandas) which were the basis of measurement of the land during the previous settlement and will therefore be depicted on the musavi. These points should be such that have remained undisturbed since the last settlement. Statements of parties accepting such points as basis for the demarcation should be recorded before starting measurement work. It is further provided in para 14.4 that if the parties do not agree on any such fixed recognisable points, then the person demarcating the land will find such points on his own with the help of the map (musavi). Thereafter, the person demarcating the land will measure these points and compare the result with the distance given on the map. If the distances when thus compared are agreed in all cases, he can then proceed to demarcate the land with reference to these points. It is further laid down in the instructions that if three fixed points are not available and only two fixed recognisable points are

available, a third point may be found with the help of these two points so as to form a triangle.

9. It is evident from these instructions that all the persons who are co-sharers with him in the land of which demarcation is being sought, besides that person, the owners of land who are in possession of the adjoining plots of land will be impleaded as necessary parties to the demarcation. The statements of the parties is to be recorded before starting measurement. In the instant case, the demarcation has been undertaken without informing the HPCA and its office bearers. The notice was required to be issued to the office bearers to be present at the time of carrying out the demarcation. Their statement was to be recorded at the time of fixing three pucca points. It is also provided in para 10.5 that after demarcation, a statement of the parties present is to be recorded and placed on the file along with a detailed demarcation report. The office bearers were neither impleaded as per para 10.2 nor they were notified of the date of demarcation i.e. 14.11.2013. Their statements were also not recorded after the demarcation. The report is required to clearly mention all the persons who were present or absent from the impleaded parties. The demarcation report is required to explain, as per para 10.5 in detail, as to how the measurement was undertaken and it should also mention as to what method was adopted and the manner in which the starting points and the fields were measured. The statements of the interested parties are required to be recorded and the objections regarding demarcation are also to be noted. In the instant case, since the office bearers have neither been impleaded nor heard at the time of fixing pucca points after preparing the demarcation report, they have been deprived the right to file even objections regarding demarcation.

10. Para 10.7 provides that on receipt of the report, the Revenue Officer shall summon all the interested parties and record their statements. In case one of the parties objects to the demarcation report and he finds the objections to be sustainable, the Revenue Officer shall get the land re-demarcated and thereafter decide the objections by a reasoned order. In the instant case, the Revenue Officer has neither summoned the office bearers of the Association nor recorded their statements.

11. Para 10.8 of the newly substituted Chapter 10 provides that the demarcation proceedings being quasi judicial in nature, unless an order accepting a report of demarcation passed by a Revenue Officer is set aside in appeal or revision by an authority of higher competent jurisdiction, a fresh demarcation of the boundaries of land demarcated shall not be given. Hence, whenever an application for demarcation is received, a Revenue Officer must ensure that all adjoining landowners are impleaded as parties and the applicant is made to fence his boundary at the time of demarcation in the presence of the adjoining land owners so that the demarcation involves all the necessary parties to avoid further applications for demarcation of the same boundary. It would be apt at this stage to mention that it is not that the office bearers have not been

summoned but the land owners of the adjoining land were also not impleaded as parties.

12. This court has noted that the demarcation report dated 14.11.2013 is not in accordance with Chapter 10 notified on 16.7.2012. Correct Khasra numbers have not been mentioned in the report, as noticed herein above. Correct Khasra number, as per the statement of Tehsildar Shiv Dev Singh was 3628/2838/1. However, in the demarcation report, khasra number shown to be encroached by the petitioner-Association is 3620/2826/1. The land in Kh. No. 460/307 measuring 414.20 sq. meters does not belong to the State Government. It is a private property. The police could not take suo motu action qua the private land owned by Gurmeet son of Gurpreet Singh. The name of Gurmeet son of Gurpreet Singh is not stated along with the HPCA in the demarcation report. The name of Gurmeet son of Gurpreet Singh only finds mention in the statement recorded of Tehsildar Shiv Dev Singh under Section 161 Cr.P.C. on 22.7.2014.

13. The police in order to overcome the defective demarcation report has sent the communication to the Tehsildar, Dharamshala on 11.6.2014 as to whether fresh demarcation could be carried out bearing Kh. Nos. 3620/2826/1, 3618/2826/1 and 3675/3547/3335 min/1. The Tehsildar, Dharamshala has categorically informed the In-charge PS Dharamshala, Distt. Kangra on 3.7.2014 that re-demarcation cannot be carried out unless the higher authority reviews the old demarcation. It is evident from the record that the police has already registered FIR No. 14/2013 dated 3.10.2013 against the office bearers of the Association qua Kh. No. 3547/3335 and it was during the course of the investigation of this FIR alleged encroachment was detected. The total land which has been leased out to the HPCA is 49118.25 sq. meters. According to the demarcation report, the HPCA was found in possession of 42886-52 sq. meters. The present FIR has been registered against the accused under Section 447 IPC.

14. Sections 441 and 447 IPC read as follows:

"441. Criminal trespass.--Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

447. Punishment for criminal trespass.--Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

15. Their lordships of the Hon^{ble} Supreme Court in the case of Smt. Mathri and others v. The State of Punjab, reported in AIR 1964 SC 986, have held that in order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such

annoyance, intimidation or insult was the aim of the entry. It is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering. In deciding whether the aim of the entry was the causing of such annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something else than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry. It has been held as follows:

"13. The question then is whether when Rattan Singh and others went on the lands of which possession was to be taken under the warrants, they were committing the offence of criminal trespass. The answer to this question depends on whether in entering upon the property these persons acted "with intent to commit an offence or to intimidate, insult or annoy" persons in possession of the property. It is not suggested that the entry was with intent to commit any offence or to intimidate or to insult the persons in possession of the property.

It has been strenuously contended however by Mr. Kohli that in entering upon these properties for the purpose of dispossessing those in possession in the purported execution of warrants which had ceased to be executable Rattan Singh and others must be held to have acted "with intent to annoy" these in possession. These persons, it is argued, knew very well that the natural and inevitable consequence of their action was that the persons in possession would be annoyed. It necessarily follows therefore according to the learned counsel that they had the intention to annoy those persons. The proposition that every person intends the natural consequences of his act, on which the learned counsel relies, is often a convenient and helpful rule to ascertain the intention of persons when doing a particular act. It is wrong however to accept this proposition as a binding rule which must prevail on all occasions and in all circumstances. The ultimate question for decision being whether an act was done with a particular intention all the circumstances including the natural consequence of the action have to be taken into consideration. It is legitimate to think also that when section 441 speaks of entering on property " with intent to commit an offence, or to intimidate, insult or annoy" any person in possession of the property it speaks of the main intention in the action and not any subsidiary intention that may also be present. One of the best expositions of the meaning of the word "intent" as used in the Indian Penal Code was given in a decision of the Bombay High Court in 1900 in Bhagwant v. Kedari (1). Examining the definition of the word "fraudulently" in section 25 of the Indian Penal Code, viz., "a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". Batty J. observed thus at page 226 of the Report:-

"The word "intent" by its etymology, seems to have metaphorical allusion to archery, and implies "aim" and thus connotes not a casual or merely possible

result-foreseen perhaps as a not improbable incident,. but not desired but rather connotes the one object for which the effort is made-and thus has reference to what has been called the dominant motive, without which the action would not have been taken."

18. We think, with respect, that this statement of law as also the similar statements in Laxaman Raghunath's Case (2) and in Sellamuthu Servaigaran's Case (3) is not quite accurate. The correct position in law may, in our opinion, be stated thus: In order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering; that in deciding whether the aim of the entry was the causing of such annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something else than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry.

19. Applying these principles to the facts of the present case, we are satisfied that the courts below are right in holding that Rattan Singh and others have not been shown to have had the intention to annoy. It may be true that they knew that annoyance would result. Armed as they were with the warrants of execution it is reasonable to think however that the intention which prompted and dominated their action was to execute the warrants. We think also that the courts below were right in their view that Rattan Singh and others could not be reasonably expected to know that the warrants had ceased to be executable in law. Taking all the circumstances into consideration we have come to the conclusion that the courts below were right in their view that criminal trespass was not committed or apprehended from the acts of Rattan Singh and others who entered the property and rightly rejected the defence plea that the object of those who assembled was to defend the property against trespass."

16. Their lordships of the Hon"ble Supreme Court in the case of Smt. Kanwal Sood v. Nawal Kishore and another, reported in (1983) 3 SCC 25, have held that every trespass does not amount to criminal trespass within the meaning of Section 441 IPC. In order to satisfy the conditions of Section 441 it must be established that the appellant entered in possession over the premises with intent to commit an offence and in the complaint made by the respondent there was absolutely no allegation in this regard. It has been held as follows:

"10. It may be pointed out that the appellant was allowed to occupy the premises in 1967 by Shri R.C. Sood. Under the terms of gift-deed Shri Sood was entitled to remain in occupation of the premises during his life time. He could as well grant, leave and licence to p the appellant to occupy the premises along with

him. Now the question arises about her status after the death of Shri R.C. Sood. At the most, it can be said that after the death of Shri Sood the leave and license granted by Shri Sood came to an end and if she stayed in the premises after the death of Shri Sood, her possession may be that of a trespasser but every trespass does not amount to criminal trespass within the meaning of section 141 of the Indian Penal Code. In order to satisfy the conditions of section 441 it must be established that the appellant entered in possession over the premises with intent to commit an offence. A bare perusal of the complaint filed by Respondent No. I makes it abundantly clear that there is absolutely no allegation about the intention of the appellant to commit any offence or to intimidate, insult or annoy any person in possession, as will be evident from three material paragraphs which are quoted below:

"2. That the late Shri R.C. Sood was occupying the said premises in accordance with clause No. I of a gift-deed executed by him in favour of Shri Anand Mayee Sangh and after his demise the said premises had to be delivered to Shri Anand Mayee Sangh.

3. That after the demise of Shri R.C. Sood, the accused was repeatedly requested to voluntarily vacate and deliver the possession of the said premises to the Sangh but the accused paid no heed and hence a notice dated 13.11.1973, copy of which enclosed, was sent to the accused as required by U.P. Amendment of Section 448 I.P.C. the said notice was served upon accused on 14.11.73 as per postal A.D. receipt attached herewith.

4. That the accused was required to quit and vacate the said premises by the 20th day of November, 1973 but instead of vacating the premises the accused has been making unusual pretext and has thus committed an offence under section 448 I.P.C."

11. The appellant may be fondly thinking that she had a right to occupy the premises even after the death of Shri R.C. Sood. If a suit for eviction is filed in Civil Court she might be in a position to vindicate her right and justify her possession. This is essentially a civil matter which could be properly adjudicated upon by a competent Civil Court. To initiate criminal proceedings in the circumstances appears to be only an abuse of the process of the Court."

17. Their lordships of the Hon'ble Supreme Court in the case of *Rajinder and others v. State of Haryana*, reported in (1995) 5 SCC 187, have held that unauthorized entry into or upon property in the possession of another or unlawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate insult or annoy the person in possession of the property. In other words, unless any of the intentions referred in Section 441 is proved no offence of criminal trespass can be said to have been committed. It has been held as follows:

"21. It is evident from the above provision that unauthorized entry into or upon

property in the possession of another or unlawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate, insult or annoy the person in possession of the property. In other words, unless any of the intentions referred in Section 441 is proved no offence of criminal trespass can be said to have been committed. Needless to say, such an intention has to be gathered from the facts and circumstances of a given case. Judged in the light of the above principles it cannot be said that the complainant party committed the offence of "criminal trespass" for they had unauthorisedly entered into the disputed land, which was in possession of the accused party, only to persuade the latter to withdraw thereupon and not with any intention to commit any offence or to insult, intimidate or annoy them. Indeed there is not an iota of material on record to infer any such intention. That necessarily means that the accused party had no right of private defence to property entitling them to launch the murderous attack. On the contrary, such murderous attack not only gave the complainant party the right to strike back in self defence but dis-entitled the accused to even claim the right of private defence of person."

18. Their lordships of the Hon"ble Supreme Court in the case of Satish Mehra v. State (NCT of Delhi) and another, reported in (2012) 13 SCC 614, have held that where allegations did not disclose prima facie case and prosecution of accused would result in abuse of process then proceedings can be quashed either at early stage or at later stage. It has been held as follows:

"15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognised to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged

against the accused."

19. Their lordships of the Hon^{ble} Supreme Court in the case of *Rajiv Thapar and others v. Madan Lal Kapoor*, reported in (2013) 3 SCC 330, have held that following steps should be followed by the High Court to determine the veracity of a prayer for quashing of proceedings raised by an accused by invoking the power vested in the High Court under Section 482 Cr.P.C. It has been held as follows:

"(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or Page 23 the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

20. Their lordships of the Hon^{ble} Supreme Court in the case of *GHCL Employees Stock Option Trust v. India Infoline Limited*, reported in (2013) 4 SCC 505, have held that when the summons were issued against Managing Director, Company Secretary and other Directors of respondent No. 1—accused Company but no specific role was assigned to them in respect of the alleged offences and the Magistrate who issued summons has not recorded his satisfaction about prima facie case against those respondents and role played by them in the capacity of Managing Director, Company Secretary and other Directors, the summons were held to be illegal and amounted to abuse of process of law. It has been held as follows:

"12. From bare perusal of the complaint and the allegations made therein, we do not find in any of the paragraphs that the complainant has made specific allegations against respondent Nos. 2 to 7. In paragraph 2 of the complaint, it is alleged that respondent Nos. 2 to 6 are looking after the day-to-day affairs of the Company. With whom the complainant or its authorised representative interacted has also not been specified. Although in paragraph 11 of the complaint it is

alleged that the complainant on numerous occasions met accused Nos. 2 to 7 and requested to refund the amount, but again the complainant has not made specific allegation about the date of meeting and whether it was an individual meeting or collective meeting. Similarly, in paragraph 17 of the complaint, there is no allegation that a particular Director or Managing Director fabricated debit note. In the entire complaint there are bald and vague allegations against respondent Nos. 2 to 7.

13. There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.

18. From bare perusal of the order passed by the Magistrate, it reveals that two witnesses including one of the trustees were examined by the complainant but none of them specifically stated as to which of the accused committed breach of trust or cheated the complainant except general and bald allegations made therein. While ordering issuance of summons, the learned Magistrate concluded as under:-

"The complainant has submitted that the accused Nos. 2 to 6 are the directors of the company and accused No. 7 is the secretary of the company and were looking after the day to day affairs of the company and were also responsible for conduct and business of the accused No. 1 and some time or the other have interacted with the complainant.

I have heard arguments on behalf of the complainant and perused the record. From the allegations raised, documents placed on record and the evidence led by the witnesses, prima facie an offence under section 415, 409/34/120B is made out. Let all the accused hence be summoned to face trial under the aforesaid sections on PF/RC/Speed Post/courier for 2.12.2008."

19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against respondent Nos. 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. Recently, in the case of M/s. Thermax Ltd. & Ors. v. K.M. Johny & Ors., 2011(11) SCALE 128, & ors. while dealing with a similar case, this Court held as under:-

"20. Though Respondent No. 1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No. 1-Company, who do not have any personal role in the allegations and claims of Respondent No. 1. There is also no specific allegation with regard to their role.

21. Apart from the fact that the complaint lacks necessary ingredients of

Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of "vicarious liability" is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant-Company."

20. As stated above, the decisions relied upon by the counsel for the appellant and the respondents need not be discussed as the law has been well settled by those decisions as to the power and duty of the Magistrate while issuing summons in a complaint case.

21. In the instant case the High Court has correctly noted that issuance of summons against respondent Nos. 2 to 7 is illegal and amounts to abuse of the process of law. The order of the High Court, therefore, needs no interference by this Court.

22. For the aforesaid reasons, we find no merit in these appeals, which are accordingly dismissed."

21. In the present case also, though the accused have been summoned but their roles have not been specifically pointed out in the commission of offence by the Magistrate. It was necessary for the Magistrate to pin point the role played by either the President or Secretary of the Association in commission of offence under Section 441 IPC. It has also not come on record in what manner the petitioners have intentionally insulted/humiliated or annoyed the occupants of the land.

22. Their lordships of the Hon"ble Supreme Court in the case of Umesh Kumar v. State of Andhra Pradesh and another, reported in (2013) 10 SCC 591, have held that the High Court cannot reject the petition merely on the ground that accused can argue legal and factual issues at the time of framing of charge. However, the inherent power should not be exercised to stifle legitimate prosecution but can be exercised to save accused from undergoing agony of criminal trial. It has been held as follows:

"20. The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Cr.P.C.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such

application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial."

23. Their lordships of the Hon^{ble} Supreme Court in the case of *Rishipal Singh v. State of Uttar Pradesh and another*, reported in (2014) 7 SCC 215, have held that the object of Section 482 Cr.P.C. is to prevent abuse of process of court and to secure ends of justice. If the allegations leading to criminal prosecution prima-facie do not disclose or constitute offence, then power under Section 482 Cr.P.C. can be exercised, however, disputed questions of fact cannot be decided like trial Court. It has been held as follows:

"10. Before we deal with the respective contentions advanced on either side, we deem it appropriate to have thorough look at Section 482 Cr.P.C., which reads:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any orders of this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice".

A bare perusal of Section 482 Cr.P.C. makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of Court and to secure ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C.

11. This Court in *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. and Others*, 2000(3) SCC 269, has discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. and how cautious and careful the approach of the Courts should be. We deem it apt to extract the relevant portion from that judgment, which reads: "Exercise of jurisdiction under inherent power as envisaged in Section 482 of the Code to have the complaint or the charge sheet quashed is an exception rather than rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution with the lodgment of First Information Report. The ball is set to roll and thenceforth the law takes it's own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and it's undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the fact of it does not constitute or disclose any offence alleged, there ought not to

be any hesitation to rise up to the expectation of the people and deal with the situations as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount".

12. This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C. In *State of Haryana v. Bhajan Lal*, 1992 Supp(1) SCC 335, this Court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1) *Central Bureau of Investigation v. Duncans Agro Industries Ltd.*, 1996(5) SCC 592; (2) *Rajesh Bajaj v. State NCT of Delhi*, 1999(3) SCC 259 and; (3) *Zandu Pharmaceuticals Works Ltd. v. Mohd. Sharaful Haque & Anr.*, (2005) 1 SCC 122. This Court in *Zandu Pharmaceuticals Ltd.*, observed that:

"The power under Section 482 of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under Section 482 of the Code must be exercised and proceedings must be quashed". Also see *Om Prakash and Ors. v. State of Jharkhand*, 2012(12) SCC 72.

13. What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.

14. In the backdrop of the legal position, well settled by this Court through catena of judgments, we would like to deal with the facts of the present case which lead to filing of the present complaint against the appellant under Sections 34, 379, 411, 417, 418, 420, 467, 458 and 477 I.P.C. on the file of the Additional Chief Judicial Magistrate, Ghaziabad.

15. The facts of the case which are not in dispute, for better appreciation of the facts and arguments advanced on behalf of the appellant, it is necessary for us to have a thorough look at the letter dated 17th May, 2004 addressed to the appellant/Branch Manager by respondent No. 2.

"Sir, It is requested that the Applicant has issued Cheque Book in which from Cheque No. 083691 to 083700 were 10 cheques in Account No. 1132, out of which, payment up to Cheque No. 083696 has been received and on rest of the cheques are signature of the applicant/account holder. The above cheque book and other necessary payers were in my hand bag and I by Bus from Pikhuwa was coming to Ghaziabad then in the bust itself by mistake that bag was left and even on making to much search could not found. Its information immediately I have given at the police station, Sihani Gate. Therefore, it is requested that you may treat the above cheques as cancelled and on that may not kindly make payment to any person. It will be very kind of you".

A reading of the above letter makes it very clear that the complainant has instructed the appellant/Branch Manager not to pass cheques bearing Nos. 083697 to 083700, the four cheques which were already signed. There is no dispute that after submitting the above letter to the appellant, when Cheque No. 083697 was presented in the Bank on 2nd August, 2004, the same was not cleared by the appellant/Branch Manager in view of the letter of the complainant. Subsequently, the appellant was transferred from that Branch to Dhaulana Branch on 21st August, 2004, there was any instruction to the Bank to inform the account holder or police when the cheque is presented. It appears from the letter that only a request was made to the Bank that the said four cheques shall not be honoured.

16. If we look at the complaint and letter addressed by the complainant to the Branch Manager, the entire grievance of the complaint appears to be that basing on the written information which had been given to the appellant on 17th May, 2004, when the stolen cheque was presented, he should have given a complaint to the police. As the appellant has not chosen to give the complaint to the police, according to the complainant the other accused hatched a conspiracy with the appellant-Branch Manager and accordingly cheated him.

17. It is no doubt true that the Courts have to be very careful while exercising the power under Section 482 Cr.P.C. At the same time we should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold. A clear reading of the complaint does not make out any offence against the appellant/Branch Manager, much less the offences alleged under Sections 34, 379, 411, 417, 418, 420, 467, 458 and 477 I.P.C. We are of the view that even assuming that the Branch Manager has violated the instructions in the complaint in letter and spirit. It all amounts to negligence in discharging official work at the maximum it can be said that it is dereliction of duty."

24. Mr. Randeep Rai, Sr. Advocate for the petitioners has also brought to the notice of the Court that the lease deed entered into between the parties on 29.7.2002 was cancelled on 26.10.2013. However, the learned Advocate General for the State submits that the letter whereby the lease deed has been

terminated/determined has been withdrawn on 18.11.2013. The petitioners have also filed application bearing No. Cr. M.P. No. 744 of 2016 on 24.7.2016. According to the averments made in the petition, the petitioners have been granted the completion certificate issued by the Town and Country Planning Department vide letter dated 8.7.2016. It is certified by the concerned officers of the Town and Country Planning Department that the work has been carried out in accordance with the map approved by the Director Town and Country Planning Department on 19.5.2003. The copy of the completion certificate is Annexure A-1. It is evident from the contents of Annexure A-1 that the site was inspected by the officers of the Town and Country Planning Department and it was found that the work has been completed according to the approved map.

25. In the present case, if the trial is permitted to continue, it would amount to abuse of process of Court and would not serve the ends of justice. The FIR and challan on the face of it do not disclose the commission of offence under Section 441 IPC. The contents of the FIR even if taken at their face value and accepted in entirety, they do not prima-facie constitute any offence or make out a case against the accused. In the charge sheet, Kh. No. 460/307 measuring 414-20 sq. meters has been reported to be in the ownership of the State Government which is factually incorrect. There is no specific mention when the accused have committed the offence. It has been vaguely stated that they have trespassed in the year 2013. It has also not been shown as to what offence they have intended to commit after trespassing on the land.

26. Their lordships of the Hon'ble Supreme Court in the case of Chittaranjan Das v. State of West Bengal, reported in AIR 1963 SC 1696, have held that the basic requirement of every criminal trial is that the charge must be so framed as to give the accused person a fairly reasonable idea as to the case which he is to face, and the validity of the charge must in each case be determined by the application of the test, namely, had the accused a reasonably sufficient notice of the matter with which he was charged? Where it is possible to specify precisely the necessary particulars required by Section 222(1) Cr.P.C., the prosecution ought to mention the said particulars in the charge having regard to the nature of information available to the prosecution and failure to mention such particulars may not invalidate the charge. It has been held as follows:

"7. It is quite clear that of the charge mentions unduly long period during which an offence is alleged to have been committed, it would be open to the criticism that it is too vague and general, because there can be no dispute that the requirement of section 222(1) is that the accused person must have a reasonably sufficient notice as to the case against him. The basic requirement in every criminal trial therefore, is that the charge must be so framed as to give the accused person a fairly reasonable idea as to the case which he is to face, and that validity of the charge must in each case be determined" by the application of the test, viz., had the accused a reasonably sufficient notice of the matter with which he was charged? It is quite conceivable that in some cases by making the

charge too vague in the matter of the time of the commission of the offence an accused person may substantially be deprived of an opportunity to make a defence of alibi, and so, the criminal courts naturally take the precaution of framing charges with sufficient precision and particularity in order to ensure a fair trial; but we do not think it would be right to hold that a charge is invalid solely for the reason that it does not specify The particular date and time at which any offence is alleged to have been committed. In this connection, it may be relevant to bear in mind that the requirements of procedure are generally intended to subserve the ends of justice, and so, undue emphasis on mere technicalities in respect of matters which are not of vital or important significance in a criminal trial, may sometimes frustrate the ends of justice. Where the provisions prescribed by the law of procedure are intended to be mandatory, the legislature indicates its intention in that behalf clearly and contravention of such mandatory provisions may introduce a serious infirmity in the proceedings themselves; but where the provisions made by the law of procedure are not of vital importance, but are, nevertheless, intended to be observed, their breach may not necessarily vitiate the trial unless it is shown that the contravention in question has caused prejudice to the accused. This position is made clear by sections 535 and 537 Cr.P.C.

8. Take, for instance, the case of murder where the prosecution seeks to prove its case against an accused person mainly on circumstantial evidence. In such a case, investigation would generally begin with, and certainly gather momentum after the discovery of the dead body. In cases of circumstantial evidence of this character, it would be idle to expect the prosecution to frame a charge specifying the date on which the offence of murder was committed. All that the prosecution can do in such cases is to indicate broadly the period during which the murder must have been committed. That means the precision of the charge in respect of the date on which the offence is alleged to have been committed will depend upon the nature of the information available to the prosecution in a given case. Where it is possible to specify precisely the necessary particulars required by"s. 222(1), the prosecution ought to mention the said particulars in the charge, but where the said particulars cannot be precisely specified in the charge having regard to the nature of the information available to the prosecution, failure to mention such particulars may not invalidate the charge."

27. The Court has gone through FIR No. 57 of 2014 dated 8.4.2014 as well as the challan and the charge sheet. What is stated in the FIR and challan is that the HPCA has illegally encroached upon the land of Education Department by raising construction of the stadium on some part and also raising boundary wall on it. There is neither any averment in the FIR nor in the challan/charge sheet that the office bearers of HPCA have entered upon the property in possession of the Education Department with intent to commit an offence or to intimidate, insult or annoy or having entered legally upon such property, unlawfully remained there with intent to intimidate, insult or annoy any such person. The names of the persons who have been humiliated, intimidated or annoyed have not been

mentioned. What has been stated is that the HPCA, Dharamshala has encroached upon the Government land. Thus, the essential ingredients of offence under Section 447 IPC are missing. The demarcation report dated 14.11.2013 is in contravention of the mandatory instructions issued under Chapter 10 on 16.7.2012 by the Financial Commissioner, Himachal Pradesh. The instructions issued are to be complied with in letter and spirit.

28. Accordingly, the petition is allowed. FIR No. 57 of 2014 dated 8.4.2014 registered under Section 447/34 IPC at PS Dharamshala is quashed, including charge sheet framed by the learned Chief Judicial Magistrate, Dharamshala in case No. 103-II/2014 and summoning orders dated 17.11.2015 and 21.11.2015, respectively. Pending application(s), if any, shall also stand disposed of.