

(1993) 07 SHI CK 0016
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 94 of 1990

V.K. Ahluwalia

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 26-07-1993

Acts Referred:

Companies Act, 1956 — Section 224, 225, 226, 227, 228
Constitution of India, 1950 — Article 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(2), 173, 309
Penal Code, 1860 (IPC) — Section 120B, 409, 43, 467, 468
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (1996) 2 ShimLC 401

Hon'ble Judges : Kamlesh Sharma, J; Bhawani Singh, J

Bench : Division Bench

Advocate : Chhabil Dass, H.M. Sharma, D.D. Sood and L.C. Kapoor, for the Appellant; B.K. Malhotra, for Respondent No. 1. and P.A. Sharma, Sr. Central Government Standing Counsel for Respondent No. 3., for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—Through this Civil Writ Petition under Articles 226 and 227 of the Constitution of India, First Information Report dated April 5, 1984 (Annexure P-30), registered by the Enforcement Department, is sought to be quashed by the Petitioner.

2. The Petitioner joined the Police service in the year 1951. He functioned against various posts like Sub-Inspector, Deputy Superintendent of Police and Superintendent of Police. He became Deputy Inspector General of Police in 1976. Being the senior most Deputy Inspector General of Police on June 30, 1985, when Inspector General of Police Shri Gangbir Singh retired, he was entitled to this assignment, however, on account of political manoeuvrings, he was not promoted.

3. In the State of Himachal Pradesh illicit felling of trees was going on racklessly.

Trees and timber worth crores of rupees were illicitly felled and exported which caused not only the revenue loss but also affected the environment of the State. Investigation of these cases, in which many influential persons were involved, was entrusted to Crime Branch of the State Criminal Investigation Department and the Petitioner was appointed Superintendent of Police of this Branch under the overall control of Shri Gangbir Singh, then functioning as Deputy Inspector General of Police (Criminal Investigation Department). Shri Sukh Ram Thakur, who was an honest and straight-forward Officer, was also appointed in this Department. In order to influence the investigation, efforts were made to bribe him, however, all these efforts failed. These facts had been brought to the notice of the Petitioner by Shri Sukh Ram Thakur, however, looking to the fact that many influential political persons were involved in this transaction and they may not involve Shri Sukh Ram Thakur unnecessarily, the Petitioner advised him to retain confidence and be of cool behaviour while carrying on the investigation. Once it so happened that these persons offered him a sum of Rs. 1,50,000 in cash contained in a brief-case and promised to pay balance of Rs. 8,50,000 after the timber was released. The Petitioner was informed by Shri Sukh Ram Thakur when he came to his room in an agitated condition. The Petitioner immediately informed the Government that a trap was being laid. This secret communication to his immediate superiors Deputy Inspector General of Police/Inspector General of Police is on the file (Annexure P-1) This was also shown to then Chief Minister through his Secretary whose remarks "C.M. has been apprised" are on this document. Instead of appreciating the action, the Petitioner's services were placed at the disposal of the Home Department and soon thereafter he was transferred to District Chamba, while Shri Sukh Ram Thakur was shifted to Armed Police on the same day. Strong protest was lodged by both of them and Shri Sukh Ram Thakur went to the extent of surrendering his Presidential Police Medal in protest. This matter was reported in all the Newspapers (Annexure P-2 and Annexure P-3). The Petitioner went on eight months long leave while Shri Sukh Ram suffered heart attack and remained in the hospital for several days.

4. The Petitioner would have suffered much humiliation but for the timely intervention of then Prime Minister of India Shri Morarji Desai who was also apprised of the facts. The Government did not allow him to join the Police Department. He was appointed against an obscure job of Managing Director, Himalaya Fertilizer Ltd., a Government of Himachal Undertaking, but on the brink of bankruptcy being in an accute financial crisis due to mis-management. However, the Petitioner joined this assignment on October 6, 1978, put in hard work and brought this sick industry on rails. His work was appreciated by the then Chief secretary and the Industries Minister in the following terms:

Remarks made on the performance of V.K. Ahluwalia, by Sh. L. Tochhawng, the then Chief Secretary, Himachal Pradesh.

1978-78

Sh. Ahluwalia is a very intelligent, hardworking matured, resourceful and quiet

officer, who produce results. Has plenty of initiative and foresight. He took over as M.D of Himalya Fertilizers Limited when the Company was in a most deplorable condition-entire capital had been wiped off, Company had loss of more than Rs. 10 lacs before he took over, stocks of more than Rs. 20 lacs were lying unsold. Sh. Ahluwalia, within a short period of his taking over wiped off the entire loss of the Company.... He, achieved all time record production of 1200 M. Ts and did an all time record business of over Rs. 2 crore.... I regard his performance as excellent...his management has been exemplary.... I grade him out- standing.

(L. Tochhawng) Chief Secretary. 23-1-1980.

Remarks made on the performance of Sh. V.K. Ahluwalia by Sh. Daulat Ram Chauhan, the then Industries Minister, Himachal Pradesh.

1978-79

Shri Ahluwalia was posted to Himalaya Fertilizers Limited when everything was in shambles.... The credibility of the Company was at the lowest ebb...it then appeared that nothing could revive this sick unit. During short span of hardly 6 months Shri Ahluwalia exhibited remarkable business acumen, foresight, exceptional application of mind to details and single minded devotion and commitment to the affairs of his charge, producing brilliant results.... An officer of un-questioned personal integrity with very high sense of responsibility...manners and an exceptional fine taste.... Outstanding officer.

(Daulat Ram Chauhan) Industries Minister. 26.1.1980.

Remarks made on the performance of Sh. V.K. Ahluwalia by the then Chief Secretary, H.P., Sh. L. Tochhawng.

1979-80

...I have no hesitation in grading him as an outstanding officer. Integrity certified.

(L. Tochhawng) Chief Secretary.

Remarks made on the performance of Sh. V.K. Ahluwalia by Sh. Daulat Ram Chauhan, the then Industries Minister, Himachal Pradesh.

1979-80

Shri Ahluwalia is a brilliant, soft spoken, quiet, well meaning, very honest and exceptionally hard working officer...is very highly spoken off...full of humility but is very sensitive-in matters of personal, honour and self respect. I grade him as an outstanding officer. His personal integrity is unquestioned.

(Daulat Ram Chauhan) Industries Minister.

In April 1980 the new Ministry under the Chief Ministership of Shri Ram Lal Thakur came into being in Himachal Pradesh. The Petitioner was appointed

Managing Director of Himachal Pradesh Tourism Development Corporation with an additional charge of the post of Commissioner, Municipal Corporation, Shimla. He was also asked to continue to look-after the affairs of the Himalaya Fertilizers Ltd. for some time. The Himachal Pradesh Tourism Development Corporation was not functioning well. The Petitioner had to burn mid-night oil and the result was that it not only started earning reasonable profits but also shaped to be a forerunner in many aspects in the country. When the Petitioner took over as Managing Director of this Corporation, he found that audits of this Corporation had not been conducted for some years. Consequently, he requisitioned the services of persons from the office of Accountant General to complete the accounts and got the same audited. Functioning of the Petitioner was appreciated by means of features, articles, editorials in many National newspapers and magazines (Annexures P-7/A to P-7/H). Appreciation was also recorded by the Board of Directors consisting of many persons including the Chief Minister Shri Ram Lal Thakur (Chairman), Minister for Tourism, Chief Secretary, Secretary Tourism, Secretary Finance (Annexure P-8) in the following terms:

"Extracts from the minutes of Board meetings of Himachal Tourism Development Corporation.

Date of the Extract. Board meeting. 26.3.1983 The Directors observed that there has been appreciative increase in the total turnover as well as operational profits. It was also noted with gratification that the Corporation had started showing net profits as well. They expressed gratification over the inauguration of a Tourism Complex at Kasauli as well as a Tourism Information Office.

26.6.1982 It was noted by the Board that the Corporation had done reasonably well despite unkind weather and natural constraints.

14.3.1982 The Directors noted with satisfaction that the Corporation had, for the first time produced an excellent result by showing a revenue surplus of Rs. 30 lacs and a net profit of Rs. 6 lacs despite the fact that the wage bill of the Corporation had increased from Rs. 24.99 lacs in 1979 to Rs 48.13 lacs in 1981, due to higher scales/ wages granted by the Government, on Punjab Pattern. The Directors further noted with satisfaction that the Comptroller and Auditor General of India, for the first time, had no comments to offer on the annual accounts of the Corporation for the year ending December 1978. The Directors also felt satisfied over the efforts made by the Corporation to clear the backlog of accounts.

27.3.1981 The Directors noted with satisfaction the achievements of the Corporation during the period." achievements of the Corporation during the period.

Shri Ram Lal Thakur was succeeded by Shri Virbhadra Singh on April 8, 1983 Soon after the oath ceremony, the Chief Secretary was asked for immediate replacement of the Petitioner as the Managing Director of this Corporation Later, the Petitioner was summoned by the then Chief Secretary Shri K.C. Pandeya and informed that he had been intimated by the Principal Secretary to the Chief

Minister on telephone from Delhi that the Chief Minister wanted the replacement of the Petitioner by the time he would be back in Shimla from Delhi. Feeling completely embarrassed over this development, the Petitioner went on leave. As per the newspaper reports, it appeared that the Petitioner had been sent on leave with an intention to eliminate corruption and streamline the administration by the Government. When the Petitioner raised protest over the news item, it was contradicted by the Chief Secretary to the State Government.

5. The Petitioner was transferred and posted as Managing Director of M/s. Nahan Foundry Ltd., another sick unit on the brink of insolvency, vide Notification No. Karmik (A-I)-B (6)-3/83, dated April 20, 1983. The administrative and financial affairs of the Foundry were at the lowest ebb. It was intended to be closed by Cabinet decision of July 14, 1983, but before actually implementing the orders, its functioning was continued for a period of one year. The Petitioner has further stated that he met the Chief Minister and explained to him his case for sufficient long time. Certain assurances were extended to him, however, they were not implemented. He had to live in one room of Public Works Department Rest House at Nahan since the residence of the previous Managing Director of this Foundry had been surrendered to the High Court for the residence of District and Sessions Judge.

6. The Himachal Pradesh Tourism Development Corporation is a Government Company registered under the Companies Act, 1956. Its management, administration and operation vests in a Board of Directors who are appointed by the Government. Under Article 61 of the Memorandum of Association, the Chairman and Directors of the Board of Directors are appointed by the Government of Himachal Pradesh and are liable to be removed at its pleasure. Since the Himachal Pradesh Tourism Development Corporation is a Government Company as defined u/s 617 of the Companies Act, therefore, appointment of Auditor and the manner of auditing the accounts of the Company are governed by Chapter XIII of the Indian Companies Act. This Act provides that in case of Government Companies, provisions of Sub-sections (2) to (5) of Section 619 would be applicable notwithstanding anything contained in Sections 224 to 233 of the Act. It inter alia, provides that:

(a) The Auditor of a Government Company shall be appointed or re appointed by the Central Government on the Advice of the Comptroller and Auditor General of India.

(b) Under Sub-section (3) of Section 619 of the Act, it would be seen that the overall control of direction and the manner of audit are vested in the Comptroller and Auditor General of India.

7. The Petitioner states that the legislature has thought it fit to vest the manner and method of audit to an independent and impartial institution of Comptroller and Auditor General of India with relation of Government Companies eliminating the right of the Board of Directors to order or appoint Auditors and the power

vested in the Central Government on the advice of Comptroller and Auditor General of India. The State or any of its functionaries or the Board of Directors of the Company would not either order or appoint any Auditor. When the Petitioner had proceeded on leave on April 11, 1983, the position of the audit and accounting of the Company was as under:

(i) Propriety Audit:

(a) Had been completed by the Accountant General, Himachal Pradesh, upto 31-12-1981, without any objection about capital purchases and the accounting procedure. They rather commented "there is a significant improvement of control over accounting transaction."

(b) Within 2 days of the close of the financial year the Petitioner had written to the Senior Dy. Accountant General to take up the audit for the year 1982, vide letter No. Acctt./ 67-8/72-TDC dated 3-1-1983. A reply was received on 12-1-1983 that the audit shall be taken up in the 3rd week of January 1983. The audit was in progress, when the Petitioner had to leave. The Accountant General had personally visited one of the important units of H.P. Tourism Development Corporation to guide the audit.

(ii) Statutory Audit:

Had been completed upto 31-12-1980 and the appointment of Auditors was under consideration with the Company Law Board, Government of India.

8. The aforesaid audit had been conducted strictly in accordance with the provisions of Section 619 of the Companies Act and the Auditors had been appointed by the Central Government on the advice of Comptroller and Auditor General of India. According to the Petitioner, in case of a Government Company, the authority to appoint Auditors and to get the audit initiated or completed, is the primary responsibility of the Comptroller and Auditor General of India and even a statutory audit conducted by the statutory auditors appointed by the Company Law Board has no finality unless it is re-checked/audited by the Accountant General and the comments of the latter thereon on which the report of the Comptroller and Auditor General of India is based. Even otherwise, if the investigation into the affairs of the Company is to be done, it is the Central Government which can order such an inquiry either of its own motion if the condition precedent u/s 235 of the Act is satisfied or it can be done under Sub-section (a) of Section 237 of the Companies Act, if the Company by a special resolution or the Court by order declares that the affairs of the Company are to be investigated by an Inspector appointed by the Central Government.

9. In non-compliance of the provisions of the Companies Act, order for a detailed audit of all the capital expenditure from 1981 onwards was passed and M/s. S.L. Lamba and Ashok Viz. partners of M/s. Lamba Viz. and Company, who were Auditors of the Corporation for sometime, were appointed to do the job covering capital expenditure made for Himachal Bhavan, Delhi, Hotel Jawalaji, Hotel

Kasauli, Ashiana Complex, Shimla and Hotel Holiday Home (New Wing), Shimla. The services of these Auditors had been dispensed with by the Petitioner for unsatisfactory performance on February 23, 1981 and when they were appointed to undertake the audit operations as a sequel to the Government order, they accepted the assignment and intended to commence the work from May 14, 1993. The Petitioner has claimed that the order of appointing these Auditors was passed even without seeking prior approval of the Board of Directors and was assigned to a Company which had been removed by the Petitioner for unsatisfactory performance and ultimately with an idea to harass and harm the Petitioner. The Petitioner protested the appointment of this Company in his telephonic communication to the Chief Secretary.

10. When this special audit came to the notice of the Accountant General of Himachal Pradesh, a letter of protest was sent by the Accountant General to the Secretary, (Tourism) to the Government of Himachal Pradesh (Annexure P 7) bringing to the notice of the latter the provisions of Section 619 of the Indian Companies Act. It was also pointed out that the approval of Government of India for conducting the audit was necessary in this case. He also desired to know the reasons for the audit being conducted. In response to this communication, Shri R.K Anand, the then Secretary (Tourism) to the Government of Himachal Pradesh, wrote (Annexure P-18) that the propriety audit was considered necessary in view of certain allegations made by the Members in the Legislative Assembly during the budget session of the Himachal Pradesh Vidhan Sabha and it was said that the order of the Chairman was approved by the Board of Directors. The Accountant General responded that prima facie provisions of Section 233(A) of the Indian Companies Act would not be attracted. However, the matter was referred by him to his Head Office for advice about the applicability of Section 233(A) of the Indian Companies Act in such cases. The view expressed by the Accountant General was later upheld by the office of Comptroller and Auditor General of India, however, the audit continued.

11. The Committee constituted by the Himachal Pradesh Vidhan Sabha-Public Undertaking Committee-took exception of this action of the Government in entrusting the special audit to a private agency without the approval of the Central Government being in violation of Section 233(A) of the Indian Companies Act observing that the Department was trying to justify the decision taken in hurry without examining all the legal aspects of the matter. It was also observed that the Department had not been fair while placing the facts before the Public Undertaking Committee under the garb of secrecy, although, the Committee was entitled to have full facts before it. The views of the Committee are contained in its report. The Petitioner had been informed that the Officers of the Tourism Development Corporation were being threatened and humiliated by the Auditor in order to fish out evidence from here and there to support the conclusions they intended to give in their report. This fact was published in the Indian Express of August 21, 1983 (Annexure P-25).

12. The Petitioner also requested the Respondents to supply him copy of the audit report for his comments before the same was processed. However, neither during the audit nor thereafter the copy was supplied to him for his explanation or comments, although, that was against him. It has been the normal practice that before adverse comments or inferences are drawn against any one, comments/explanation of the person concerned are sought, but in the present case the Auditors were behaving in a most biased fashion in order to harm the Petitioner. A summary of the audit report was placed before the Board of Directors in its meeting of January 13, 1984 which was handed over to the Secretary of the Department for examination and place his findings before the Chairman. From news item the Petitioner came to know that it was to be handed over to the Vigilance Department for inquiry (Annexure P-27) While the matter was still pending before the Board for consideration, the report was handed over to the Vigilance Department for inquiry illegally and intriguingly which was apparent from the statements of the Chief Minister from time to time. In doing so, all these statutory provisions were not at all adhered, to the Chief Minister being personally prejudiced against the Petitioner, therefore, Shri B.S. Thind, the then Superintendent of Police (Enforcement) a much junior Officer to the Petitioner in the Department, was appointed to inquire into the matter. This was done in the circumstances over which the Petitioner had no control nor he was in any way responsible.

The Directorate of Enforcement was created by the Himachal Pradesh Government vide Notification No. Per(Vig.) A-I (I)/8t(SIC), dated February 28, 1981 for the following purposes:

- (i) to set up, manage and control multipurpose barriers for all departments in place of separate barriers at present working for different departments;
- (ii) to undertake enforcement work for all departments in place of separate enforcement agencies working in certain departments ; and
- (iii) any other work assigned from time to time by the Government

(b) The second proviso provides as under:

"Provided further that functions, duties and jurisdiction of the Vigilance Department, as detailed in letter No 6-1/71-Vig dated 27th December, 1971 shall not in any way be curtailed or reduced by the creation of new Directorate of Enforcement because the jurisdiction of the Vigilance Department covers any transaction in which a public servant is suspected to have indulged in corrupt practices or misconduct as per para 8 of Chapter I of Vigilance Manual of the Government of Himachal Pradesh, Department of Personnel (Vigilance)".

13. The matter, according to the Petitioner, was within the exclusive purview of Vigilance Department and not of Enforcement Department which was concerned only with economic offences. Since Shri B.S. Thind was the trusted Officer of the Chief Minister in Enforcement Department, this case was specifically assigned to

him because he had a personal grievance against the Petitioner with respect to former's relations with a lady employee in the Himachal Pradesh Tourism Development Corporation, facts about which have been recorded extensively in this petition. These are not being reproduced since we propose to deal with the matter on an entirely different questions argued before us by the learned Counsel for the parties. The issue of mala fides was not touched for the reason that while admitting the petition on June 25, 1990, notice was not issued to the second Respondent and the Investigating Officer, namely, Shri B.S. Thind is not a party to this case.

14. The Petitioner has further claimed that some of his retirement benefits have been withheld by the State, although, the Petitioner had made repeated representations for the release of these benefits. The First Information Report was registered on April 5, 1984 but the investigation was not completed before the retirement of the Petitioner on April 30, 1990. The initiation of the present case is totally illegal and unwarranted. The First Information Report does not disclose any offence. It is based on audit report which itself is illegal. It was not scrutinised by the Comptroller and Auditor General of India as required under Sub-section (4) of Section 619 of the Companies Act nor approved by the meeting of the Board. It does not disclose any case of embezzlement or any other kind of offence committed by the Petitioner. Before lodging the report, the matter should have been inquired into by some Inquiry Officer, since the Petitioner was holding a responsible post and belonged to Indian Police Service Cadre.

15. Reply in this case has been filed by Shri H.L. Nashad, Joint Secretary (Home) to the Government of Himachal Pradesh. It has been stated that Shri R.R. Verma was appointed to Indian Police Service on June 1, 1961 while the Petitioner was appointed on January 30, 1971. The appointment of the Petitioner as Superintendent of Police, C. I. D. (Crime Branch) with Shri Gangbir Singh, Deputy Inspector General of Police in that wing, has been admitted, but no comments have been offered about the episode relating to Shri Sukh Ram Thakur mentioned in the petition and involvement of certain political persons in the illicit felling of trees. Secret information (Annexure P-I) has been admitted, but it has been denied that the Petitioner was thrown out of the Department as contended. It was done for administrative reasons, according to the replying Respondent.

16. With respect to the work of the Petitioner in the Tourism Development Corporation, it has been stated that during the tenure of the Petitioner in 1980, 1981 and 1982, loss to the extent of Rs. 17.24 lacs, Rs. 14.57 lacs and Rs. 12.47 lacs respectively was suffered as per audit accounts, therefore, the contention of the Petitioner that the Corporation had started earning profits, has been denied. Regarding the audits being in arrears, it has been stated that it was on account of the delay in the appointment of Statutory Auditors to the Corporation by the Company Law Board, Government of India and when the Petitioner was transferred from the post of Managing Director of the Corporation, annual

accounts for the past two years, namely, 1981 and 1982 were still in arrears It has been admitted that in the year 1980 four persons, including one Accounts Officer, had been taken on deputation to the Corporation from the office of the Accountant General, Himachal Pradesh Similarly, it has been denied that the Nahan Foundry started improving its financial position during the tenure of the Petitioner, though, it has been admitted that during his stay at Nahan, he had been staying in one room of the Public Works Department Rest House.

17. The provisions of Sections 235 and 237 of the Companies Act, 1956 are not applicable to the present case since the special audit of the Corporation was not conducted under these provisions. As a matter of fact, certain allegations were made by the Members in the Legislative Assembly during the budget session of 1983, the propriety audit was, therefore, considered necessary. This audit was by way of fact finding enquiry into the capital expenditure made by the Corporation during the period from January 1981 onwards There is no bar whatsoever under the Act for ordering the enquiry into the affairs of the Company. The order of Chief Minister initiating the audit of the Corporation was ratified in the Board meeting of June 28, 1983. During the period from April 1980 onwards when the Petitioner was Managing Director of the Corporation, capital expenditure was incurred in respect of many units/Hotels of the Corporation including the Himachal Bhawan, New Delhi, Hotel Jawalaji at Jawalamukhi, Rose Common Hotel at Kasauli, Ashiana Complex at Shimla and Hotel Holiday Home (New Wing), Shimla.

18. In view of the allegations by certain Members of the Legislative Assembly, special audit (propriety audit) was ordered to look into these allegations. It was by way of fact finding enquiry into the capital expenditure of the Corporation, as such, the provisions of the Companies Act were not applicable. It has been admitted that M/s. Lamba Viz and Company, Chartered Accountants were engaged by the Corporation on May 10, 1983 to conduct special propriety audit of the said capital expenditure of the Corporation because this firm was Shimla based and had knowledge about the working of the Corporation since it had worked as Internal Auditors of the Corporation. The Chief Minister had authority to order this audit to probe into certain allegations levelled by some of the Members of the Legislative Assembly. The appointment of Auditors was made by the Managing Director without the approval of the Board of Directors in view of the issue having been raised in the Legislative Assembly by certain Members. In the interest of Corporations decisions are taken in advance but got ratified subsequently by the Board of Directors.

19. The engagement of M/s. Lamba Viz. and Company had not been done to harass the Petitioner, rather, it had been done in order to examine the allegations with respect to certain capital purchases to the Corporation and set at rest the controversy regarding the alleged malpractices and irregularities. It was on the request of the Petitioner that M/s. Lamba Viz. and Company were disengaged and replaced by M/s. Chandra Gupta and Associates from out of many

Companies considered for the purpose.

20. Regarding the contention that the Accountant General, Himachal Pradesh and Chandigarh had raised objection with respect to this audit, it has been stated that no such objection was raised. Inquiry was only directed with respect to the factual position about certain aspects of the special audit in question Provisions of Section 233-A of the Companies Act, 1956 were not attracted in this fact finding enquiry No further communication was received by the State from the Accountant General, Himachal Pradesh and Chandigarh, Shimla which means that the Accountant General's office had no objection against the fact finding enquiry entrusted to M/s. Chandra Gupta and Associates in the said capital purchases made by the Corporation.

21. The allegation with respect to the threatenings, humiliations and harassments of Corporation Officers by the Auditors has been denied. It has also been stated that the copy of audit report was supplied to the Petitioner vide registered letter No. 3-19/83-TSM (Sectt.), dated March 13, 1984. It was not obligatory on the part of the Government to invite comments from the Petitioner.

22. It has been admitted that the summary of the audit report was placed before the Board of Directors on January 13, 1984 and it was decided to authorise Shri R.K. Anand, Director to scrutinise the report with respect to the further action that may be taken on this report. The report was to be submitted to the Chairman with findings. Consequent upon this decision, Commissioner-cum-Secretary (Tourism) to the Government of Himachal Pradesh wrote to the Commissioner-cum-Secretary (Home) on March 15, 1984 that after examination of the findings contained in the report, it was decided that further probe would be made by the Enforcement Directorate and accordingly as per Government decision, the enquiry was got conducted through the Enforcement Wing of the Home Department.

23. The allegation regarding the observations of the Public Undertaking Committee that the decision was taken without the prior approval of the Board of Directors, have been categorically denied. Similarly, it has been stated that there is nothing on the record to show that Shri B.S. Thind was in any way inimical towards the Petitioner, though he may be junior to the Petitioner in the police hierarchy, but that was not a bar to take up the investigation against the senior under the direction of the Government. The entrustment of the case to Enforcement Wing for investigation has been justified and the allegation that it was deliberately handed over to Shri B.S. Thind by the second Respondent has been denied. The Petitioner should have agitated the matter soon thereafter but the matter has been assailed when the investigation is almost at its final stages.

24. The allegations with respect to the relation of second Respondent have been explained and it has been said that whatever was found due from her, that had been paid and that her services were terminated for the reason that she failed to produce the Matriculation Certificate or equivalent examination passed by her.

25. On the basis of available information contained in the audit report, a prima facie case under Sections 409, 467, 468, 471 and 120-B of the Indian Penal Code read with Section 5(2) of the Prevention of Corruption Act was made out, accordingly, case was registered against the Petitioner. No person has been named in the First Information Report as an accused since the involvement of various officials was yet to be ascertained. According to the scheme of Enforcement vide which this Department was established, it is competent to enquire into this matter. u/s 156(2) of the Code of Criminal Procedure, no proceedings can be called in question merely on the ground that Police Officer has no powers to investigate the case. The contention of the Petitioner that the matter was with the exclusive purview of Vigilance Department and not with Enforcement Department, has been denied. The Vigilance Department could deal only with cases of Government servants whereas the Enforcement Department is wider and deals with cases where private persons are involved.

26. The facts about the lady employee of Hotel Holiday Home have been denied. Similarly, the allegations of R.S. Uppal, Accounts Officer have also been denied and it has been stated that this person had filed a writ petition against his repatriation to his parent department which was dismissed by this Court on August 7, 1984 (Civil Writ Petition No. 380 of 1984).

27. With respect to the promotion of the Petitioner, it has been stated that the representation of the Petitioner was duly considered and it was not considered necessary to promote each and every Officer of the batch. No one junior to the Petitioner was promoted as Inspector General of Police. Regarding the service benefits, it has been stated that these benefits can be paid on receipt of No Demand Certificate from the department where the Petitioner has served,

28. As regards delay, it has been stated that the Enforcement Wing has finalised about 357 criminal cases since the year 1983 involving property worth Rs. 1,53,28,919 and about 1053 Government servants as well as private persons are involved therein. 215 cases were pending investigation for many administrative reasons. The investigation is stated to be in final stage and about thirty-three officials/persons remain to be interrogated. Many statements were recorded and it has been denied that no case against the Petitioner is made out. The audit report was duly scrutinised which discloses commission of offence. The police has right to investigate the matter and it calls for no interference.

29. The Petitioner has also filed rejoinder-affidavit in this case. Although most of the submissions made in the main petition have been re-asserted, however, other relevant facts may now be stated. It has been asserted that the year of allotment in the case of both, Shri R.R. Verma and the Petitioner, is 1961. Similarly, the contention that he was the senior most Deputy Inspector General of Police and was entitled to be promoted as Inspector General of Police on the retirement of Shri Gangbir Singh on June 30, 1985, has been reiterated. With respect to the performance of the Petitioner, reference to the note of Shri L. Tothhawng, former Chief Secretary to the Government of Himachal Pradesh has

been quoted, besides the observations of Hon"ble Mr. Justice R.S. Pathak, former Chief Justice of India, Shri Prem Bhatia, former Editor-in-Chief, The Tribune, Chandigarh, Dr Tejbir Singh, Editor, Tourism Recreation and Resort, Shri Morarji Desai, former Prime Minister of India, Shri Rajiv Gandhi, former Prime Minister of India, Shri Narain Dutt Tiwari, former Chief Minister of Uttar Pradesh and Central Cabinet Minister and Hon"ble Mr. Justice M.P. Thakkar, the then Chief Justice of Gujarat High Court, etc. etc. They may be quoted below:

Observations recorded during the tenure of the Petitioner as Managing Director, H.P. Tourism Dev. Corpn.

R.S. Pathak, Former Chief Justice of India.

"As one who has watched the growth of the Himachal Pradesh Tourism Dev. Corporation for some years. I am gratified to see the great strides it has made in the provision of facilities for visiting tourists I have stayed here for a few days, and also visited a few other units, and I am greatly impressed by the achievements to its credit. Throughout my stay here, it has been a pleasure to witness the high standards of efficiency, of courtesy and of service. The State can be justly proud of the dynamism which has inspired both policy and its implementation, and the managerial skill and competence one finds displayed throughout. Himachal Pradesh has set a model for other States, and I have no doubt that in this field it will proceed to attain greater and greater success. All my best wishes."

Mr. Prem Bhatia Former Editor-in-chief, The Tribune, Chandigarh.

"H.P. Tourism Corporation"s showpiece Excellent maintenance, great courtesy in service and altogether a very high standard of efficiency."

R.S. Pathak, Former Chief Justice of India.

"My wife and I spent a most enjoyable three days stay here. We had visited earlier in 1973, and we find such a vast improvement. The building is very well maintained and the gardens present a feast of colour and greenery. The premises live up to the name which the Hotel bears and the management deserves to be warmly congratulated on the high standards which are maintained here. The food served here is a gourmets delight and no efforts is spared to present a menu which appeals to the most catholic of tastes There is a courtesy which is heartwarming and a service which leaves nothing to be desired, the visitor is assured the happiest of holidays in sylvan surroundings, and any one who visit Chail and stays here will want to do again."

Dr. Tejbir Singh, Editor, Tourism Recreation and Resort.

"Mr. V.K. Ahluwalia (IPS) Managing Director, Himachal Tourism Corpn. is enviably endowed with sixth sense for tourism development. Uncompromisingly dedicated and doggedly determined, he seems to be obsessed with his ideals for shaping anything worthwhile, possibly unique, and typically Himachal for his State.

Imagination and leadership are his biggest forte."

Sh. Morarji Desai. Former Prime Minister of India.

"My stay here was very pleasant and comfortable. I am thankful for the efficient arrangement".

Sh. Rajiv Gandhi, Former Prime Minister of India.

"Although we stopped only for a shortwhile we were looked after well. The house was well kept and the food good."

Sh. Narain Dutt Tiwari, Former Chief Minister, U.P. and Central Cabinet Minister.

"I congratulate HPTDC management for having attained maturity in the field of servicing burgeoning Tourism in Himachal Pradesh I have found each and every member of the staff unfailing in courtesy. I hope that the HPTDC and its staff will continue with this reputation and even better in this future by attaining even higher standards of efficiency."

M. P. Thakkar, the then Chief Justice of Gujarat High Court.

"Nothing better can be desired-it was so comfortable. Services excellent, everyone is considerate and courteous- hospitality at its best Mr. Ahluwalia himself takes keen and active interest-H.P. can rightly take pride. Congratulations to all concerned. Hope I will have an opportunity to come back again".

30. The Petitioner has also disputed the allegation of the Respondents that during his time the financial position of the Corporation did not improve Same is the plea with respect to the improvement in working of Nahan Foundry which had the highest turn over during his time as Managing Director of this unit, although, no co-operation was extended to him by the Government. The Petitioner has assailed the audit conducted by the Auditors at the instance of the Respondents. The allegations raised by one of the Members in the Legislative Assembly had been duly met by the then Chief Minister as well as the Minister for Tourism, therefore, there was no necessity to undergo the exercise of conducting audit into the purchases of certain items of insignificant nature for Tourism Development Corporation looking after the tourism activities not only in the State but also elsewhere. It has also been re-asserted that copy of special audit report was not supplied to him, although, it was demanded repeatedly though it had been leaked to the Press.

31. The third Respondent had admitted in its affidavit that services of some officials were requisitioned on deputation from Accountant General's office for the accounts of the Corporation. It has also been stated that the office of the Accountant General, Himachal Pradesh did not lodge any protest when the Government initiated special audit of the Corporation. As a matter of fact, certain clarifications regarding the entrustment of audit to M/s. Chandra Gupta and Associates were sought and when the office was informed that it was being done

by way of fact finding enquiry, it was understood that the provisions of Section 233(A) of the Indian Companies Act were not attracted. With respect to the withholding of gratuity of the Petitioner, it is stated that this has been done in terms of Rule 6 of All India Services (Death-cum-Retirement Benefit) Rules, 1958, since the State Government had against column No. 23 of Form No. 7 stated that First Information Report had been lodged against the Petitioner which was under investigation. However, certain clarifications had been sought from the State Government and in case they were not answered, further action in the matter could not be taken.

32. After recording these facts in the light of the submissions of the parties made before us during the course of the hearing, we now turn to the specific pleas raised by the learned Counsel for the Petitioner in this case and record our opinion thereon.

33. Before proceeding further, we may notice here that despite our insistence for the production of record, it was not shown to us. The learned Counsel for the Petitioner handed over written submissions explaining the allegations with documents. Before using them, copy of the same was made available to the learned Counsel appearing for the State.

34. Before dealing with the contentions comprehensively, the case of the Petitioner, in nutshell, is that the audit had been conducted in violation of statutory provisions contained in Indian Companies Act, 1956, therefore, it is no audit in the eyes of law. Even if it is assumed that it is a proper audit, it was conducted without associating the Petitioner and then no copy of it was supplied to the Petitioner seeking his comments and clarifications before it was finalised and approved for action. The whole process was unfair and in violation of principles of natural justice. Certain irregularities pointed out by the Auditors who were otherwise biased against the Petitioner, do not disclose commission of any offence against any one including the Petitioner. In these circumstances, registration of the First Information Report and investigation thereon is highly arbitrary and without any justification. It has put the Petitioner to immense hardship and mental teasion for all these years, although, his functioning had been appreciated by every one from time to time. The Petitioner belonged to Indian Police Service, holding a high office, it was desirable that before registering any case against him, enquiry by some impartial Officer should have been got conducted and the Petitioner heard in the matter, instead of entrusting the matter to an Officer junior to the Petitioner by many years having a biased attitude. The incident had taken place during 1980-1982, the First Information Report was lodged on April 5, 1984, the Petitioner retired from service on April 30, 1990. For all these years the investigation had been moving limpingly putting the Petitioner to great hardship. There is no case against the Petitioner and in case such a lame prosecution is permitted to be taken to the Court, it will not only end in acquittal but also mean putting the Petitioner's liberty to jeopardy and continued harassment for all these years without any reasonable justification.

for it.

35. The first contention of the Petitioner is that either the State Government or the Board of Directors of the Company had itself no power to order the audit or to make any enquiry into the affairs of the Company through the Auditors. It is only the Central Government or the Comptroller and Auditor General of India who could do so. Therefore, holding of audit or enquiry are not only illegal but also against all canons of fair play and well settled principles of conducting audits and enquiry, besides being ex parte and making out no liability of criminal nature against the Petitioner. The Himachal Pradesh Tourism Development Corporation limited is a Government Company registered under the Companies Act, 1956. Its management, administration and operation vests in a Board of Directors appointed by the Government. Since it is a Government Company within the meaning of Section 617 of the Companies Act (hereafter shortly "the Act"), the appointment of Auditor and the manner of auditing of accounts of the Companies are governed by Part XIII of the Act, which empowers the Comptroller and Auditor General of India to advise the Central Government for the appointment of the Auditor. It also empowers him to direct the manner in which the Company's accounts shall be audited by the Auditor appointed in pursuance of Sub-section (2) of Section 619 and to give such auditor instructions in regard to any matter relating to the performance of his functions as such and to conduct a supplementary or test audit of the Company's accounts by such person or persons as he may authorise in this behalf ; and for purposes of such audit, to require information or additional information to be furnished to any such person or persons so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General may, by general or special order, direct. The Auditor has to submit a copy of his audit report to the Comptroller and Auditor-General and he has right to comment upon, or supplement, the audit report in such manner as he may think fit. Such comments and supplements are to be placed before the annual general meeting of the Company at the same time and in such manner as the audit report.

36. Special audit in certain cases can be directed by the Central Government u/s 233-A whereby the Central Government is of the opinion:

(a) that the affairs of any Company are not being managed in accordance with sound business principles or prudent commercial practices ; or

(b) that any Company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains ; or

(c) that the financial position of any Company is such as to endanger

37. While directing the special audit of the Company's accounts, the period or periods for which it has to be done, shall be specified in the order. The Auditor may be appointed by the same or by a separate order and he shall be called a Special Auditor and shall have same powers and duties in relation to the special

audit as an auditor of a Company u/s 227 of the Act, but unlike the latter he shall have to make his report to the Central Government. Further action on the report depends upon the view taken on it by the Central Government.

38. Under Sections 235 and 237 of the Act, Central Government can also order investigation into the affairs of the Company through an Inspector or Inspectors and seeking report about its functioning in such manner as it may desire. (See: *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, *Rohtas Industries Vs. S.D. Agarwal and Others*, *Rohtas Industries Ltd. v. S.D. Agarwal and Anr. etc.* But this investigation cannot be undertaken by a Chartered Accountant in view of Section 238 of the Act.

39. In the light of the aforesaid discussion, it is plainly clear that the State Government or the Board of Directors of the Company has no power to order special audit of the Company. The power solely vests in the Central Government or the Comptroller and Auditor General of India. The contention that it was a propriety audit or a fact finding enquiry, lacks factual and statutory support. These expressions are foreign to the Companies Act. The power which is not assigned to the State Government or the Board of Directors of the Company, cannot be exercised by it colour-ably terming it "Proprietary Audit", "Propriety Audit", "fact finding enquiry". Even this exercise, it appears, was undertaken behind the back of the relevant Officers of the Company. It is undeniable that while conducting the audit or enquiry into the affairs of a body, it is important to seek explanation and justification from the relevant Officers with respect to questions that may crop up before drawing any adverse inference against them or the functions of the body concerned. It appears that such a course has been designedly ignored.

In the aforesaid background, there is great deal of substance in the contention of the Petitioner that not only the audit of the Company is illegal but also the report submitted in this regard. Similar is our view with respect to the contention that the audit report is ex parte and lacks dependability, besides being impracticable for reasons to be recorded in the latter part of this judgment. It was acted upon without examining its practical utility and the question whether it could give rise to commission of any criminal offence in the legal sense assuming that police could register and investigate a case where in its opinion an offence of cognizable nature appears to have been committed. (See: AIR 1957 Mad 65, *M. Vaidyanathan v. The Sub-Divisional Magistrate, Erode and Ors.* and AIR 1957 Mad 432 (*In re, M. Vaidyanathan, Appellant*). But, if we trace the nature of investigation in this case, it is absolutely clear that it is chiefly based upon and influenced by the report of the Auditors.

40. Now, we turn to the second contention of the Petitioner that no case is made out against him either from the First Information Report which is based upon the Auditors' report or from the investigation carried on its basis. We proceed to take note of them one by one.

Flora Carpet and Hand Tufted Carpet:

41. It was contended that the Corporation called for the rates and issued tender notice in July 1980. Two firms, M/s. Krishna Furnishing Co., Shimla and M/s. Krishna Carpet Co., Chandigarh, furnished their quotations, former offering the supply at the rate of Rs. 349.78 per sq. mtr. and the latter Rs. 365.72 per sq. mtr. M/s. Krishna Carpet Co., Chandigarh accepted price of Rs. 348 per sq. mtr. of Flora Carpets, but there is no evidence of minutes of discussion by which it could be ascertained that any negotiations were made with this firm as a result of which it accepted to supply the Flora Carpets at a lower rate and M/s. Krishna Furnishing Co., Shimla had declined to reduce its rate. No orders were placed with M/s. Krishna Furnishing Co., Shimla at their accepted rate of Rs. 349.78 and it was only on February 26, 1981 that an order was placed with M/s. Krishna Carpet Co., Chandigarh to supply Flora Carpets at their accepted price of Rs. 348.00 per sq. mtr.

42. Through letter of March 20, 1981, M/s. Krishna Carpet Co, Chandigarh requested for the revision of price from Rs 348.00 per sq. mtr. to Rs. 407.00 per sq. mtr. There is no evidence to show whether the Corporation had enquired from M/s. Krishna Furnishing Co., Shimla, whether it was prepared to supply Flora Carpets at the old quoted rates. In support of the request for the upward revision of rates, M/s. Krishna Carpet Co., Chandigarh informed the Corporation that its principals M/s. Bharat Carpet Co., Delhi had increased the rates of their carpets. Both M/s. Krishna Carpet Co., Chandigarh and M/s. Krishna Co , Shimla are dealers of M/s. Bharat Carpet Co, Delhi and manufacturers of Flora Carpets. M/s. Bharat Carpet Ltd., New Delhi had offered to supply Flora Carpets at the rate of Rs. 425 per sq. mtr. excluding cutting and laying and aluminium grippers, while M/s. Krishna Carpet Co., Chandigarh had offered at the rate of Rs. 407.00 per sq. mtr, inclusive of cutting, laying and aluminium grippers. This clearly indicated that the dealer was prepared to supply the material at a rate lower than that of the manufacturer. A counter offer should have been made to the local dealer of the same manufacturer, since it was not made, favouratism was shown to M/s. Krishna Carpet Co., Chandigarh which resulted in wrongful loss to the Corporation and wrongful gain to M/s. Krishna Carpet Co., Chandigarh. Instead of accepting their upward revision, fresh tenders/quotation should have been called for. The very object of calling sealed tender/quotation is defeated, if after opening these tenders/quotation a party is allowed to marginal lower rates as compared to other suppliers without giving an opportunity to others to bring down their rates as well.

43. As to hand tufted carpets, it has been alleged that in July 1980 quotation of M/s. Krishna Carpet Co., Chandigarh was Rs. 23.75 per sq. mtr. and subsequently, the firm requested vide letter of March 20, 1981 for upward revision in rates due to increase of rates by its principals and informed the Corporation that the revised rates of the manufacturers would be submitted to the Corporation shortly. However, M/s. Krishna Carpet Co., Chandigarh sent the

revised rates vide letter of March 27, 1981 for Rs 27.20 per sq ft. claiming themselves as manufacturers. The ambiguous stand taken by this Company regarding request for upward revision in the rates, initially as a dealer and subsequently claiming as a manufacturers, caused suspicion as to the intentions of the suppliers and aggravated when the Corporation accepted the two varied contentions of the proposed suppliers. The purchase Committee constituted for verifying and analysing rates of hand tufted carpets compared the revised quoted rates of M/s. Krishna Carpet Co., Chandigarh at Rs. 27 20 per sq. ft. i.e. Rs 292.67 per sq. mtr. when the rate of machine made Modi Carpet offered by M/s. Kala Niketan Shimla at Rs 324.00 per square metre and machine made OCM Carpets offered by M/s. Nathu Ram and Sons, Shimla at Rs. 447.00, Rs. 378.00 and Rs. 315.00 per sq. mtr. for three qualities. The rates of machine made carpets of OCM and Modi are compared with the hand made carpets of M/s. Krishna Carpet Co., Chandigarh and the Committee wrongly came to the conclusion that "Since the rates of M/s. Krishna Carpet Co., Chandigarh are lowest, they are recommended", and the same were accepted and approved by the Managing Director on April 27, 1981. M/s. King Carpets Sadhaura offered hand made tufted carpets at the rates which would have worked out to about Rs. 23.50 per sq. ft. F.O.R. destination. The grounds for not considering this offer have not been recorded in the concerned file.

44. The lapse committed in the purchase of hand tufted carpets has caused wrongful loss to the Corporation which could have been avoided, had proper care and caution, which a normally prudent person is expected to exercise, been taken instead of accepting the gospel truth whatever the suppliers M/s. Krishna Carpet Co., Chandigarh was taking from time to time.

45. According to the Petitioner, the requirement for the purchase of various items emanated from the Purchase Section as a result of which limited tenders were invited on 1st/2nd July, 1980 from eight firms, out of which four were from Shimla and four were from Chandigarh. The Corporation had already been dealing with these firms much before the Petitioner became the Managing Director of the Corporation. In response to these tenders, the firms quoted their rates and the tenders were obtained on July 15, 1980 in the presence of the representatives of some firms, by a Committee consisting of:

1. General Manager, H.P.T.D.C.
2. Divisional Manager, H.P.T.D.C.
3. Area Manager (Finance and Accounts).
4. Area Manager, Shimla Complex.
5. Area Manager, Chail Complex.

Two firms mentioned in the First Information Report, had not only sent their tenders for Flora Carpets, they had submitted competitive tenders for various other items. So far as carpets are concerned, the two firms quoted their tenders

as follows:

Quality: Krishna Carpet Co. Krishna Furnishing

. per sq. mtr. Co. per sq. mtr.

Durolay Rs. 178.15 Rs 178.75.

Decora Rs. 207.52 Rs. 210.00.

Flora Rs 365.72 Rs. 358.75.

46. A look at the quotations discloses that Chandigarh firm had also quoted lowest rate for two of the three brands of machine made carpets manufactured by M/s. Bharat Carpet Co., Delhi, The Purchase Committee, therefore, felt that it would be prudent, convenient and administratively expedient arrangement if the Chandigarh firm could be negotiated for reducing their rates for Flora Carpets. The Flora Carpet had large flowers of about 12" x 13" and, therefore, interior designing with plain carpets is comparatively much easier. During the negotiation by the Purchase Committee M/s. Krishna Carpet Co. agreed not only to reduce the rates of Flora Carpets from Rs 365.72 to Rs 348.00 per sq mtr. but also voluntarily agreed to reduce their rates of Durolary Carpets from Rs. 178.15 to Rs. 170.00 and Decora Carpet from Rs. 207.52 to Rs. 204.00 per sq. mtr.

47. While the Purchase Committee of the Corporation negotiated the purchase of Decora Carpet with this firm at Rs. 204.00 per sq. mtr. inclusive of laying and wastage, the rate contract of this carpet with the Himachal Pradesh Government was Rs 215.00 per sq mtr. plus laying charges and the cost of gripper. Eight months later M/s. Krishna Carpet Co. vide their letter No. 1445/KCC/81, dated March 20, 1981, requested for the revision of rates for Flora Carpets as well as for hand tufted carpets because of increase in the rates effected by the manufacturers. This letter was placed before the Petitioner by the Divisional Manager, Tourism Development Corporation and the Petitioner wrote on March 26, 1981 that:

We may check the rates from the manufacturers as well as others-like O.C.M., Modi's etc.

48. Again, vide letter No. 1489/KCC/81, dated March 27, 1981, M/s. Krishna Carpet Co. requested for revision of rates of Flora Carpets to Rs. 407.00 per sq. mtr. and of hand tufted carpets to Rs. 217.20 per sq. mtr. This letter was placed before the Petitioner on March 30, 1981 and the Petitioner desired in writing that the rates from Modi for hand tufted carpets in designs as well as in plains in 2000 gm. weight should be obtained. Accordingly, the communication was issued. M/s Kala Niketan, Shimla-stockists of Modi Carpets-were asked to give the information. A Committee of four senior Officers met on April 10, 1981 to examine the request of M/s. Krishna Carpet Co. vis-a-vis the information sought from other firms. It was noticed that manufacturers of Flora Carpet had quoted its rate at Rs. 425 00 per sq. mtr. plus freight wastage and laying charges as

against Rs. 407.00 per sq mtr. inclusive of wastage and laying offered by M/s. Krishna Carpet Co. During this period Flora Carpet was purchased by different departments and institutions. In Himachal Bhawan, Delhi it was purchased by the Government at Rs. 435.00 per sq. mtr. For High Court of Himachal Pradesh it was supplied at the rate of Rs. 437.00 per sq. mtr. less 5% The Civil Supplies Corporation purchased it for Rs. 419.64 per sq. mtr. excluding wastage and from other buyers, the firm realised rate of Rs. 500 per sq. mtr. etc. etc.

49. For hand tufted woollen carpets, M/s. Krishna Carpet Co. had not claimed themselves as manufacturers of that type of carpets in their letter dated March 27, 1981. It has been wrongly stated in the First Information Report that the Purchase Committee compared the rates of hand tufted carpets offered by M/s. Krishna Carpet Co with the machine made Modi Carpets offered by M/s. Kala Niketan, Shimla. The quotations given by M/s. Kala Niketan, Shimla was for hand tufted woollen carpets as would be seen from the proceedings of the Committee which has examined the rates From the minutes of the Committee it would be seen that the rate offered by M/s Krishna Carpet Co. was Rs. 292.67 per sq. mtr. For 2000 gm, M/s. Kala Niketan, Shimla Rs. 324.00 per sq mtr. for 2000 mg. and O.C.M. tufted carpets quoted by M/s. Nathu Ram and Sons, Shimla at Rs. 447, Rs. 378 and minimum Rs. 315 per sq. mtr. The matter was examined by a Committee consisting of:

1. General Manager, H.P.T.D.C.
2. Divisional Manager, (Finance and Accounts).
3. Divisional Manager (II-Purchase).
4. Manager, State Guest Home, Himachal Bhawan. (Annexure F).

50. The First Information Report does not indicate what loss was caused to the Corporation by accepting supplies at lower rates from M/s. Krishna Carpet Co. With respect to allegations that M/s. Krishna Furnishing Co. was not consulted regarding Flora Carpet, it is stated that except for Flora Carpet, all other furnishing items had been approved by the Purchase Committee from M/s. Krishna Carpet Co., Chandigarh and they had agreed to supply Flora Carpet also at a rate less than the one quoted by M/s. Krishna Furnishing Co, Shimla and it was administratively prudent to place one order with one firm. Secondly, soon after the submission of their tenders, the proprietor of M/s. Krishna Furnishing Co., Shimla unfortunately expired and his successor had switched over their main business to dealership of O.C.M. Fabrics and their furnishing business took a back seat.

51. The Corporation had again invited sealed tenders through advertisement in press on December 16, 1981 and in response to this advertisement, M/s. Krishna Furnishing Co, Shimla did not submit any tender which they should have done in case they had any grievance that they could supply Flora Carpet at a cheaper rate. The new Purchase Committee consisted of six senior Officers of the

Corporation namely:

1. Shri Pritpal Singh, General Manager, H.P.T.D.C.
2. Shri N.K. Sharma, Divisional Manager.
3. Shri K.S. Thakur, Divisional, Manager.
4. Shri Dhian Chand, Manager, Ashiana, Shimla.
5. Shri S.K. Sharma, Manager, Himachal Bhawan.
6. Shri R.S. Uppal, Manager (Finance and Accounts).

The minutes of the Purchase Committee dated February 12, 1982 have been recorded (Annexures G and H).

Regarding allegation as to the offer made by M/s. King Carpet Sadhaura for hand tufted carpets, the view of the Investigating Officer is entirely unreasonable and whimsical. The quotation from M/s. King Carpet Sadhaura was received in the office on May 16, 1981 and was placed before the Petitioner. This quotation was received after more than a month of the finalisation of earlier rates by the Purchase Committee, besides the quality and designs were also poor.

Tapestry:

52. It is alleged that tapestry and other materials have been purchased on the recommendation of the various Purchase Committees constituted by the order of the Managing Director from time to time. Most of the purchases have been made from M/s. Krishna Carpet Co., Chandigarh invariably on the spot quotations collected from M/s. Hindustan Textile Corporation, Chandigarh, M/s. Cottage Emporium, Chandigarh While M/s. Krishna Carpet Co. and M/s. Cottage Emporium are situated in Sector 17, the address of third firm as per the letter head is 51, Sector 18-A, Chandigarh. This plot No. 51, Sector 18-A, Chandigarh, is the residential accommodation in which the partner of M/s. Krishna Carpet Co. and M/s. Cottage Emporium are living These three firms are concerns of the same business family and there is no shop at Flat No 51, Sector 18-B, Chandigarh. Further, in one of the quotations, the address of M/s. Cottage Emporium has been given as Shop No. 2, Sector 17-E, Chandigarh and on the other, it is Shop No 14, 30, Bayas Building Sector 17-B, Chandigarh. The address of M/s. Krishna Carpet Co, Chandigarh is also 30 Bayees Building Sector 17-B, Chandigarh which are the same premises as that the Cottage Emporium.

53. According to the Auditors, it is clearly established that the above three firms are under the same management. On September 17, 1981, the Managing Director constituted a Purchase Committee to visit Chandigarh and decide the purchase of furnishing items required for Maharaja Suit Chail As per minutes of the Purchase Committee, "M/s Krishna Carpet Co., Chandigarh have been approved by the Committee as the rates quoted by the firm are the lowest and the stuff shown was also found to be suitable for furnishing the Maharaja suit".

These minutes have been signed by the members of the Purchase Committee on September 27, 1981 and the orders were placed on the same day. The comparative statements announced and forming part of the minutes of the Purchase Committee dated September 27, 1981 is dated January 9, 1982. Further, the Purchase Committee has collected on the spot quotations from M/s. Krishna Carpet Co., Chandigarh, M/s. Hindustan Textile Corporation, Chandigarh and M/s. Cottage Emporium, Chandigarh which are the concerns of the same management and of which M/s. Hindustan Textile Corporation is situated in a residential accommodation.

54. On Sept. 27, 1981, another Purchase Committee was constituted by the Managing Director to finalise the purchase of furnishing for Ashiana Complex. The same members of the Purchase Committee procured another set of quotations from the same parties, namely, M/s. Krishna Carpet Co., Chandigarh, M/s. Hindustan Textile Corporation, Chandigarh and M/s. Cottage Emporium, Chandigarh, whereas M/s. Krishna Carpet Co., Chandigarh quoted the same rate for which they quoted for Chail, M/s. Cottage Emporium and M/s. Hindustan Textile Corporation had quoted different rates of same items on the same day. This confirms the fact that undue pecuniary advantage is being caused to one party thus showing that this was manoeuvred and the Management was in collusion with these three concerns and the constitution of Purchase Committee was only an eye-wash. The minutes of the proceedings of the Purchase Committee and the quotations were procured intentionally from one party. Since no Purchase Committee which could go into the market, would imagine even of visiting the residential accommodation of the partners. The minutes of the Purchase Committee have been made subsequent to the date of making purchases as the comparative statement made on January 9, 1982, while the purchase order was placed on September 27, 1981. No record was procured to confirm regarding indenting of material requested for furnishing of Maharaja Suit at Chail and Ashiana Complex Shimla. No efforts were made to procure tapestry items from Panipat, a known centre for tapestry cloth and furnishing and no other dealers at Shimla or Chandigarh were contacted for this purpose. All these illegalities have resulted in wrongful loss to the Himachal Pradesh Tourism Development Corporation.

55. On April 10, 1982, another set of quotations was obtained from M/s. Krishna Carpet Co., M/s. Hindustan Textile Corporation and M/s. Phulbari Emporium, Chandigarh for jute matting and handmade woollen pile carpet etc. While the items of M/s Krishna Carpet Co, Chandigarh were approved, the Manager of M/s. Phulbari Emporium, Chandigarh has denied giving any quotation. This is not only fraud but has also resulted in pecuniary advantage to M/s. Krishna Carpet Co., Chandigarh as no proper exercise was undertaken to determine if the same goods could be purchased from other suppliers at lesser rates. This could easily have been done by obtaining genuine quotations from actually dealing in these goods.

56. In answer to these allegations, the Petitioner submits that the other party has admitted that the purchases were made on the recommendations of various Purchase Committees constituted by him from time to time. Relating to other facts it has been asserted that before he became Managing Director, Tourism Development Corporation, the Corporation was already dealing with these three firms for their purchases. A set of three quotations, dated May 22, 1979 from M/s. Krishna Carpet Co., M/s. Cottage Emporium and M/s. Hindustan Textiles, Chandigarh and the expenditure sanction order relating to purchase made on the strength of these three quotations is Annexure J In view of the fact that all these firms were already on approved list, he had no reason to believe to the contrary. However, after the special audit and the registration of the case on the basis of audit report, the Petitioner ascertained facts. They are:

(a) M/s. Hindustan Textiles Corpn., Chandigarh was an authentic firm registered with the Sales-tax authorities, through sales tax registration No. CHA/CST/2782 and CHA/2982 dated 3-7-1973. This firm was on Rate Contract with the Controller of Stores, Himachal Pradesh Govt, vide circular No. IND (SP) (PURCHASES) F (6/3)/452/79 (140) dated 3-10-1979 valid upto 31-10-1980 for latex rubber mattresses and again vide Rate Contract No. IND (SP) (PURCHASES) F (6/3)/63/80/154 dated 31-12-1981 for latex rubber mattresses. Copies of the rate contracts are placed at Annexures K and L, page 34-37.

Amongst a number of Department who dealt with Hindustan Textiles Corpn., Chandigarh, during this period, were:

1. Executive Engineer, Housing Board, Parwanoo.
2. Resident Engineer, HP PWD, Himachal Bhawan, New Delhi.
3. Medical Supdt., H.P. Govt. Sanitorium, Dharampur.

Copies of orders placed by them are enclosed at Annexures, "M", "N" and "O", pages 38, 39, 40.

(b) Rate Contract with Punjab Government for woolen drugget.

M/s. Hindustan Textiles Corpn. was on Rate Contract with Punjab Government vide Rate Contract No. RC/GL/C-4/73/74/17768 dated 28-3-1974 for woolen drugget (copy placed at Annexure "P" page 41).

(c) M/s. Hindustan Textiles Corpn. was on Rate Contract for rubberised coir mattresses with the Controller of Stores, Punjab, Chandigarh vide No GL/G-2/208/80-81/50535-51034, dated 14-8-1980. Copy placed at Annexure "Q", page 42.

(d) The firm M/s. Hindustan Textiles Corpn had some business dealings abroad also. The Dy. Controller, Foreign Exchange had extended permit and granted foreign exchange vide permit No. EC/G/TAR/125/AS-16 (H-17) 80 on 20-3-1980 to allow the firm to survey market for sale of products abroad. A copy of this permit is placed at Annexure "R", page 43.

(e) Copies of orders placed by various departments of the Government of Himachal Pradesh Government of Punjab and Central Government etc. are placed at Annexures "S-I" to "S-6" page 44-50.

Cottage Emporium, Chandigarh.

This firm initially had their show room in 30 Bays building in which building M/s. Krishna Carpet Co. is also located. This firm was registered with the Sales Tax Department vide No. CHA/ 4786 and CST/4572 on 20-12-1977. Later in 1979 they shifted their premises to Show Room No II, Sector 17-E, Chandigarh. A copy of their letter intimating the shifting of their premises is placed at Annexure "T", page 51.

(a) Rate Contract with Government of Himachal Pradesh.

M/s. Cottage Emporium, Chandigarh was on Rate Contract with the Govt. of Himachal Pradesh vide No. IND (SP) (TENDER) (SP) (6-2)90/80 dated 20-3-1980 (Annexure U, page 52 and 52-A). During a short period the other two firms M/s. Krishna Carpet Co. and Hindustan Textiles Corpn., Chandigarh were also simultaneously on rate contract with the Govt. of Himachal Pradesh. In other words all these 3 firms, who are alleged to be under the same management, were on rate contract with the Govt. of Himachal Pradesh simultaneously at the same given time. Much has been made in the F. I. R. regarding the location of Cottage Emporium, Chandigarh at Shop No. 14, 30 Bays Building, Chandigarh which in fact was their earlier address before shifting to their new premises in August 1979. They might have used an old stationery letter head for giving some quotation to the Tourism Corporation. The quotations dated 14-9-1981; 10-4-1982; 10-4-1980; 14-9-1982; 22-1-1983 and 23-2-1983 were given by Cottage Emporium bearing their correct address at Shop No. 2, Sector 17-E, Chandigarh and with which firm the Tourism Dev. Corporation has some correspondence. (Annexure "V-I" to "V-6", page 53-58). Deliberately and only one letter head, bearing an old address was picked up by the auditors which assertion, though irrelevant is repeated in the F. I. R. to indulge in mud-slinging."

57. All the purchases of tapestry and other items were made from M/s. Krishna Carpet Co. and other firms primarily on the strength of the acceptance of their tender during July 1980 and February 1982. It was a normal practice with the Corporation to study the market trends under his instructions for ascertaining prevailing rates of various items and in this process the officers might have collected some quotations from M/s. Cottage Emporium, M/s. Hindustan Textile Corporation etc also. The Petitioner had categorically stated in his letter to the Chief Minister, Himachal Pradesh and the Secretary (Tourism) (Annexure P-26), that the total purchases during three years of his tenure on the strength of spot quotations from these firms on the recommendations of Purchase Committees were only to the extent of Rs. 25,000.

58. So far as purchases for Maharaja Suite in Chail Palace Hotel are concerned, they were made strictly as per procedure. Rates for Flora Carpet had already

been approved by the Central Purchase Committee long before the order was placed with M/s. Krishna Carpet Co. The same also happened in the case of Ashiana Complex. The quotations obtained from other firms had no bearing so far as the acceptance of rates for Flora Carpets and placing of order for the same was concerned. The allegations of undue favour to M/s. Krishna Carpet Co. are thoroughly baseless.

59. Maharaja Suite in Chail Palace Hotel had to be re-furnished in a great hurry under the directions of the Government, since Mrs. and Mr. Rajiv Gaudhi were to visit Chail Palace Hotel and were likely to stay there as VVIP guests of the State Government. The Corporation was also directed to refurnish a suite in Chief Minister's residence within 24 hours in early 1982 where the Prime Minister of India was to halt for some time during her short visit. The Himachal Tourism Development Corporation was in developing stage, trying to cater to the needs of the tourists, so it was not necessary nor admissible nor practicable to make purchases from Panipat, more so, when open press tenders had been invited and certain firms from Panipat had also submitted their tenders but their quality was found of sub-standard and had been rejected by the Purchase Committee being unsuitable to the requirement.

60. No purchases were made by the Corporation on the basis of quotations obtained from Punjab Government Emporium or from other two firms on April 10, 1982. The enquiry made from Punjab Government Emporium "Phuikari" was a routine enquiry by the Purchase Committee to ascertain the prevailing market rates of certain items of furnishing. When this matter was brought to the notice of the Petitioner by certain officers of the Corporation, he wrote letter of December 2, 1983 to the Manager Punjab Government Emporium, Phuikari, Sector 17, Chandigarh (Annexure W) enclosing therewith a photostat copy of the quotation in question to know whether they had issued this quotation or not. The Manager by letter of December 8, 1983 certified that they had been giving quotations to the Corporation as and when approached for the purpose. This means, the Punjab Government Emporium had been issuing quotations prior to the audit period and the contention that no such quotations were sent by it, is absolutely baseless, more particularly, when the Corporation had already approved the rates of all the items from M/s. Krishna Carpet Co. in response to the press tenders approved in the beginning of 1982.

Brass Items, Iron Furniture and furniture from Kartarpur.

61. Here the allegation is that for the purchase of brass items, quotations were obtained from three firms, but out of them, two firms are not dealing in manufacturing the items for which they have quoted. This has resulted in wrongful gain to M/s. Ferozpur Metal Industry Chandigarh. In the purchase of iron furniture, the order constituting the Purchase Committee is missing, the rates/minutes have not been approved by the Managing Director, quotations have not been signed by the Committee Members and the supply order is placed by an Officer not authorised to do so for the purchase of furniture from Kartarpur.

The quotations were received by Post on October 25, 1980 at Shimla whereas the supply order by the Managing Director was made on October 20, 1980 with Camp Officer at Kartarpur. The quotations obtained from the other two different parties bear the same handwriting. All the purchases of furniture from Kartarpur are made from M/s. New National Furniture House. All this shows that the purchases have been made by circumventing codal formalities and wrongful loss has been caused to the Corporation due to the wilful negligence of the concerned officials in the performance of their duties.

62. The Petitioner explains that M/s. Ferozpur Metal Industries, Chandigarh had their parent organization at Ferozpur and to his knowledge, are the biggest suppliers of brass items like boards etc. in this part of the country, both to the Army and civilian organizations. In Himachal Pradesh, they have supplied boards and several other items, amongst others; the High Court of Himachal Pradesh, the Police Department of Himachal Pradesh and Municipal Corporation, Shimla. They are the original manufacturers of brass items. It has been denied that other two firms do not deal in brass items. Partners of these firms have confirmed that their quotations were genuine and they were prepared to supply brass material, in case their quotations were accepted. They have said so on affidavits. Regarding Cast Iron furniture, it has been stated that the very fact that sanction was accorded by the sanctioning authority for the purchase of some items of Cast Iron furniture from Delhi confirms that the sanctioning authority had approved the order placed by some other senior officer of the Corporation. In all probabilities, this furniture was purchased for the Glass House at Barog which was to be inaugurated by the Chief Minister and later visited by Mrs and Mr. Rajiv Gandhi.

63. As to the purchase of other furniture from Kartarpur, it is submitted that in July 1980, a Purchase Committee with three senior Officers of the Corporation had been constituted to select some furniture items for the Tourism Development Corporation Complexes. The Committee visited Chandigarh as well as Kartarpur. One of the important recommendations of this Committee recorded in its minutes is that:

The Committee observed that the rates of each item of furniture had very wide design but also in the cost involved. To quote an example price of dining chair varies from as low as Rs. 85 to Rs. 900 per chair. Similarly an average sofa set costs Rs. 2,000 whereas the price goes upto Rs. 5,000 and onwards. The same is the case of bed-steds where the price would range from Rs. 1,000 per pair to Rs. 3,000 and upwards. This is just to quote a few of the examples. The cost of each item of furniture required by us had to weigh not only in term of money but other important factors involved were the quality of wood, the design, the quality of rubber used the quality of upholstery, the quality of polish etc. etc. Since each item offered is handmade, therefore, it cannot be standardised for purpose of price quotations as these must vary from item to item offered by each firm for obvious reasons. In a loose term a piece of furniture shall also be taken as a

piece of art for which the price of necessity, shall vary. In this background the Committee inspected each item carefully in not only premises mentioned above but at some other places also and after taking to consideration the comparative prices and the quality of the goods offered as a whole have come to the considered decision as given below. It is recommended that the items may be approved to be purchased from the firm concerned as mentioned against each.

After going through the minutes of this Purchase Committee, the Petitioner recorded that:

Recommendations accepted We shall adopt these for standardisation of furnishing in our Complexes.

64. M/s. New National Furniture House, Kartarpur had also been selected for the purchase of quite a few items because of competitive rates and the quality. In the instant case some furniture items had to be select- ed for the new wing of Hotel Holiday Home, which was likely to be completed within two months, and for Himachal Bhawan. The Committee visited Chandigarh and Kartarpur and selected fourteen items of furniture from M/s. New National Furniture House, Kartarpur. The minutes of the Committee were approved by the Petitioner the same day and the order was placed with the firm. The minutes dated October 20, 1980 are clear on this point. It may be that the quotations obtained were misplaced by the Purchase Committee and might have asked for duplicate copies from the firm concerned which were received in the office on October 25, 1980 So far as the Petitioner is concerned, these quotations were irrelevant when the Purchase Committee had made on the spot selection of furniture as per requirement for the two units after ascertaining the market trend commensurate with the quality. The other two firms M/s. Saien Dass and Sons and M/s. Aggarwal Furniture House, Kartarpur have stated on affidavit after the visit of the Auditors to their show rooms that the quotations given by them to the Corporation, were genuine. These affidavits are on record.

Utensils, Crockery\\Cutlery:

65. In the purchase of these items from M/s. Rajeshwar Lal Janesh-war Lal and M/s. Jain Trading Corporation, Shimla, the supply orders were issued to parties on October 1, 1981 against quotations received on October 20, 1981. Further, the rate charged in the bills differs from the rates mentioned in the supply order. This has caused wrongful loss to the Corporation.

66. In answer to these allegations, it has been submitted that the utensils were required for the Corporation's news restaurant "Ashiana" located at the Ridge, Shimla. It was to be inaugurated on October 21, 1981 by the Chief Minister. Those were Diwali days and there is always unusual rush for new utensils around these days. Total purchase made from these two firms were Rs. 9,375 (M/s. Rajeshwar Lal Janeshwar Lal) and Rs. 5,741 (M/s. Jain Trading Corporation, Shimla), respectively. There is an Association of brassware merchants in Shimla since 1972. It had fixed identical rates for all utensils which are sold by weight.

All the three firms which had given quotations have given affidavits stating about the genuineness of their quotations. The amount involved in the purchase of roughly thirty-six items was approximately Rs. 15,000. There might have been some mistake in the mention of date on the quotations/bills for reasons mentioned above, but that does not make the whole transaction fraudulent and actuated by criminal intention of any kind.

Receipt of goods and verification of bills:

67. In certain cases items have been received in excess of the supply order, for example, in Hotel Holiday Home at Shimla, order was placed for the supply of 2000 coffee mugs and against this order, the party had supplied 2200 mugs and payment was made for this quantity of mugs. Another purchase order dated February 22, 1981 was for the supply of 36 mattresses and 50 pillows against which the supplier had supplied 44 mattresses and 60 pillows and was thus paid for this quantity. Further, vide another purchase order dated March 10, 1981, four Sofa Chairs were required against which the supplier had supplied and billed for eight chairs which was also paid accordingly. At Hotel Jawalaji, purchase order was for two Sofa Sets, but four Sofa Sets were received and paid accordingly.

68. In all these cases no objection was raised at any stage by the store accounts and the Finance Department of the Corporation. This shows that the furniture and mattresses had been received in excess and paid for by the Corporation. When the same was not required, the excess quantity should not have been accepted. The suppliers were therefore, accommodated at the cost of the Corporation funds which remained blocked for years, thus, causing loss to the Corporation since the mattresses worth rupees two lacs are still lying in the Central Stores.

69. In many cases when the supplier had supplied shorter/lesser quantities and the Corporation had paid the bill of higher quantity unsupplied, for example, (a) in Hotel Holiday Home actual measurement taken by the Auditors of additional block, Conference Hall and old block of Hotel Holiday Home reveal that the Corporation had been billed in excess for 69.03 metres of carpet for which payment has been made. As per arrangement with M/s. Krishna Carpet Co., Chandigarh, the Corporation was to pay for actual measurements and all wastages, therefore, were at the cost of the supplier (b) M/s. Krishna Carpet Co., Chandigarh also supplied curtains to Hotel Holiday Home. The supplier billed the Corporation for 12.85 mtrs. of curtain cloth and 1069 mtrs. of lining cloth. The payments for these quantities were made but actual measurement taken by the Auditors revealed shortage of 94.50 mtrs of curtain cloth and 237.33 mtrs. of lining cloth, (c) Actual measurement taken in Rose Commas Kasauli also revealed that M/s. Krishna Carpet Co., Chandigarh billed the Corporation for 898 mtrs. of hand tufted carpets in excess of what was actually supplied and for which payment had already been made, (d) as per purchase order No. 13-24/80-TDC III, dated September 27, 1981 for supply of carpets and curtains for

Ashiana Complex, Shimla with M/s. Krishna Carpet Co, Chandigarh, the Corporation was to pay for providing and fixing Flora Carpet according to actual measurement and curtain cloth of approved design. The supplier raised a bill for 119.90 sq. mtrs. whereas the actual measurement of Ashiana Restaurant comes to 94 34 sq. mtrs. Excess payment has, therefore, been made for 26 mtrs. All these instances show that the concerned officials have intentionally caused wrongful loss to the Corporation and wrongful gain to the suppliers.

70. In respect of furniture, the quality and specifications of the goods supplied should have been verified before despatch to the respective units as no member of the staff of respective unit was a member of the Purchase Committee. It was, therefore, not possible for the unit. Incharge to verify the quality and specification of furniture when such specifications were not available on the record. Therefore, it is clear that bills were only verified for quantities received and not for quality and specification of goods ordered. This has again resulted in the wrongful loss to the Corporation.

71. Relating to these allegations, it has been explained that there is no allegation that the Corporation received less than the one it paid for, meaning thereby, the Corporation made payments only for the goods received. So far as the Petitioner remembers, coffee mugs were ordered with Logo embossed on the mugs. The manufacturers always keep margin for wastage and breakage. In the instant case, 2200 mugs instead of 2000 earlier ordered, were available and were accepted because it would have been improper for the mugs with the Logo of Tourism finding its way in some way-side petty "Dhaba". Besides, for a Corporation running nearly 48 establishments, 200 extra mugs would not have made any difference.

72. It is wrong to allege that it was the supplier who made excess supplies which were quietly accepted by the Corporation. All suppliers were ordered according to the requirement and there must be subsequent orders for supply of more mattresses and pillows, received and paid for. Same thing must have happened with respect to Sofa Sets and Chairs. Perusal of Stock Register maintained in the Central Stores of the Corporation would show that as per entry dated June 3, 1983, only 21 mattresses valuing approximately Rs. 20,000 were in stores and they had been purchased for the third wing of Hotel Holiday Home which was near completion. The Petitioner remembers that his successor had initiated a proposal for the purchase of more mattresses also. As a matter of fact, there was not even one mattress in excess of the exact requirement of the Corporation and none was lying in the stores even before the commencement of audit.

73. As to the verification of bills and quality of goods received, the allegation is thoroughly baseless. On August 19, 1982, instructions were issued, letter on the file, that whenever any supplies were received, the senior most officer of the unit concerned and two other employees of the unit should form a survey committee and draw proceedings on a form prescribed by the Petitioner. It had also been desired that when special items were required to be purchased for a particular

unit, the Area Manager/ General Manager etc. of the unit concerned should be associated as member of the purchase committee. The allegation about shortage in goods supplied, is also without any basis. Report of Store-Keeper to the General Manager, Hotel Holiday Home, dated August 6, 1983 regarding wrong measurement by the Auditors, is on the file (Annexure AK), but no attention was paid to it and wrong inferences were drawn unnecessarily. Supplies of curtain cloth and lining cloth are totally wrong. So far as shortage in curtains is concerned, the Auditors had ripped upon all the curtains, the pleats etc. and then took measurement without taking into consideration that all curtain fabrics, on washing shrink, besides when the curtain are stitched to match flowers/designs, there is always little wastage.

74. Regarding Kasauli Complex, it is explained that all the items including the carpets, purchased from M/s. Krishna Carpet Co., Chandigarh for six bed rooms tourist bungalow could not be more than approximately Rs. 50,000 in all, whereas the shortage in the carpets alone has been estimated at approximately Rs. 2.50 lacs. Ashiana Complex is in the hexagonal shape. All cut pieces of the main carpet had been used in carpadding the stairs leading to the basement and pantry, besides, fabricating pieces to be used as door-mats. The Auditors refused to take into account this factor since they were discharging their function with pre-conceived ideas and conclusions. In note dated August 11, 1983 by the Deputy General Manager (Finance and Accounts) (Annexure AL), this kind of attitude of the Auditors is testified.

Discharge of duties by Managing Director while on leave.

75. According to the Auditors, the Petitioner was on earned leave from February 11, 1983 to February 25, 1983. Even then he performed certain functions which he could not do as per law.

76. In answer to this allegation, it has been explained that although the Petitioner was not bound to discharge his official function being on leave, yet he discharged certain functions in the interest of the Corporation and had kept the higher authorities informed all about this, without claiming any extra benefit for discharging these functions. His movements had approval of the Chief Secretary to the Government. Although his parents were ill and his father died during this period, yet the Petitioner paid visits to units of the Corporation located at a distance of more than 100 kms. from Chandigarh.

Deposit Works:

77. The allegation is that unusual discretion appeared to have been exercised in the execution of certain works and the approval of Board or the State Government was not sought whenever necessary. Firstly, no projects reports were prepared so as to ascertain the project viability and thereafter when the project was already on the floor, the Corporation did not examine its progress resulting in losses. The Corporation's idealistic idea of putting up a Janta Hotel was converted into a pompous project with large number of deluxe and VIP

suites. Neither the State Government approved as required under Sub-clause I Ind of Clause 65 of the Articles of Association of the Corporation nor the Board was informed of it Initial cost was exceeded grossly causing wrongful loss to the Corporation as the Hotel is incurring heavy loss as the occupancy rate is much below 25%.

Department Work:

78. In departmental work, the following irregularities were committed resulting loss to the Corporation.

Kitchen Block Hotel Holiday Home:

79. For the construction of kitchen block of Hotel Holiday Home, tenders were invited and after negotiation, the work was awarded to Vicber Interprises at 160% above the H.P.P.W.D. rate of 1979 and the estimated cost of the project worked out to Rs 1.15 lacs. Subsequently, plan was changed to add basement first, second and third floor in the original plan and the work was ultimately awarded to M/s. Vicber Interprises at 155% above the H.P.P.W.D. Scheduled rate of 1979 without calling for fresh tender in November 1982, so the work for which tenders called and estimated value of which was Rs. 5.5 lacs approximately, was still in progress and the Corporation, according to the Auditors, had incurred an expenditure of Rs. 12,81,020, causing loss to the Corporation as the premium rate of H.P.P.W.D. Schedule of rates in 1979 in Shimla town were 60%, whereas the work was awarded to M/s. Vicber Interprises at 160%, 155% and 153%. Approximately four lacs have already been paid in excess as per the Auditors report.

Dhovighat:

80. In September 1982, tenders were invited for the construction of Dhovighat Hotel Holiday Home, Shimla. The work was awarded to M/s. Modern Sanitary Engineers at 145% above the H.P.P.W.D. Schedule of rates 1979, whereas the H.P.P.W.D cost index at that time was below 100% of the schedule of rates 1979. At the time of allotting the work, no consideration was paid to prevailing market rates and the Corporation incurred approximately Rs. 12,000 as expenditure. In a similar fashion, the Corporation incurred excess expenditure of Rs. 12,000 in the construction of a retaining wall for Hotel Holiday Home, Shimla. The Auditors further pointed out that the revenue budgets had been presented together with comparative statements of the preceding of the two years, but no such efforts were made to compare the capital budgets of the previous years. In the absence of discussion on capital budgets relating to previous years, the Officers of the Corporation could have and did mislead the Board of Directors thereby causing huge loss to the Corporation. This amounts to misuse of authority, misrepresentation and breach of trust. The minutes of Purchase Committee are prototype and only limited to collection of quotations from one group of suppliers at one station. The team did not even bother to explore other suppliers in the same area. It is unthinkable that any organization in Northern India is unaware

of the fact that tapestry and curtain cloth are being manufactured at Panipat. According to the Auditors, no samples alongwith Purchase Committee proceedings were available on the record. In some cases the quotations were received by Post subsequent to the date of orders. Materials were received at units and the bills were varified by the unit Incharge or any other Officer In-charge, but according to Auditors report, it is evident that hardly any attempt was ever made to verify the goods and connect it with the purchase order during the period under audit. It has been pointed out by the Auditors that in certain cases, Officers who were not delegated the financial authority, had signed the purchase orders, passed the bills for payments and various units made the purchases.

81. From the above facts, it is evident that the concerned public servants of the Corporation had entered into a conspiracy with the firms with a view to defraud and cause loss to the Corporation and to obtain for themselves or for others pecuniary advantage, resorting to corrupt or illegal means, thus, committing offences u/s 5(2) of the Prevention of Corruption Act, Sections 409, 467, 468, 471 read with Section 120-B of the Indian Penal Code.

82. The Petitioner submitted vehemently that these allegations are thoroughly baseless. Observations of the Auditors are thoroughly uncalled for. No wrongful loss was caused to the Corporation by any act of the Officers of the Corporation Actions initiated were bona fide and in the interest of the Corporation so that it could gain prominence in the estimation of its consumers. There was neither any conspiracy amongst any officers of the Corporation inter se nor with any outside agency or firm. Proper procedure, as per past practice added by experience, was adopted in all spheres of the activities.

83. Explaining further, it was contended that with respect to deposit works Annexure P-26 on the file, is the complete answer. It has not been refuted by the Respondents in the reply-affidavit. Further, no new project involving a capital investment of over Rs. 25,00,000 was initiated by the Petitioner during his tenure since the main emphasis and thrust was on consolidation of the existing assets which had witnessed a haphazard growth as admitted even by the Board of the Corporation in its meeting of July 26, 1980.

84. So far as Hotel Hawalaji is concerned, the Petitioner appeared on the scene at a time when it was near completion and omission. This "Janta Hotel" was not converted into a "pompos" project by the Petitioner which is clear from the minutes of the Board in this regard. These facts have not been refuted by the Respondents in the reply.

85. Because of undue delay in the execution of Corporation's projects "deposit works", a decision was taken by the Board to get the work executed departmentally, since the Corporation had already certain Engineers from Public Works Department on deputation. Consequently, tenders were invited by the Corporation and a Negotiation Committee with senior officers was constituted.

According to the recommendations of this Committee, the work was awarded initially at 160% above the scheduled rate of 1979 and for other floors at 155% and 153% Before inviting tenders on April 27, 1982, M/s. Mehta Associates and Architect had been assigned the job of carrying out detailed analysis of the work to be executed with justification of costs. This firm had worked out the justification for the award of construction work at 165.09% above the P.W.D. scheduled rate of 1979. A Committee of the following Officers of the Corporation was constituted to invite the tenders, examine the whole case and put up the proposals:

- (1) General Manager, HPTDC.
- (2) Deputy General Manager (Accounts).
- (3) Deputy General Manager (Purchase).
- (4) Assistant General Manager (P).
- (5) Junior Engineer, TDC.

The lowest tender was 195% above the scheduled rates of P.W.D. Negotiations were held by this Committee and the rates were brought down to 160% and the work was accordingly awarded on May 8, 1982. When the position of funds improved, it was decided that instead of only kitchen block, two more storeys should be added to carve out the deluxe rooms for tourists including a private VIP lounge. On November 10, 1982, the Deputy General Manager (Project) had put up a note to the Petitioner that the work may be awarded to the same firm at the same rate for second slab as well. The Petitioner wrote the following note on this proposal:

The same committee (of officers) which had earlier examined tenders and had awarded work may examine the whole aspect and let me have their considered opinion.

On November 16, 1982, this Committee drew the proceedings and recommended that first, second and third floors should be awarded to the firm at 153% above P.W.D. scheduled rates. This was approved and the work was near completion when the Petitioner was asked to leave the Corporation.

86. The second wing of Hotel Holiday Home had been constructed as a deposit work by the Housing Board-known as guest house portion. The work was started on May 24, 1979 and completed in September 1981. The cost of construction came to Rs. 215.29 per sq. ft.

87. The third phase of Hotel Holiday Home (subject-matter of the First Information Report) was awarded in May 1982 and was completed in 1984. The cost of construction per square foot came to Rs. 187.34 which included the cost escalation during this period of two years estimated at a minimum of 15%.

88. Pinewood Hotel at Barog was constructed by the Public Works Department at

Rs. 201.05 per sq. ft. where stones, sand, ballast etc. were available at site and the truck could go right upto the door.

89. In the year 1981, a building in "Khandsari Unit" was constructed at Paonta Sahib where raw material was easily available at site, at 151% above the P.W.D. scheduled rate. The specification of a Khandsari Unit is far inferior to a star category of Hotel building. It would be clear that the Corporation had rather saved by executing this work departmentally at much cheaper rate than similar work executed by the Housing Board and the Public Works Department during earlier periods. In order to simply substantiate the allegations in the First Information Report, wrong and piped estimates were prepared by the Public Works Department thrice under instructions from the above, so that they could fit into the allegations in the First Information Report. When this process was going on, the Petitioner wrote a letter to the Engineer-in-Chief to what was being done and demanded that proper enquiry into the matter be made and proper estimations prepared, but these officials were under pressure from the Chief Minister's Secretariat which would be clear from Annexure AP. However, it would be relevant to point out that while drawing these estimations, many illegalities were committed deliberately, for example:

(a) Cost of index for carriage of material by truck was charged in analysis at 18% above the scheduled rate of 1979 whereas it had already been increased by the Engineer-in-Chief to 45% on September 21, 1982. The difference in terms of costs thus was approximately Rs. 40,000.

(b) 10% premium for time bound construction was not allowed in the final analysis whereas earlier it had been stated in the last para of the covering letter by the Executive Engineer that this letter was withdrawn and replaced. It made a difference of Rs. 1,30,000.

(c) No wastage allowance for wood work was allowed.

(d) Wrong and lower rates for labour and material were deliberately charged and the difference including that of wastage allowance for wood work was approximately Rs. 1,20,000. In nut shell, a sum of approximately Rs. 3,00,000 had been deliberately reduced in the analysis by the Public Works Department simply to justify the allegations in the First Information Report that the work was awarded by the Corporation at a higher rate.

There was no reason for awarding of the work at the higher rates. The Petitioner or any Officer of the Corporation had no relationship with the contractors or the executing agency nor there is any evidence to show any kind of complicity with them. Initiation of the present case has not only caused immense damage to the reputation of the Petitioner but also his initiative to bring the unit of the Corporation to such an angle that tourist visiting the State could really like to utilise its services. However, not only the Petitioner but also all other officers of the Corporation received such a set back by the initiation of the present case that no one is prepared to take any kind of responsibility, initiate new measures to

promote tourism in the State on healthy standards with the result that the speed with which it was once going ahead, had received an alarming set back.

90. It was for the first time in the Corporation that system of pre-audit of all bills before payment was initiated and the allegation that there was no such procedure for verification of the bills, is against the record. Of course, it was dispensed with soon after the exit of the Petitioner. It is clear from note dated September 15, 1983 (Annexure AS). It has wrongly been made out that all the purchases during the time of the Petitioner were from M/s. Krishna Carpet Co., on the strength of quotations obtained from the sister concerns like M/s Hindustan Textile Corporation and M/s. Cottage Emporium All these firms were dealing with Tourist Development Corporation much before the Petitioner was appointed the Managing Director of the Corporation. They were on rate contract with the Government of Himachal Pradesh and the Government of Punjab. They had different premises and separate Sale Tax numbers. Two of them had been sanctioned foreign exchange by the Government of India.

91. In the circumstances aforesaid, it was neither necessary nor practicable for any one in the Corporation including the Petitioner to have resorted to any kind of enquiry about the relationship of these firms with each other before making any kind of purchases or seeking tenders and allowing them. It may be that the partners of these firms were related to each other, but legally speaking, they were separate entities and calling of tenders, accepting them and placing of orders with them did not mean that the Corporation was dealing with only one firm. The records made available to this Court with the written submissions, would clearly demonstrate that the Petitioner had taken all possible steps to ensure effective and honest purchases through recommendations of Committees consisting of senior Officers of the Corporation There was no reason to doubt the bona fides of any member of these Committees nor there is any iota of evidence to impute any kind of bad faith in their actions. Finally, there was system of pre-auditing of bills before the payments were released.

92. In view of the above, there is no evidence against the Petitioner nor any other officer of the Corporation about the commission of any offence. The facts contained in the First Information Report are mere conjectures and surmises conclusions drawn by the Auditors which do not at all constitute any offence.

93. The agreement between two or more persons to do an illegal act or legal act by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. It is by itself a substantive offence and is distinct from the offence which is committed in pursuance of the conspiracy.

94. In Major E.G. Barsay Vs. The State of Bombay, it has been held that:

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. u/s 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law.

Again, in *Yashpal v. State of Punjab* (1977) SCR 2433, the apex Court has stated thus:

The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performance in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or over-shooting by some of the conspirators.

95. If we pause here and examine the facts of this case, it can be safely noticed that there is not an iota of evidence pointing out that the Petitioner had conspired with any one as a result of which the other offences were committed. There is nothing to show that the Petitioner had been associating with the other accused to carry out the object of conspiracy. There is neither direct nor circumstantial evidence of conspiracy against the Petitioner. It being a highly technical offence, all its ingredients must be strictly proved. Unless total and specific proof against each of the accused that they participated in a particular design to do a particular thing, has been established, there can be no conviction u/s 120 B of the Indian Penal Code.

96. In *State of U.P. Vs. Sukhbasi and Others*, it has been held that (para 7, p 1227):

...To substantiate a charge u/s 120-B of the Code, there must be a criminal conspiracy at least between two or more persons. There is not an iota of evidence to establish that the three accused prior to the commission of the offences had conspired together with the accused Ashok Kumar and got forged from him the Ruqqa (Exh. Ka 42) in the name of Kirpal Singh Munim to secure an entry into the house of the deceased. There is nothing to show that the accused Ashok Kumar had been associating with the other accused. Although the accused Ashok Kumar had admitted that the Parcha (Exh. Ka 42) was in his handwriting, but his

version is that when he was arrested on January 2, 1971 the document was got written by him by PW 31 by use of force....

It can thus be held that there is no evidence of conspiracy against the accused or any other person in this case.

97. So far as other offences are concerned, we have scanned large number of documents to see whether there is evidence pointing out the commission of the offences mentioned in the First Information Report. The learned Counsel for the Petitioner forcefully contended that in the light of the explanation offered by the Petitioner and the documents placed before us, it can safely be said that the whole case against the Petitioner is thoroughly baseless and devoid of merit. The facts being pressed into service against the Petitioner, do not constitute commission of any criminal offence whatsoever. Instead of giving credit to the Petitioner for his sincere efforts to improve the functioning of the Corporation, his bona fide and honest actions are being termed dishonest for extraneous considerations simply to harass and humiliate the Petitioner by the intended prosecution. Therefore, it is a fit case where, in the interest of justice to save the Petitioner from this kind of lame prosecution, this Court should quash the First Information Report and the investigation against him.

98. In the preceding part of this judgment, we have made serious attempts to reproduce the allegations and the explanations of the Petitioner quite exhaustively to scrutinise the case more deeply. It is quite clear from that the Petitioner has had a remarkable role in the development of tourism industry in this State. He had taken numerous initiatives to develop it from stage to stage. These are reflected in the remarks recorded by many eminent personalities of our country. Obviously, while making these efforts, the Petitioner had to construct new units at various places and furnish them with a view to attract national and international tourists. He had to make purchases of various items, allot works to agencies, but we find that all his actions were neither haphazard nor unsystematic. Committees of various levels were constituted to examine the issue properly and then make recommendations. These Committees comprised of various senior Officers of the Corporation and it was on their recommendations that the Petitioner had been making the final decisions. The decisions were bona fide and in the interest of the Corporation. There is nothing to show that the Petitioner was moved by corrupt or illegal means or by abusing his official position for extending any pecuniary advantage to some other persons. He had no dishonest intention in making decisions whether relating to construction or furnishing or any other matter. Being the head of a Developing Corporation, quick decisions even by departing normal procedures could be taken, but we do not notice that the Petitioner ever did so.

Criminal case cannot be initiated on one's view about a particular matter. It is only when the act is committed with a particular dishonest or fraudulent intention wrongful loss to the State is the result of deliberateness, one can say that the act of the person concerned is culpable. Mere error of judgment or an act of

indiscretion do not lead to the inference of dishonest intention. Very heavy onus lies on the prosecution to prove these ingredients against the accused (See: Major S.K. KALE Vs. State of Maharashtra,

99. We record that the view formed by the Auditors in this case is their ex parte opinion with respect to the matters pointed out by them which, in face of the material before us, is totally absurd. Besides, it is subject to variation from Auditor to Auditor. But the pity is that the investigation in the case is completely influenced by the opinion of the Auditors and no legal evidence is there which can point out the commission of criminal offence by the Petitioner. The Petitioner has given straight forward explanation qua all the allegations under investigation against him. We think, no other or better explanation can be offered with respect to each item of allegation against him. He had taken all necessary steps to avoid commission of any kind of lapse in the discharge of his functions and even before passing the bills for payments, system of pre-auditing had also been provided.

100. In R.P. Kapur Vs. The State of Punjab, the Court had, without being exhaustive, laid down three circumstances when inherent jurisdiction to quash the proceedings can and should be exercised. Further, Gajendragadkar, J., speaking for the Bench, observed that:

Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person.

In The Delhi Development Authority, New Delhi Vs. Lila D. Bhagat and Others, the apex Court said that:

...In an appropriate case it may be, rather, is permissible to protect a person from illegal and vexatious prosecution by grant of an appropriate writ or in exercise of the inherent or revisional powers of the High Court....

101. In State of Karnataka Vs. L. Muniswamy and Others, the apex Court speaking through Y.V. Chandrachud, J., as he then was, while discussing the power of High Court u/s 482 of the Code of Criminal Procedure quashing a proceeding, said that (para 7 at p. 1-92):

...In the exercise of the wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a

salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.

102. It would be relevant to quote paras 8 and 9 of this judgment since they deal with the question of conspiracy and the jurisdiction of Court u/s 561-A of 1898 Code (Corresponding to Section 482 of 1973 Code):

8. Let us then turn to the facts of the case to see whether the High Court was justified in holding that the proceedings against the Respondents ought to be quashed in order to prevent abuse of the process of the Court and in order to secure the ends of justice. We asked the State counsel time and again to point out any date or material on the basis of which a reasonable likelihood of the Respondents being convicted of any offence in connection with the attempted murder of the complainant could be predicted. A few bits here and a few bits there on which the prosecution proposes to rely are woefully inadequate for connecting the Respondents with the crime, howsoever skilfully one may attempt to weave those bits into a presentable whole. There is no material on the record on which any tribunal could reasonably convict the Respondents for any offence connected with the assault on the complainant. It is undisputed that the Respondents were nowhere near the scene of offence at the time of the assault. What is alleged against them is that they had conspired to commit that assault. This, we think, is one of those cases in which a charge of conspiracy is hit upon for the mere reason that evidence of direct involvement of the accused is lacking. We have been taken through the statements recorded by the police during the course of investigation and the other material. The worst that can be said against the Respondent on the basis thereof is that they used to meet one another frequently after the dismissal of accused No. 1 and prior to the commission of the assault on the complainant. Why they met, what they said, and whether they held any deliberations at all, are matters on which no witness has said a word. In the circumstances, it would be a sheer waste of public time and money to permit the proceedings to continue against the Respondents. The High Court was therefore justified in holding that for meeting the ends of justice the proceedings against the Respondents ought to be quashed.

9. Learned Counsel for the State Government relies upon a decision of this Court in *R.P. Kapur Vs. The State of Punjab*, in which it was held that in the exercise of its inherent jurisdiction u/s 561-A of the Code of 1898, the High Court cannot

embark upon an enquiry as to whether the evidence in the case is reliable or not. That may be so. But in the instant case the question is not whether any reliance can be placed on the veracity of this or that particular witness. The fact of the matter is that there is no material on the record on the basis of which any tribunal could reasonably come to the conclusion that the Respondents are in any manner connected with the incident leading to the prosecution Gajendragadkar, J, who spoke for the Court in Kapur's case, observes in his judgment that it was not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction. The three instances cited in the judgment as to when the High Court would be justified in exercising its inherent jurisdiction are only illustrative and can in the very nature of things not be regarded as exhaustive. Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the strait-jacket of a rigid formula.

103. High Court does not ordinarily interfere at an interlocutory stage of a criminal proceedings pending in a subordinate Court. The inherent powers possessed by it u/s 482 of Code of Criminal Procedure. can be invoked and exercised only when the facts alleged in the complaint if they are accepted to be correct at their face value, do not make out an offence with which the accused is charged (See: P. Vijayapal Reddy and Others Vs. The State, .Vijayapal Reddy and Ors. v. The State (Government of India) and Suresh Kumar Gupta Vs. Om Parkash Alipuria,

104. In State of West Bengal and Others Vs. Swapan Kumar Guha and Others, it was held that (at pp 971 and 972):

...the legal position is well-settled. The legal position appears to be that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if however, the materials do not disclose an offence, no investigation should normally be permitted.... Once an offences, disclosed, an investigation into the offence must necessarily follow in the interest of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing The liberty and property of any individual are sacred and sacrosanct and the Court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and providing an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires

that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed....

105. In *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, it has been said that (at p. 711, para 7):

7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

106. In *AIR 1989 SC 1211 State of U.P. through C B.I.S.P.E., Lucknow and Anr. v. R.K. Srivastava and Ors.* it has been held that if the allegations contained in the First Information Report are taken at their face value and accepted in their entirety do not constitute an offence, the criminal proceedings instituted on the basis of such a report should be quashed. This principle has been profounded in many other decisions holding that the Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the First Information Report do not constitute an offence and that it depends upon the facts and circumstances of each particular case.

107. In para 108 of *State of Haryana and others Vs. Ch. Bhajan Lal and others*, S. Ratnavel Pandian, J., speaking for the Court, laid down seven categories of cases by way of illustration where powers under Article 226 of the Constitution or the inherent powers u/s 482 of the Code of Criminal Procedure can be exercised either to prevent the abuse of the process of any Court or to secure the ends of justice. Of course, clearly pointing out that it may not be possible to lay down any precise, clearly definite and sufficiently channelised and enforceable guidelines or rigid formulae and to give an exhaustive list of marked kinds of cases where such powers should be exercised. The circumstances laid down are:

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R., do not disclose a cognizable offence, justifying an

investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide, and/or where the proceeding is malicious instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of F.I.R. was not justified.

108. Now, we advert to the next contention of the Petitioner. His submission is that continuance of a case based on no evidence and initiated for the purpose of his harassment, deserves to be quashed on account of gross delay. He has a right of speedy trial which has been violated by the Respondent without any reasonable and acceptable explanation. Large number of documents and witnesses are to be placed before the trial Court, in case it goes there and the Court will also take lot of time in commencing, continuing and finishing the case which is likely to result in the acquittal of the Petitioner since there is no evidence to support the allegations. It is, therefore, in the interest of justice that the proceedings are quashed and the Petitioner who has retired since long, is saved from harassment.

109. Respondent's counsel submitted that it was on account of large number of cases pending investigation that delay has been caused in the investigation of this case; except for interrogating about thirty-three officials/persons including the Petitioner, the investigation is at the final stage.

110. Fair, just and reasonable procedure is implicit in Article 21 which creates

right of speedy trial in favour of the accused. It is not only in public interest but also in the interest of the accused that his guilt or innocence is established within a reasonable time, of course, depending on the circumstances of each case. Similar is the principle behind Section 309 of the Code of Criminal Procedure. Therefore, these two provisions, namely, Article 21 of the Constitution of India and Section 309 of the Code of Criminal Procedure embrace all stages like investigation, enquiry, trial, appeal, revision, re-trial. It is not the accused who has to claim his right. The duty to try him speedily and to explain the delay is of the prosecution. However, in the present case, the accused had from time to time brought to the notice of the Respondent that there was nothing against him and that his harassment should be put to an end at the earliest, but the Respondent did not show any anxiety to undertake the investigation speedily. The explanation that large number of cases were pending investigation is hardly convincing. This explanation does not impair the utility and thrust of accused's right guaranteed by Article 21 of the Constitution, more particularly, when the accused is not at all responsible for any kind of delay in the investigation of this case.

111. In Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., after detailed analysis of the question by the apex Court, following propositions have been laid down by way of guidelines, although, they have not been laid exhaustively. These are (para 86, pp 270-272):

86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the special interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expenses and disturbance to his vocation and peace,

resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account death, disappearance or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of providing the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is-who is responsible for the delay ? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior Court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions and so on-what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delay may indeed work to his advantage. As has been observed by Powell, J in Barker "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell, in the following words:

...the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients ; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution But

when does the prosecution become persecution, again depends upon the facts of the given case.

(7) We cannot recognize or give effect to, what is called the "demand" rule. An accused cannot try himself; he is tried by the Court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

(8) Ultimately, the Court has to balance and weigh the several relevant factors-"balancing test" or "balancing process"- and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the Court to make such other appropriate order-including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded-as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case, before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

(See also: Rakesh Saxena Vs. State,

112. In ILR 1982 HP 317, State of H.P. v. Iqbal Singh Kohli, the learned Chief Justice, while examining this question, said in para 19 that:

19. It is submitted that even after the expiry of 9 years of the police filing the charge sheet charge has not been framed. Keeping in view the number of witnesses cited and the documents placed on record it is evident that it is likely to take still few years more before the case can be decided. The Respondent is stated to be due to retire from service by the end of this year.

113. Again in ILR 1982 (HP) 327, B.N. Ganjoo v. State of H.P., the same question came for consideration before the same Court and it said that:

...It is not even known today how long the Court is likely to take before the question of framing a charge against the Petitioner can be decided. In my opinion the Petitioner has already suffered a lot in terms of not only money but also in mental agony and humiliation for the alleged petty offence.... It does no credit to the police also that it took more than three years for completing the investigation. The Court is also taking its time. I know that the Chief Judicial Magistrate, Shimla is over-burdened with work specially because of the paucity of the Judicial Officers. But then as far as the Petitioner is concern-ed, it is no solace to him. A sword of Damocles has been hanging over his head for a long time in respect of the present alleged offence. It is in the interest of speedy justice that the offences are reported to the police expeditiously and the investigations are completed with utmost despatch. It is for that reason that Section 173 of the Code of Criminal Procedure enjoins upon the investigation agency to complete the investigation without un-necessary delay....

114. In Prithvi Raj and Another Vs. State of Haryana, the following observations are worth noticing:

To allow the criminal proceedings to continue further after a long lapse of time of about 11 years from the date of alleged commission of offence would, in my opinion, amount to permitting a Court proceeding to degenerate into a weapon of harassment and would not at this stage, achieve any salutary public purpose. On the facts and circumstances obtaining in the instant case, such continuance constitutes gross abuse of process of Court. It is thus imperative for securing the ends of justice that this criminal proceeding should no longer be allowed to stand and must be quashed.

Chief Justice Warren, delivering the opinion of the United States Supreme Court in Peter H. Klopfer v. State of North Carolina (1967) 18 Law Ed 2 : 386 US 213:

We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215), wherein it was written, "We will sell to no man, we will not deny or defer to any man either justice or right", but evidence of recognition of the right to speedy justice in even earlier times is found in the Assize of Clarendon (1166). By the late thirteenth century, justices, armed with commissions of goal delivery and/or oyer and terminer were visiting the countryside three times a year.

115. Another aspect of the right to speedy trial was then highlighted in *Barker v. Wingo* (1972) 33 Law Ed 2: 407 US 514, in these words:

The right to a speedy trial is generically different from any of the other rights enshrined in the Constitution for the protection of the accused. In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial which exists separate from, and, at times in opposition to the interests of the accused.

Yet again, the basic principles underlying the right were concretised in the following terms in *Richard M. Sumith v. Fred M. Hooey* (1969) 21 Law Ed 2 : 393 US 374:

Suffice it to remember that this constitutional guarantee has universally been thought essential to protect at least three basic demands of criminal justice in the Anglo-American legal system:

- "(1) to prevent undue and oppressive incarceration prior to trial,
- (2) to minimize anxiety and concern accompanying public accusation, and
- (3) to limit the possibilities that long delay will impair the ability of an accused to defend himself".

(See *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another, , Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , State of Maharashtra Vs. Champalal Punjaji Shah, , Vasanta Vs. State of Maharashtra, ; T.V. Vatheeswaran v. State of Tamil Nadu*).

116. Looking the present case from the angle of principles and pre-cedents, we see great deal of substance in this contention of the Petitioner. The subject-matter of investigation pertains to the years 1980-82. We have crossed the middle of 1993. The investigation is likely to take some more time before the matter is submitted to the Court. There are large number of documents and witnesses to be proved before a Court which is already burdened with large number of old, complicated and big cases involving many accused, numerous documents and witnesses. Even if the case is filed in the Court, it is most unlikely that the trial will start within two to three years. Already a period of more than twelve years has gone by since the taking of the incident. It would be, in these circumstances, futile to allow this kind of lame investigation to continue. It would be in the interest of justice not to permit the investigation to continue and save the Petitioner and others involved in this case from continuous harassment and mental tension.

Accordingly, we allow this writ petition, quash the First Information Report No. 11 of 1984 (Annexure P-30) against the Petitioner and others involved in this case. Costs on parties.