
(2015) 12 SHI CK 0105

In the High Court Of Himachal Pradesh

Case No : Criminal MMO Nos. 134, 181, 212 and 243 of 2015

Prem Kumar Dhumal and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Constitution of India, 1950 — Article 162, 166
Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 190, 193, 197
Penal Code, 1860 (IPC) — Section 120A, 120-B, 405, 415, 420
Prevention of Corruption Act, 1988 — Section 13, 13(1)(d), 13(2), 19, 19(1)(c)

Citation : (2015) 12 SHI CK 0105

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : A.P.S. Deol, Sr. Advocate, Anshul Bansal, Sudhir Thakur, Vikrant Thakur, Vir Bahadur Verma, Adhiraj Thakur and Shriyek Sharda, Advocates, for the Appellant; Shrawan Dogra, Advocate General, Parmod Thakur, Addl. Advocate General and Vikram Thakur, Dy. AG, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in these petitions, the same were taken up together for hearing and are being disposed of by a common judgment. However, in order to maintain clarity, the facts of Cr. MMO No. 134 of 2015 have been taken into consideration.

Cr. MMO. No. 134 of 2015.

2. Sh. A.N. Sharma, was working as Deputy Inspector General of Police in Police Training College, Daroh, Distt. Kangra, H.P. He sought voluntary retirement from service by submitting an application to the Principal Secretary (Home) to the Government of Himachal Pradesh vide letter dated 20.9.2007 under All India Services (Death-cum- Retirement Benefits) Rules, 1958, vide Annexure P-2. He sought voluntary retirement w.e.f. 21.12.2007. Sh. A.N. Sharma, sent communication to the Principal Secretary (Home) to the Government of Himachal

Pradesh on 18.10.2007 with a request to waive off compulsory period of 3 months to 2 months for voluntary retirement from service w.e.f. 21.11.2007 vide Annexure P-3. Sh. A.N. Sharma, submitted an application on 20.11.2007 seeking withdrawal of application dated 18.10.2007. The application dated 20.11.2007 is marked as Annexure P-4. However, the fact of the matter is that the petitioner was retired voluntarily w.e.f. 21.11.2007 vide notification dated 16.11.2007. The request of Sh. A.N. Sharma was declined vide letter dated 10.12.2007 vide Annexure P-7. Sh. A.N. Sharma filed Original Application before the Central Administrative Tribunal, Chandigarh Bench (CAT) bearing No. 799/HP/2007. The parties were directed to maintain status quo vide order dated 14.12.2007 by the Central Administrative Tribunal, Chandigarh Bench (CAT). Sh. A.N. Sharma, filed fresh representation to the Chief Secretary, Government of Himachal Pradesh for reviewing the earlier order dated 10.12.2007. The Chief Minister made the following remarks vide Annexure P-8:

"His withdrawal which appears to be in order, may be accepted, as it fulfills the statutory requirements."

3. Sh. A.N. Sharma, was also afforded personal hearing vide order dated 24.1.2008. He produced Clerk LC Sandhya as well as Const. Prakash Chand posted at PTC, Daroh. These witnesses deposed that the application dated 20.11.2007 was received by LC Sandhya and entry was made with regard to receipt of the application in the Dak register at Sr. No. 17902 dated 21.11.2007. The copy of the letter addressed to the Chief Secretary is marked as Annexure P-9. The matter was dealt with by the Principal Secretary (Home) to the Government of Himachal Pradesh. He made the following observations:

"Sh. A.N. Sharma, IPS, DIG (P) PTC Daroh applied for voluntary retirement which was accepted on 16.11.2007. Sh. A.N. Sharma on 20.11.2007 applied for withdrawal of voluntary retirement and again requested on 4.12.2007 to permit him to withdraw the option of voluntary retirement. But the Govt. rejected his request for withdrawal of voluntary retirement vide letter at page 242/cors. Sh. A.N. Sharma approached Hon"ble Central Administrative Tribunal for redressal of his grievance which is pending with Hon"ble Central Administrative Tribunal. He has further stated that in case his request for withdrawal of voluntary retirement is accepted he will withdraw O.A. from Hon"ble Central Administrative Tribunal.

As per sub rule (2A) of Rule 16 of the All India Service (Death-cum-retirement benefit) Rules 1958, the exact provision for withdrawal is:---

"A notice of voluntary retirement given by a member of the service may be withdrawn by him after it is accepted by the State Government, only with the approval of the State Government concerned provided the request for such withdrawal is made before the expiry of the period of notice."

The above guidelines state that the notice of voluntary retirement can be withdrawn with the approval of the State Govt. before the expiry of the period of notice. The officer, in this case, has withdrawn his voluntary retirement

application before expiry of the notice period which was 21.11.2007, but the same was not considered by the State Government. I am of the view that we should consider his withdrawal application in right perspective and accept his withdrawal application. The officer is still in service. The State Govt. has not posted any officer there so far. In order to avoid future litigation, we may accept the plea of the officer and allow him to continue in Govt. service subject to withdrawal of O.A. from Hon"ble Central Administrative Tribunal."

4. Thereafter the Principal Secretary (Home) to the Government of Himachal Pradesh, made the following order dated 1.2.2008:

"Sh. A.N. Sharma has submitted application on 30.1.2008 stating that as per directions during the personal hearing, he was asked to submit evidence of withdrawal. The statements of Lady Constable Smt. Sandhya No. 29 PTC Daroh and Sh. Om Parkash Constable No. 451 are also enclosed with the application of Sh. A.N. Sharma. Both the constables have stated that the withdrawal application was submitted on 20.11.2007 which was dispatched to higher authorities on 21.11.2007. in view of the evidence and as examined vide No. 239 to 241, we may accept the plea of the officer and allow him to continue in Govt. service subject to withdrawal of O.A. from Hon"ble Central Administrative Tribunal.

sd/- (Dr. P.C. Kapoor) Principal Secretary (Home) 1.2.2008."

5. Thereafter, the Chief Secretary has made the following observations:

"The evidence submitted by the officer may be accepted."

sd/- Ravi Dhingra 1.2.2008.

6. It was signed by the Chief Secretary on 1.2.2008 and thereafter by the Chief Minister on 1.2.2008. The plea of the petitioner was accepted vide order dated 2.2.2008. Sh. A.N. Sharma, retired on 30.11.2011.

7. The case was re-opened when Sh. Virbhadra Singh took over as the Chief Minister of the State on 25.12.2012. The enquiry was marked by the Chief Minister's Office on 6.2.2014 on the basis of letter dated "Nil" received from one Sh. Ram Singh Negi son of Tek Singh, on which the Hon"ble Chief minister made the following note:

"The ADGP Vigilance may be asked to enquire and report on file within 10 days."

8. Thereafter, FIR No. 6 of 2014 dated 17.6.2014 was registered under Sections 420 and 120-B of the IPC and Section 13(2) of the Prevention of Corruption Act, 1988. The request was made by I.O. through letter dated 22.12.2014 addressed to ADGP to seek prosecution sanction under Section 197 Cr.P.C. and Section 19 of the P.C. Act against the petitioner. The request to seek prosecution sanction against the petitioner was sent to the Governor of H.P., vide request dated 29.12.2014. The Governor of H.P. made the observation that prosecution sanction under Section 19 of the P.C. Act and 197 Cr.P.C. was not required in this

case as per law, on 20.1.2015 vide Annexure P-15. The petitioner also made representation to the Governor of H.P. The same was considered by the Governor of H.P., by making following observations at page 152 of the paper book, as per order dated 21.3.2015:

"I have gone through the file placed before me and found out that Shri Prem Kumar Dhumal has acted on the legal advice and the recommendation of the Principal Secretary (Home) and the Chief Secretary without any mala fide, complicity, and favour. Mr. Dhumal has all acted in discharge of his official duty. Apart from this, there is nothing on record wherein either the Principal Secretary (Law), Principal Secretary (Home) and the Chief Secretary have stated that they had recommended the matter on the directions of Shri. Prem Kumar Dhumal. So I found it a fit case for denial of prosecution sanction. Accordingly, I hereby deny prosecution sanction sought against Sh. Prem Kumar Dhumal for alleged offences under Section 420 and 120-B of IPC in FIR No. 6/2014, dated 17.6.2014, Police Station SV & ACB, Shimla exercising powers under Section 197 Cr.P.C.

Moreover it has been reported that the challan has been filed by the Vigilance Bureau in the Court. I have noted this development and am of the view that, legality of bar on Court taking cognizance without sanction u/s. 197 Cr.P.C., should be left open for the court to decide as per law."

9. The communication dated 21.3.2015 was not placed on record by the prosecution and the learned trial Court proceeded to issue process against all the accused, including the petitioner for offences under Section 420 and 120-B of IPC and under Section 13(2) of the P.C. Act, in FIR No. 6/2014, dated 17.6.2014, registered at Police Station SV & ACB, Shimla, vide order dated 8.4.2015.

10. The gist of the accusations against the petitioner is that when he was the Chief Minister of the State of Himachal Pradesh, he passed an order asking Home Department to consider withdrawal of application of voluntary retirement of Sh. A.N. Sharma. There was no provision in the rules to take an officer back to service after he had retired. Thus, it amounted to illegal act. The application of Sh. A.N. Sharma was already rejected by the Government. The application for withdrawal reached the Government on 28.11.2007. The Government had earlier considered the date of dispatch as 21.11.2007, thus Sh. A.N. Sharma, could not be permitted to withdraw the application after expiry of period of notice. It amounted to abuse of office by Sh. P.K. Dhumal, the then Chief Minister.

11. The gist of the reply filed by the respondents is that once the prosecution sanctioning authority has earlier applied its mind to the facts then on same set of facts and evidences, the case could not be reviewed by the prosecution sanctioning authority on the basis of the representation made by the petitioner. The order dated 21.3.2015 amounts to review of earlier order of the Governor of H.P., dated 20.1.2015.

Cr. MMO No. 181 of 2015.

12. The petitioner has retired as Addl. Chief Secretary to the Government of Himachal Pradesh. The case of Sh. A.N. Sharma, was marked to the Principal Secretary (Home), Government of Himachal Pradesh. The relevant record pertaining to the retirement was obtained. The accusation made against the petitioner as per the final report is that the stand taken by the petitioner was contrary to the reply filed by the State in the Original Application before the Central Administrative Tribunal, Chandigarh on 31.12.2007. The position with respect to receipt of application remained unchanged but the petitioner approved the withdrawal of application for voluntary retirement by A.N. Sharma, contrary to the All India Service (Death-cum-Retirement Benefit) Rules, 1958, giving pecuniary advantage to Sh. A.N. Sharma, by illegally allowing him to continue in service after retirement.

13. Reply was filed by respondents No. 1 and 2 to the petition. The statements of LC Sandhya, Constable Bhim Singh and Constable Prakash Chand were recorded correctly during the course of investigation under Section 161 Cr.P.C. The sanction was accorded by the Governor of H.P. in accordance with law.

Cr. MMO No. 212 of 2015

14. The petitioner was working as Deputy Inspector General of Police in Police Training College, Daroh, District Kangra, H.P. He submitted an application seeking voluntary retirement on 20.9.2007. He sought voluntary retirement with effect from 21.12.2007 by curtailing period from 90 days to 60 days vide letter dated 18.10.2007. The petitioner was retired vide communication dated 16.11.2007 with effect from 21.11.2007. However, in the meantime, petitioner had also moved an application on 20.11.2007, seeking withdrawal of his application for voluntary retirement. His representation was rejected on 10.12.2007. He challenged order dated 10.12.2007. He filed OA No. 799/HP/2007 before the Central Administrative Tribunal, Chandigarh vide annexure P-8. Thereafter the case was considered and he was permitted to continue in service vide letter dated 2.2.2008, annexure P-9. FIR No. 6/2014 dated 17.6.2014 was registered and the matter was investigated. The sanctioning authority accorded the sanction vide annexure P-13. The accusation against the petitioner as per final report is that the decision of the government to reject the withdrawal letter was taken as per law. In fact, Shri A.N. Sharma was seeking BJP ticket from Nadaun and it was known to Shri Prem Kumar Dhumal as he was member of State Election Committee of the BJP. It is difficult to believe that the Chief Minister did not know this fact. However, due to changed circumstances mentioned in the withdrawal letter, Shri A.N. Sharma, was aware that he would not get the BJP ticket. The illegal act of the government to allow his withdrawal application was against the All India Service (Death-cum-Retirement Benefit) Rules, 1958. It resulted in permanent pecuniary benefit to the petitioner. His pension would have been Rs. 27740/- per month if he had retired on 21.11.2007, while his pension after retiring on attaining the age of superannuation is Rs. 32,770/- per month. He has obtained pecuniary advantage of Rs. 5030/- per month.

15. The petitioner was working as Chief Secretary to the Government of Himachal Pradesh. FIR No. 6 dated 17.6.2014 was registered at Police Station SV & ACB Shimla under Sections 420 , 120-B IPC and Section 13(2) of the Prevention of Corruption Act. It was registered on the basis of inquiry conducted with a predetermined mind, alleging that Shri A.N. Sharma had obtained pecuniary advantage in terms of increase in his monthly pension by way of increase in length of service from 21.11.2007 till 30.11.2011. The accusation against Shri Ravi Dhingra is that earlier when he was Chief Secretary, he had already rejected the withdrawal of application and thereafter on the same material he has allowed the application contrary to provisions of sub rule (2A) of Rule 16 of the AIS (DCRB) Rules, 1958. The notification was issued on 2.2.2008 withdrawing the notification dated 16.11.2007. Sh. Ravi Dhingra has approved the file submitted by the Principal Secretary (Home) and forwarded to the then Chief Minister against the Rules, resulting in pecuniary advantage to Shri A.N. Sharma, by allowing him to continue in service after his retirement. The sanction was also obtained.

16. Rule 16(2A) of the AIS (DCRB) Rules, 1958, reads as under:

"16(2A).--A member of the service may, after giving three months" previous notice in writing to the State Government concerned, retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice: Provided that a notice of retirement given by a member of the service shall require acceptance by the Central Government if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the Service could have retired from service under sub-rule (2): Provided further that a member of the Service, who is on deputation to a corporation or company wholly or substantially owned or controlled by the government or to a body controlled or financed by the Government, shall not be eligible to retire from the service under this rule for getting himself permanently absorbed in such corporation, company or body. Provided also that a member of the Service borne on the Cadres of Assam-Meghalaya. Manipur-Tripura, Nagaland and Sikkim may retire from service on the date on which he/she completes 15 years of service."

(While computing the period of three months" notice referred to in sub-rules (2), (2-A) and (3), the date of service of the notice and the date of expiry is required to be excluded.)

17. The Government of India's decision under Rule 16(2A) reads as under:

"GOVERNMENT OF INDIA DECISION UNDER RULE 16(2A)

1. Guidelines for acceptance of notice of voluntary retirement: - It has been decided to lay down the following guidelines for the acceptance of the notice of retirement under sub-rule (2A) of Rule 16 of the All India Service (Death-cum-

retirement Benefits) Rules, 1958 for the information and guidance of the State Governments:--- (i) A notice of voluntary retirement given by a member of the service may be withdrawn by him, after it is accepted by the State Government, only with the approval of the State Government concerned provided the request for such withdrawal is made before the expiry of the period of notice. (ii) In cases where disciplinary proceedings are pending or contemplated against a member of the Service for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case, is of the view that the imposition of the major penalty of removal or dismissal for service would be warranted, the notice of voluntary retirement given by the officer concerned may not ordinarily be accepted. (iii) In cases where prosecution is contemplated or may have been launched in a court of law against a member of the service, the notice of voluntary retirement given by him may not ordinarily be accepted. (iv) The notice of voluntary retirement given a member of the Service, Who is on study leave or who has but not completed a minimum service of 3 years on completion of study leave, may not ordinarily be accepted."

(DP & AR Letter No. 25011/2/80-AIS (II), dated the 16th October, 1980)

18. The Governor of Himachal Pradesh observed in order dated 20.1.2015 that prosecution sanction for alleged offences under the Prevention of Corruption Act, 1988 is dealt under Section 19(1)(c) . There is reference to the decisions of R.S. Nayak Vs. A.R. Antulay, , Parkash Singh Badal and Another Vs. State of Punjab and Others, and Abhay Singh Chautala Vs. C.B.I., , wherein it is clearly laid down that once a public servant demits his office in respect of which the offence was alleged to have been committed, sanction under Section 19 of the P.C. Act is not required. According to the Governor, the offences in the instant case under Sections 420 and 120-B IPC were not reasonably connected with the discharge of official duty of the public servants, hence prosecution sanction u/s. 19(1)(b) of the Cr.P.C. was not required as per the law laid down by the Hon'ble Supreme Court of India in the matter of Parkash Singh Badal and Another Vs. State of Punjab and Others, . Moreover, based on the settled position of law, the officers in the State Government and State Vigilance Bureau had not sought prosecution sanction from the Governor in a similarly situated case of Sh. Vir Bhadra Singh, the then former Chief Minister, in the C.D. Case. Even in the FIR No. 12/2013 dated 1.8.2013, registered at Police Station SV & ACB, Dharamshala against Sh. Prem Kumar Dhumal, former Chief Minister, the State Vigilance Department had not sought prosecution sanction from the Governor u/s. 19 of the P.C. Act, although he was charge sheeted u/s. 13 of the P.C. Act. The Court has already noticed that the petitioner made a representation to the Governor of Himachal Pradesh, which was duly considered by the Governor. The operative portion of the order has already been reproduced hereinabove. The Governor has declined the prosecution sanction against the petitioner Sh. Prem Kumar Dhumal for the alleged offences under Sections 420 and 120-B IPC in case FIR No. 6/2014 dated 17.6.2014.

19. According to the plain language of Section 16(2) of the AIS (DCRB) Rules 1958, a member of the service, may after giving at least three months' previous notice in writing to the State Government retire from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice with proviso that no member of the service under suspension shall retire from service except with the specific approval of the Central Government. According to second proviso of Section 16(2), the State Government concerned on a request made by the member of the service may, if satisfied and for reasons to be recorded in writing, relax the period of notice. As per Section 16(2A), a member of the service may, after giving three months' previous notice in writing, to the State Government concerned, retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice. The first proviso to Rule 16(2A) provides that the notice of retirement given by a member of the service shall require acceptance by the Central Government, if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the service could have retired from service under sub-rule (2). The second proviso to Rule 16(2A) provides that a member of the service, who is on deputation to a Corporation or company wholly or substantially owned or controlled by the government or to a body controlled or financed by the Government, shall not be eligible to retire from the service under this rule or getting himself permanently absorbed in such Corporation, Company or Body. According to the Government of India's decision under Rule 16(2A), as quoted verbatim in para 4 of Cr. MMO No. 134 of 2015, a notice of voluntary retirement given by a member of the service may be withdrawn by him, after it is accepted by the State Government, only with the approval of the State Government concerned provided the request for such withdrawal is made before the expiry of the period of notice.

20. In the instant case, the petitioner has submitted an application, as noticed hereinabove, seeking voluntary retirement on 20.9.2007 w.e.f. 21.12.2007. Thereafter another application was submitted by Sh. A.N. Sharma on 18.10.2007 curtailing compulsory period of 3 months to 2 months. The petitioner submitted an application for withdrawal of application dated 18.10.2007 on 20.10.2007. However, the fact of the matter is that the petitioner's request for voluntary retirement was accepted on 16.11.2007 w.e.f. 21.11.2007. The application was duly diarized and sent to the State Government. The petitioner has also made representation but the same was rejected on 10.12.2007, vide Annexure P-7. The text of the letter dated 10.12.2007, reads as under:

"I am directed to refer to your letter No. P-I(2)YK-361/2000-69905 dated 30.11.2007 on the subject cited above to say that Shri A.N. Sharma, IPS stands retired from Government service w.e.f. 21.11.2007 (AN) pursuant to the acceptance of his notice for voluntary retirement vide notification of even number dated 16.11.2007. Since the request for withdrawal was not received before the expiry of the period of the notice in terms of guidelines under sub-rule

(2A) of Rule 16 of the AIS (DCRB) Rules, 1958, the notice cannot be withdrawn and Shri A.N. Sharma, IPS, DIGP already stands retired from Govt. Service w.e.f. 21.11.2007 (AN)."

21. The petitioner thereafter approached the Central Administrative Tribunal by filing O.A. No. 799/HP/2007. The Central Administrative Tribunal directed the parties to maintain status quo on 14.12.2007. The petitioner submitted an application seeking withdrawal of his voluntary retirement as per Annexure P-8 dated 03.01.2008. The Special Secretary-cum-Principal Private Secretary to the Chief Minister marked the file to the Principal Secretary (Home) with the observation of the Chief Minister; "His withdrawal which appears to be in order, may be accepted, as it fulfills the statutory requirements." The Principal Secretary (Home) Dr. P.C. Kapoor gave reference to instructions appended to Rule 16(2A) of the All India Service (Death-cum-retirement Benefit) Rules, 1958 and was of the view that the State should consider the withdrawal application in right perspective and accept his withdrawal application. It was observed that State has not posted any Officer there so far. In order to avoid future litigation, they may accept the plea of the Officer and allow him to continue in government service subject to withdrawal of O.A. from the Central Administrative Tribunal. There is reference to instruction appended to Rule 16(2A), dated 16.10.1980 of the All India Service (Death-cum-Retirement Benefit) Rules, 1958, whereby the incumbent was permitted to withdraw his application. Dr. P.C. Kapoor, thereafter passed the order on 01.02.2008 stating therein that according to the statement of the L.C. Sandhya and Constable Om Prakash, the application for withdrawal was submitted on 20.11.2007 and was dispatched to higher authorities on 21.11.2007. The order was marked to the Chief Secretary, to the Government of Himachal Pradesh. He observed that the evidence submitted by the Officer may be accepted and thereafter it was signed on 01.02.2008, which led to withdrawal of earlier notification dated 16.11.2007 vide letter dated 02.02.2008. In these circumstances, Sh. A.N. Sharma continued to work up to 30.11.2011 with all consequential benefits. The Principal Secretary (Home) while considering the case of the petitioner for withdrawal of application for voluntary retirement has specifically referred to statements of two witnesses i.e. L.C. Sandhya and Constable Om Prakash. Sh. A.N. Sharma was also given an opportunity of personal hearing on 24.01.2008. It has also come on record that application was diarized on 20.11.2007 and forwarded on 21.11.2007. The application was submitted by Shri A.N. Sharma for withdrawal of application for voluntary retirement before the notification dated 16.11.2007 could take effect on 21.11.2007. The application was submitted by Shri A.N. Sharma before the expiry period of notice. The emphasis under the Rules and decisions is that the application should be made before the expiry of period of notice. Merely that the application has reached the State Government at later date, would not have any adverse effect, since Shri A.N. Sharma has already submitted an application for withdrawal of application for voluntary retirement before 21.11.2007.

22. The application has been processed in accordance with Rules governing the

issue of submission of application for seeking voluntary retirement and its withdrawal. The order made by the Chief Minister on 03.01.2008 and the notings made by Principal Secretary (Home) and the Chief Secretary will not amount to criminal misconduct. It was purely an administrative decision. Merely that Shri A.N. Sharma has superannuated on 30.11.2011 instead of 21.11.2007, will not render it an illegal act. There was no dishonest intention or guilty mind involved in the decision making process. Even as per the language employed by the then Chief Minister, the observation made is that the withdrawal which appears to be in order, may be accepted. The words "appears and may be accepted" are not couched in mandatory and imperative language. It was for the officers concerned to deal with the matter in accordance with law which in fact they have done so by taking into consideration the Rules, decisions and the statements of the Constables who have diarized the application submitted by Shri A.N. Sharma seeking withdrawal of application for voluntary retirement.

23. What was most important in the present case is whether the application was filed before the expiry of period of notice or not. Prima facie, it was submitted on 20.11.2007 and diarized on 21.11.2007 and thereafter sent to the State Government, which culminated into order dated 02.02.2008. The case of the prosecution against the accused is that the act of grant of permission to withdraw the application for voluntary retirement amounted to permanent pecuniary advantage of Rs. 5030/- per month to Sh. A.N. Sharma.

24. Once the application seeking withdrawal of application for voluntary retirement is accepted, it cannot be said that the monetary gains of Rs. 5030/- in the monthly pension would amount to any illegality. It is mentioned in the final report that it was required to be proved that letter of withdrawal reached the authorities before 21.11.2007. The Court has already discussed that what was important was whether the letter has been written before the expiry of the period of notice. In fact, it was written on 20th and diarized on 21.11.2007. Thereafter, the final decision was to be taken on the same. The effective date of retirement was 21.11.2007 and the letter was submitted on 20.11.2007. Thus, it cannot be said that Shri Prem Kumar Dhumal has abused his official position. It would be necessary for completion of facts that the letter has reached the Government on 20.11.2007 and thereafter it was rejected on 10.12.2007. The decision dated 10.12.2007 was assailed before the Central Administrative Tribunal. The Central Administrative Tribunal has directed the parties to maintain status quo on 14.12.2007. Shri A.N. Sharma thereafter was permitted to discharge his duties. No substitute was also sent. He was regularly drawing salary till his retirement in the year 2011. Dr. P.C. Kapoor has made observations that the application submitted by the petitioner to review the earlier decision was required to be considered in right perspective. He has also highlighted the petition filed by Shri A.N. Sharma before the Central Administrative Tribunal. The Constables have categorically deposed that the application was received on 20th and diarized on 21.11.2007.

25. While taking the administrative decision, the principles of Evidence Act would not apply. The case was decided as per the conditions of service governing the case of Shri A.N. Sharma. Shri A.N. Sharma was also given personal hearing on 24.01.2008. Thus, it cannot be said that Dr. P.C. Kapoor has followed any illegal dictate of the then Chief Minister.

26. Now as far as Shri Ravi Dhingra is concerned, he has approved the file submitted by the Principal Secretary (Home) and has submitted to Hon''ble the Chief Minister. This exercise does not have any trappings of criminal misconduct or dishonest intention. It is purely administrative decision based on the orders passed by the Principal Secretary (Home).

27. Shri A.N. Sharma has submitted an application seeking voluntary retirement by giving three months'' notice. He curtailed it to two months. Thereafter he submitted application on 20.11.2007, but vide notification dated 16.11.2007 his voluntary retirement came into force w.e.f. 21.11.2007. He submitted application for reviewing order dated 16.11.2007, which was rejected on 10.12.2007 by making observations that by that time he made the application for voluntary retirement, he stood already retired from government service w.e.f. 21.11.2007. The Central Administrative Tribunal directed the parties to maintain status quo. The Court has already noticed that he was permitted to work and draw his salary. He made representation to the Chief Secretary, to the Government of Himachal Pradesh. It was considered by the then Chief Minister and as noticed hereinabove, the final decision was taken on 02.02.2008, as per notings of the Principal Secretary (Home). Since Shri A.N. Sharma was permitted to work by withdrawing notification dated 16.11.2007 on 02.02.2008, he was bound to get his pension after attaining the age of superannuation in the year 2011 @ Rs. 32,770/-. Thus, it cannot be said that he has obtained any pecuniary advantage illegally in getting monthly pension. The so called advantage, as mentioned in the report that Shri A.N. Sharma obtained pecuniary advantage of Rs. 16,15,368/-, can also not be termed as illegal. He has worked w.e.f. 21.11.2007 till 30.11.2011.

28. The I.O. has sent the case seeking prosecution sanction through proper channel. The then Governor has noted that sanction under Section 19 of the P.C. Act was not required once the public servant demits the office. Now as far as the case under Sections 420 and 120-B of the IPC is concerned, the observations made by the Governor of Himachal Pradesh was that it did not seem to be reasonably connected with the discharge of official duty of the public servant, hence prosecution sanction under Section 197(1)(b) of Cr.P.C. was not required. Moreover, in similarly situated case of Shri Vir Bhadra Singh, in C.D. case, the prosecution has not sought sanction from the Governor. In earlier case bearing FIR No. 12/2013 dated 01.08.2013 against the petitioner Shri Prem Kumar Dhumal, the State Vigilance Department has not sought the prosecution sanction. The petitioner Prem Kumar Dhumal has made representation to the Governor qua sanction. It was duly considered by the Governor of Himachal

Pradesh vide order dated 21.03.2015. A specific observation was made that the decision has been taken by Shri Prem Kumar Dhumal on legal advice and the recommendation of the Principal Secretary (Home) and the Chief Secretary without any mala fide, complicity and favour. He has acted in discharge of his official duty. Moreover, there is nothing on record wherein either the Principal Secretary (Law), Principal Secretary (Home) and the Chief Secretary had stated that they had recommended the matter on the directions of Shri Prem Kumar Dhumal. In view of this, the Governor of Himachal Pradesh denied the prosecution sanction against Shri Prem Kumar Dhumal. The decision dated 21.03.2015 cannot be termed as a review of the earlier order dated 20.01.2015. In earlier order dated 20.01.2015, the Governor of Himachal Pradesh has observed that prosecution sanction was not required under Section 19 of the P.C. Act and the same was also not required under Section 197(1)(b) of the Cr.P.C. under Sections 420 and 120-B of the IPC and in similarly situation, the prosecution sanction was not obtained. The sum and substance of the order dated 20.01.2015 is that the prosecution sanction was not required. However, in order dated 20.01.2015 the then Governor has taken a specific decision declining the prosecution sanction under Section 197 Cr.P.C. qua Sections 420 and 120-B IPC in FIR No. 6 of 2014, dated 17.06.2014 registered at Police Station, SV and ACB, Shimla. It is reiterated that order dated 21.03.2015 is not review of earlier order dated 20.01.2015. The order dated 20.01.2015 is strictly in accordance with law.

29. According to Corpus Juris Secundum, except as otherwise provided by the Statute, an overt act to constitute a crime must be accompanied by a criminal intent or by such negligence as is regarded by law as equivalent to a criminal intent and a crime is not committed if the mind of the person bring the act is innocent, "Actus non facit reum, nisi mens sit rea." To constitute a crime the act must, except as otherwise provided by Statue, be accompanied by a criminal intent on the part of the accused, or by such negligent and reckless conduct and indifference to the consequences of conduct as is regarded by the law as equivalent to a criminal intent. Thus, to constitute a crime, the intent with which the unlawful act was done must be established by either direct or indirect evidence tending to establish the fact or by inference of law from other facts proved. Criminal intent is a sine qua non of criminal responsibility. It is not the policy of the law to hold either individuals or groups criminally liable, unless their activities show clearly an intention to commit, aid, advise, or encourage, willfully and intentionally, a criminal act. Injury resulting from poor and foolish judgment is a matter for the Civil Courts, not the Criminal Courts. A crime usually is composed of two components and elements, an act and an intent. Unless excluded expressly or by necessary implication, the criminal intent or negligence must unite with the overt act, or there must be a union or joint operation of the criminal act and intention, and under some statutes this is expressly required. The personal volition or negligence of the actor must precede the act, and they must concur in point of time.

30. The case of the prosecution is that the then Chief Minister exercised the power with mala fide intention. What malice is, has been explained in Corpus Juris Secundum to signify either general malignity or ill-will toward another or simply an intent to commit a wrongful act. In criminal law, the term is not generally used in the former sense, but only in the latter as synonymous with "criminal intention" and as applied to the state of mind of a person who does a wrongful act intentionally or willfully, and without legal justification of excuse. According to Corpus Juris Secundum, ordinarily one is not guilty of a crime unless he is aware of the existence of all those facts which make his conduct criminal. Without guilty knowledge, criminal intent cannot exist. It cannot be said, in the present case, that the then Chief Minister has acted knowingly to do a criminal act. The act of the then Chief Minister and petitioners cannot be termed as willful. The willful act sometimes is held to be equivalent to "intentional" or "designed", and not to require a wrongful intention or malice. The act of the then Chief Minister and other petitioners cannot be held to be a criminal act. They have neither any motive nor malice to do any criminal act or designed. It was purely an administrative decision.

31. The administrative action has been defined in Volume-2 of Corpus Juris Secundum to mean as under"-

"Administrative action includes not only merely ministerial acts, but many decisions by responsible public officers involving judgment and discretion, and administrative officers, in arriving at decisions, may be free to investigate and determine proper methods and procedures, although their final decision is ex parte in nature, as distinguished from decisions based upon evidence which the parties at interest have an absolute right to present and insist upon.

Administrative acts. Acts which are to be deemed as acts of administration, and classed among those governmental powers properly assigned to the executive department, are those which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body, or such as are devolved upon it by the organic law of its existence. They are commonly called "administrative acts". "Administrative acts" have been compared with or distinguished from "judicial acts," and "legislative acts".

32. Their Lordships of the Hon"ble Supreme Court in the case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, , have held that the Government has discretion to grant or not to grant sanction under Section 6 , but the sanctioning authority has to apply its own mind and then pass orders. The sanctioning authority has not to act mechanically in obedience to mandamus issued by the High Court. Their Lordships have further held that if it is shown that the sanctioning authority was unable to apply its independent mind for any reason or was under an obligation or compulsion or constraint to grant the sanction, the order granting sanction will be bad. It has been held as under:---

"14. From a perusal of Section 6 , it would appear that the Central or the State

Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that "public servant" is to be prosecuted or not. Since the Section clearly prohibits the Courts from taking cognizance of the offences specified therein, it envisages that Central or the State Government or the "other authority" has not only the right to consider the question of grant of sanction, it has also the discretion to grant or not to grant sanction.

19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows, that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.

32. By issuing a direction to the Secretary to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in one direction and to act only in one way, namely, to sanction the prosecution of the appellant. The Secretary was not allowed to consider whether it would be feasible to prosecute the appellant; whether the complaint of Harshadraj of illegal gratification which was sought to be supported by "trip" was false and whether the prosecution would be vexatious particularly as it was in the knowledge of the Govt. that the firm had been black-listed once and there was demand for some amount to be paid to Govt., by the firm in connection with this contract. The discretion not to sanction the prosecution was thus taken away by the High Court.

33. The High Court put the Secretary in a piquant situation. While that Act gave him the discretion to sanction or not to sanction the prosecution of the appellant, the judgment gave him no choice except to sanction the prosecution as any other decision would have exposed him to action in contempt for not obeying the mandamus issued by the High Court. The High Court assumed that role of the sanctioning authority, considered the whole matter, formed an opinion that it was a fit case in which sanction should be granted and because it itself could not grant sanction under Section 6 of the Act, it directed the Secretary to sanction the prosecution so that the sanction order may be created to be an order passed by the Secretary and not that of the High Court. This is a classic case where a Brand name is changed to give a new colour to the package without changing the

contents thereof. In these circumstances the sanctions order cannot but be held to be wholly erroneous having been passed mechanically at the instance of the High Court.

34. Learned counsel for the State of Gujarat contended that the judgment passed by the High Court cannot be questioned in these proceedings as it had become final. The contention is wholly devoid of substance. The appellant has questioned the legality of "sanction" on many grounds one of which is that the sanctioning authority did not apply its own mind and acted at the behest of the High Court which had issued a mandamus to sanction the prosecution. On a consideration of the whole matter, we are of the positive opinion that the sanctioning authority, in the instant case, was left with no choice except to sanction the prosecution and in passing the order of sanction, it acted mechanically in obedience to the mandamus issued by the High Court by putting the signature on a pro forma drawn up by the office. Since the correctness and validity of the "sanction order" was assailed before us, we had necessarily to consider the High Court judgment and its impact on the "Sanction". The so-called finality cannot shut out the scrutiny of the judgment in terms of *actus curiae neminem gravabit* as the order of the Gujarat High Court in directing the sanction to be granted, besides being erroneous, was harmful to the interest of the appellant, who had a right, a valuable right, of fair trial at every stage, from the initiation till the conclusion of the proceedings."

33. Their Lordships of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh Vs. Sheetla Sahai and Others*, , have explained the difference between criminal misconduct and service misconduct and have explained the official duty and purports to act. Their lordships have further held that for establishing offence of conspiracy in regard to criminal misconduct under PC Act, prosecution is required to apply same legal principles as are required for establishing criminal misconduct against accused. Their lordships have held as follows:

"37. Criminal conspiracy is an independent offence. It is punishable separately. Prosecution, therefore, for the purpose of bringing the charge of criminal conspiracy read with the aforementioned provisions of the Prevention of Corruption Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of an accused.

47. Even under the Act, an offence cannot be said to have been committed only because the public servant has obtained either for himself or for any other person any pecuniary advantage. He must do so by abusing his position as public servant or holding office as a public servant. In the latter category of cases, absence of any public interest is a *sine qua non*. The materials brought on record do not suggest in any manner whatsoever that the respondent Nos. 1 to 7 either had abused their position or had obtained pecuniary advantage for the respondent Nos. 8, 9 and 10, which was without any public interest."

34. In the instant case, it cannot be held that the petitioners have abused their position and obtained for themselves any valuable thing or pecuniary advantage while holding office as public servants without any public interest. Moreover, there is a difference between criminal misconduct and misconduct under service law.

35. Their lordships of the Hon'ble Supreme Court in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others, , have held that if it is prima-facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed. Their lordships have further held that sanctioning of prosecution of public servants has following limits:

"35. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. This aspect makes it clear that the concept of Section 197 does not immediately get attracted on institution of the complaint case.

At this juncture, we may refer to P. Arulswami Vs. The State of Madras, ,

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

Section 197(1) and (2) of the Code reads as under: "197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -

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

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

* * * (2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty.

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

Such being the nature of the provision the question is how should the expression, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", be understood? What does it mean? "Official" according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In *B. Saha and Others Vs. M.S. Kochar*, it was held : (SCC pp. 184-85, para 17) "The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1) , an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision."

Use of the expression, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have

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

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

If on facts, therefore, it is *prima facie* found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.

The above position was highlighted in *State of H.P. Vs. M.P. Gupta*, *State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew*, *Shri S.K. Zutshi and Another Vs. Shri Bimal Debnath and Another*, *K. Kalimuthu Vs. State by D.S.P.*, and *Rakesh Kumar Mishra Vs. The State of Bihar and Others*, ."

36. Their lordships in the same judgment have further held that law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalized guidelines in that regard. It has been held as follows:

"47. The sanctioning authority is not required to separately specify each of the offence against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalized guidelines in that regard."

37. Their lordships of the Hon^{ble} Supreme Court in the case of Choudhury Parveen Sultana Vs. State of West Bengal and Another, , have held that all acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Cr.P.C. The underlying object of Section 197 Cr.P.C. is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. It has been held as follows:

"18. The direction which had been given by this Court, as far back as in 1971 in Bhagwan Prasad Srivastava's case (supra) holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Cr.P.C. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in Bhagwan Prasad Srivastava's case (supra), the underlying object of Section 197 Cr.P.C is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Cr.P.C. and have to be considered de hors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned."

38. Their lordships of the Hon^{ble} Supreme Court in the case of State of Punjab and Another Vs. Mohammed Iqbal Bhatti, , have held that grant of sanction, by reviewing an earlier sanction order is permissible but serious application of mind on part of the authority concerned as to existence of fresh materials is imperative. Their lordships have further held that although the State in the matter of grant of refusal to grant sanction exercises statutory jurisdiction under Section 197 , the same, however, would not mean that power once exercised cannot be exercised once again. The validity of an order of sanction would depend upon application of mind on the part of the authority concerned and consideration of all the material facts and evidence collected during investigation and placed before it. It has been held as follows:

"5. The respondent is a public servant. The Governor of the State of Punjab is his appointing authority. He is, therefore, not removable from his office save by and with the sanction of the Government and in that view of the matter if he is accused in any offence alleged to have been committed by him while acting or purporting to act in discharging of his official duty, grant of prior sanction is imperative in character in terms of Section 197 of the Code of Criminal Procedure, 1973. The power of the State, as is well known, is performed by an executive authority authorized in this behalf in terms of the Rules of Executive Business framed under Article 166 of the Constitution of India insofar as such a power has to be exercised in terms of Article 162 thereof. Once a sanction is refused to be granted, no appeal lies there against.

6. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts.

7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. [See *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*,] The concerned authority cannot also pass an order of sanction subject to ratification of a higher authority. [See *State (Anti Corruption Branch) Govt. of N.C.T. of Delhi and Another Vs. Dr. R.C. Anand and Another*,].

14. Before us, however, it was contended that requisite clarification was made by the Deputy Superintendent of Police, Vigilance Bureau on 17.12.2002 stating:

"Besides this Sh. Hans Raj Golden has no link with Vigilance Department. It is false that he is a tout of Vigilance Department."

However, it is stated that with the change in the Government and after more than nine months of the said refusal to grant sanction, the Vigilance Department

again approached the concerned Secretary for grant of sanction by a letter dated 16.05.2004.

15. The Deputy Secretary, Government of Punjab, Village Development and Panchayat Department by a letter dated 30.09.2004 addressed to the Deputy Secretary, Vigilance Bureau, stated as under:

"On the above mentioned subject this department vide letter memo No. 6/37/2001-3 RDE-3/9925 dated 15.12.2003 had refused to grant sanction for prosecution of Sh. Mohammed Iqbal Bhatti.

2. Vide your letter under reference you had again requested to grant sanction for prosecution of the concerned official in the case and after reconsidering the case, sanction for prosecution Sh. Mohammed Iqbal Bhatti, District Development and Panchayat Officer is granted..."

16. The Governor of Punjab in his order of sanction dated 14.09.2004 recorded the prosecution case presumably as contained in the First Information Report and opined:

"Therefore, after perusing the above case police file, documents, challan and attached all the documents minutely the Rajya Pal Ji has become fully satisfied that the above Mohd. Iqbal D.D.P.O. Ferozepur during the tenure of his service/posting, have committed an offence u/s. 7 , 13(2) 88 P.C. Act."

The said order was also signed by the Secretary, Government of Punjab, Rural Development and Panchayat Department.

17. The contention of the learned Additional Advocate General for the appellants is that Rule 8 of the Rules of Business shall apply whereas according to the learned counsel for the respondent, Rule 9 thereof shall apply. In terms of Clause (3) of Article 166 of the Constitution of India all orders of the government must be issued in the name of the Governor. Such orders, however, may be signed by any authorities specified in Rule 9 of the Rules of Business. By reason of either Rule 8 or Rule 9 of the Rules of Business, no substantive power is conferred. The Rules of Executive Business inter alia provided for three authorities before whom the records are to be placed, viz., Minister of the Department, Chief Minister and Cabinet. It has not been contended that in terms of the Rules of Executive Business read with the Standing Order, the Minister of the Department concerned could not have refused to grant sanction. What is contended before us is that Rule 8 of the Rules of Business should have been complied with.

18. It is now well-known that in the event it appears from the order and the records produced before the court, if any occasion arises therefor that even if a valid order is not authenticated in terms of Clause (3) of Article 166 of the Constitution of India, the same would not be vitiated in law. Failure to authenticate an executive order is not fatal. The said provision is directory in nature and not mandatory. [See I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others,].

19. From a perusal of the order dated 15.12.3003, it is evident that before the Hon"ble Minister all the relevant records were produced. The Vigilance Department did not contend that the Hon"ble Minister did not have any jurisdiction. It accepted the said order. It was not challenged. Only when a new government came in, a request was made for reconsideration of the earlier order, as would be evident from the memo of the Secretary of the Department.

20. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon"ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to."

39. Their lordships of the Hon"ble Supreme Court in the case of State of Himachal Pradesh Vs. Nishant Sareen, , have held that when the prosecution sanction is refused on the basis of material placed on record by the Sanctioning Authority and no fresh material is brought on record by Investigating Agency, it is not permissible for the Sanctioning Authority to review or reconsider the matter on the same material again. It has been held as follows:

"12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

14. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated March 15, 2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible."

40. In the present case, the Governor of Himachal Pradesh in the order has held that sanction was not necessary but when the fresh material was placed before the Governor on the basis of the representation, the decision was taken not to accord the prosecution sanction under Section 197 Cr.P.C.

41. Their lordships of the Hon''ble Supreme Court in the case of Om Prakash and Others Vs. State of Jharkhand and Another, , have held that protection of sanction under Section 197 Cr.P.C. is available only for acts having reasonable connection with official duty. Their lordships have also explained the term "official duty". Reasonable connection between act done by public servant with discharge of his official duty must be established to avail of protection of prior sanction under Section 197 . The question whether sanction is necessary or not may have to be determined from stage to stage. Their lordships further held that the true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it. It has been held as follows:

"32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it. (K. Satwant Singh). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.

34. In Matajog Dobey, the Constitution Bench of this court was considering what is the scope and meaning of a somewhat similar expression "any offence alleged

to have been committed by him while acting or purporting to act in discharge of his official duty" occurring in Section 197 of the Criminal Procedure Code (Act V of 1898). The Constitution Bench observed that no question of sanction can arise under Section 197 unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. On the question as to which act falls within the ambit of above-quoted expression, the Constitution Bench concluded that there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim that he did it in the course of performance of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to Hori Ram Singh and observed that at first sight, it seems as though there is some support for this view in Hori Ram Singh because Sulaiman, J. has observed in the said judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and Varadachariar, J. has also stated that the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceeding. It is pertinent to note that the Constitution Bench has further observed that a careful perusal of the later parts of the judgment however show that learned judges did not intend to lay down any such proposition. The Constitution Bench quoted the said later parts of the judgment as under:

"Sulaiman, J. refers (at page 179) to the prosecution case as disclosed by the complaint or the police report and he winds up the discussion in these words: "Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground". The other learned Judge also states at page 185, "At this stage we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty". It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

The legal position is thus settled by the Constitution Bench in the above paragraph. Whether sanction is necessary or not may have to be determined from stage to stage. If, at the outset, the defence establishes that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.

41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the concerned public servant at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. At this point, in order to exclude the possibility of any misunderstanding, we make it clear that the legal discussion on the requirement of sanction at the very threshold is based on the finding in the earlier part of the judgment that the present is not a case where the police may be held guilty of killing Munna Singh in cold blood in a fake encounter. In a case where on facts it may appear to the court that a person was killed by the police in a stage- managed encounter, the position may be completely different."

42. Their lordships of the Hon"ble Supreme Court in the case of Urmila Devi Vs. Yudhvir Singh, , have held that the expression "official duty" in the absence of any statutory definition, therefore denotes a duty that arises by reason of an office or position of trust or authority held by a person. It has been held as follows:

"[54] A careful reading of the above would show that protection against prosecution will be available only if the following ingredients are satisfied:

- (a) The person concerned is or was a judge or magistrate or public servant.
- (b) Such person is not removable from his office save by the sanction of the Government.
- (c) Such person is accused of commission of an offence and
- (d) Such offence is committed while the person concerned was acting or purporting to act in the discharge of his official duties.

[55] There is in the instant case no dispute that the first three of the four requirements set out above are satisfied inasmuch as the Respondent public servant was not removable from the office held by him save by or with the sanction of the Government and that he is accused of the commission of offences punishable under the Indian Penal Code. What constituted the essence of the forensic debate at the bar was whether the offences allegedly committed by the Respondents were committed while he was "acting or purporting to act in the discharge of his official duty". The words "acting or purporting to act in the discharge of his official duty" appearing in Section 197 are critical not only in the case at hand but in every other case where the accused invokes the protection of

that provision. What is the true and correct interpretation of that provision is no longer res integra. The provision has fallen for consideration on several occasions before this Court. Reference to all those decisions may be unnecessary for the law has been succinctly summed up in the few decisions to which we shall presently refer. But before we do so we may point out that the expression "official duty" appearing in Section 197 has not been defined. The dictionary meaning of the expression would, therefore, be useful for understanding the expression both literally and contextually. The term "official" has been defined in Black's Law Dictionary as under:

Official... Of or relating to an office or position of trust or authority.

[56] The term "office" is defined in the same dictionary as under:

Office: A position of duty, trust, or authority, esp. one conferred by a governmental authority for a public purpose.

[57] Law Lexicon also gives a similar meaning to the expression "official" and "office" as under

Official...As adjective, belonging to an officer: of a public officer; in relation to the duties of office.

Office...The word "office" refers to the place where business is transacted.

[58] The term "duty" is defined by Black's Law Dictionary in the following words:

Duty. 1. A legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right.

[59] The expression "official duty" would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the Court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that protection Under Section 197 Code of Criminal Procedure may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression Under Section 197 of the Code."

43. The learned Single Judge of the Punjab and Haryana High Court in the case of Mrs. Nirmal Yadav Vs. Central Bureau of Investigation and another, , has held as follows:

"33. From the careful perusal of the aforesaid judgments relied upon by Shri Tulsi, following propositions emerge:---

(i) Grant or refusal of sanction for prosecution is a statutory function of the competent authority.

(ii) Grant or refusal of the sanction for prosecution of a public servant is the prerogative of the appointing authority/authority competent to remove from service.

(iii) Once the competent authority on the basis of material before it decides to decline sanction, it is impermissible in law to review the question of grant of sanction without fresh material and valid reasons.

(iv) Due application of mind by the competent authority at every stage of consideration is sine qua non for a legal and valid order for grant or refusal of sanction.

70. Now coming to the principal question argued by Mr. Tulsi regarding reviewability of the sanction order, in the case of Nishant Sareen (supra), Hon"ble Supreme Court has held that review on the basis of the same material is impermissible. In the same judgment in para 12, it has been said that it is not an absolute rule that sanction once refused in exercise of statutory power cannot be reconsidered at a subsequent stage. While acknowledging the power of review, it has been held that power is not unbridled or unrestricted. The embargo for review is on the same material and without any fresh inputs. Similarly, in case of Mohammed Iqbal Bhatti (supra), it has been noticed that no fresh material was produced at the time of reconsideration and no reason has been recorded for such reconsideration. Similar is the ratio in the case of Gopikant Choudhary (supra). However, in the present case, at the first place, there was no refusal at any stage or at least a positive view or order for refusal to grant sanction and thus, the question of review or reconsideration does not arise. Even if it is assumed that the note recorded in the letter of Mr. Meena, is to be construed as a refusal, indubitably further investigation was carried out which persuaded the Hon"ble CJI and the sanctioning authority to grant sanction. As per the affidavit of Ms. Neela Gangadharan, file was placed before the competent authority only once in February, 2011, after obtaining the concurrence of Hon"ble CJI in July, 2010. At no earlier stage, the file seems to have been produced before Hon"ble CJI or before the sanctioning authority (President of India). Since there was no earlier refusal, there was no occasion for review or reconsideration. In view of the dictum of various judgments referred to above, review is permissible on the basis of fresh inputs and even for other valid reasons. Assuming in a given case, the sanctioning authority makes an order of declining sanction, even without looking to any material and without due application of mind and subsequently, such authority reviews its own opinion on consideration of material produced and application of mind, this definitely falls within the purview of other valid reasons providing an occasion to the sanctioning authority to review its earlier decision

and grant sanction. Such an order would be legally valid and has the sanction of law."

44. Their lordships of the Hon^{ble} Supreme Court in the case of Balram Gupta Vs. Union of India (UOI) and Anr, , have held that when the voluntary retirement was sought under Rule 48-A by the government servant, the withdrawal of the same in quick succession within the time prior to expiry period, the order allowing to retire prospectively without allowing withdrawal of notice was illegal. It has been held as follows:

"8. The facts, therefore, are that the appellant offered to resign from his service by the letter dated 24th December, 1980 with effect from 31st March, 1981 and according to the appellant his resignation would have been effective, if accepted, only from 31st March, 1981. Before the resignation could have become effective the appellant withdrew the application by the letter dated 31st of January, 1981, long before, according to the appellant, the date the resignation could have been effective. In the meantime, however, prior thereto on the 20th of January, 1981 the respondent has purported to accept the resignation with effect from 31st March, 1981. The appropriate rule sub-rule (4) of Rule 48-A of the Pension Rules as set out hereinbefore enjoins that a government servant shall be precluded from withdrawing his notice except with the specific approval of such authority.

11. In AIR India Vs. Nergesh Meerza and Others, , there the Court struck down certain provisions of Air India Employees Service Regulations. We are not concerned with the actual controversy. But the Court reiterated that there should not be arbitrariness and hostile discrimination in Government's approach to its employees. On behalf of the respondent it was submitted that a Government servant was not entitled to demand as of right, permission to withdraw the letter of voluntary retirement, it could only be given as a matter of grace. Our attention was also drawn to the observations of this Court in Raj Kumar Vs. Union of India (UOI), . There the Court reiterated that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. But in the facts of the instant case the resignation from the Government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus. As mentioned hereinbefore the main question was whether the sub-rule (4) of Rule 48-A was valid and if so whether the power exercised under the sub-rule (4) of Rule 48-A was proper. In the view we have taken it is not necessary, in our opinion, to decide whether sub rule (4) of Rule 48-A was valid or not. It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reasons. Therefore, for the purpose of

appeal we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the Pension Rules is valid or not. If properly exercised the power of the government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter. This is not an unreasonable reason. The guidelines indicated are as follows:

"(2) A question has been raised whether a Government servant who has given to the appropriate authority notice of retirement under the para 2(2) above has any right subsequently (but during the currency of the notice) to withdraw the same and return to duty. The question has been considered carefully and the conclusion reached is that the Government servant has no such right. There would, however, be no objection to permission being given to such a Government servant, on consideration of the circumstances of his case to withdraw the notice given by him, but ordinarily such permission should not be granted unless he is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given.

Where the notice of retirement has been served by Government on the Government servant, it may be withdrawn if so desired for adequate reasons, provided the Government servant concerned is agreeable."

12. In this case the guidelines are that ordinarily permission should not be granted unless the Officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in so quick succession that it cannot be said that any administrative set up or management was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this purpose the respondent is to blame and not the appellant.

13. We hold, therefore, that there was no valid reason for withholding the permission, by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff

members and relations which changed his attitude towards continuing in Government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees."

45. Their Lordships of the Hon^{ble} Supreme Court in the case of C.K. Jaffer Sharief Vs. State (Through CBI), , have held that it could not be held that accused abused his position as a public servant and caused pecuniary loss without public interest and thus no offence under Section 13(1)(d) of the P.C. Act, 1988 was made out. It has been held as under:---

"17. It has already been noticed that the appellant besides working as the Minister of Railways was the Head of the two Public Sector Undertakings in question at the relevant time. It also appears from the materials on record that the four persons while in London had assisted the appellant in performing certain tasks connected with the discharge of duties as a Minister. It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons. If the statements of the witnesses examined under Section 161 show that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however insignificant such tasks may have been, no question of obtaining any pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public servant can arise. As a Minister it was for the appellant to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated that he would be required to perform his official duties while in London. If in the process, the Rules or Norms applicable were violated or the decision taken shows an extravagant display of redundancy it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in M. Narayanan Nambiar v. State of Kerala [1] while considering the provisions of section 5 of Act of 1947."

46. Mr. Shrawan Dogra, learned Advocate General has placed reliance upon the decision in the case of P. Lal Vs. Union of India (UOI) and Others, . The facts of this case are different. In this case since the government servant accepted the notice of voluntary retirement and the retirement has become effective and consequently, the grant of permission at subsequent stage for withdrawal of voluntary retirement was bad. In the present case, Sh. A.N. Sharma has submitted the application for withdrawal of voluntary retirement on 20.11.2007 and the date of communication is 16.11.2007 w.e.f. from 21.11.2007.

47. Their lordships of the Hon"ble Supreme Court in the case of Fakhruddin Ahmad Vs. State of Uttaranchal and Another, , have held that nevertheless, where the High Court is convinced that 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 or where the allegations made in the FIR or the 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, the powers of the high Court under Section 482 should be exercised. It has been held as follows:

"20. So far as the scope and ambit of the powers of the High Court under Section 482 of the Code is concerned, the same has been enunciated and reiterated by this Court in a catena of decisions and illustrative circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. However, for the sake of brevity, we do not propose to make reference to the decisions on the point. It would suffice to state that though the powers possessed by the High Court under the said provision are very wide but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist. The inherent powers possessed by the High Court are to be exercised very carefully and with great caution so that a legitimate prosecution is not stifled. Nevertheless, where the High Court is convinced that 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 or where the allegations made in the F.I.R. or the 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, the powers of the High Court under the said provision should be exercised."

48. In the present case also, even if the FIR and the final report are taken into consideration, at their face value and accepted in entirety, it does not prima-facie constitute an offence against the petitioners.

49. Their lordships of the Hon"ble Supreme Court in the case of Rajeswar Tiwari and Others Vs. Nanda Kishore Roy, , have held that when the proceedings are civil in nature which cannot be adjudicated by criminal court, High Court would

be justified in exercising its inherent jurisdiction and quashing the same. It has been held as follows:

"29) This Court, in a series of decisions, has emphasized the inherent power of the High Court to pass appropriate orders to prevent the abuse of process of court or to secure the ends of justice. Though, inherent jurisdiction under Section 482 has to be exercised sparingly, carefully and with caution when adequate materials are available which clearly shows that the proceeding is either of civil nature, cannot be adjudicated by the criminal court or if it is an abuse of process of court, the High Court is well within its power to exercise its inherent jurisdiction and quash the same.

30) Contours of the power under Section 482 CrPC have been explained in a series of decisions by this Court. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate issuing process against the accused could be quashed under the following circumstances:

"(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

36) In the light of the above mentioned well established principles, we are of the view that the High Court has committed an error, firstly, in not assigning any reason and passing a cryptic order and secondly, failed to exercise its jurisdiction under Section 482 when the complaint does not disclose any offence of criminal nature. For the sake of repetition, we reiterate, though the respondent had some grievance about his non promotion, certain orders passed by the High Court including filing of contempt etc., in view of the statutory provisions of the Income Tax Act, the assertion of the appellants that deductions were being made for all the persons who are liable to pay tax in terms of the Income Tax Act, the proper remedy for the respondent is to approach the authority/officer concerned and not by filing complaint as mentioned above. We have already adverted to the report of SI Hirapur holding that the matter in issue is civil in nature."

50. Their lordships of the Hon^{ble} Supreme Court in the case of Kishan Singh (D) through LRs. Vs. Gurpal Singh and Others, , have held that in cases where there is delay in lodging an FIR, the Court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. In such cases, the Court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side. It has been held as follows:

"22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide : Chandrapal Singh and Others Vs. Maharaj Singh and Another, ; State of Haryana and others Vs. Ch. Bhajan Lal and others, ; G. Sagar Suri and Another Vs. State of U.P. and Others, and Gorige Pentaiah Vs. State of A.P. and Others,)."

51. The petitioner was permitted to withdraw his application for voluntary retirement on 2.2.2008 but the FIR No. 6 of 2014 was registered on 17.6.2014. The delay in lodging the FIR has not been explained.

52. Their lordships of the Hon^{ble} Supreme Court in the case of State of A.P. Vs. Gourishetty Mahesh and Others, , have laid down the following principles for quashment of criminal proceedings at threshold as under:

"18) While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, other wise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.

19) Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in.

20) Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482 ."

53. Their lordships of the Hon"ble Supreme Court in the case of Joseph Salvaraj A. Vs. State of Gujarat and Others, , have held that purely civil dispute sought to be given colour of criminal offence to wreak vengeance against the appellant, it did not meet strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong. This Court, in the present case, has already held that the decision was civil/administrative in nature where no criminal wrong was committed by the petitioners.

54. Their lordships of the Hon"ble Supreme Court in the case of Harshendra Kumar D. Vs. Rebatilata Koley Etc., , have held that in order to prevent injustice or abuse of process or to promote justice, the High Court may look into the materials which have significant bearing on the matter at prima facie stage. The High Court can quash complaint if materials relied upon by accused are beyond suspicion or doubt or which are in the nature of public documents and are uncontroverted. Their lordships have further held that criminal prosecution is a serious matter. It affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. It has been held as follows:

"25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, 7 State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in

exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents - which are beyond suspicion or doubt - placed by accused, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

26. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company."

55. Their lordships of the Hon"ble Supreme Court in the case of Amit Kapoor Vs. Ramesh Chander and Another, , have culled out the following principles to be considered for proper exercise of jurisdiction, particularly with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 Cr.P.C., as under:

"1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

3) Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

4) The High Court should not unduly interfere. No meticulous examination of the

evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

5) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

6) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

7) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

8) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

9) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction.

10) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence."

56. Their lordships of the Hon^{ble} Supreme Court in the case of Rajiv Thapar and Others Vs. Madan Lal Kapoor, , have laid down following principles for quashing of proceedings raised by an accused by invoking the power vested in the High Court under Section 482 Cr.P.C.:

"(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 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."

57. Their lordships of the Hon''ble Supreme Court in the case of Binod Kumar Vs. State of Bihar, , have held that civil liability cannot be converted into a criminal liability as it will amount to abuse of process of the Court.

58. The essential ingredients of criminal conspiracy under Section 120-B IPC are that; (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish the object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute requires it, an overt act. Their lordships of the Hon''ble Supreme Court in the case of Esher Singh Vs. State of Andhra Pradesh, , have held as follows:

"34. Merely because the accused A-1 was holding the deceased, as alleged, to be responsible for the killing of six Sikh students that per se does not prove conspiracy. Section 120-B of IPC is the provision which provides for punishment for criminal conspiracy. Definition of "criminal conspiracy" given in Section 120A reads as follows:

"120A- When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy;

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof".

The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that

object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the minds. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to encompass all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American Jurisprudence Vol.II See 23, p. 559). For an offence punishable under section 120-B , prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

40. The provisions of Section 120A and 120-B , IPC have brought the law of conspiracy in India in line with the English Law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English Law on this matter is well settled. Russell on Crime (12 Ed.Vol.I, p.202) may be usefully noted-

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties, agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."

Glanville Williams in the "Criminal Law" (Second Ed. P.382) states-

"The question arose in an Iowa case, but it was discussed in terms of conspiracy rather than of accessory ship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy

because there was no agreement for "concert of action", no agreement to "cooperate".

Coleridge, J. while summing up the case to Jury in Regina v. Murphy [(1837) 173 ER 502 at p. 508] states:

"I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, had they this common design, and did they pursue it by these common means the design being unlawful."

41. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trapping of the provisions contained in section 120-B [See: Suresh Chandra Bahri Vs. State of Bihar with Gurbachan Singh,]

44. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is

executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B IPC."

59. There is nothing in the FIR or in the final report to suggest that there was any agreement amongst the parties to accomplish a particular object.

60. Their lordships of the Hon"ble Supreme Court in the case of State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., , have held that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary.

61. Their lordships of the Hon"ble Supreme Court in the case of State through Superintendent of Police, CBI/SIT Vs. Nalini and Others, , have culled out the following principles governing the law of conspiracy:

"583. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may, for example, be enrolled in a chain - A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the centre doing the enrolling and all the other members being unknown to each other, though they know that there

are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the

conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

662. From a survey of cases, referred to above, the following position emerges:

In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do from the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.

709. In the view I have taken in the light of the above discussions and on examining the said statements of confession and the evidence, both oral and documentary on record, it would be duplication to record here the same reasoning over again on the question of confirmation of conviction of appellants A-1, A-2, A-3, A-9, A-10, A-16 and A-18. Insofar as the conviction of any other appellant is concerned it would serve no practical purpose and will be only of academic interest and an exercise in futility. I, therefore, consider it appropriate to record my respectful agreement with the reasoning and conclusion arrived at by Thomas, J. in confirming the conviction of A-1, A-2, A-3, A-9, A-10, A-16 and A-18 for the aforementioned offences."

62. Their lordships of the Hon"ble Supreme Court in the case of K.R. Purushothaman Vs. State of Kerala, , have again reiterated that conspiracy is an agreement between two or more persons for doing an illegal act or an act by illegal means. Unlawful agreement is a sine qua non for constituting offence under IPC and not an accomplishment.

63. Their lordships of the Hon"ble Supreme Court in the case of R.S. Nayak Vs. A.R. Antulay and Another, , have held as under:

"67. Cheating is defined in S. 415 of the IPC and the ingredients for that offence are :

(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by the second part of (ii), the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

64. Their lordships of the Hon"ble Supreme Court in the case of Dalip Kaur and Others Vs. Jagnar Singh and Another, , have held that fraudulent and dishonest intention must exist from the very inception when the promise or representation was made to prove charge under Section 420 IPC. It has been held as follows:

"8. Sections 405 and 415 of the Indian Penal Code defining "criminal breach of trust" and "cheating" respectively read as under:

"405 - Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other

person so to do, commits "criminal breach of trust".

"415. Cheating--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating.

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Indian Penal Code."

65. Note No. 23 made by the Governor on dated 21.3.2015, reads as under:

"My Predecessor has elaborated in detail about the position of law well settled but did not express her opinion on the merits of the present case. However, the question to be seen is whether in the present case Shri Prem Kumar Dhumal is entitled for protection under section 197 CrPC."

66. The allegations as contained in the FIR No. 6 of 2014 dated 17.6.2014 and final report do not constitute offence of cheating under Section 420 IPC and criminal conspiracy under Section 120-B IPC and criminal misconduct under Section 13(2) of the Prevention of Corruption Act, 1988. Moreover, the decision to permit the withdrawal of retirement has been taken as per the Rules of Business of Government of Himachal Pradesh, 1971. There is a complete hierarchy provided therein, the manner in which the decisions are to be taken by the Government. Reliance has also been placed upon the two statements made by the Constables, but definitely improvements have been made by these Constables.

67. The allegations contained in the FIR No. 6 of 2014 dated 17.6.2014 and accusations made in the final report even if taken at their face value and accepted in their entirety, neither constitute criminal misconduct nor discloses guilty mind or dishonest intention. It is reiterated that it was purely an administrative decision taken strictly as per the laid down procedure.

68. It cannot also, as per the discussion made hereinabove, be said that the

petitioners by any illegal means have obtained for themselves or for any other person any valuable thing or pecuniary advantage or abused their position as public servant by obtaining for themselves or any other person any valuable thing or pecuniary advantage or while holding office as public servant(s) obtained for them any valuable thing or pecuniary advantage without any public interest. The basic ingredients of Section 13(2) of the P.C. Act, 1988 are lacking in the FIR and the final report. The petitioners have not committed any criminal misconduct as per the bare perusal of the contents of FIR and the final report to bring it within the ambit of Section 13(2) of the P.C. Act, 1988. The petitioners have not deceived anyone to deliver any property to any person or to make, alter or destroy the whole or part of the valuable security or anything which was signed or sealed or which was capable of being converted into a valuable security dishonestly. In order to prove case under Section 420 IPC, it is required to be established not only that the accused has deceived someone, but also that the accused must induce a person who was cheated to deliver any property. There is also no agreement between the petitioners to do some illegal act.

69. Now, as far as the case of Sh. Prem Kumar Dhumal is concerned, the Governor has also declined the prosecution sanction under Section 197 of the Code of Criminal Procedure.

70. Prima-facie, there is no evidence against the petitioners and the prosecution will surely fail to prove the charge against the petitioners on the basis of FIR registered against them and in these circumstances, further continuation of proceedings will amount to abuse of the process of the Court.

71. Before parting with the judgment, it would be apt to add that the registration of criminal cases immediately after the change of guards does not augur well for the democracy. It may lead to vicious cycle. The public servant may be scared to take decisions apprehending their involvement at the later stage. The Court hastens to add that public servants must discharge their duties with utmost honesty and integrity. There has to be continuity in the governing process. The registration of FIR even in those cases which are purely civil/administrative in nature against the public servants would also demoralize them. The averment in the present case has also been made against the complainant. Needless to add that once the complaint is filed with the Police Station and the case is registered, the involvement of the informant/complainant is of secondary evidence. The Court would also like to add a caveat that prolonged bitter quarrel or campaign against each other may vitiate the political atmosphere and may result in impeding the engine of development/growth.

72. Accordingly, all the petitions are allowed. FIR No. 6/2014 dated 17.6.2014, titled as State of Himachal Pradesh Versus Prem Kumar Dhumal and others, registered at Police Station SV & ACB, Khalini, Shimla under Section 13(2) of the P.C. Act, 1988 and under Sections 420 and 120-B IPC and final report submitted under Section 173 of the Code of Criminal Procedure in criminal case No. 2-8/7 of 2015, along with the order dated 8.4.2015 of the learned Special Judge

(Forests), Shimla are quashed and set aside.