



**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Criminal Revisional Jurisdiction)

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**S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE**  
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**Crl.Rev.P. No.4 of 2014**

**Revisionist/Petitioner** : Dr. Khagendra Neopanay

**versus**

**Respondent** : State of Sikkim (CBI)  
represented by the  
Senior Superintendent of Police,  
Head of the Branch,  
Central Bureau of Investigation,  
Special Crime Branch,  
Kolkata.

Application under Sections 397 and 401  
read with Section 482 of the Code of  
Criminal Procedure, 1973

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**Appearance**

Mr. A. K. Upadhyaya, Senior Advocate with Ms. Binita Chettri, Advocate for the Petitioner.


Md. Ashraf Ali, Advocate for the Respondent-Central Bureau of Investigation.

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**O R D E R**(15<sup>th</sup> April, 2015)**Wangdi, J.**

**1.** The Petitioner-Revisionist has preferred this application under Sections 397 and 401 read with Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), seeking to quash order of the Learned Special Judge, Prevention of Corruption Act, East and North Sikkim at Gangtok, dated 27-12-2013 in Sessions Trial (CBI) Case No.1 of 2012 by which charges were directed to be framed against the Petitioner under Sections 120B/197/193 Part II of the Indian Penal Code, 1860 (for short "IPC") and, under Section 13(1)(d)(iii) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (for short the "P. C. Act").

**2(i).** The genesis of the case against the Petitioner and the other accused persons is traced to an order dated 09-06-2006 passed by a Division Bench of this Court in WP(C) No.22 of 2006 filed by one Hishey Sherpa against a selection process of various Group 'C'



staff conducted by the Regional Research Institute (Ayurveda), Tadong, Sikkim, under Central Council for Research in Ayurveda & Siddha, an autonomous Organisation under the Ministry of Health and Family Welfare, Government of India. The Chairman of the Selection Committee was one Dr. Pratap Makhija who is the accused no.1.

*(ii)* Without going into the details, it is sufficient to state that the investigation resulted in a charge-sheet being filed in the Court of the Learned Special Judge against the said Dr. Pratap Makhija, accused no.1 and 5 (five) others of which accused no.6 was the present Petitioner and accused nos.2, 3, 4 and 5, the alleged beneficiaries of the illegal appointments. The Petitioner has questioned the order directing framing of charge against him under the aforesaid provisions on the ground that no case is at all made out against him in view of the prosecution case being bereft of any evidence to support the impugned finding.

*(iii)* It is the Petitioner's case that he is a Dental Surgeon and was under service of the Government of

Sikkim in the Department of Health and Family Welfare and working at the STNM Hospital at the relevant time. He was also holding the post of the Registrar, Sikkim Birth and Deaths Cell, Department of Health and Family Welfare, Government of Sikkim, in a part time capacity in addition to his normal official duties. While functioning as the Registrar, Births and Deaths Cell, he was not required to attend the Office as there was no sitting arrangement and used to sign on the filled in forms of Certificates of Births and Deaths as brought to him by the concerned staff of the Cell in his chamber at the STNM Hospital in the midst of his duty while treating patients. That there was no scope for him to verify the official records as those were kept in the Births and Deaths Cell and, used to sign the filled in forms in good faith believing the entries to be genuine and correct.

**(iv)** The Petitioner states that he did not remember having signed the Birth Certificate of the accused no.4, Mukesh Kumar Balmiki and, even if he did sign, it must have been done in good faith under the circumstances stated earlier. That he does not

know the said accused no.4, Mukesh Kumar Balmiki and any of his family members. That he is protected under Section 28 of the Registration of Births and Deaths Act, 1969, which, *inter alia*, provides that no suit, prosecution or other legal proceeding shall lie against the Government, the Registrar-General, any Registrar, or any person exercising any power or performing any duty under the Act for anything which is in good faith done or intended to be done in pursuance of the Act or any rule or order made thereunder.

(v) It is pointed out that in a previous case filed by the State in respect of the very transaction involved in the present case, in the Court of the Chief Judicial Magistrate, East and North Sikkim, Gangtok, being G. R. Case No.143/07 registered against the Petitioner under Section 197 IPC, one Ram Kishan Balmiki under Sections 468/471/34 IPC and, the accused no.4, Mukesh Kumar Balmiki under Sections 471/34 IPC, he was discharged along with other accused persons by order dated 19-06-2008 of the Learned Chief Judicial

Magistrate, having found no materials to frame charges against them for the aforesaid offences.

**(vi)** That the only allegation in the foregoing case against the Petitioner being that he had issued a fake Birth Registration Certificate in favour of Mukesh Kumar Balmiki, accused no.4., which was fraudulently used by the latter, the only charge that could be made out would have been under Section 197 and not under any other provisions of the IPC and Section 13(1)(d)(iii) of the P. C. Act, as alleged in the present case.

**(vii)** It is stated that the sole prosecution witness, namely, Sher Bahadur Karki, having stated that the Petitioner had signed on the Birth Registration Certificate of the accused no.4, Mukesh Kumar Balmiki, in good faith and in *bona fide* performance of his official duty, he is entitled to protection under Section 28 of the Registration of Births and Deaths Act, 1969. That there is no material whatsoever either documentary or oral to connect the Petitioner with the accused no.4, Mukesh Kumar Balmiki. It is also not the case of the prosecution that they had any such connection. No

motive has also been alleged against the Petitioner for issuing the Birth Registration Certificate. The case against the Petitioner who was a serving public servant at the material time, is also unsustainable for want of sanction against the Petitioner under Section 197 Cr.P.C. That there is no material at all to frame charge against the Petitioner under Section 13(2) read with Section 13(1)(d)(iii) of the P. C. Act, as no material has been produced by the prosecution for establishing the charge of misconduct against him which is the main ingredient underlying the offence.

**3(i).** During the course of the argument, Mr. A. K. Upadhyaya, Learned Senior Advocate, assisted by Ms. Binita Chettri, Advocate, reiterated the grounds set out above and further pointed out that the charge-sheet filed by the Central Bureau of Investigation (for short the "CBI") itself revealed that it is in conflict with the order of this Court dated 12-03-2008 in WP(C) No.22 of 2006.

**(ii)** That in S.L.P. (Civil) No. 2301 of 2007 filed by the accused no.2, Ramayan Singh Meena, in the

Hon'ble Supreme Court of India by order dated 31.01.2007 in CC No.118/2007 arising out of the S.L.P., had indicated that the matter may be remitted to this Court for a fresh disposal directing that in the meanwhile the CBI shall discontinue with the investigation. This led the CBI to file a final report dated 27-02-2007 under Section 173(2) Cr.P.C. for closure of the case in the Court of the Learned Special Judge, East Sikkim, Gangtok, on 08-03-2007. Subsequently, the Hon'ble Supreme Court disposed of Civil Appeal No.684 of 2008 arising out of the S.L.P. (Civil) No. 2301 of 2007 by order dated 25.01.2008 remitting the case to this Court for disposal in accordance with law, *inter alia*, observing that it had not expressed any opinion on the criminal proceedings which had been initiated. In pursuance of this, the CBI filed a petition on 08-10-2009 in the Court of the Learned Special Judge, East Sikkim, seeking leave not to press the closure report dated 27-02-2007 submitted earlier and to permit to them to continue with the investigation of the case. The prayer having been allowed by the order dated 09-10-2009 of the Learned



Special Judge, East Sikkim, the CBI then continued with further investigation of the case.

(iii) It is submitted that once a closure report is submitted under Section 173(2) Cr.P.C., it was not permissible for the CBI to have withdrawn it. Secondly, it was urged that the only charge against the Petitioner being that he had issued a fake Birth Registration Certificate in favour of Mukesh Kumar Balmiki, accused no.4, it could only attract Section 197 IPC from which he had been discharged earlier in G.R. Case No.143 of 2007 by order dated 19-06-2008 of the Learned Chief Judicial Magistrate, East and North, Gangtok.

(iv) Referring to the said order, it was pointed out that the Learned Chief Judicial Magistrate had in most unambiguous terms observed that the charge against the Petitioner was groundless and the facts did not constitute an offence under Section 197 IPC as there was no *prima facie* materials in the case records to show that a false certificate was issued or signed by him. It is stated that while arriving at this finding, it was noted by the Learned Chief Judicial Magistrate that

during the investigation, the Petitioner had not denied his signature on the Birth Registration Certificate issued to the accused no.4, Mukesh Kumar Balmiki, and had identified it as his own. It was thus the submission of Mr. Upadhyaya that in view of the clear and categorical finding of the Learned Chief Judicial Magistrate in G.R.Case No.143 of 2007, no charge under Sections 197, 193 (Part-II) and 120B IPC and, under Section 13(1)(d)(iii) read with Section 13(2) of the P. C. Act, could have been framed in the present case.

(v) As per the Learned Senior Counsel even in the charge-sheet the only allegation against the Petitioner is that he had issued a fake Birth Registration Certificate in favour of Mukesh Kumar Balmiki, accused no.4 and nothing else. Apart from this, the State of Sikkim had also not preferred an Appeal against the order dated 19-06-2008 of the Learned Chief Judicial Magistrate, East and North, Gangtok, in G.R. Case No.143 of 2007. In view of this, no case ought to have been registered against the Petitioner, let alone framing charge against him for the aforesaid offences.

(vi) It is then contended that the investigation by the CBI which culminated in the charge-sheet in the present case, was not permissible in view of order of the Supreme Court dated 31-01-2007 in CC No. 118/2007 in S.L.P. No.2301 of 2007 read with its final order dated 25-01-2008 in Civil Appeal No.684 of 2008 arising out of S.L.P. No.2301 of 2007. It is submitted that in the order dated 31-01-2007 which was interim in nature, it had been directed that in the notice that was directed to be issued, it shall be indicated that the matter may be remitted to the High Court for a fresh disposal after grant of opportunity to the opposite parties in the Writ Petition before the High Court to file their responses and that the CBI enquiry shall not be continued. He then drew the attention of this Court to the order dated 25-01-2008 filed as Annexure I finally disposing of Civil Appeal No.684 of 2008 and submitted that the Supreme Court had set aside the order of the High Court and remitted the matter to the High Court for a fresh disposal in accordance with law. He would submit that when the entire impugned order of the High Court had been set aside by the Supreme Court in

terms of its earlier interim order dated 31-01-2007 directing discontinuation of the CBI enquiry, it would unmistakably follow that even the CBI enquiry which also emanated from the same order would also stand set aside.

**(vii)** Besides the above, as already observed, Mr. A. K. Upadhyaya also seriously contented that there was no material on record at all even to *prima facie* sustain any charge against the Petitioner for the offences alleged against him.

**(viii)** It was urged that even otherwise the Petitioner was protected under Section 28 of the Registration of Births and Deaths Act, 1969, the questioned Birth Registration Certificate having been issued in good faith and in *bona fide* exercise of his official duties.

**4(i).** Md. Ashraf Ali, Learned Advocate, appearing on behalf of the Respondent-CBI, submitted that the Learned Special Judge had directed framing of charges against the Petitioner as sufficient materials were found on the record.

(ii) He would submit that the offence for which he had been discharged earlier was under Section 197 IPC which is quite distinct from Sections 120B, 193 (Part-II) read with Section 197 of IPC and, Section 13(1)(d)(iii) read with Section 13(2) of the P. C. Act for which the Petitioner has been charged in the present case. That there was no embargo under the law to prohibit the CBI from conducting the investigation against the Petitioner and submit charge-sheet when materials have been found to clearly make out those offences.

(iii) Rebutting the impermissibility of the CBI to withdraw the closure report, it was contended that the closure report had been submitted in view of the order of the Hon'ble Supreme Court dated 31-01-2007 directing discontinuation of the CBI enquiry but, when in the final order dated 25-01-2008 it had been observed that it had not expressed any opinion about the criminal proceedings which had been initiated, the prayer for withdrawal of the closure report had been submitted before the Learned Special Judge, and it was only after the prayer was allowed that the investigation

was again taken up. On the submission that the final order of the Supreme Court dated 25-01-2008 which set aside the impugned order of the High Court, also by implication obliterated the CBI enquiry, Md. Ashraf Ali referred to the last part of the impugned order and submitted that the observation contained therein made it clear that the Hon'ble Supreme Court had not expressed any opinion about the criminal proceedings thereby permitting the CBI enquiry to continue.

5. I have given my thoughtful and anxious consideration to the rival contentions of the parties, the evidence and the materials on record. The Petitioner has primarily raised the following contentions in seeking to assail the impugned order: -


(a) That he had signed on the Birth Registration Certificate of the accused no.4, Mukesh Kumar Balmiki, in *bona fide* performance of his official duty as the Registrar of the Births and Deaths Cell and that he did not know who the accused no.4 was. The duly filled in Birth Registration Certificate form placed before him by the concerned staff, namely, Sher Bahadur Karki, was

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signed by him in his dental clinic at the STNM Hospital in the midst of his duty as Dental Surgeon attending to his patients, in good faith believing the entries to be genuine and correct. That this fact has also been corroborated by said Sher Bahadur Karki, the sole witness who testified before the Police in connection with the certificate.

**(b)** The charge could not have been framed for want of sanction of prosecution against him under Section 197 Cr.P.C. as the Petitioner was a serving public servant under the Government of Sikkim at the material time. No material has been produced for establishing charge of misconduct.

**(c)** The CBI could not have proceeded to investigate in the matter as the Supreme Court by its final order dated 25-01-2008 in Civil Appeal No.684 of 2008 arising out of S.L.P.(C) No.2301 of 2007, set aside the order of the Division Bench of this Court dated 09-06-2006 in CMA 72 of 2006, *inter alia*, directing the CBI to enquiry. That since the final order dated 25-01-2008 was passed in terms of the interim



order dated 31-01-2007 in CC No.118 of 2007 arising out of the SLP, by implication, therefore, the interim order directing discontinuation of the CBI stood confirmed rendering the investigation against the Petitioner a nugatory and *non est* as the CBI was left bereft of the necessary jurisdiction.

**(d)** That as the Petitioner had been discharged in an earlier criminal case initiated at the behest of the State Police being G. R. Case No.143/07, by the Court of the Learned Chief Judicial Magistrate, from a charge under Section 197 IPC on the very transaction involved in the present case, it was not permissible to charge him again under the same provision.

**(e)** That once the CBI had filed a final report for closure of the case by their application dated 27-02-2007 under Section 173(2) Cr.P.C., it was not permissible for them to have sought for withdrawal of the closure report as they had done on 08-03-2007 before the Learned Special Judge, East Sikkim at Gangtok. Moreover, considering that the only allegation against the Petitioner was that he had issued





a fake Birth Registration Certificate, no other offence other than Section 197 IPC could have been attracted.

**6(i).** In order to deal with the above questions, it would be necessary to examine the charge framed against the Petitioner. The charge as framed by the Learned Special Judge, P. C. Act, 1988, is reproduced below: -

" .....

**Firstly** – That you sometime between the period 2005 to 2006 being the Registrar, Birth and Deaths, Government of Sikkim, being required by law to issue a Birth Certificate, issued and signed a Birth Certificate to A-4, which is by law admissible in evidence of the fact that A-4, which is by law admissible in evidence of the fact that A-4 was born in Sikkim, knowing that such Certificate is false and thereby committed an offence under Section 197 of the IPC, 1860 punishable under Section 193 Part 2 of the IPC, 1860 and within my cognizance.

**Secondly** – That you, in the same period as mentioned above, while holding Office as a public servant obtained for A-4 the false Birth Certificate without any public interest and thereby committed an offence under Section 13 (1) (d) (iii) punishable under Section 13 (2) of the Prevention of Corruption Act, 1988 and within my cognizance.

**Thirdly** – That you in the same period as mentioned above, you agreed with A-4 to do an illegal act i.e. to obtain the false Birth Certificate for A-4 and to furnish it along with his Application Form to A-1, before the Regional Research Institute (Ayurveda) for the purpose of obtaining a Government Employment and thereby committed an

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offence punishable under Section 120 B of the IPC, 1860 and within my cognizance.

I hereby direct that you be tried on the said charges.

....."

**(ii)** As would appear from the above, the charge against the Petitioner is under Sections 197/193 Part II/120B IPC read with Section 13(1)(d)(iii) and Section 13(2) of the P.C. Act, 1988. The foundation for charge of Section 13(1)(d)(iii) P.C. Act, 1988, would naturally, therefore, be the offence under Section 197 IPC which is punishable under Section 193 Part II IPC. The essential requirement for an offence to be punishable under Section 193 Part II IPC is "intentionally giving or fabricating" false evidence and for the offence under Section 197 IPC "knowing or believing" that the certificate is false.

**(iii)** The case of the Petitioner, as already noted, is that he had no occasion to verify the contents of the duly filled in application form for Birth Registration Certificate which is said to be a fake one and that it was signed by him on being placed by the staff of the



Birth and Deaths Cell of the Bureau of Economics and Statistics, Government of Sikkim.

(iv) On a perusal of the charge-sheet, the material portion as regards the accused no.4, Mukesh Kumar Balmiki and the Petitioner, reads as under: -

“ .....

That during investigation, it was revealed that the birth registration certificate of Mukesh Kumara **(A-4)**, which he enclosed with this application, was a fake one. He enclosed the fake birth registration certificate with his application in order to get undue and false benefit to show him as a local candidate by birth.

Investigation revealed that as per the issue the birth registration certificate in question was got made in 1991 when Mukesh Kumara **(A-4)** was at the age of 12 years. Hence question may arise how a boy of 12 years of age could do the forgery in question. In this regard, investigation has clearly established that the forged birth registration certificate was utilised in this case by Mukesh Kumar **(A-4)** when he was 26 years old to get undue benefit of showing himself as local candidate when the appointment was basically for the local candidate only.

.....

That investigation established that Shri Mukesh Kumar (A-4), in order to cause illegal and undue benefit, submitted a copy of forged Birth Registration certificate of Births & Deaths Registration office, Gangtok with knowledge that the said certificate was false and forged one. He received assurance from Dr. Pratap Kakhija **(A-1)** about his selection so he started learning typing less than one month from the



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date of advertisement and enclosed a provision typing certificate only to show his eligibility.

.....

That investigation has also clearly established that Dr. Khagendra Neopani **(A-6)** had issued a fake Birth Registration certificate in favour of Mukesh Kumar **(A-4)** and the same certificate was fraudulently used by the accused Mukesh Kumar to prove himself as a local by birth.

....."

There is nothing else in the charge-sheet other than what have been extracted above that deal with the allegations against the Petitioner.

**(v)** The questions that arises for consideration is as to whether from the materials on record, it can be said that there is no evidence at all to *prima facie* attract the offence for which the Petitioner has been charged with and as to whether this Court has the necessary powers to quash the impugned order directing framing of charge in exercise of its power under Section 482 Cr.P.C. which has also been invoked in the petition.

**(vi)** Before embarking upon determining the questions, it would be appropriate to analyse the scope



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and ambit of the inherent powers of the High Court under Section 482 Cr.P.C.

(vii) In ***Sushil Suri*** vs. ***Central Bureau of Investigation and Another*** : (2011) 5 SCC 708, it has been held as under: -

**"16.** Section 482 CrPC itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under CrPC; (ii) to prevent an abuse of the process of Court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 CrPC. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but, the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the complaint or charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged."

(viii) In the above case, the case of ***R. P. Kapur*** vs. ***State of Punjab*** : AIR 1960 SC 866 was noticed with regard to the category of cases where the inherent

powers under Section 482 Cr.P.C. could be exercised by the High Court to quash criminal proceedings against the accused by summarising paragraph (6) in ***R. P. Kapur's case (supra)*** which reads as follows: -

“(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

In paragraph (6) of ***R. P. Kapur (supra)*** while dealing with the category (iii), it has been further held as follows: -

“(6) ..... In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S.561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. ....”

**(ix)** We may also refer to the decision of ***Fakhruddin Ahmad vs. State of Uttaranchal and Another*** :



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*2008 CRI.L.J. (SC)* by which the imperative duty of a Magistrate before taking cognizance of an offence has been laid down. We may reproduce the relevant portion below: -

**"15.** Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender."

(x) Apart from the above, there is the landmark decision in *State of Haryana vs. Bhajan Lal : 1992 Supp (1) SCC 335*, in which after considering most of the early decisions of the Apex court on the question, the following has been laid down:

**"102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way

of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent





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person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

**(xi)** We may now examine the question as to whether this Court, in the facts of the present case, can exercise its power under Section 482 Cr.P.C. in quashing the charge framed against the Petitioner. In order to do so, it would be essential to consider the allegations made in the complaint or in the charge-sheet and as to whether considering at their face value and accepted in their entirety do not constitute the offence alleged. It also would be necessary to see as to whether the evidence adduced clearly or manifestly



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fails to prove the charge and as to whether the Learned Special Judge while framing the charge, *inter alia*, had taken note of the charge-sheet and the materials filed therewith.

**(xii)** As adumbrated, the essential ingredient for commission of offence under Section 197 IPC is the “knowing or believing” that the certificate was false and for Section 193 Part II, it is “intentionally gives or fabricated false evidence”. In other words, the false evidence ought to be intentionally given or ought to be fabricated and that while issuing the certificate the Petitioner ought to have known or believed it to be false.

**(xiii)** From the extract of the relevant portion of the charge-sheet, the only allegation against the Petitioner is that he had issued a fake Birth Registration Certificate in favour of the accused no.4, Mukesh Kumar Balmiki, which was fraudulently used by the latter. The evidence on this allegation is only that of one Sher Bahadur Karki whose name appears at serial number 37 of the list of witnesses, Annexure I to the



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charge-sheet. The statement of this witness recorded under Section 161 Cr.P.C. reads as under: -

" .....

On being asked, I am to state that I joined Bureau of Economics & Statistics, Govt. of Sikkim on 10.3.1975 as Peon and still working as Peon. Name of our office has been changed from Bureau of Economics & Statistics to Directorate of Economics & Statistics Monitoring. I remained attached with Administration section of the department. My duty is to distribute letters, issued from our section / department to various other departments. I also performed duty in the Registration Cell from 1989 to 1995. In registration cell, in addition to my normal duty, I used to take duly filled up births and death registration certificates, received from the Registration clerk, to the Govt. Hospital to obtain signature of Dr. Neupaney, the then Registrar of Births & Deaths Registration office, in the certificates. Dr. Neupaney used to sit there. After signature in the certificates, I handed over it to the registration clerk.

On being asked I am to state that as many as 10-12 Master roll staff were engaged to write the registration certificates. I do not remember their names. Shri Latuk Tamang was the registration clerk and Shri N. S. Allay, Deputy Director was the officer, supervising the job of Registration cell. Shri Latuk Tamang himself used to issue the registration certificates to the parties concerned.

On being shown a Birth registration certificate No. 5255 dated 10.6.2011 of our office, I am to state that this certificate contains signature of Dr. Neupaney and initial (signature) of Latuk Tamang. I am well familiar with their signature so I identify their signature in this certificate. However, I could not identify the hand writing in this certificate. Issuance of certificates was solely handled by Latuk Tamang. My duty was only to obtain signature of issuing authority i.e Dr. Neupaney in the certificate and after signature handed

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over it to Latuk Tamang only. He never engaged me or any other staff to issue the registration certificate. Latuk Tamang had already retired from service. I do not know his house but know that he is staying at Lower Syari, Gangtok.

.....” [underlining mine]

(xiv) As would appear from the above, the witness was a Peon in the Bureau of Economics and Statistics, Government of Sikkim, attached to its Administrative Section. At the material time, he was attached to the Registration Cell of the Bureau from 1989-95 and his duty involved taking duly filled up Births and Deaths Registration Certificates to the Government Hospital to obtain the signature of Dr. Neupaney, the then Registrar of Birth & Deaths Registration Office, in the certificates who used to sit there and after obtaining signature on the Certificates, he would hand it over to the Registration clerk. That one “Shri Latuk Tamang himself used to issue the registration certificates” which used to be solely handled by him. His duty was only to obtain signature of the issuing authority, i.e., Dr. Neupaney, in the certificates and handed it over to Latuk Tamang after it was signed. The said Latuk

Tamang curiously has neither been examined nor the aspect of his involvement investigated.

(xv) It is pertinent to note that the materials which are under consideration form part of the charge-sheet on the basis of which the impugned order directing framing of charge was passed. On the face of these, it is quite manifest that the Petitioner only used to sign on the filled in application forms of Registration of Births and Deaths placed before him and the entire work was to be done by the personnel in the Births and Deaths Cell of the Office of the Bureau of Economics and Statistics, Government of Sikkim and, that the duly filled in application forms used to be brought to him for his signature in the Hospital.

7. Under these circumstances and a reading of the charge-sheet extracted above, the evidence collected in support of the charge do not at all appear to disclose commission of any offence against the Petitioner as the circumstances indicated by the only witness would negate the essential ingredients underlying Part II of Section 193 and Section 197 IPC

alluded to above. As held in *R. P. Kapur (supra)* the evidence is manifestly and clearly inconsistent with the accusation made against the Petitioner.

**8(i).** There is also another aspect of the matter which requires to be dealt with as it assumes significance in the disposal of the case, an aspect which is said to have been placed also before the Learned Special Judge at the hearing.

**(ii)** In G. R. Case No.143/07 instituted at the behest of the State Police against the present Petitioner, the accused no.4 and another, which arose out of the same transaction involved in the present case, i.e., the selection process conducted by the Regional Research Institute (Ayurveda), Tadong, Gangtok, Sikkim, the same charge under Section 197 IPC had been held against the Petitioner. The Learned Chief Judicial Magistrate upon hearing by order dated 19-06-2008 had discharged the Petitioner finding the charge against him groundless and the facts stated in the charge-sheet did not constitute an offence under Section 197 IPC as there was no *prima facie* materials

in the case record to show that a false Birth Registration Certificate was issued and signed by the Petitioner. While passing the said order it was noted by the Learned Chief Judicial Magistrate that the Petitioner identified his signature on the questioned Birth Registration Certificate pertaining to the accused Mukesh Kumar Balmiki, i.e., the accused no.4, and did not deny it as being his own, thereby holding that the signature was genuinely that of the Petitioner.

*(iii)* Although the impugned order would not attract the provisions of Section 300 Cr.P.C. by virtue of the Explanation thereto which stipulates that discharge of the accused would not amount to an acquittal for the purpose of the Section, it would certainly be a relevant consideration as to whether the subsequent charge on the same offence considered with the other aspects would lie or not. That apart, Clause (2) of Article 20 of the Constitution of India which mandates that "no person shall be prosecuted and punished for the same offence more than once" also cannot be lost sight of. This being a plenary

provision also would be relevant consideration under the present facts and circumstances.

(iv) Besides this, having regard to the evidence of the sole witness, namely, Sher Bahadur Karki, that the only role of the Petitioner in the transaction was appending his signature on the filled in application form sent from the Births and Deaths Cell in the Bureau of Economic and Statistics, Government of Sikkim, in *bona fide* discharge of his official duties believing the entries to be correct, the Petitioner would then also be protected under Section 28 of the Registration of Births and Deaths Act, 1969, which reads as under: -

**"28. Protection of action taken in good faith.—**(1) No suit, prosecution or other legal proceeding shall lie against the Government, the Registrar-General, any Registrar, or any person exercising any power or performing any duty under the Act for anything which is in good faith done or intended to be done in pursuance of the Act or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder."

9. For the aforesaid reasons, in my view, it would be a travesty of justice to relegate the Petitioner





to face the ordeal of a trial in which the prosecution quite obviously is likely to fail.

**10.** Having held so, it would be of no consequence but, rather redundant to deal with the other questions raised on behalf of the Petitioner as set out earlier.

**11.** In the result, the Crl.Rev.P. succeeds.

**12.** The charge framed against the Petitioner stands hereby quashed and the Petitioner stands acquitted.

**13.** Let a copy of this order along with the original records of the case be transmitted to the Court of the Learned Special Judge, Prevention of Corruption Act, East and North Sikkim at Gangtok, forthwith for its due compliance.

Sd/-  
( **S. P. Wangdi** )  
**Judge**  
15-04-2015