(2011) 04 SHI CK 0383

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 96 of 2003

State of Himachal Pradesh — APPELLANT

Vs

R.K. Mehta and Others — RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173, 209, 227, 228, 239
Evidence Act, 1872 — Section 40, 41, 42, 43
Himachal Pradesh Municipal Corporation Act, 1979 — Section 268, 269, 384
Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 — Section 14, 14(3), 14(30), 30
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 118
Himachal Pradesh Town and Country Planning Act, 1977 — Section 38
Penal Code, 1860 (IPC) — Section 120B, 201, 379, 420, 447
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (2011) 04 SHI CK 0383

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The challenge herein in this revision petition under Sections 397 and 401 read with Section 482 of the Code of Criminal Procedure (in short ''Code of Criminal Procedure''), is against the order dated 18.3.2003, of the learned Special Judge (Forest), Shimla, H.P., in Case No. 21-S/7 of 1997, titled State v. Shri R.K. Mehta and Ors. whereby Respondents No. 1 to 6 and 8 herein along with deceased Respondent Shri Om Dutt Sharma, who along with co-accused Shri Satish Chand Jain, who died during pendency of the proceedings before the learned trial court and co-accused Shri D.V. Gupta, who turned approver, who were booked under Sections 420, 447, 379, 467, 468, 471 and 120-B IPC, Sections 14/30 of the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983, Sections 268 and 269 of the Himachal Pradesh Municipal Corporation Act, 1979, Section 38 of the Himachal Pradesh Town and Country Planning Act, 1977 and Section 5(2) of the Prevention of Corruption Act, 1947, were discharged u/s 227 of Code of Criminal Procedure as under:

For these reasons, therefore, owners accused, namely, Kusum S. Chand and Rajesh Jain are discharged u/s 120-B, 420, 201, 447, 379 I.P.C. and the official-accused are discharged u/s 120-B, 420, 201, 447, 379, 467, 468, 471 I.P.C., Section 14(30) (3) of the H.P. Specific Corruption Act and Section 5(2) of the Prevention of Corruption Act.

2. It shall be pertinent to notice at the very outset that earlier vide order dated 25.8.2001, the learned trial court had proceeded to frame charges against all the accused except deceased accused Shri Satish Chand Jain, in the following terms:

In totality of the facts and circumstances of the case, the documents placed by the accused on record u/s 239 Code of Criminal Procedure upon consideration of the police report and documents sent therewith, it appears that there is a prima-facie case and sufficient grounds to presume that the accused R.K. Mehta has committed offences under Sections 467, 468, 471, 120-B of the Indian Penal Code and u/s 5(2) of the P.C. Act 1947, accused R.S. Chandel, Om Dutt Sharma, Krishan Lal, Jagdish Chand Pant and Ganga Ram have committed offences u/s 120-B of the Indian Penal Code and u/s 5(2) of the P.C. Act 1947; accused Rajesh Jain has committed offence u/s 120-B of the Indian Penal Code, u/s 38 of the H.P. Town and Country Planning Act 1977 and u/s 384 of the M.C. Act 1979; accused D.V. Gupta has committed offences under Sections 120-B and 420 of the Indian Penal Code and accused S. Kusum Chand has committed offence under Sections 120-B, 420 of the Indian Penal Code; u/s 38 of the H.P. Town and Country Planning Act 1977 and u/s 384 of the M.C. Act 1979.

Charges as ordered framed. The accused pleaded not guilty and claimed trial.

3. Against the above order of charge dated 25.8.2001, as many as three criminal revision petitions being Cr. R Nos. 152, 153 and 154 were filed in this Court by A-8 Smt. Kusum S. Chand, A-2 Shri R.S. Chandel and A-10 Shri Rajesh Jain, respectively and the same were allowed by the learned Single Judge of this Court vide judgment dated 19.8.2002, operative part whereof is as under:

After having considered the respective submissions urged on behalf of the parties as also examining the case law cited at the bar as well as for the reasons to be recorded hereinafter, all these Revision petitions need to be allowed. However, before proceeding further in the matter, reference is being made to the decision in Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, on which great emphasis was led by Mr. R.C. Sharma. The legal propositions laid down in this judgment can hardly be disputed as was stated on behalf of the Petitioners. But according to Mr. Sood, the documents referred to in the two applications u/s 239 Code of Criminal Procedure should have been considered and in no case could have been excluded in the fact of the order dated 14th August, 2001 and statement of learned PP of the said date.

In this behalf it is also appropriate to observe that so far as the judgment of

Supreme Court is concerned, that the trial court was otherwise bound to have looked into. Since the facts stated in two applications u/s 239 Code of Criminal Procedure having not been controverted, this fact coupled with the statement of P.P. supra, the existence, legality, propriety or otherwise was not disputed. Once this conclusion is arrived at, ratio laid down in the decision reported in Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, is not attracted to the facts of the present case. As such going into other contentions urged on behalf of the parties at the time of haring of these Revision petitions, the impugned order dated 25th August, 2001 passed by learned Special Judge (F), Shimla is hereby quashed and set aside in its entirety and consequential charges framed must also go. It is ordered accordingly.

At the same time it is directed that learned Special Judge (F) will re-examine the matter on the basis of materials which are on the file and thereafter at the same time it will keep in view the order dated 14th August, 2001 and statement made on that day as extracted hereinabove, and then, it shall proceed further to re-examine the case regarding framing of charges or otherwise and then deal with the same in accordance with law.

In this behalf, it hardly needs to be clarified that nothing said in this order shall come in the way of the trial court to re-examine the case afresh.

Since the record is here, parties are directed to appear before the learned Special Judge (F), Shimla on 6th September, 2002. Where after trial court is directed to proceed with utmost expedition while dealing with the case, learned trial Court shall keep in view the fact that First Information Report was lodged in the year 1987 and the challan was put in Court in the year 1997.

4. The impugned order dated 18.3.2003, was passed by the learned trial Court against the above backdrop.

5. Factual matrix as noticed by the learned trial court is as under. Undisputedly, land on which main building ''Hotel Honny Moon Inn'' is situate in the city popularly known as ''Queen of Hills'' Shimla, was earlier housing "Rook Villa Cottage'', which was situate in khasra No. 532/313/D, 532/313/F and 313/2/1 and vacant land, measuring 721.08 square yards. In fact, khasra No. 532/313/F measuring 533.05 square yards equivalent to 446.29 square meters was an open land, khasra No. 532/313/D measuring 533 square yards equivalent to 28.10 square meters, was a path and on khasra No. 313/2/1 measuring 155.03 square yards, equivalent to 130 square meters, there was a house, (referred to as property in question). Undeniably, D.V. Gupta accused and his wife Smt. Sudha Gupta had earlier purchased the property in question from one Sh. Anand Prasad as a compact number. Thereafter, by two separate registered sale deeds namely Deed No. 555 and Deed No. 556, dated 5.9.1983, the property in question, was purchased by accused late Satish Chand Jain and his wife Smt. Kusum S. Chand. To be more precise, by a sale deed No. 555, accused D.V. Gupta and his wife Smt. Sudha Gupta sold a part of the property in question, namely, khasra No.

532/313/F measuring 446.29 square meters to Smt. Kusum S. Chand accused. Similarly, by sale deed No. 556 the rest of the property in question measuring 188.03 square meters, plus an old house called ''Rookvilla Cottage'' was purchased by late Satish Jain. The sale consideration in each of the said sale transaction was a sum of Rs. 48000/-. Earlier to the said sale transactions, accused D.V. Gupta and his wife had on 5.9.1983 applied to the Town and Country Planner for a permission to construct a Hotel in question, which was accorded by the Municipal Corporation on 3.12.1983. Late Sh. Satish Chand Jain and his wife Kusum S. Chand then leased out the property in question to a Company floated in the name of M/S Hotel Hill Huts Shimla which was being represented by Rajesh Jain accused as a General Manager and of which late Sh. Satish Chand Jain was the Managing Director. Later, late Satish Chand Jain purchased, vide registered sale deed, dated 23.4.1985, land comprising in khasra No. 532/313/B measuring 147 square yards in Station Ward Chhota Shimla from one Sh. Sant Ram. An application was moved on 14.8.1985 to Town and Country Planner seeking permission to construct a lift block in the said parcel of land. According to the prosecution case, despite the ban having already been imposed on a new construction in this green area, w.e.f. 25.10.1983, the owners/ accused of the M/S Hotel Hill Huts namely, Kusum S. Chand, Rajesh Jain and late Satish Jain in connivance with officers accused namely, accused R.K. Mehta, State Town Planner, accused J.C. Panth Range Officer, Krishan Lal Deputy Range Officer, Ganga Ram Patwari of Municipal Corporation Shimla, and R.S. Chandel and Om Dutt Sharma, Tehsildar and Naib Tehsildar, carried out illegal and unauthorized construction of the Hotel as well as the Lift-cum-stair case in violation of the provisions of M.C. Act, Town and Country Planning Act and the Interim Development plan for Shimla planning area. The prosecution allegations are that R.K. Mehta accused not only approved the construction of the hotel building in violation of the provisions of Interim Development plan as well as the Town and Country Planning Act, but, he also illegally recommended to the Himachal Pradesh Govt. the approval of the construction of the lift. He did not bother to point out or stop the illegal/unauthorized construction until 7.3.1986 when the Director Town and Country Planning himself visited the spot and found that unauthorized building had already come up. Even the Municipal Corporation authorities, namely, accused J.C. Panth and Krishan Lal Range Officer and Deputy Range Officer did not bother to take action despite the fact that one Pratap Singh Guard reported to them that illegal construction is being carried out on the spot. It was much later i.e. only on 20.8.86 that the demarcation was got done through Patwari of Shimla and it was found that the owner-accused have encroached upon the M.C. land. It was only then when a belated notice after the expiry of 9 months was shot off to the owner/accused, much less Rajesh Jain, who was ordered to appear in the court of Asstt. Commissioner on 7.1.87. This notice was also not served and in the meanwhile Range Officer reported that some more land seems to have been encroached by M/S Hotel Hill Huts, and, therefore, during the course of an other demarcation it was found that one common path was damaged and obliterated and 9/10 Deodar trees were illicitly felled. Consequently, 4 damage reports were prepared by the Municipal Corporation, Forest wing, out of which only one challan, for felling one Deodar tree, was sent to Special Judicial Magistrate Shimla. So far as the revenue accused, namely, R.S. Chandel and Om Dutt Sharma are concerned, the allegations against them are that they registered the sale deeds in respect of the property in question as well as the land which was subsequently purchased from Sant Ram for construction of the lift, in utter violation of provisions of Section 118 of the H.P. Tenancy and Land Reforms Act, 1974, thus, they like other official accused, connived with the owners accused, by abusing their official position.

6. I have heard the learned Assistant Advocate General for the Petitioner-State and the learned Counsel for the Respondents and gone through the record.

7. The controversy between the parties lies within a narrow compass. Whereas according to the Respondents the learned trial court was well within its rights u/s 227 Code of Criminal Procedure to consider the documents submitted by them, it is contended on behalf of the Petitioner-State that at the time of framing of charge material produced by the prosecution alone is to be considered and materials/documents filed by the accused cannot be taken into account at that stage.

8. When initially the learned trial court had framed charges against the accused vide order dated 25.8.2001, it had relied upon the law laid down by the Hon''ble Supreme Court in Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, wherein it has been held as under vide para 18 of the report:

It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar Vs. Ramesh Singh, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of that offence.

9. In the earlier revision petitions the accused in support of their contention had relied upon three judgments rendered by the Hon''ble Supreme Court reported as (1) Satish Mehra Vs. Delhi Administration and Another, (2) Om Parkash Sharma v. CBI, Delhi 2000 SCC 1014 and (3) Suresh @ Pappu Bhudharmal Kalani etc. Vs. The State of Maharashtra,

10. Per contra at that time reliance was placed on behalf of the State on Supdt.

& Remembrancer of Legal Affairs, west Bengal v. Anil Kuamr Bhunja and Ors. supra.

11. In State of Bihar Vs. Ramesh Singh, the Hon''ble Supreme Court while considering the law on the point of discharge or framing of charge under Sections 227 and 228 Code of Criminal Procedure, respectively, has laid down the following law in para 4 of the report:

Under Section 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either u/s 227 or Section 228 of the Code. If "the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", so enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which....

(b) in exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter u/s 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order u/s 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one u/s 228 and not u/s 227.

12. To the similar effect is the law laid down by the Hon''ble Apex Court in Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others,

13. The law with regard to framing of charge/discharge under Sections 227/228 Code of Criminal Procedure is by now fairly settled to the effect that the materials/documents filed by the accused cannot be considered at that stage and instead material produced by the prosecution alone is to be considered and it is only in very rare cases that the High Court in exercise of its powers u/s 482 Code of Criminal Procedure and Article 226 of the Constitution can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters the law laid in R.S. Raghunath Vs. State of Karnataka and another, In this behalf reference may be made to two recent authoritative pronouncements of law on the subject rendered by the Hon''ble Supreme Court, that is (1) State of Orissa Vs. Debendra Nath Padhi, whereby Satish Mehra v. Delhi Administration and Anr. supra was overruled and (2) Rukmini Narvekar v. Vijaya Satardekar and Ors. 2009 (2) CCC 442.

14. In State of Orissa v. Devendra Nath Padhi, supra, it has been held as under vide paras 8, 16 and 29:

8. What is to the meaning of the expression ''the record of the case'' as used in Section 227 of the Code. Though the word ''case'' is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit ''the case'' to the Court of Session and send to that court ''the record of the case'' and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

16. All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be well settled proposition. This aspect, however, has been adverted to in State Anti-Corruption Bureau, Hyderabad and Anr. v. P. Suryaprakasam 1999 SCC 373 where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to u/s 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that (emphasis supplied). The judgment of the High Court quashing the proceedings by looking into the documents filed by the accused in support of his claim that no case was made out against him even before the trial had commenced was reversed by this Court. It may be noticed here that learned Counsel for the parties addressed the arguments on the basis that the principles applicable would be same - whether the case be under Sections 227 and 228 or under Sections 239 and 240 of the Code.

29. Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court u/s 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal''s case.

15. In Rukmini Narvekar v. Vijaya Satardekar and Ors. supra, it has been laid down as under vide paras 17, 18 and 19 of the report based on the judgment rendered by Hon''ble Mr. Justice Markandey Katju and para 9 of the concurring judgment authored by Hon''ble Mr. Justice Altamas Kabir:

17. We have carefully perused the decision of this Court in the State of Orissa v. Devendra Nath Padhi (supra). Though the observations in paragraph 16 of the said decision seems to support the view canvassed by shri Rohtagi, it may be also pointed out that in paragraph 29 of the same decision it has been observed that the width of the powers of the High Court u/s 482 Code of Criminal Procedure and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal''s case (supra). Thus we have to reconcile paragraphs 16 and 23 of the decision in State of Orissa v.

Debendra Nath Padhi (supra). We should also keep in mind that it is well settled that a judgment of the Court has not to be treated as a Euclid formula vide Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another, As observed by this Court in Bharat Petroleum Corporation Ltd. and Anr. v. N.R. Vairamani and Anr. AIR 2004 SC 4778, observations of Courts are neither to be read as Ejuclid''s formula nor as provisions of he statute. Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. Padhi''s case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance.

18. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.

19. However, in this case it cannot be said that the evidence in the Civil Suit which was produced by the defence before the trial court established convincingly that the prosecution case is totally absurd or preposterous. In our opinion this is a matter which has to be looked into by the trial Court.

9. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227 Code of Criminal Procedure can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom u/s 482 Code of Criminal Procedure the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi''s case (supra) by the larger Bench to which the very same question had been referred.

16. The plea of the accused leading to their discharge was based mainly on two judgments, one rendered by a Division Bench of this Court in CWP No. 458 of 1987 Hotel Hill Huts Pvt. Ltd. v. Municipal Corporation and Ors. decided on 30.4.1997 and the other by the learned Sub Judge 1st Class (I) Shimla, H.P., in Case No. 220-1 of 95 (133-1 of 89), Dr. (Mrs.) Kusam S. Chand and Ors. v. State of Himachal Pradesh and Anr. decided on 31.12.1996, copies whereof are on the

trial court record..

17. The operative part of the judgment in M/s Hotel Hill Huts Pvt. Ltd. v. Municipal Corporation and Ors. supra, reads thus:

10. Learned Counsel contends that when the Government has chosen to examine each case of building plan and reject or grant it by exercising its powers, it ought to have given an opportunity to the person concerned before passing an order of rejection. This contention is well-founded. In our opinion, it is a matter which concerns the rights of an individual concerned. In this case when the Director has found a fit case of the Petitioner then he recommended the case of the Petitioner for the consideration by the Government then the latter ought to have given an opportunity to the Petitioner to place all the necessary facts before the Government as to why the Petitioner should be granted exemption from the general ban imposed under Sub-clause (x) of Clause 10.4.2. of the Interim Development Plan. Inasmuch as an opportunity was not given to the Petitioner, we are of the opinion that it is a fit case in which the orders passed under Annexure PQ and PQ-1 are set-aside and the Respondents are directed to give an opportunity to the Petitioner to place his case before the Government for getting exemption.

11. Petitioner is directed to make an appropriate representation to the second Respondent within a period of four weeks from this date seeking exemption from the operation of Sub-clause (x) of Clause 10.4.2. of the Interim Development Plan for Shimla Planning Area. On receipt of such representation the second Respondent shall pass an appropriate order within a period of 8 weeks therefrom. Thereafter, the consequential proceedings shall be issued by the Director, Town and Country Planning and Municipal Corporation Shimla who are Respondents 3 & 1 respectively in this petition.

12. With the above directions, this writ petition is disposed of. There will be no order as to costs.

18. Pursuant to the above decision dated 30.4.1997 in M/s Hotel Hill Huts Pvt. Ltd. v. Municipal Corporation and Ors. supra, planning permission for construction of lift by M/s Hotel Hill Huts (P) Ltd., Shimla, was granted by the Director, Town and Country Planning Department, Himachal Pradesh, in favour of the deceased accused Shri Satish Chand Jain being its Managing Director, in relaxation of the ban imposed under the provisions of the Interim Development Plan on payment of a sum of Rs. 86,740/- as compounding fee. Consequently, on deposit of the said sum of as Rs. 86,740/- on 31.8.1998, the map in respect of the existing lift/stairs was approved by the Municipal Corporation.

19. The aforesaid case No. 220-1 of 95 (133-1 of 89), Dr. (Mrs.) Kusam S. Chand and Ors. v. State of Himachal Pradesh and Anr. decided on 31.12.1996, was filed by A-8 Smt. Kusum, S. Chand and the deceased accused Shri Satish Chand Jain on their own behalf and on behalf of Hotel Hill Huts Pvt. Ltd. being its Director and Managing Director, respectively, for grant of perpetual prohibitory injunction

challenging the ejectment proceedings initiated against them. A perusal of the judgment in that case would go to show that the suit was decreed mainly on the grounds that ex parte proceedings ordered against the Respondents therein and thereafter rejection of their prayer for setting aside the ex parte order was utterly against the principles of natural justice and that the encroached area could not be ascertained with exactitude. Accordingly, the suit was decreed in the following terms:

In view of my issue wise discussion and decision, suit of the Plaintiffs is decreed to the effect that the order of ejectment having been passed by Defendant No. 2 is null and void. Furthermore, Defendants are restrained permanently from interfering or demolishing encroached area except in due process of law. Parties are left to bear their own cost. Decree sheet be drawn and file after completion be consigned to record room.

(emphasis supplied).

20. On the point whether judgment of a Civil Court is binding on a Criminal Court, reliance was placed on behalf of the Petitioner-State on Syed Askari Hadi Ali Augustine Imam and Another Vs. State (Delhi Admn.) and Another, wherein it has been held as under vide para 25 of the report:

It is, however, significant to notice that the decision of this Court in M/s Karam Chand Ganga Prasad v. Union of India, wherein it was categorically held that the decisions of the civil courts will be binding on the criminal courts but the converse is not true, was overruled, stating: (K.G. Premshanker case, SCC p. 98, para 33)

33. Hence, the observation made by this Court in V.M. Shah case that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff case as well as Sections 40 to 43 of the Evidence Act.

21. Even if, both the aforesaid judgments, one rendered by this Court in CWP No. 458 of 1987, Hotel Hill Huts Pvt. Ltd. v. Municipal Corporation and Ors. dated 30.4.1997 and the other passed by the learned Sub Judge 1st Class (I), Shimla, in Case No. 220-1 of 95 (133-1 of 89), Dr. (Mrs.) Kusam S. Chand and Ors. v. State of Himachal Pradesh and Anr. decided on 31.12.1996, are taken into consideration the only inferences deducible are that firstly, planning permission for construction of lift and stairs block was granted in favor of M/s Hotel Hill Huts Pvt. Ltd. in relaxation of the ban imposed under the provisions of the Interim Development Plan on payment of compounding fee of Rs. 86, 740/- and secondly the order of ejectment against M/s Hotel Hill Huts (P) Ltd. was held to be null and void with a further perpetual restraint order against the Defendants therein, that is, State of Himachal Pradesh and Assistant Collector II Grade (U), Tehsil Shimla, not to interfere or demolish the encroached area except in due process

of law. In such circumstances, to my mind, these judgments may have some bearing on the offences alleged against the accused under the provisions of The Himachal Pradesh Municipal Corporation Act, 1979 and The Himachal Pradesh Town and Country Planning Act, 1977, but the same definitely cannot be said to have wiped out other offences alleged against the accused under the provisions of the Indian Penal Code, the Himachal Pradesh Specific Corrupt Practices Act, 1983 and the Prevention of Corruption Act, 1947.

22. In view of the above, the petition succeeds and is accordingly allowed. Consequently, the impugned order dated 18.3.2003, whereby the accused were discharged for the offences alleged against them, is quashed with a direction to the learned trial court to proceed further in the matter from the stage of consideration on charge in accordance with law with due despatch and promptitude as the First Information Report in the case was lodged in the year 1987 and the Challan was put in the court in the year 1997, though unfortunately the present revision petition remained pending in this Court since 2003.

23. It is made clear that the observations made here-in-above are limited for disposal of the present petition and the same shall have no bearing, whatsoever, on merits of the case.

24. The parties through the learned Assistant Advocate General/learned Counsel are directed to appear before the learned Special Judge (Forest), Shimla, on 2.6.2011. The Registry shall send the records back to the learned trial court forthwith, so as to reach well before the date fixed for appearance of the parties in the said court.

