

# IN THE HIGH COURT OF SIKKIM

## Criminal Revision Petition No.1 of 2000

Shri P. K. Pradhan,  
S/O Late K. B. Pradhan,  
Sichey Busty, Gangtok,  
East District, Sikkim.

..... Petitioner.

### *Versus*

State of Sikkim through  
Central Bureau of Investigation

..... Respondent.

Present : Mr. D. K. Singh, Advocate along with  
Mr. P. K. Pradhan, the petitioner.

Mr. I. D. Vaid, Deputy Legal Adviser Advocate  
with Mr. V. K. Sharma, Public Prosecutor for  
the respondent - CBI.

Mr. Vipin Sharma, Inspector, CBI., ACU-V,  
New Delhi.

## Criminal Revision Petition No.2 of 2000

Shri Sonam Wangdi Bhutia,  
S/O Shri Norbu Tshering Bhutia,  
R/O Khamdong, East Sikkim.

..... Petitioner.

### *Versus*

State of Sikkim through Central Bureau  
of Investigation

..... Respondent.

Present: Mr. A. K. Upadhyaya, Advocate for the petitioner.

Mr. I. D. Vaid, Deputy Legal Adviser Advocate with  
Mr. V. K. Sharma, Public Prosecutor for the respondent -  
CBI.

Mr. Vipin Sharma, Inspector, CBI., ACU-V, New Delhi.

**Criminal Revision Petition No.3 of 2000**

Shri N. B. Bhandari,  
R/O Samdur, Ranipool,  
P.O. Ranipool, East Sikkim ..... Petitioner.

***Versus***

State of Sikkim through Central Bureau  
of Investigation ..... Respondent.

Present : Mr. Bhaskar Raj Pradhan, Advocate for the  
Petitioner.

Mr. I. D. Vaid, Deputy Legal Adviser Advocate  
with Mr. V. K. Sharma, Public Prosecutor for  
the respondent - CBI.

Mr. Vipin Sharma, Inspector, CBI., ACU-V.,  
New Delhi.

**Criminal Revision Petition No.4 of 2000**

Shri Srinivas Agarwal,  
S/O Shri Chandu Lal Agarwal,  
R/O Jorethang, South Sikkim ..... Petitioner

***Versus***

State of Sikkim through Central  
Bureau of Investigation ..... Respondent

Present : Mr. A. K. Upadhyaya, Advocate for the  
Petitioner.

Mr. I. D. Vaid, Deputy Legal Adviser  
Advocate with Mr. V. K. Sharma, Public  
Prosecutor for the respondent - CBI.

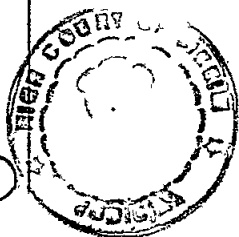
Mr. Vipin Sharma, Inspector, CBI.,  
ACU-V, New Delhi. -

**Criminal Revision Petition No.5 of 2000**

State of Sikkim through  
Central Bureau of Investigation,  
Anti Corruption Unit (V),  
New Delhi

..... Petitioner

1. Shri Nar Bahadur Bhandari.  
R/O Samdur, Ranipool,  
P.O.Ranipool, Sikkim.
2. Shri Purna Kumar Pradhan, IAS  
the then Secretary Rural Development  
Department, Govt. of Sikkim  
R/O Sichey Busty, East Sikkim..
3. Shri Nar Bahadur Rawat,  
S/O Man Bahadur Rawat,  
R/O Rawal Gaon, Malbasey,  
Block, West Sikkim.
4. Shri Harka Singh Chewan,  
S/O Dil Bahadur Chewan,  
R/O Malbasey, West Sikkim.
5. Shri Hari Prasad Rai,  
S/O Shri Pertuman Rai,  
R/O Pakki Gaon, Malbasey Block,  
West Sikkim.



6. Shri R. B. Subba,  
S/O Raghubir Subba,  
R/O Pakki Gaon, Malbasey Block,  
West Sikkim.
7. Shri Hari Prasad Sharma,  
S/O Shri Bishnu Kant Sharma,  
R/O Pakki Gaon, Malbasey Block,  
West Sikkim.
8. Shri S. D. Tamang,  
S/O Shri N. P. Tamang,  
R/O Singtam, East Sikkim.
9. Shri Bhim Bahadur Gurung,  
S/O Late Bhakta Bahadur Gurung,  
R/O Sadam, Sikkim.
10. Shri Chetan Das Ghimirey,  
S/O Shri Padam Bahadur,  
R/O Pakyong Bazar, East Sikkim.
11. Shri Norbu Tshering Bhutia,  
S/O Shri Naga Bhutia,  
P.O. Khamdong, East Sikkim.
12. Shri Minjur Bhutia,  
S/O Shri Tshering Bhutia,  
R/O Singyang, P.O. Pelling,  
East Sikkim.

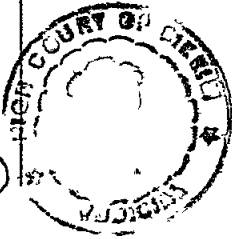
..... Respondents.

**Coram :**

***The Hon'ble Mr. Justice Ripusduan Dayal, Chief Justice.***

Present : Mr. I. D. Vaid, Deputy Legal Adviser Advocate  
with Mr. V. K. Sharma, Public Prosecutor for  
the revisionist/petitioner - CBI.

Mr. Vipin Kumar, Inspector, CBI, ACU-V,  
New Delhi.



Mr. Bhaskar Raj Pradhan, Advocate for the respondent No.1.

Mr. D. K. Singh, Advocate along with Mr. P. K. Pradhan, respondent No.2.

Mr. N. B. Kharga, Advocate for respondent Nos. 9 and 10.

Mr. A. K. Upadhyaya, Advocate for respondent Nos. 11 and 12.

Mr. Nar Bahadur Rawat, respondent No.3 in person in Criminal Revision Petition No.5/2000.

Mr. Harka Singh Chewan, respondent No.4 in person in Criminal Revision Petition No.5/2000.

Mr. Hari Prasad Rai, respondent No.5 in person in Criminal Revision Petition No.5/2000.

Mr. R. B. Subba, respondent No.6 in person in Criminal Revision Petition No.5/2000.

Mr. Hari Prasad Sharma, respondent No.7 in person in Criminal Revision Petition No.5/2000.

Mr. S. D. Tamang, respondent No.8 in person in Criminal Revision Petition No.5/2000.

Mr. Bhim Bahadur Gurung, respondent No.9 in person in Criminal Revision Petition No.5/2000.

Mr. Chetan Das Ghimirey, respondent No.10 in person in Criminal Revision Petition No.5/2000.

Mr. Norbu Tshering Bhutia, respondent No.11 in person in Criminal Revision Petition No.5/2000.

Mr. Minjur Bhutia, respondent No.12 in person in Criminal Revision Petition No.5/2000.

Date of Decision : 3<sup>rd</sup> October, 2001.

## J U D G M E N T

Dayal, CJ

All these Revisions arise from the Order dated 04.12.1999 amended on 31.1.2000 by the Special Judge, P.C. Act, Gangtok holding that charges against accused No. A-11 Srinivas Agarwal, accused No. A-13 A. B. Gurung and accused No.A-15 Sonam Wangdi Bhutia be framed under section 120-B of the Indian Penal Code and against accused No.A-1 Sri N. B. Bhandari and accused No.A-2 Sri P. K. Pradhan under section 5(2) read with Section 5 (1)(d) of the Prevention of Corruption Act, 1947 corresponding to Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 read with Section 120-B of the Indian Penal Code. It was further held that there was no *prima facie* material against accused Nos. A-4 to A-10, A-12, A-14 and A-17 i.e Nar Bahadur Rawat, Harka Singh Chewan, Hari Prasad Rai, R. B. Subba, Hari Prasad Sharma, S. D. Tamang, Bhim Bahadur Gurung, Chetan Das Ghimirey, Norbu Tshering Bhutia and Minzur Bhutia and so they were discharged.

2 Criminal Revision No.5 of 2000 has been filed by the CBI on the ground that in respect of some of the schemes there is material available on record justifying the framing of charges in those schemes but the charges were not framed in respect of those schemes. It has been submitted that Scheme Nos. 1, 10 and 11 were not even discussed. In respect of Scheme No.2, the learned trial Court held that since charge-sheet had not been filed against R. K. Goel, there was no ground to proceed with the trial against accused Nos. 1 and 2. Reason given by the learned trial Court is in fact and law no reason, since if a person had wrongly been left out, the proper course would be to proceed against that person and not to throw out the whole case. This is so in view of the legal position that the Magistrate takes cognizance under section 190 of the Code of Criminal Procedure of the offence and not of the offender and when any offender has been left out by the prosecuting branch, the

Magistrate has the jurisdiction to proceed against that person. This legal position has been clarified by the Supreme Court in M/S SWIL Ltd. Versus State of Delhi & Another 2001 AIR SCW 3017 and also in Rajendra Prasad Versus Bashir 2001 SOL Case No.554.

3. Learned Counsel for the parties agree that the charges framed by the learned trial Court pursuant to the impugned order are not proper in form. All the Counsel agree that the matter may be remitted to the learned trial Court for considering the matter again after giving opportunity of being heard to them.

4. Accepting the request of the learned Counsel for the parties present, I allow the aforesaid revisions, set aside the impugned order dated 04.12.1999 amended on 31.01.2000 and the charges framed pursuant thereto and remit the matter for reconsideration after giving opportunity of being heard to all the parties concerned. Parties shall appear before the learned trial Court on 18.10.2001.

sd/-

(Ripusudan Dayal)  
Chief Justice  
3.10.2001.

at/-

**CERTIFIED TO BE TRUE COPY**

*[Signature]*  
ASSISTANT REGISTRAR (JUDICIAL)  
HIGH COURT OF SIKKIM  
AT GANGTOK