



THE HIGH COURT OF SIKKIM AT GANGTOK
(Criminal Jurisdiction)

DATED : 19.09.2013

CORAM

HON'BLE MR. JUSTICE PIUS C. KURIAKOSE, CHIEF JUSTICE

Crl. M. C. No. 13 of 2013

1.

Shri Satish Singhal,
S/o Late R. B. Singhal,
M/s. Bright Scientific Instrument Pvt. Ltd.,
Gangtok,
East Sikkim.
2.

Shri Dawa Tamang,
S/o Late J. B. Tamang,
R/o Kitam,
South Sikkim.
-

Petitioners.

- versus -

State of Sikkim.

.....

Respondent.

For Petitioners

:

M/s. K. T. Bhutia, Sr. Advocate with Bandana Pradhan, Advocate.

For Respondent

:

M/s. Karma Thinlay, Addl. Public Prosecutor with S. K. Chettri, Asstt. Public Prosecutor.

Crl. M. C. No. 14 of 2013

Dr. C. P. Upreti,
Additional Director,
Animal Husbandry and Veterinary Services,
Government of Sikkim,
Tadong,
East Sikkim.

.....

Petitioners.

- versus -

State of Sikkim.

.....

Respondent.

For Petitioners

:

M/s. N. B. Khatiwada, Sr. Advocate with Rajendra Upreti and Gita Bista, Advocates.

For Respondent

:

M/s. Karma Thinlay, Addl. Public Prosecutor with S. K. Chettri, Asstt. Public Prosecutor.



J U D G M E N T O R A L

Pius, CJ.

Under challenge in Crl.M.Cs. No. 13 of 2013 and 14 of 2013 is the order of Sessions Judge, East and North Sikkim at Gangtok passed in Crl. Rev. Case No.2 of 2012 filed by the Sikkim Vigilance Police against the petitioners in Crl.M.C. No. 12 of 2013 who are respondents No. 2 and 3. In the above Crl. Revision Case No. 2 of 2012, the petitioners were accused No. 2 and 3 respectively in Vigilance Case No. 1 of 2006 charge-sheeted by the Sikkim Vigilance Police against them and one Shri C. P. Upreti. The charge against the petitioners was under Sections 420/406 IPC read with Section 120B of the IPC. The charge against Shri C. P. Upreti was under Section 420/409 IPC read with Section 120B of the IPC. Crl.M.C. No. 14 of 2013 is filed by Shri C. P. Upreti, accused No. 1 before the learned Magistrate challenging the very same order which is impugned in Crl.M.C. No. 13 of 2013. The learned Magistrate by his order dated 09.06.2011 discharged all the three accused taking the view that the prosecution has failed to bring on record prima facie materials to sustain charge against the accused and under the impugned order the learned Sessions Judge set aside the order of the Magistrate and directed the learned Magistrate to frame charges against all the three accused.



2. The charges against Shri Satish Singhal, petitioner No. 1 in Crl.M.C. No. 13 of 2013 were the following: -

Firstly that he in the year 1998 at Gangtok, East Sikkim agreed to prepare false beneficiaries list of the beneficiaries of Ranka constituency for the distribution of piglets and also caused short supply of piglets and submitted false bills to the Department for the payment for the supply of 400 nos. Of piglets and the same was done in pursuance of the agreement between him (Satish Singhal) and Dawa Tamang, the petitioner No. 2 in Crl.M.C. No. 13 of 2013 and they together committed an offence punishable under Section 120B of the IPC.

Secondly that he in the year 1998 at Gangtok, East Sikkim being entrusted with the funds for the supply of piglets to the beneficiaries of Ranka constituency committed criminal breach of trust with respect to the said property and thus committed an offence punishable under Section 406 of the IPC

Lastly, the charge was that Satish Singhal in the year 1998 at Gangtok, East Sikkim cheated the Welfare Department, Government of Sikkim by dishonestly submitting the false beneficiaries list of the beneficiaries of



Ranka constituency, caused short supply of 160 nos. of piglets instead of 400 nos. of piglets to be distributed to the beneficiaries of Ranka constituency and thereby received the payment for the supply of 400 nos. of piglets from the department and thereby committed an offence punishable under Section 420 of the IPC .

3. The charges against the petitioner No. 2 in Crl.M.C. No.13 of 2013, Shri Dawa Tamang were substantially the same as charges against Shri Satish Singhal.

4. The charges against Shri C. P. Upreti, accused No. 1 before the Magistrate and the petitioner in Crl.M.C. No. 14 of 2013 were the following:-

Firstly, that in the year 1998 at Gangtok, East Sikkim, he agreed to prepare false beneficiaries list of the beneficiaries of Ranka constituency for the distribution of piglets and also caused short supply of piglets and submitted the false bills to the Department for the payment for the supply of 400 nos. of piglets and the same was done in pursuance of the agreement between him (C.P. Upreti) and other two accused in the case and



thereby committed an offence punishable under Section 120B of the IPC.

Secondly, the charge was that in the year 1998 at Gangtok, East Sikkim, he being entrusted with the funds for the supply of piglets to the beneficiaries of Ranka constituency committed criminal breach of trust with respect to the said property and thus committed an offence punishable under Section 406 of the IPC.

Lastly, the charge was that in the year 1998 at Gangtok, East Sikkim, the accused cheated the Welfare Department, Government of Sikkim by dishonestly submitting the false beneficiaries list of the beneficiaries of Ranka constituency, caused short supply of 160 nos. of piglets instead of 400 nos. of piglets to be distributed to the beneficiaries of Ranka constituency and thereby received the payment for the supply of 400 nos. of piglets from the department and thus committed an offence punishable under Section 420 of IPC.

5. The learned Judicial Magistrate, 1st Class, East Sikkim at Gangtok would hear counsel for the parties on the question of framing charges by the Court. Learned Magistrate would conclude that



initiation of the scheme for distribution of piglets by Shri C. P. Upreti, accused No. 1, was on the basis of an application submitted by the Panchayat of the area which was duly recommended by the Area MLA. It was concluded that the scheme was initiated as per the usual norms and procedure by inviting of quotations for supplying of piglets. The learned Magistrate would scan the available materials before him and would conclude that from the statement of various witnesses who were proposed to be examined by the prosecution and particularly, the statement of Smt. Rinzing Ongmu Bhutia, Area MLA who significantly was a Minister also, it was seen that during the relevant period piglets were supplied and the same were distributed by the Area MLA and also by the Panchayat of the area. It was concluded that on the relevant day truck load of piglets was unloaded in the house of the Area MLA and as large number of people were gathered there in the MLA's house, they started choosing the piglets and they took away the same. According to the learned Magistrate, from the above statement of the MLA it can be concluded that the shortage in number of piglets could have been due to the taking away the piglets by the people without proper accounting. Learned Magistrate also noticed that the Panchayat members who were elected representatives occupying responsible positions have given their No Objection Certificates regarding the receipt of the 400 piglets for distribution. According to



the learned Magistrate, it was clear from the records that the distribution was made through the Panchayat and the Area MLA as per the list prepared the Panchayat and duly recommended by the Area MLA. It was clear that the accused had no role to play in the matter of distributing the piglets. Therefore, according to the learned Magistrate, the prosecution had failed to bring on record the prima facie materials to sustain charge against the three accused. The learned Magistrate in view of that matter would discharge all the three accused.

6. The learned Sessions Judge on considering the Criminal Revision case filed by the Sikkim Vigilance Police would at the outset notice that the learned Magistrate had passed an order of discharge without specifying the sections of offences in respect of which the accused were being discharged. Nevertheless the learned Judge would go on to consider the merits and analyse some of the judicial precedents which were cited before her such as **Kamal Singh vs. Resham Singh & Anr. : 1991 Cri.L.J. 1114 (Allahabad); Union of India vs. Prafulla Kumar Samal & Anr. : 1979 Cri.L.J. 154; State of Bihar vs. Ramesh Singh : AIR 1977 SC 2018; Nirmaljit Singh Hoon vs. State of West Bengal & Ors. : AIR 1972 SC 2639**; and would opine that when the principles laid down in these precedents are borne in mind and when the statements given by the



witnesses of the prosecution to the Investigating Officer and various documents on record were carefully considered, it had to be concluded that the Magistrate erred in discharging the accused persons. According to the learned Judge, there appears to be *prima facie* materials against the accused. In that view on the basis of that, the learned Sessions Judge set aside the order of the Magistrate and would, allowing the revision, direct the Magistrate to frame charges against the accused.

7. The two Criminal Misc. Cases have been filed by the petitioners raising various grounds assailing the order of the learned District & Sessions Judge with a prayer that the order impugned be set aside and the order of learned Magistrate discharging them be restored. It was very strenuous submissions which were addressed before me by Mr. K. T. Bhutia, learned Senior Counsel appearing for the petitioners in Crl.M.C. No. 13 of 2013 and also by Mr. N. B. Khatiwada, learned Senior Counsel appearing for the petitioner in Crl.M.C. No. 14 of 2013. Making submissions on the basis of the grounds raised in memorandum of Crl.M.C. No. 13 of 2013, Mr. Bhutia would argue that this is a case where the learned Sessions Judge erred in interfering with the order of discharge passed by the learned Magistrate. Learned Senior Counsel would refer first to the facts of the case and then to the allegations against his clients who are



accused in the charge-sheet submitted by the police. The allegation against his clients, in a nutshell, was only that Shri C. P. Upreti, the petitioner in Crl.M.C. No. 14 of 2013, the then Deputy Director of the Department of Animal Husbandry and Veterinary Services has issued a supply order to M/s. Bright Scientific Instrument Pvt. Ltd., a firm owned by the petitioner No. 1 who is licensed to deal with scientific instrument only. The further allegation was that the two petitioners raised the bill and received an amount of `4,32,766/- against the supply of 400 piglets whereas there was actual short supply of 180 piglets. Mr. Bhutia submitted that it is not the case of the prosecution that it was by way of misrepresentation that the petitioners procured the supply order. He submitted that it was not the prosecution case that the petitioners did not supply the piglets and received payment on the basis of forged and fabricated bills. He argued that it is not the prosecution case that the petitioners did not purchase piglets from the earmarked sellers and thereby committed offence. It is not the prosecution case that the petitioners violated terms and conditions of the supply order and thereby committed any offence. Referring to the judgment of the Supreme Court in **C. Chenga Reddy & Ors. vs. State of Andhra Pradesh : AIR 1996 SC 3390**, Mr. Bhutia submitted that even if it is shown that the accused did not follow the code of provision or accused committed financial irregularities and



administrative lapses, the same cannot be construed as incriminating circumstances to fasten criminal liability on the accused. Mr. Bhutia pointed out that the specific and only case against the petitioners in the charge-sheet laid by the police is that during the spot verification conducted for the purpose of ascertaining whether or not the beneficiaries had actually received piglets, it was found that 65 numbers of beneficiaries whose names are listed (listed in the beneficiaries list Annexure-P8 at pages 53 to 58 of the paper-book) under Barbing, Songthang and Burtuk do not exist. Further the electoral roll of 30 Ranka for 1999 and the statement of the Panchayat of these areas also show the non-existence of those beneficiaries. Further at Sichey and Chandmari area 25 nos. of beneficiaries has been located who stated during the course of their examination under Section 161 Cr.P.C. that they have not received any piglets. Counsel referred to the charges framed against the petitioners in Annexures P-3 and P-4. Mr. Bhutia would submit that his clients, the petitioners had no role in the identification of the beneficiaries, distribution of the piglets and also in the matter of preparation of the list of beneficiaries. Learned Senior Counsel submitted that the list of beneficiaries is prepared and signed by the Panchayat Members and counter signed by the Area MLA who was the Minister In-Charge. Counsel referred to Annexure-P8. The learned Senior Counsel submitted that the fact is



that the petitioners procured 400 piglets and got them insured with the National Insurance Company (@ `900/- each x 200 pairs) for `3,60,000/- as evident from Insurance Policy (LCR). That the supply was wholly made by the petitioners is evident from the statement of the Area MLA and Minister In-Charge, Smt. Rinzing Ongmu and in this context read over to me the relevant portion of the statement of Smt. Rinzing Ongmu under Section 161 Cr.P.C. Mr. Bhutia would highlight that the Panchayats have issued duly signed No Objection Certificates in Annexure-P7 collectively at pages 51 and 52 of the paper-book. Counsel submitted that Annexure-P7 series will show that 400 piglets were actually supplied by the petitioners and received by the Panchayat. Mr. Bhutia went on to submit that his clients, the petitioners cannot be responsible for alleged non-existence of 65 nos. of beneficiaries in Barbing, Songthang and Burtuk. Counsel also submitted that his clients cannot have any responsibility for alleged non-existence of piglets by 25 nos. of beneficiaries at Sichey and Chandmari. Counsel also reiterated that the petitioners had no role in the preparation of beneficiaries list Annexure-P8. The Annexure-P8 is prepared by the Panchayat, signed by them and counter-signed by the Area MLA-cum-Minister In-charge Smt. Rinzing Ongmu. Annexure-P8 is the direct result of mismanagement by the Panchayat who were the persons responsible for identification of beneficiaries, distribution of



piglets and preparation of beneficiaries list. Counsel in this context referred to the observations of the learned Judicial Magistrate in his order Annexure-P1 discharging the accused. Mr. Bhutia in this context would rely on Section 161 statement given by Shri Lakpa Lepcha, who was the member of the Panchayat of Ward No. 61 who stated that “the Area MLA Smt. Rinzing Ongmu while visiting our area, gave me 8 nos. of piglets and asked me to distribute it to the public of my ward but I was not provided any beneficiaries list, so accordingly I distributed the piglets to 8 beneficiaries of my ward”.

8. Further, in this context, Mr. Bhutia referred to the Section 161 statement of Shri Nar Bdr. Gurung, who was the member of the Panchayat in Upper Burtuk and stated that Smr. Rinzing Ongmu Bhutia, the then Area MLA gave him 40 nos. of piglets for distribution to the public in his area but did not give him any beneficiary list which compelled him to distribute the piglets to 40 beneficiaries identified by him. Mr. Bhutia also referred to the 161 statement of Smt. Dawa Doma, member of Panchayat of Lingding Ward which was to the effect that Area MLA Smt. Rinzing Ongmu Bhutia gave her piglets for distribution without any beneficiaries list, distribution of piglets to marked women who are actually supporters of Area MLA's parties known as “Ama Party” or Mothers’ Party. Mr. Bhutia submitted that the statement of witnesses referred to him is a submission to show



that it was not the petitioners that the piglets actually supplied by the petitioners were mismanaged and randomly distributed to the near and dear ones by the Panchayats and Area MLA without any proper beneficiaries' list. Mr. Bhutia once again highlighted that the identification of the beneficiaries was the responsibility of the respective Gram Panchayat in a Gram Sabha where the officials of the Welfare Department were supposed to be present. Mr. Bhutia argued that the NOCs are signed by the Panchayat Members who are responsible representatives of people and they cannot be allowed the same that they signed the NOCs "in good faith" meaning inadvertently. Mr. Bhutia referred to the definition of the expression "good faith" under Section 51 of the IPC.

9. Mr. Bhutia would rely on various judicial precedents cited before me. Referring to the judgment of the Supreme Court in **Century Spinning & Manufacturing Co. Ltd. Vs. State of Maharashtra : AIR 1972 SC 545** and that of the Allahabad High Court in **Manmohan & Anr. vs. State of U.P. & Anr. : 1975 CRI.L.J. 1241**. Mr. Bhutia argued that if on a screening of materials available, the Magistrate finds that no case has been made out against the accused on evidence given by the prosecution, the Magistrate was duty bound to discharge the accused. Relying on the judgment of the Supreme Court in **Union of India vs. Prafulla Kr. Samal & Anr. :**



1979 CRI. L. J. 154, Mr. Bhutia submitted that a Judge while considering the question of framing the charge under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not the prima facie case against accused is made out; whether the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing of charge and proceeding with the trial; by and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not amounting to grave suspicion against the accused, the Judge will be fully justified in discharging the accused; the Judge which under Section 227 of the Code is a senior and experienced court cannot act merely as Post Office or a mouth piece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. Mr. Bhutia relied once again on the judgment of the Supreme Court in Century Spinning & Manufacturing Co. Ltd. (supra). Counsel submitted that if materials available on record in this case is scanned, it will be seen that there is no chance of conviction of the petitioners and therefore, compelling the accused to stand trial of the case would be futile exercise of power and wastage of the



precious Court's time, discharge is warranted as the Courts are overburdened with very genuine cases for trial. Mr. Bhutia highlighted before me the delay which has been cautioned in the matter of this case. He submitted that this case has been dragging since last twelve years starting from the year 2001. The supply of 400 piglets by the petitioner were done in the month of June, 1998, suo-moto FIR was registered on 18.10.2001, the learned Chief Judicial Magistrate took cognizance on 29.09.2006, the learned Judicial Magistrate discharged the petitioners vide his order dated 09.06.2011 which was reversed by the impugned order dated 11.04.2013 passed by the learned Sessions Judge. Mr. Bhutia went on to show that how the decision relied on by the learned Sessions Judge in her judgment such as **State of Bihar vs. Ramesh Singh : AIR 1977 SC 2018; Kamal Singh vs. Resham Singh & ors. : 1991 Cri.L.J. 1114; Nirmaljit Singh Hoon vs. State of West Bengal : AIR 1972 SC 2639** were not applicable to the facts of the present case. Strong reliance was placed by Mr. Bhutia regarding the parameter for deciding whether a prima facie case is made out. Mr. Bhutia concluded by submitting that the petitioners may not be compelled to undergo the ordeal of trial which may be last for several years.

10. Equally emphatic submissions were addressed before me by Mr. N. B. Khatiwada, learned Senior Counsel appearing for the



petitioner in Crl.M.C. No. 14 of 2013. The learned Senior Counsel would point out at the very outset that the allegations against his client, the petitioner in Crl M.C. No. 14 of 2013 is that he called for quotation of allotted works to M/s. Bright Scientific Instrument Pvt. Ltd. for supply of 400 of piglets to 200 beneficiaries families in Ranka constituency in the year 1998. The offences charged by the Police against the petitioner are, he submitted, under Sections 120B, 406 and 420 of the IPC.

11. Analysing the above penal sections, Mr. Khatiwada submitted that Section 120B IPC requires proof in respect of the following aspects:-

- i. That the accused agreed with another.
- ii. To do an act, or caused it to be done.
- iii. That such act was illegal or was done by illegal means.
- iv. An overt act if the agreement was not an agreement to commit an offence.

12. Regarding section 406 IPC, Mr. Khatiwada submitted that to substantiate the points it is necessary to prove the following:-

- i. That the accused was entrusted with property or with dominion over it.
- ii. That he –
 - a. Misappropriated it, or
 - b. converted it to his own use, or
 - c. Used it, or
 - d. disposed of it.



- iii. He did so dishonestly.
- iv. That he did so in violation of –
 - a. any direction of law prescribing the mode in which such trust was to be discharged, or
 - b. any legal contract, expressed or implied, which he has made touching the discharge of such trust, or
- v. That he wilfully suffered any person to do as in person to misappropriate it or convert it to his own use or used it or to dispose of it or to do it dishonestly or to do it in violation of any direction of law prescribing the mode in which such trust was to be discharged or any legal contract, expressed or implied which he has made touching the discharge of such trust.

13. Similarly, regarding Section 420 IPC, learned Senior Counsel submitted that for substantiating his arguments it is necessary to prove that (i) the accused cheated another person, (ii) delivery of property to any person which property did not belong to the accused or to make, alter or destroy the whole or any part of a valuable security or anything which is signed or sealed and capable of being converted into a valuable security.

14. Mr. Khatiwada would assert that in the present case none of the points requiring proof are even remotely indicated in documents supplied by the prosecution against Shri C. P. Upreti, accused No. 1. He submitted that the duty of Shri Upreti, accused No. 1, in the



capacity of Deputy Director and Drawing and Disbursing Officer was confined within the four corner of his office building. According to Mr. Khatiwada what actually happened was that on the application by the Panchayat presidents of Sichey and Ranka Gram Panchayat which are the units of the Ranka Constituency, submitted directly to the Director, Animal Husbandry and Veterinary Science Department, the Director directed the petitioner, accused No. 1 to initiate the proposal for distribution of piglets to 200 tribal families. The petitioner who was bound to oblige as a subordinate officer initiated the proposal vide NSP No. 1 and submitted the proposal before the Director through proper channel. The proposal ultimately was approved not only by the Secretary-cum-Commissioner, Animal Husbandry but also concurred with by the Development Commission and Finance Department. According to Mr. Khatiwada, there was noting illegal or irregular about the petitioner's action in accepting the quotations overlooking the fact that five persons, namely (1) Tashi Bhutia or Ranka, (2) Choppel Bhutia of Chandmari, (3) Amar Rai of Sichey, (4) Kamal Chettri and (5) M/s. Bright Scientific Instrument Pvt. Ltd. Of Gangtok had submitted their quotations. After the receipt of the said quotations from the intending suppliers, the Department constituted a Committee of 3 (three) members, namely, (1) Hemant Chettri, Deputy Director, AH & VS, (2) Dr. P. c. Gupta, Joint Director, AH & VS and (3) the petitioner,



C.P. Upreti in his capacity as Deputy Director. It was the Committee which after thorough examination and proper consideration ultimately allotted the work order for supply of piglets to M/s. Bright Scientific Instrument Pvt. Ltd. who was the lowest bidder. The rule under scheme, according to the learned Senior Counsel, is that the lowest bidding should be accepted. Regarding the situation of M/s. Bright Scientific Instrument Pvt. Ltd., who submitted the application to the Secretary-cum-Commissioner requesting for permission to supply piglets to the Department, Mr. Khatiwada submitted that the petitioner took action only when that application was forwarded to him by the Secretary-cum-Commissioner. The competent authority did not take any action. The petitioner forwarded the application to the concerned Section in the department so that the application may be processed along with other applications. Mr. Khatiwada submitted that after the selection of the party the file was sent for final approval to be given by the concerned officers right at the level of the Secretary-cum-Commissioner which was done in terms of the departmental practice and procedure. Counsel submitted that as the funds were given to the Social Welfare Department, the file was sent to that department for their concurrence. Mr. Khatiwada also highlighted that the list of beneficiaries were prepared by respective Gram Panchayats in Gram Sabha where the officers of the Social Welfare Department were also



present. The final list of 200 beneficiaries was supplied after duly signed by the respective Gram Panchayat Presidents and the Area MLA, who happened to be the Minister In-Charge in the Social Welfare Department, Smt. Rinzing Ongmu Bhutia.

15. Mr. Khatiwada submitted that the 400 piglets were physically verified by the officers including a Doctor of the National Insurance Company Ltd. Cattle Insurance Wing. The said company issued cattle insurance policy Certificate No. 595192 dated 23.09.1998 wherein the sum insured was `3,60,000/- and the premium paid was `23,400/- valid till 23.09.1999. The price of each piglet is `900/-. Rs.900 x 400 piglets = `3,60,000/-. According to Mr. Khatiwada, this proves that 400 piglets were supplied for which the payment was made by the Department. He referred to the Section 161 statement given by Mrs. Dawa Doma, elected Panchayat Member, which was to the effect that she was not given any beneficiaries' list but Area MLA had given to "Ama Party" and eight nos. of piglets were distributed to Mrs. Nima Phuti Rai, who is an active party supporter. Mr. Khatiwada asserted that the beneficiaries list was neither prepared nor given by the petitioner. On the other hand, the details of beneficiaries list were submitted to the Department duly signed by the Area MLA or Panchayats after the same was discussed in the respective Gram Sabha. All the documents like beneficiaries list, quotations for the



supply of piglets, cheque issued etc. were forwarded by the lower staff through the petitioner to the Joint Director, Additional Director, Director, Principal Director and Secretary. All the officers approved the same and the petitioner has only done his routine duty as directed by the Secretary of the Department. According to Mr. Khatiwada, the petitioner's family has a deep interest in politics and as the petitioner's brother is a leader of the opposition party, the instant case is a pure example of political victimization. Counsel submitted that the petitioner's brother and sister were also implicated in a false case but after a long trial they were honestly acquitted. Mr. Khatiwada submitted that the petitioner is a junior officer in the department and he has to obey the orders of the Secretary, officers and other superiors. The petitioner was bound to work according to the orders given by them. The petitioner has done the work as per the Government norms and orders and approval of the senior officers taken at the various stages. Mr. Khatiwada submitted that as per the report submitted by the Department (NSP page 3 in 3rd para) there has been a short supply of piglets but the supply was given to the beneficiaries by the Area MLA and Panchayat members without involving the Departmental officers. Being elected representatives of the people of their respective areas, it was their responsibility to ensure supply of piglets to the deserving among other people.



16. Mr. Khatiwada submitted that the Area MLA being also Minister of Welfare Department and Chief Guest for the distribution ceremony, her office could have informed the officers and asked them to participate in the piglets distribution programme but she never did that. Mr. Khatiwada submitted that the statements were given by the Area MLA and Panchayat members regarding the receipt of the piglets and distribution of it to the beneficiaries. As regards the prosecution case that addresses have not been given in the quotations submitted by the parties but the transaction was done vide letter No.396/DD(E)/AHVS dated 08.09.1998. Counsel submitted that the parties had submitted quotations with full address details but in the office copies only their names have been mentioned. Mr. Khatiwada submitted that the details of beneficiaries list which was approved by Gram Sabha was signed individually by the farmers and certified by Area MLA and Panchayat members submitted to the Secretary, Welfare Department who accordingly forwarded the same along with cheque of ₹ 4,32,800/- to AHVS Department. Mr. Khatiwada submitted that the distribution of feed to the piglets was assigned to SIMFED by the Department but due to lack of storage facilities with the suppliers they gave order to the supply of feed to private supplier and during the placement of bill additional cost for carriage charges for the feed has been claimed. Mr. Khatiwada submitted that the order for the



supply of piglets from the Government and private farm is genuine but the demand for piglets on the Government and private farms of the public for the domestic purpose and also to substitute was done by the Department is so high that the demand of 400 nos. of piglets could not be fulfilled by the Government and private farms. So the supplier after purchasing all the piglets in disposal from the Government and private farms in and around has to buy remaining from outside to meet 400 nos. demand. Coming to the track record of the petitioner, Mr. Khatiwada submitted that as he was doing a very good job in the Department, he was transferred to Hon'ble Chief Minister's area at Namchi. However, as the population of East Sikkim was very high and required skilful person to carry out the work, that transfer order was cancelled and the petitioner was retained in the East District itself. Mr. Khatiwada submitted that as per the Annual Confidential Report submitted by the higher authority, the petitioner was given excellent remarks in view of the good work done by the petitioner. Mr. Khatiwada submitted that due to the political involvement of the petitioner's brother Shri K. N. Upreti, former Minister, Law and Education, the petitioner's promotion was also held up and the petitioner was not allowed to carry out his work properly in the manner in which a senior officer should have been allowed to do work. Counsel submitted that on account of pendency of this case, his



juniors were promoted by superseding the petitioner and ultimately the promotion of the petitioner was kept in a sealed envelope. The petitioner retired from service w.e.f. 01.06.2013. Till this moment no retirement benefits have been given to the petitioner. The petitioner had 31 years of unblemished service according to the learned Senior Counsel.

17. According to the learned Senior Counsel, there are no materials available in this case for framing charge against his client. The Magistrate was, therefore, perfectly justified and in fact, had a duty to consider the entire materials referred to in Sub-section 2 of the Section 173 Cr.P.C. In this context, Mr. Khatiwada relied on judgment of the Supreme Court in **Century Spinning & Manufacturing Co. Ltd. (supra)** to argue that if there is no material justifying framing of charge against the accused, the Court is bound to discharge him. According to Mr. Khatiwada, summoning of an accused in a criminal case on the charges is a grave matter. Actual trial starts only after framing of charge. Criminal law cannot be set in motion as a matter of course.

18. Learned Senior Counsel submitted on the basis of the above said decision and referring to the judgment of the Supreme Court in **M/s. Pepsi Foods Ltd. & Anr. vs. Special Judicial**



Magistrate & Ors. : AIR 1998 SC 128 and referring to the judgment of the Jharkhand High Court in **Dilip Kumar Sarkar vs. State of Jharkhand : 2003 CRI. L. J. 2086** that when materials are not available in the case for proceeding against the accused, the Court below will be erring seriously in not discharging the accused.

19. The judgment of the Supreme Court in **P. Vijayan vs. State of Kerala : AIR 2010 SC 663** was relied on by the learned Senior Counsel who submitted that in the absence of available materials, giving room for grave suspicion, the trial Court will be justified in ordering discharge. Lastly, it was submitted that the trial in the present case where prosecution has listed 56 witnesses is going to be a futile exercise such purposeless trial may not be allowed to be conducted. Learned Senior Counsel relied also on the judgment in **Smt. Mehar Dubash vs. Jamshed Dubash : 2008 CRI. L. J. 738 (M.P.)**; **M/s. Ashoka Alloys Ltd. vs. M/s. Arun Steels & Ors. : 2007 CRI. L. J. 947**, **Kailash Sah vs. State of Bihar : 2006 CRI. L. J. 3886** and **Hemaben Sanjeevkumar Kanodiya vs. Dr. D. N. Nanavati & Anr. : 2013 CRI. L. J. 2472**.

20. Mr. Karma Thinlay, learned Addl. Public Prosecutor would resist the submissions of Mr. K. T. Bhutia and Mr. N. B. Khatiwada very strongly. Mr. Karma Thinlay submitted that the scheme for



distribution of piglets to 200 numbers of Schedule Tribe beneficiaries or Ranka Constituency was a scheme funded by the Welfare Department, Government of Sikkim and the fund amount being ₹4,32,800/- was transferred to the Department of Animal Husbandry and Veterinary services vide letter dated 22.08.1998. The transfer of the fund was subject to certain conditions laid down by the Welfare Department. According to Mr. Karma, following were the conditions: -

- (I) The fund will be transferred to AH & VS Deptt. as per the Circular of the Home Deptt.
- (II) The breed should be hybrid & certified breed of either saddle back, Hampshire or Berkshire.
- (III) Each piglet should be insured and the premium should be paid by the beneficiaries.
- (IV) The piglets should be procured from the Animal Husbandry breeding farm at Bob. Chungthang, Hee-Gyathang, Ralang and if not available then from registered and certified breeder viz. Pradhans breeding farm and Rai breeding farm at Rangpo.
- (V) The beneficiaries will be identified by the respective Gram Panchayat in a Gram Sabha where officials of Welfare Department will also be present and list will be placed before the Government of approval.
- (VI) The feed may be procured from SIMFED. On completion of the procurement of piglets



and feed Welfare Department may be informed. The distribution should be done in a formal function on the date and the time convenient to the chief guest.

- (VII) After the implementation of the scheme a detail report along with the list of beneficiaries should be submitted to the Welfare Deptt."

21. When the transfer was made fulfilling the above conditions, the entire process from the time of inviting quotations by Mr. N. B. Khatiwada's client, who was then Deputy Director, East was also declared as Drawing and Disbursing Officer by the Finance Department, Government of Sikkim till payment to Mr. K. T. Bhutia's clients smacks of illegal gain for Mr. C. P. Upreti, Mr. Khatiwada's client. According to Mr. Karma, there are several circumstances which will show that the petitioners in Crl.M.C. No. 13 of 2013 and the petitioner in Crl.M.C. No. 14 of 2013 were acting hands in glove. It was submitted that the petitioner in Crl.M.C. No. 14 of 2013 sought approval of the Secretary for inviting quotations from the bidders on 08.09.1998 and on the same day, the Secretary approved the proposal for inviting quotations. According to Mr. Karma, even before the Department had called for quotations on the previous day, i.e. on 07.09.1998, Mr. Bhutia's clients submitted an application claiming that they are maintaining piggery farm. Mr. Karma highlighted that as per



the trade licence issued by the Urban Development and Housing Department, Government of Sikkim, Mr. Bhutia's clients are entitled to trade only those commodities mentioned in the trade licence which shows that the firm is authorised to deal with only scientific instrument. Mr. Karma highlighted that Mr. Bhutia's clients had never shown that they are maintaining piggery farm and is a registered breeder by producing any document. Mr. Karma would then submit that more surprisingly, Mr. Khatiwada's client on 08.09.1998 issued letter No. 376/DD to Mr Bhutia's clients whose details are not known. The petitioners' firm on 14.09.1998 by way of an application handwritten on plain paper submitted their quotation. That and other quotations are all vague and bereft of materials which are necessary for identifying the bidders. According to Mr. Karma, the hand writing appearing on all the quotations seems to be similar to each other. Mr. Karma, learned Addl. Public Prosecutor submitted that as a matter of practice, quotations are to be submitted with details on letter head of the quotation giving party. According to Mr. Karma, the alleged quotations appear to be fabricated and manipulated deliberately for the purpose of obtaining consideration by Mr. Khatiwada's client. It was highlighted that the names and signatures appearing on all the unsuccessful quotations seem to be of persons either from Ranka, Sichey, Chandmari and Singtam Bazar and not from Animal Husbandry



breeders or from registered/certified breeders at Rangpo is totally contrary to the terms and conditions based on which the funds were transferred by the Welfare Department and the observation made by the Finance Department while concurring with the proposal of the Welfare Department for transfer of fund to the Animal Husbandry Department.

22. The No objection Certificate issued by the Panchayat member and the Panchayat policy also came up for sharp criticism by Mr. Karma. According to him, it is evident that the concerned Panchayat member issued the No Objection Certificate in good faith only. The words "good faith", learned Addl. Public Prosecutor submitted, were used not in the meaning of the same in the IPC but in the meaning under dictionary – general parlance meaning.

23. Mr. Karma submitted that piglet feed was to be procured by the suppliers SIMFED but investigation reveals that feed was procured from Amar Feed located at Ranipool. The investigation revealed that the shop Amar Feed was found closed since few years back and the owner of that shop could not be traced. The petitioners while submitting the bill have procured piglet feed amounting to 550 kg. @ `90/- per kg. from Siliguri and they have also claimed transportation fee of piglet feed from Siliguri to Gangtok @ `3,000/-.



The learned Addl. Public Prosecutor would then submit that the supply order issued by the petitioner in Crl.M.C. No. 14 of 2013, Mr. Upreti, reflects the address of Mr. Bhutia's client to be at Development Area, opposite Super Market and sales office at Tibet Road near Kazi Road. It was also pointed out that Mr. C. P. Upreti was also a Drawing and Disbursing Officer and without proper verification certified all the bills submitted by Mr. Satish Singhal (Managing Director of M/s. Bright Scientific Instrument Pvt. Ltd.) and also sent them for approval and release of payment. The bills were submitted within a period of 6 (six) months from the date of the supply order and the payment of cheque was paid by account payee cheque in favour of M/s. Bright Scientific Pvt. Ltd. which was received by Mr. Dawa Tamang of the Department of Animal Husbandry and he deposited the cheque in State Bank of Sikkim in the account operated by M/s. Bright Scientific Pvt. Ltd. as confirmed by the letter issued by the State Bank of Sikkim which forms the part of the record. Mr. Karma would refer to the Section 161 statement given by Mr. Kagey Lapcha, then Welfare Officer who had categorically stated that Animal Husbandry Department was supposed to inform the Welfare Department the time of the distribution so that distribution could be monitored but no such information was given to the Welfare Department and therefore, he cannot say whether the piglets were actually distributed by Animal Husbandry Department or



not. According to Mr. Karma, the opinion of GEQD further fortifies the stand of the prosecution that the signatures appearing on many of the revenue stamp affixed by the beneficiaries acknowledging receipt of the piglets and feeds seem to be done by one and the same person. So, according to Mr. Karma, the available materials sufficiently made out prima facie case against Mr. Satish Singhal and Mr. Dawa Tamang, who are Mr. Bhutia's clients acting, in connivance with Mr. C. P. Upreti, Mr. Khatiwada's client. They had committed an offence of criminal conspiracy, criminal breach of trust and cheating. Therefore, they are not entitled for discharge at the threshold. They should be sent for trial. Mr. Karma also did not lag behind insisting decisions in drawing my attention to the statutory provision referring to under Section 482 Cr.P.C. Mr. Karma submitted that power has to be exercised very sparingly, cautiously and exceptionally. Reliance was placed by the learned Addl. Public Prosecutor in **Suresh alias Pappu Bhudharmal Kalani vs. State of Maharashtra : (2001) 3 SCC 703**. Relying on the judgment of the Supreme Court in **Om Wati (Smt.) & Anr. vs. State, through Delhi Administration & Ors. : (2001) 4 SCC 333**, it was submitted by Mr. Karma that the Court has, therefore, to consider the question of framing charges on general consideration of the material placed before it by the investigating agency. At this stage of discharge, the truth, veracity and effect of the judgment which the



prosecution proposes to adduce are not to be meticulously judged. According to learned Addl. Public Prosecutor, even on the basis of a strong suspicion founded on materials before it, the Court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event will be justified in framing the charges against the accused in respect of the commission of the offence allegedly committed by them. Mr. Karma would submit on the authority of the very same decision that merely on account of observations and opinion incorporated in the post-mortem report, the prosecution could not be deprived of its right to prove that the accused is guilty of the offence for which the final report had been filed against them. According to the learned Addl. Public Prosecutor, the Supreme Court has reminded the High Courts of their statutory obligation not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Reliance was placed by Mr. Karma on the judgment of the Supreme Court in **Soma Chakrabarty vs. State, through CBI : (2007) 5 SCC 403**. It was submitted that before framing a charge the Court must apply its judicial mind on the materials placed on record and must be satisfied that the commission of offence by the accused is possible. According to Mr. Karma, the Supreme Court held that when



a person signs on a document, he or she is expected to make some enquiry before signing the same. Mr. Karma would rely on the judgment of the Supreme Court in **Shivnarayan Laxminarayan Joshi vs. State of Maharashtra : (1980) 2 SCC 465 19**. Reliance was also placed by him on the judgment of the Supreme Court in **CBI, Hyderabad vs. K. Narayana Rao : (2012) 9 SCC 512**. Mr. Karma argued that invocation of the jurisdiction under Sections 227 and 228 of the Cr.P.C. was to be done very cautiously. The Court will be justified in framing a charge and proceeding with the trial where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained. The above judgment was also relied on for the proposition that at the stage of giving discharge, there cannot be any roving enquiry into the pros and cons of the matter and weigh the evidence as if the Court is conducting a full-fledged trial. What the Court is expected to do at this stage is to evaluate materials and documents on record with a view to find out if the facts emerging therefrom taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. According to Mr. Karma, the materials available on record disclosed that a prima facie case is made out against all the three accused and they are not entitled for discharge without trial.



24. I have given my anxious consideration to the pleadings raised by the parties and also to the rival submissions addressed before me at the Bar by the learned Senior Counsel appearing for the accused and the Addl. Public Prosecutor. I have carefully read through the impugned order and the order set aside by that order. I have scanned all the materials on record.

25. The learned Addl. Public Prosecutor is certainly right when he submits that the inherent powers of the High Court which are saved under Section 482 Cr.P.C. are to be invoked cautiously and sparingly. But it is clear to my mind that the inherent powers which are saved under Section 482 Cr.P.C. are very wide powers conferred on the High Court, the other provision of the Cr.P.C. notwithstanding the inherent powers of the High Court can be exercised for preventing abuse of the process of any Court or otherwise to secure the ends of justice. (***emphasis supplied***)

26. It is necessary now to make a survey of judicial precedents which were cited before me by the learned Senior Counsel who appeared before me in this case including the learned Addl. Public Prosecutor for properly appreciating the extent of the power of the Magistrate's Court under Section 227 of the Cr.P.C. for discharging the



accused thereby exonerating them from the ordeal of undergoing trial.

Section 227 can be conveniently as below: -

“227. Discharge. – If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

27. This is a case where the Magistrate was called upon by the prosecution to frame charge against the petitioners in terms of the final report under Section 173 Cr.P.C. The Magistrate scanned the various materials which were placed before him by the prosecution and held that the prosecution failed in bringing on record prima facie materials for sustaining the charge proposed by them and accordingly, discharged them invoking the powers under Section 227 Cr.P.C. The question before me is whether in applying of Section 227 Cr.P.C. and on considering Section 161 statements given by the witnesses of the Investigating Officer and the documents on record, the learned Magistrate erred in his view that there are no sufficient grounds for framing charge against the accused? The learned Sessions Judge passed the impugned order in Criminal Revision Case No. 02 of 2012 reversing the view and decision of the learned Magistrate relying mainly on certain principles which, according to learned Sessions Judge, emerge from a few judicial precedents, i.e. the judgment of the



Allahabad High Court in **Kamal Singh (supra)**; the judgment of the Supreme Court in **State of Bihar (supra)**; the opinion of Sarkar on Cr.P.C. in his Commentaries at page 752, 7th Edition Reprint 2000 and the judgment of the Supreme Court in **Nirmaljit Singh Hoon (supra)**.

28. A basic principle to be kept in mind while proceeding to decide a case relying wholly on judicial precedents or judge made law is that a precedent can be followed only if it applies to the facts of a given case. In other words, the *ratio decidendi* has to be appreciated in the backdrop of the facts in which the same was given. For understanding the precedential value of any judgment it is necessary to consider the applicability of the judgment to the facts which are obtaining in the case on hand and also to the comparability of the facts covered by the precedent relied on in the case on hand.

29. As already stated, the judgment of the Supreme Court in **State of Bihar (supra)** was one of the decisions relied on by the Sessions Judge while passing the impugned order. I do not find much of comparability between the facts of the case of **State of Bihar (supra)** and our present case. The case of **State of Bihar (supra)** was a bride burning case. The accused in that case was discharged by the Sessions Court under Section 227 Cr.P.C. and the



High Court also confirmed that order of discharge. The accused was a Professor of Economics in Munshi Singh College, Motihari in Bihar. At about 3:30 a.m. on 26.11.1973, Smt. Tara Devi, wife of the accused, was found burning in the kitchen of his house. A hulla was raised. One Chandreshwar Prasad Singh, brother of Tara Devi, who is a Professor of Botany of the said College and lives nearby, came to the scene of occurrence. He found the accused and his brother standing near the burning body of Tara Devi but not taking any steps whatsoever to extinguish the fire. Tara Devi died apparently as a result of the extensive burn injuries on her body. Nobody can have a quarrel that in the light of the above facts, grave suspicion has been aroused against the accused because of his conduct in simply standing by the side of the burning body of his wife without making any endeavour whatsoever to put down the fire. The Supreme Court naturally interfered with the order of discharge taking the view that the accused was bound to stand trial. I have no hesitation to say that there is no much comparability between the facts of the above case and the present case.

30. I do not find much comparability between the facts of the present case and the case decided by the Allahabad High Court in **Kamal Singh (supra)**. The case of **Kamal Singh (supra)** is a murder case in which Kamal Singh had lodged an FIR against the



accused. Learned Sessions Court discharged the accused taking the view that materials were insufficient to conclude that the accused was liable to undergo trial. The Allahabad High Court found that the Sessions Court in fact had held that as a result of conspiracy hatched by the accused, it was not the accused who had killed the father of Kamal Singh but two unknown persons had killed him. For coming to a conclusion, the Sessions Court had made thread bare analysis of the various statements given by the prosecution under Section 161 and had come to the conclusion that the materials (mainly 161 statements of the prosecution witnesses) did not make out a prima facie case against the accuse. The Allahabad High Court took the view that meticulous analysis of the statements under Section 161 was not warranted at the stage of discharge under Section 227 and that what was required, was that there was a probability that the accused was the mastermind behind the murder. The High Court found, in my view, rightly also that there was sufficient materials to frame charge against the accused and whether or not the accused was guilty was a matter to be brought out in trial. Particularly, in view of the finding of the Sessions Court itself that in the incident the accused that the deceased was murdered by two unknown persons.

31. The judgment of the Supreme Court in **Nirmaljit Singh Hoon (supra)** is another judgment which is relied on by the Sessions



Judge for passing the impugned order. I do not find comparability between the facts covered by the said judgment and the present case. That was a case of serious dispute relating to the share of a company and the observation by the Hon'ble Supreme Court in Prafulla Kr. Samal (supra) was that the test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not the grave suspicion against the accused, the Court will be justified in discharging the accused as standing trial is a very serious matter which may have the result of affecting the destiny of not only the accused or his entire family.

32. One of the considerations which can be weigh with the Court while deciding whether or not to exercise the power to discharge under Section 227 Cr.P.C. is the possibility of the proposed trial ending in conviction of the accused. Having regard to the nature of the charge proposed by the prosecution against the petitioners before me and also having regard to the quality and the nature of the materials already before the Court, it will be difficult for a conscientious Judge to say that the petitioners, if referred for trial, will be convicted ultimately for the offences which are proposed against



them by the prosecution. Before I proceed to analyse the other judgments cited before me, let me scan the proposed charge and the available materials including the 161 statements of crucial witnesses for reassuring myself in my view that the chances of the proposed trial ending in conviction of the petitioners are not bright.

33. In the final report submitted by the Police under Section 173 Cr.P.C., the offences charged against the 3 (three) accused are those under Sections 120B, 406 and 420 of the IPC. Section 120B provides punishment for criminal conspiracy and criminal conspiracy is defined under Section 120A IPC. When two or more persons agree to do, or cause to be done, - (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. There is a proviso to Section 120A which says that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. The Explanation to Section 120A says that it is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object. The offence of criminal breach of trust is made punishable under Section 406 IPC and is defined under Section 405 IPC which stands established only when (1) the accused was entrusted with property or with dominion over property, (2) the



accused misappropriated the property or converted the property for his own use or used the property of disposed of the property, (3) he did so dishonestly or (4) he did so in violation of any direction of law prescribing the mode in which such trust was to be discharged or any legal contract, expressed or implied, which he has made touching the discharge of such trust or (5) the accused wilfully suffered any person to do as in (2), (3) and (4) (i) or (4) (ii). The offence under Section 420 –cheating and dishonestly inducing delivery of property will stand made out only when the accused cheats another person and thereby dishonestly induces delivery of property to any person, which property does not belong to the accused or to make, alter or destroy the whole or any part of a valuable security or anything which is signed or sealed and capable of being converted into a valuable security and he did so dishonestly.

34. The substance of the prosecution case against the petitioners before me is that the Welfare Department, Government of Sikkim earmarked a sum of ` 4,32,800/- and transferred the same to the Department of Animal Husbandry and Veterinary Services, Government of Sikkim for free distribution of 400 piglets to 200 numbers of tribal beneficiaries, one pair each to the beneficiary belonged to Ranka constituency; that C. P. Upreti, accused No. 1, the then Deputy Director of Animal Husbandry and Veterinary Services



invited quotations and issued supply orders to M/s. Bright Scientific Instrument Pvt. Ltd., a firm of which accused No. 2 is Director; that M/s. Bright Scientific Instrument Pvt. Ltd. is licensed to deal with only scientific instrument only; that the petitioners No. 2 and 3 received a bill of ` 4,32,766 against the supply of 400 piglets where as a matter of fact there was a short supply of 180 piglets. The question, which the learned Sessions Judge and now this Court is called upon to decide, is as to whether the materials placed on record had made out a case for trial against the petitioners.

35. A specific allegation against the petitioners in the charge-sheet laid before the learned Judicial Magistrate is that during the spot verification conducted in order to ascertain whether or not the beneficiaries had actually received piglets, it was found that 65 numbers of beneficiaries whose names are listed under Barbing, Songthang and Burtuk do not actually exist. Further, electoral roll of 30 Ranka for 1999 and the statement of the Panchayat members of these areas shows that non-existence of these beneficiaries in the above shown areas. Further at Sichey and Chandmari area 25 nos. of beneficiaries have been located who stated during the course of their examination that they have not received any piglet. It is clear from the records available that the petitioners had no role in the matter of identification of the beneficiaries, distribution of the piglets to the



beneficiaries and the preparation of the list of beneficiaries. The list of beneficiaries is prepared and signed by the Panchayat Members and counter-signed by the Minister In-Charge, Smt. Rinzing Ongmu Bhutia as evident from Annexure-P8 produced in Crl.M.C. No. 13 of 2013 which bears the signatures of Panchayat Members and the Minister In-Charge. These two petitioners procured 400 piglets, got them insured through National Insurance Company @ `900/- each x 200 pairs – `3,60,000/- as evident from the insurance policy. That the petitioners supplied the piglets, which is evident from the Area MLA and Minister In-Charge, Department of Woman and Child Development, Government of Sikkim, Smt. Rinzing Ongmu Bhutia. The statement given by her under Section 161 can be profitably quoted here as follows: -

“I am to state that I am a permanent resident of Chandmari. I was elected as MLA from Ranka constituency during 1992-1993.

On being asked about the piglets distributed in my constituency during tenure as an MLA in Ranka Constituency. I am to state that during the said period, piglets were distributed several times as such I cannot recollect exactly who supplied the piglets and who are the recipients. However, from few reference given/provided to me of this particular case, I, from my faint memory could only recollect very little i.e. during 1998-99, piglets were brought to my residence in a truck at evening time but I cannot say exactly how many piglets were there in the truck and the piglets were unloaded that evening itself and as piglets were brought to my residence large number of public of Chandmari Area had gathered in my residence and, as it was getting dark those public gathered at my



residence started choosing the piglets and took away the piglets. Further as there was a huge rush the piglets could not be distributed in orderly manner. And against after few days a batch of piglets was unloaded at barbing area and those piglets were also distributed to the public, some piglets were given to the Panchayats for distribution of the same to the public of their ward. But as I did not maintain any record, during the said period, I cannot say exactly to whom I gave those piglets. However, it is fact that piglets were supplied by the Department for distribution."

36. Annexure-P7 collectively produced along with that Crl.M.C. No. 13 of 2013 is the No Objection Certificates issued by the Panchayat acknowledging the receipt of 400 piglets by the Panchayats. Annexure - P8 beneficiaries list is prepared by the Panchayats, signed by them and counter-signed by the Area MLA-cum-Minister In-Charge. Even if the mismanagement is there, the same is done by the Panchayat members who were responsible for identification of beneficiaries list. The mismanagement in the matter of distribution of 400 piglets is evident from the 161 statement given by Lakpa Lepcha, Panchayat member of Ward No. 61, a portion of which can be quoted as follows:-

"Sometime during 1998 our area MLA Smt. Rinzing Ongmu Bhutia visited our area and during her visit she gave me 8 nos. of piglets and asked me to distribute it to the public of my ward but I was not provided any beneficiaries list so, accordingly, I distributed the piglets to 8 beneficiaries of my ward."



37. The 161 statement given by Nar Bdr. Gurung, Panchayat member of Upper Burtuk is also relevant. Certain portion of his statement is quoted below: -

".....I did not submit any beneficiary list of my ward nor I was asked to submit one. However, during the said period Smt. Rinzing Ongmu Bhutia, the then area MLA gave me 40 nos. of piglets for distribution to the public of our area, further, I was not given any beneficiary list by her, so I distributed these piglets to 40 individuals of our area/ward and the details of those 40 beneficiaries are as follows."

38. The statement of Smt. Dawa Doma, Panchayat of Lingding Ward is also to the effect that she was not asked to submit any beneficiaries list nor had she submitted any. She stated that during that day area MLA used to give works to Ama Party and similarly 8 nos. of piglets or so was given to Nim Phuti Rai of our area as she was one of the active party supporters.

39. Mismanagement in the matter of distribution of piglets actually supplied by the suppliers was by distributing piglets to near and dear ones was not by the petitioners but by the Panchayat members and area MLA-cum-Minister In-charge. It is evident that the identification of the beneficiaries was the responsibility of the respective Gram Panchayat in a Gram Sabha where the officers of the Welfare Department were supposed to be present. The defence case of the petitioner that they had no role in the identification of the



beneficiaries, distribution of piglets and preparation of the list of beneficiaries etc., seems to be well supported by the materials available on record.

40. The argument of Mr. Karma Thinlay, learned Addl. Public Prosecutor was that No Objection Certificates were issued by the Panchayat members in good faith. This argument cannot be accepted as being responsible representatives to the people they should be presumed to have exercised due care and attention in the matter. The important question is whether the present petitioners can be held responsible for dereliction in the matter of the distribution of piglets and short supply, if any. According to me, that question can be decided only in favour of the petitioners. The principles laid down by the Supreme Court in **Century Spinning and Manufacturing Co. Ltd. (supra)** are that if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not to grave suspicion against the accused, the Judge will be justified in discharging the accused. According to me, the learned Magistrate was fully justified in taking the view that the materials did not rise to grave suspicion against the petitioners. The principles laid down in the very same judgment are also to the effect that the Court has to consider the broad probabilities of the matter so that the total effect of the evidence and the documents produced



before the Court and any basic infirmities appearing in the cases can be taken into account. According to me, if the total effect of the evidence (161 statements and documents) and the broad probabilities are taken into account, it will have to be held that the chances of the trial ending in a conviction of the present petitioners are remote. I am sure that the judgments relied on by the learned Sessions judge for interfering with the order of discharge by the learned Magistrate were not apposite to the facts of the present case. Those judgments are not applicable on the facts which are available in this case. The circumstances highlighted by Mr. Karma Thinlay, learned Addl. Public Prosecutor at best may arouse some suspicion but those circumstances, according to me, did not arouse grave suspicion. I am fully convinced on my own survey on the materials available that trying the accused on the basis of the proposed charge will be an exercise in futility from the point of the prosecution. Though not tried the cases have become sufficiently old as FIR was lodged as early as on 18.10.2001. The records reveal that the petitioners had to appear before the Courts below on several dates. I am fully convinced that it will be an uphill task for the prosecution to substantiate the charge proposed by them so as to give a conviction to the petitioners who are accused. The interference by the learned Sessions Judge in the order passed by the learned Magistrate was unwarranted. I take into



account the track record of Dr. C. P. Upreti, the petitioner in Crl.M.C. No. 14 of 2013. It is not disputed before me that his service has been unblemished. The argument of Mr. Khatiwada, his counsel that he has been discharging his routine duties as directed by his superiors are appealing. The submission of Mr. Khatiwada that his client was being politically victimised is not substantiated. But interestingly may be an omission, that submission was not answered at the Bar. Whatever that be, I am of the view that on the materials which are available in these cases, there were no warrant being interference to the order of discharge on the part of the learned Magistrate.

41. I, therefore, allow both the Crl. Misc. Cases, setting aside the impugned order and restoring the order of discharge passed by the learned Judicial Magistrate.

42. Hence, the Crl. Misc. Cases are allowed.

43. No order as to costs.

Sd/-
(Pius C. Kuriakose)
Chief Justice
19.09.2013

Approved for reporting : Yes / ~~No~~.

Internet : Yes / ~~No~~.