

Sewak Balkishan Gupta vs.the State & Ors.

Sewak Balkishan Gupta vs.the State & Ors.

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Court : Delhi

Decided On : Dec-01-2017

Appellant : Sewak Balkishan Gupta

Respondent : The State & Ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on:

1. t December, 2017 1. CRL.M.C. 4542/2016 & CRL.M.A.18997/2016 SEWAK BALKISHAN GUPTA

... Petitioner

Through: Mr.Ramesh Gupta, Sr. Adv. with Mr.Sunil Magoo, Adv. versus THE STATE JITENDER NATH RAJNISH GOENKA KAMAL GAIND RAM PHAL BANSAL Respondent No.1 Respondent No.2 Respondent No.3 Respondent No.4 Respondent No.5 Through: Mr.Raghuvinder Varma, APP for State with SI Chanchal Singh, PS- EOW. Mr.Sumit Chander, Adv. with Mr.Mizan Siddiqui, Mr.Jatin Choudhary and Mr.Supreet Prasad, Advs. for R-2.

2. CRL.M.C. 223/2017 & CRL.M.A.982/2017 RAM PHAL BANSAL

... Petitioner

Through: Mr.A.K.Singla, Sr. Adv. with Mr.Rajesh Bansal, Mr.Arun Shrivastava, Mr.Pramod Dayal, Mr.Deepak Dewan, Mr. Vijay K. CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 1 of 20 Gupta,

Mr. Mohit Saroha and Ms.Ridhima Bansal, Advs. versus STATE JITENDER NATH SEWAK BALKISHAN GUPTA KAMAL GAIND RAJNISH GOENKA Respondent No.1 Respondent No.2 Respondent No.3 Respondent No.4 Respondent No.5 Through: Mr.Raghuvinder Varma, APP for State with SI Chanchal Singh, PS- EOW. Mr.Sumit Chander, Adv. with Mr.Mizan Siddiqui, Mr.Jatin Choudhary and Mr.Supreet Prasad, Advs. for R-2.

3. CRL.M.C. 317/2017 & CRL.M.A.1387/2017 RAJNISH GOENKA

... Petitioner

Through: Mr.A.S.Chandhiok, Sr. Adv. with Mr.Sunil Magoon, Mr.Dipender Chauhan, Ms.Ramya Kutty and Ms.Anshu, Advs. versus STATE JITENDER NATH KAMAL GAIND SEWAK BALKISHAN GUPTA Respondent No.1 Respondent No.2 Respondent No.3 Respondent No.4 CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 2 of 20 RAM PHAL BANSAL Respondent No.5 Through: Mr.Raghuvinder Varma, APP for State with SI Chanchal Singh, PS- EOW. Mr.Sumit Chander, Adv. with Mr.Mizan Siddiqui, Mr.Jatin Choudhary and Mr.Supreet Prasad, Advs. for R-2.

4. CRL.M.C. 4544/2016 & CRL.M.A.19004-19005/2016 KAMAL GAIND

... Petitioner

Through: Mr.Ramesh Gupta, Sr. Adv. with Mr.Sunil Mangon, Adv. versus THE STATE JITENDER NATH RAJNISH GOENKA SEWAK BALKISHAN GUPTA RAM PHAL BANSAL Respondent No.1 Respondent No.2 Respondent No.3 Respondent No.4 Respondent No.5 Through: Mr.Raghuvinder Varma, APP for State with SI Chanchal Singh, PS- EOW. Mr.Sumit Chander, Adv. with Mr.Mizan Siddiqui, Mr.Jatin Choudhary and Mr.Supreet Prasad, Advs. for R-2. CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 3 of 20 CORAM: HON'BLE MR. JUSTICE I.S.MEHTA I. S. MEHTA, J.

JUDGMENT1 By virtue of the above four captioned petitions, the petitioners invoke the inherent jurisdiction of this Court under Section 482 of the Code of

Criminal Procedure, 1973 read with Article 227 of the Constitution of India, 1950 to set aside the order of framing of charge dated 6th May, 2014 and 17th May, 2014 passed by the learned Chief Metropolitan Magistrate in FIR No.1 dated 10th March, 1997 under Sections 201/448/471/120-B/34 IPC registered at Police Station Chitranjan Park, New Delhi, which was upheld by the District and Sessions Judge, South East, Saket Court on 7th October, 2016.

2. The factual matrix of the case is that, the respondent no.2 Jitender Nath, the President of Shri Sanatan Dhanam, Greater Kailash-II Sabha made a complaint on 3rd March, 1997 with the Commissioner of Police, regarding commission of offence of criminal trespass, destruction of records, man-handling of the staff and use of force in the Administrative Block of Shri Sanatan Dharam Greater Kailash-II Sabha. It was alleged by the respondent no.2/complainant that on 2nd March, 1997 accused persons namely B.K. Rana, P.R. Gulati, Rajnish Goenka and Kamal Gaiind in furtherance of criminal conspiracy trespassed into the office of Sanatan Dharam Greater Kailash-II in order to grab the CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 4 of 20 administration of the said Sabha and snatched the keys from the respondent no.2/complainant and took illegal possession of gullak/chest. It was further alleged that all the accused persons forged three documents i.e. requisition for holding Extraordinary General Body Meeting dated 3rd January, 1997; Notice dated 4th February, 1997 for attending Extraordinary General Body Meeting and attendance register of the Extraordinary General Body Meeting dated 2nd March, 1997 to justify their act and used these documents in litigations before High Court and were filed in the office of Registrar of Societies on 5th March, 1997 by Rajnish Goenka and Ramphal Bansal assisted the accused persons.

3. It was further alleged that the accused persons opened a new account in the State Bank of Indore, Greater Kailash-II in the name of Sanatan Dharam Greater Kailash-II Sabha and cheated the contributors, whose money was deposited in new account. Furthermore, it was alleged by the complainant that Advocate Ram Phal Bansal represented the accused persons in the High Court and though he gave undertaking on behalf of them that the forged documents would be produced for the purpose of investigation, but the same were alleged to be destroyed by him

in conspiracy with co-accused and he gave an excuse that these documents have been misplaced in his office.

4. The said complaint was registered as an FIR No.119 of 1997 on 10th March, 1997 and vide order dated 28th October, 1997 passed by the Lieutenant Governor of Delhi, the investigation of the case FIR No.119/1997 registered at Police Station Chitranjan Park was CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 5 of 20 transferred to Land and Building Racket Section of Economic Offences Wing Cell of the Crime branch.

5. Thereafter, the petitioners through Advocate Ram Phal Bansal (the petitioner herein in Crl.M.C. 223/2017) filed a Criminal Writ Petition No.3 of 1998 in this Court for quashing of FIR No.1

of Police Station Chitranjan Park, initially registered under Sections 448/420/468/471 read with Section 120-B of IPC. The said FIR was quashed by this Court vide order dated 16th October, 1998. Subsequently, the respondent no.2-Jitender Nath filed a Criminal Appeal No.561 of 1999 in the Honble Supreme Court challenging the order dated 16th October, 1998 passed by this Court. Vide order dated 19th August, 2004, the Honble Supreme Court set aside the order dated 16th October, 1998 passed by this Court and directed the investigation to proceed further in accordance with law, after which charge sheet was to be filed by the investigating agency and directed the learned Magistrate to proceed in accordance with law.

6. The Economic Offences Wing Cell of the Crime branch filed its charge sheet on 17th March, 2006 under Section 201/420/448/468/471/120-B of IPC against all the seven accused persons namely: i. Prithvi Raj Gulati, ii. Sukhdev Raj, iii. Kamal Gaiind, iv. Sewak Balkishan Gupta, v. B. K. Rana, CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 6 of 20 vi. Rajnish Goenka and vii. Ram Phal Bansal. The accused persons Prithvi Raj Gulati, Sukhdev Raj and B. K. Rana died during the pendency of this case.

7. The learned Metropolitan Magistrate vide order dated 15th September, 2006 took cognizance of the offences punishable under Sections 420/448/468/471/120-B of IPC and issued summons against all the six accused persons except Ram

Phal Bansal for want of evidence.

8. The respondent no.2/complainant- Jitender Nath preferred a Criminal Revision Petition No.832 of 2006 under Section 397 read with Sections 401/403/482 Cr.P.C. before this Court seeking to set aside a portion of the order dated 15th September, 2006 passed by the learned Metropolitan Magistrate, whereby he refused to take cognizance of offence committed by Ram Phal Bansal under Section 201 read with Section 120-B of IPC. On the other hand, petitioners namely Rajnish Goenka, B.K. Rana, Kamal Gaiind, S.R.Chanan and Sewak Balkishan Gupta preferred Criminal Miscellaneous Petition No.7311-15 of 2006 before this Court to quash FIR No.119/1997 under Sections 420/448/468/471/120-B of IPC and challenged the summoning order dated 15th September, 2006. This Court decided both the petitions together and vide the common judgment dated 17th May, 2010 allowed the Criminal Revision Petition No.832 of 2006 filed by the respondent No.2- Jitender Nath and directed all the accused persons including Ram CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 7 of 20 Phal Bansal to appear before the learned Metropolitan Magistrate on 31st May, 2010.

9. Meanwhile, the petitioner Ram Phal Bansal preferred a Special Leave to Appeal (Crl.) No.5510 of 2010 against the judgment and order dated 17th May, 2010 in Crl. Rev.P. No.832 of 2006 passed by this Court. The Honble Supreme Court, vide order dated 16th August, 2010 dismissed the petition.

10. In another round of litigation, petitioners namely Kamal Gaiind and Ram Phal Bansal approached this Court by way of Writ Petition (Crl.) No.1379 of 2013 and Writ Petition (Crl.) No.1502 of 2013 respectively, filed on 12th September, 2013 for quashing of FIR No.1

registered at Police Station Chitranjan Park and charge sheet dated 17th March, 2006. This Court vide order dated 30th September, 2013 dismissed both the petitions and observed that criminal proceeding cannot be quashed merely on the ground of delay. Aggrieved by the order dated 30th September, 2013, the petitioner Kamal Gaiind preferred a Special Leave to Appeal (Crl.) No.1263 of 2014 in Honble Supreme Court, which was dismissed as withdrawn on 13th February,

2015.

11. Thereafter, on the basis of evidence on the record and after hearing the arguments on charge, the learned Chief Metropolitan Magistrate vide order dated 6th May, 2014 and 17th May, 2014 framed charges against all the accused persons. The petitioner-Ram Phal Bansal was charged on 24th May, 2014 under Sections 201/120-B/34 IPC, the petitioner-Sewak Bal Kishan Gupta was charged on 17th May, 2014 under Section 471/201/120-B/34 IPC CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 8 of 20 and the petitioners- Rajnish Goenka and Kamal Gaiind were charged on 17th May, 2014 under Sections 448/471/201/120-B/34 IPC. Vide the order dated 6th May, 2014, Sewak Bal Kishan Gupta was discharged for offence punishable under Section 448 IPC and accused persons namely Rajnish Goenka, Kamal Gaiind and Sewak Bal Kishan Gupta were discharged for the offence under Section 468 IPC.

12. Aggrieved by the above said orders dated 6th May, 2014 and 17th May, 2014, all the accused persons namely Ram Phal Bansal, Kamal Gaiind, Sewak Balkishan Gupta and Rajnish Goenka preferred separate revision petitions and filed Crl.Rev.No.04/16, Crl.Rev.No.118/14, Crl.Rev.No.1 and Crl.Rev.No.1

respectively, in the Court of District & Sessions Judge, South East, Saket Court, New Delhi. The learned District & Sessions Judge vide common judgment and order dated 7th October, 2016 dismissed all the four revisions petitions and directed the learned Trial Court to complete the trial expeditiously.

13. Against the said impugned order dated 7th October, 2016, passed by the learned District & Sessions Judge, Sewak Balkishna Gupta filed Crl.M.C.4542/2016, Ram Phal Bansal filed Crl.M.C. 233/2017, Rajnish Goenka filed Crl.M.C. 317/2017 and Kamal Gaiind filed Crl.M.C. 4544/2016 in this Court, assailing the dismissal of their revision petitions under Section 482 Cr.P.C. read with Article 227 of Constitution of India and for setting aside the order of framing of charge dated 6th May, 2014 and 17th May, 2014 passed by the learned Chief Metropolitan Magistrate in FIR No.CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 9 of 20 1

and the order dated 7th October, 2016 passed by the learned District and Sessions Judge. Hence the present four petitions.

14. The learned senior counsel appearing on behalf of the petitioners has submitted that the present petition has been filed under Section 482 Cr.P.C for setting aside impugned order dated 7th October, 2016. He has further submitted that the alleged incident is dated 2nd March, 1997 and FIR was registered on 10th March, 1997 for offence under Section 448 IPC. However, after investigation charge sheet was filed on 17th March, 2006 for offences punishable under Sections 201/420/448/468/471/120-B IPC against seven accused persons and the cognizance was taken by the learned Magistrate on 15th September, 2006 against six accused persons for offences under Sections 420/448/468/471/120-B IPC. However, the learned Magistrate had not taken cognizance against accused Ramphal Bansal, Senior Advocate. The respondent no.2/complainant filed Revision Petition No.832/2006 under Section 397 read with Sections 401/403/482 Cr.P.C., wherein it was directed that Ramphal be also summoned and therefore he was also summoned. Out of the seven accused persons, three died and four are before this Court challenging the order of framing charge against them.

15. The learned senior counsel appearing on behalf of the petitioners has submitted that the charge framed is bad in law. CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 10 of 20 16. The learned senior counsel has further submitted that the learned Magistrate failed to take notice of the fact that cognizance in this case was taken after almost 8 years whereas it should have been taken within 3 years because the charges were framed under Sections 201/448/471/120-B/34 IPC against two accused persons and all offences are punishable up to maximum of two years. However, charge was not framed under Sections
for want of evidence and the same is not challenged by the State.

17. He has further submitted that the learned Magistrate while framing the charge has not gone into the factum of limitation to which he should have satisfied himself that the cognizance taken is within the period of limitation for the offences for which he has framed charge. Until and unless this factum is made clear the charge

framed is bad in law and it cannot sustain.

18. He has further submitted that though Sections 468 and 420 IPC at the time of taking cognizance were there in existence but mere factum of existence of Sections 468 and 420 IPC in the charge sheet ipso facto does not help the prosecution to defeat the law of limitation for taking cognizance.

19. The learned senior counsel on behalf of the petitioners has submitted that even if the contentions of the learned Additional Public Prosecutor are to be accepted still it is beyond three years. Registration of FIR was on 10th March, 1997 and the same was quashed by this Court on 16th October, 1998 and it was restored by Honble Supreme Court on 19th August, 2004 and the charge sheet was filed on 17th March, 2006. CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 11 of 20 20. The learned senior counsel in support of his arguments has relied upon the following judgments:-

"i. Arun Vyas & Anr. v. Anita Vyas, 1999 SCC Cri629 ii. C.H. Satyanarayan v. State, 2012 SCC OnLine Del 1412. iii. Vipin Kalra v. State, 2001 SCC OnLine Del 1240. iv. Mam Chand & Ors. v. State, 1998 SCC OnLine Del 923. v. Surinder Kumar v. State, 64 (1996) DLT620 vi. M.K. Razdan & Ors. State, 2008 IV AD (Delhi) 73. vii. Shashi Lata Khanna v. State of Delhi & Others, 121 (2005) DLT522 21. Per contra, the learned Additional Public Prosecutor on behalf of the State has submitted that the issue in question has already been decided by this Court in W.P. CrI. 1379/2013 and W.P. CrI.1502/2013 filed by the petitioners namely Kamal Gaiind and Ram Phal Bansal respectively, whereby this Court vide order dated 30th September, 2013 has observed that criminal proceeding cannot be quashed merely on the ground of delay. The same has been upheld by the Honble Supreme Court vide its order dated 13th February, 2015.

22. The learned Additional Public Prosecutor has pointed out that the FIR No.119 of 1997 was quashed by this Court in CrI.W.P. 3/1998 on 16th October, 1998 and thereafter the Honble Supreme CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 12 of 20 Court directed to reopen the case on 19th August, 2004 and the charge sheet was filed on 17th March, 2006.

23. Therefore, when the FIR itself was quashed, there was no question of filing charge sheet. However, since Honble Supreme Court has reopened the FIR on 19th August, 2004, fresh limitation started by setting aside the order passed by High Court of Delhi.

24. The learned Additional Public Prosecutor in support of his arguments has placed reliance on the following judgments: i. Ganesh Narayan Hagde v. S. Bangarappa, (1995) 4 SCC41 ii. Jagdish Ram v. State of Rajasthan & Another, (2004) 4 SCC432 25. I have given my thoughtful consideration to the submissions made by the learned counsel for both the parties and have also perused the material on record.

26. The whole dispute hinges around whether the learned Metropolitan Magistrate has taken the cognizance within the period of limitation and whether there is sufficient material evidence on record to proceed with the matter in accordance with law?. The answer is: YES.

27. It is an admitted fact emerging on record that the FIR No.119 of 1997 was registered on 10th March, 1997, the said FIR was challenged in the High Court of Delhi by the petitioners and the same CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 13 of 20 was quashed by this Court vide its order dated 16th October, 1998 and the relevant paragraph is reproduced hereunder for ready reference: IN THE HIGH COURT OF DELHI CRIMINAL WRIT No.3/1998 Date of decision: October 16, 1998 Shri Prithvi Raj and others through Mr.R.P.Bansal Senior Advocate with Mr.Rajeev Awasthi, Advocates Versus States (NCT) of Delhi through Mr.S.S.Gandhi for the State and Mr.R.M.Bagai for the Intervener.Consequently, the petition is allowed. FIR and proceedings taken thereunder are quashed. However, it is made clear that observations made while deciding this petition will not prejudice any of the parties in any pending litigation or other proceedings. 28. The respondent no.2-Jitender Nath aggrieved from the quashing of FIR No.119 of 1997 preferred a Criminal Appeal No.561 of 1999 in the Honble Supreme Court. The relevant order of the Supreme Court in this context is reproduced to show the position of law between the parties as on 19th August, 2004: IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO.561 OF1999
Jitendra Nath ...Appellant(S) Versus CRL.M.C.4542/2016, CRL.M.C.223/2017,
CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 14 of 20 State (NCT of Delhi) and
Ors.

... RESPONDENT

(S) ORDER Heard Learned Senior Counsel for the parties. This appeal by special leave has been filed challenging order dated 16th October, 1998 passed in Criminal Writ Petition No.3 of 1998 by the Delhi High Court, whereby First Information Report No.119 of 1997, instituted at Chitaranjan Park Police Station, under Section 448, 420, 468 and 471 read with Section 120 B of the Indian Penal Code, has been quashed. In the facts and circumstances of the case, we are of the view that it was got a fit case where the High Court should have interfered with the investigation and quashed the First Information Report. Accordingly, the appeal is allowed, impugned order passed by the High Court is set aside and the writ petition is dismissed. The investigation shall now proceed further in accordance with law and upon completion thereof, final form shall be submitted, which may be either in the shape of charge sheet or final report, as the case may be, on receipt whereof, the learned Magistrate shall apply his mind and proceed in accordance with law. It is made clear that if upon submission of final form by the police, cognizance is taken and accused persons are summoned, it would be open to them to move the High Court for quashing their prosecution and in case such an application is filed, the same shall be considered on its own merits. It is clarified that we should not be misunderstood to have expressed any opinion one way or the other on merits of the case. sd/- B.N.Aggarwal J.

sd/- H.K.Sema J.

CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017,
CRL.M.C.4544/2016 Page 15 of 20 29. New Delhi August 19, 2004 After the
completion of investigation, the charge sheet was admittedly filed on 17th March,
2006, which comes within the period of three years.

30. In the instant petition, the learned Metropolitan Magistrate took cognizance of the offences punishable under Sections 420/448/468/471/120-B and issued

summons against all the accused persons on 15th September, 2006. Therefore, the contention of the learned senior counsel of the petitioner that the FIR was registered in the year 1997 and offences are punishable up to maximum of two years and the charge sheet has been filed beyond the period of three years is without force as the Apex Court has cleared the position of law on this point on 19th August, 2004.

31. So far, the evidence to proceed with the matter is concerned, the FIR No.119 of 1997 was registered on the basis of a complaint made by the respondent no.2/ complainant on 3rd March, 1997 to the Police Station Chitranjan Park, New Delhi alleging that the accused persons namely B.K. Rana, P.R. Gulati, Rajnish Goenka and Kamal Gaiind in furtherance of criminal conspiracy trespassed into the office of Sanatan Dharam Greater Kailash-II on 2nd March, 1997, in order to grab the administration of the said Sabha and snatched the keys from the respondent no.2/ complainant (President of said Sabha) and took illegal possession of gullak/chest. It was also alleged that all the accused persons forged three documents i.e.: CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 16 of 20 i. Requisition for holding Extraordinary General Body Meeting dated 3rd January, 1997 purportedly signed by 31 signatories; ii. Notice dated 4th February, 1997 signed by 32 persons for attending the Extraordinary General Body Meeting on 2nd March, 1997 and iii. Attendance register of the Extraordinary General Body Meeting dated 2nd March, 1997 purportedly signed by 62 persons.

32. It has been further alleged that to justify their act, the petitioners used the above mentioned documents in litigation before High Court and filed in the office of Registrar of Societies on 5th March, 1997 by Rajnish Goenka and the petitioner/accused Advocate Ram Phal Bansal assisted the accused persons. It has also been alleged that the accused persons opened a new account in the State Bank of Indore, GK-II in the name of Sanatan Dharama Greater Kailash-II Sabha and cheated the contributors, whose money was deposited in new account. Moreover, it has been alleged that Advocate Ram Phal Bansal, who represented the accused persons in this Court had given an undertaking on behalf of his clients/petitioners that the forged documents would be produced for the purpose of

investigation, but the same were alleged to be destroyed by him in conspiracy with co-accused and he gave an excuse that these documents have been misplaced in his office.

33. During the investigation, it transpired that as per the Memorandum of Articles and Association of Sanatan Dharam GK-II CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 17 of 20 Sabha, to call a General Body Meeting, 25 life members of the Sabha have to sign a requisition and send the same to General Secretary, however, in the Requisition dated 3rd January, 1997, which is purported to have been signed by 31 members/signatories, most of the signatories have denied their signatures in the statement given under Section 161 Cr.P.C. Moreover, Sh.S.M. Aggarwal, the then General Secretary of the Sabha has also denied receiving any such requisition.

34. The statement of witnesses under Section 161 Cr.P.C. of Tek Bahadur, Shiv Narain, Sudershan Kumar Chopra and Tilak Singh revealed that on 2nd March, 1997, the accused persons Rajnish Goenka, B.K. Rana, S.R. Chanan and P.R. Gulati entered into the premises of Sanatan Dharam Greater Kailash-II Sabha and snatched the keys and this way grabbed the seat and encroached the premises of Sanatan Dharam Greater Kailash-II Sabha.

35. On the basis of abovementioned evidence, the investigating agency filed its charge sheet on 17th March, 2006 under Sections 201/420/448/468/471/120-B of IPC against all the seven accused persons namely Prithvi Raj Gulati, Sukhdev Raj, Kamal Gaiind, Sewak Balkishan Gupta, B. K. Rana, Rajnish Goenka and Ram Phal Bansal. The accused persons Prithvi Raj Gulati, Sukhdev Raj and B. K. Rana died during the pendency of this case.

36. The written complaint and statement of witnesses under Section 161 Cr.P.C. would be appreciated during the trial. At this stage, in presence of the complaint dated 3rd March, 1997 and statement of witnesses i.e. Jitender Nath, S.M. Aggrawal, Tek Bahadur, Shiv Narain, Sudershan Kumar Chopra and Tilak Singh etc. recorded under CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 18 of 20 Section 161 Cr.P.C., it cannot be said that there is no sufficient evidence to proceed with the matter.

37. Consequently, the finding of Court below that, there is prima facie case made out against accused Ram Phal Bansal under Sections 201/120-B/34 IPC, a prima facie case under Sections 471/201/120- B/34 IPC made out against accused Sewak Bal Kishan Gupta and a prima facie case made out against accused persons Rajnish Goenka and Kamal Gaiind under Sections 448/471/201/120-B/34 requires no interference. In this regard, the following observation of the Honble Supreme Court in the case of Hem Chand v. State of Jharkhand, AIR 2008 SC1903 are relevant: The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any. 38. In view of the aforesaid reasons and circumstances in the present case and in the light of the abovementioned caselaw, I do not find it a fit case to invoke the powers under Sections 482 Cr.P.C.

39. Consequently, all the four petitions are dismissed and disposed of in the above terms. All the pending applications (if any) are also disposed of. CRL.M.C.4542/2016, CRL.M.C.223/2017, CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 19 of 20 40. The original order be placed in Crl. M.C.4542/2016 and the copies may be placed in Crl. M.C. 223/2017, Crl.M.C. 317/2017 and Crl.M.C. 4544/2016.

41. Lower Court Record be sent back forthwith along with one copy of this judgment to the concerned Court(s). No order as to Costs. I.S.MEHTA, J
DECEMBER01 2017 CRL.M.C.4542/2016, CRL.M.C.223/2017,
CRL.M.C.317/2017, CRL.M.C.4544/2016 Page 20 of 20

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