Before Mehinder Singh Sullar, J.

M/S ANSAL PROPERTIES & INFRASTRUCTURE LTD. AND OTHERS—*Petitioners*

versus

HARYANA STATE POLLUTION CONTROL BOARD—*Respondent*

Crl.M. No. M-51514 of 2007

3rd May, 2012

Constitution of India, 1950 - Art.48-A, 51-A - Water (Prevention and Control of Pollution) Act, 1974 - Air (Prevention and Control of Pollution) Act, 1986 - S.2(a)(b), 3, 3(2)(1)Clause(v), 15, 16, 17, 19, - Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 - Haryana Development and Regulation of Urban Areas Act, 1975 - Code of Criminal Procedure 1973 - S. 2(n), 202 to 204, 482 - Indian Penal Code, 1860 - 33, 35 to 38 & 40 - Central Govt. issued notification dated 7.5.1992 and imposed a prohibition on a number of activities - Ministry of Environment, Govt. of India issued another notification on 29.11.1999 and delegated powers to State Govt. to accord environmental clearance - Inspection was carried out by a committee in pursuance of Aravalli Notification - Pollution Control Board filed complaint U/s 15 read with S.19 of the Environment Protection Act, 1986 - It was alleged that petitioners had destroyed 'Gair Mumkin Pahad' and converted it into farm houses - Summoning order was passed by Special Environment Court - The petitioner challenged it by way of present quashing petition - Dismissed holding that questions relating to appreciation of evidence can be decided only during the course of trial after receiving the respective evidence of parties.

Held, that what cannot possibly be disputed here is that realizing the importance of the prevention and control of pollution for human existence and considering the importance of protection and improvement of environment, Article 48-A was introduced in the Constitution of India, which envisages

that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Likewise, Article 51-A (g) further mandates that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

(Para 18)

Further held, that a conjoint and meaningful reading of the indicated provisions of the Act of 1986 and relevant rules would reveal that whoever fails to comply with or contravenes any of the provisions of this Act or the rules made or orders or directions issued there under, shall be liable for punishment under this section. Supplementing the provisions of the Act of 1986 as per the notification dated 7.5.1992 (Annexure P5), if any person is carrying on the processes and operations in any manner, without the prior permission of the Pollution Board in the manner depicted therein and in all reserved forests, protected forests or any other area shown as forest in the land records maintained by the State Government as on the date of this notification in relation to Gurgaon District of State of Haryana and Alwar District of State of Rajasthan and all areas shown as Gairmumkin Pahad, Gairmumkin Behend, Banjad Beed or Rundh, then he is liable to be punished under the provisions of this Act and the Notification (Annexure P5).

(Para 27)

Further held, that as to whether the Pollution Board has filed the false complaints against the petitioners-accused, whether the developers have demolished the Gairmumkin Mountain (Pahad) and converted it into Gairmumkin Farm houses after the publication of Notification (Annexure P5), whether the authorities under the Acts of 1963 and 1975, Forest Act or the Additional Director (Environment) have actually granted the clarifications under some authority or otherwise, what would be the effects of such clearance under the other Acts on the commission of offence under the Act of 1986, whether the impugned area falls within the radius of 10 kilometers, all other conditions of Notification (Annexure P5) have been violated or not and all other arguments, relatable to the appreciation of evidence (now sought to be urged on their behalf), would be the moot points

to be decided during the course of trial by the trial Court, after receiving the respective evidence of the parties. In case, the admissibility, validity & genuineness or otherwise of these documents and other relatable facts, which require determination by the trial Court, are to be decided by this Court in the garb of petitions under section 482 Cr.PC, then the sanctity of the trial would pale into insignificance and amount to nullify the statutory procedure of trial as contemplated under the Code of Criminal Procedure, which is not legally permissible.

(Para 40)

Further held, that faced with this grave situation, the learned counsel for petitioners accused (subsequent vendees) (in cases mentioned in Schedule B) then raised another cosmetic submission that in case, it is proved that the developers have violated the provisions and committed the indicated offences, even then, the subsequent vendees/transferees cannot be prosecuted in that regard, as they are bona fide purchasers. At the very outset and first instance, the argument appeared somewhat attractive, but when it was legally and deeply analyzed, then, I cannot help observing that the same sans merit as well.

(Para 42)

Further held, that being the statutory/legal position, the bare reading of these provisions would go to show that where the element of a particular knowledge or a particular intention enters in the composition of a crime, all the co-accused are liable for the same offence. It provides that where several persons are concerned in committing an act, which is criminal only by reason of its being done with a criminal knowledge and whosoever assists in the commission of such offence, each of such persons, who joins in the act with such knowledge is liable for the act in the same manner as if the act were done by him alone with that knowledge. In that eventuality, the criminal law only concerns to the result of the commission of offence and not to the means by which it has been achieved and whosoever cooperates in the cumulative result of the commission of such offence is equally liable in this relevant behalf.

(Para 44)

Further held, that not only that, Sections 202 to 204 Cr.P.C posit that at the stage of summoning, all that Magistrate has to see is whether or not there is "sufficient ground for proceeding" against the accused. The Magistrate is not to weigh the evidence so meticulously as he is required to do during the course of trial of main case. The standard to be adopted by the Magistrate in scrutinizing the evidence is not the same as the one which is to be kept in view at the stage of framing charges. This matter is no more res integra and is now well settled.

(Para 47)

R.S.Rai, Senior Advocate with Gautam Dutt, Advocate. A.S.Chadha, Advocate, Akshay Bhan, Advocate, Sanjeev Manrai, Advocate, Jaishree Thakur, Advocate, C.S.Rana, Advocate, Sumeet Goel, Advocate, Sanjeev Sharma, Advocate, Jaivir Yadav, Advocate, Ravinder Kumar Rana, Advocate, S.K.Garg Narwana, Advocate, Suneesh Bindlesh, Advocate, Vikram Choudhary, Advocate, Sandeep Kumar Sharma, Advocate, Pankaj Katia, Advocate, Ajay Nara, Advocate, Anil Malik, Advocate, Rajiv Kataria, Advocate, S.K.Panwar, Advocate, Deepak Balyan, Advocate, Neelesh Bhardwaj, Advocate, Kapil Sharma, Advocate, Sanjay Vij, Advocate & Sanjeev Pabbi, Advocate *for the petitioners.*

H.S.Hooda, Advocate General, Haryana with Arun Walia, Advocate *for the respondent.*

MOHINDER SINGH SULLAR, J.

(1) As identical questions of law and facts are involved, therefore, I propose to decide all the cases of petitioners-accused (developers), depicted in **Schedule A** and those of subsequent vendees/transferees, mentioned in **Schedule B** (attached herewith), by virtue of this common judgment, in order to avoid the repetition. However, the relevant facts and material, which need a necessary mention for the limited purpose of deciding the core controversy, involved in the instant petitions, extracted from main petitions (1) **CRM No. M-51514 of 2007** titled as **"M/s Ansal Properties and Infrastructure Ltd. & Ors. Vs. Haryana State Pollution Control Board"** of **Schedule 'A'** and (2) **CRM No. M-880 of 2010** titled as **"Arvinder S.Brara Vs. Haryana State Pollution Control Board"** of

Schedule 'B', would be referred in subsequent part of this judgment for ready reference in this context.

(2) Exhibiting the deep concern of degradation of environmental indiscipline, adversely affecting the humanity at large, the United Nations Organization (U.N.O.) convened an International Conference on human environment w.e.f. 5th to 16th of June, 1972 at Stockholm, in which, the Indian delegation led by the Prime Minister of India participated as well. Inter-alia, the gist of the proclamation/resolution adopted in the Conference, in substance, is as under:-

> *"1. Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power, to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man made, are essential to his well being and to the enjoyment of basic human rights – Even the right to life itself.*
>
> *2. The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world, it is the urgent desire of the peoples of the whole world and the duty of all Governments.*
>
> *3. Man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In our time man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of man-made harm in many regions of the earth; dangerous levels of pollution in water, air, earth and living beings; major and undesirable*

disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies harmful to the physical, mental and social health of man, in the man-made environment; particularly in the living and working environment.

A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. Conversely, through fuller, knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes. There are broad vistas for the enhancement of environmental quality and the creation of a good life. What is needed is an enthusiastic but calm state of mind and intence but orderly work. For the purpose of attaining freedom in the world of nature man must use knowledge to build in collaboration with nature a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind a goal to be pursued, together with, and in harmony with, the established and fundamental goals of peace and of world-wide economic and social development.

To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and National Governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions. International cooperation is also needed in order to raise resources to support the developing countries carrying out their responsibilities in this field. A growing class of environmental problems, because they are regional or global in extent or because they

affect the common international realm, will require extensive cooperation among nations and action by international organizations in the common interest. The Conference calls upon the Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity."

(3) Sequelly, the assignment of 22nd April of every year as **live clean** and **live green Earth's (Mother's) Day** by the UNO, is another step in this direction. In order to fulfill the International commitment, the Parliament has amended and introduced the Articles 48-A & 51-A in the Constitution of India. Likewise, it enacted The Water (Prevention and Control of Pollution) Act, 1974 (for brevity "the Act of 1974"); The Air (Prevention and Control of Pollution) Act, 1981 (for short "the Act of 1981"), The Environment (Protection) Act, 1986 and framed the rules thereunder (hereinafter to be referred as "the Act of 1986 & the relevant rules").

(4) The matrix of the facts, culminating in the commencement, relevant for disposal of the present petitions and emanating from the record, is that the complainant-Haryana State Pollution Control Board respondent (in short "the complainant-Pollution Board") claimed in the complaint (Annexure P20) that the Central Government has issued the Notification dated 7.5.1992 (Annexure P5) and imposed a prohibition/ban qua the activities/operations/processes as indicated therein. Subsequently, the Ministry of Environment, Government of India issued yet another Notification dated 29.11.1999 (Annexure P11), by means of which, the powers to accord environmental clearance was delegated to the State Government. The issuance of Aravali notification, all kind of directions, bans, restrictions and prohibitions were duly published for the knowledge of general public, so that, no one could involve in any prohibited activities, which may entail punitive action under the said notifications. In view of Aravali Notification, an inspection committee was constituted and as per the inspection conducted by the committee, it revealed that M/s Ansal Properties and Infrastructure Limited, its sister concern and officers (developers) (petitioners-accused in Schedule A) have developed a complete Township in the name & style of 'Aravali Retreat' with a total area, approximately of 1200 acres of land after demolishing the Gairmumkin Mountain (Pahad), situated within the revenue

estate of village Raisina, District Gurgaon. They have totally changed the nature of Gairmumkin Mountain (Pahad), carved out individual farm houses in complete violation of the provisions of the Act of 1986 and sold the same to the subsequent vendees-accused-petitioners, in cases mentioned in Schedule B. All that was claimed to have been done by the petitioners-accused after the commencement of the Notification dated 7.5.1992 (Annexure P5). Consequently, show cause notices dated 15.3.2006 (Annexure P15) & 15.6.2007 (Annexure P18) were issued, to which, they filed the replies dated 28.3.2006 (Annexure P16) & 7.7.2007 (Annexure P19), taking the false plea of construction of Farm houses before the commencement of notification (Annexure P5).

(5) Levelling a variety of allegations and narrating the sequence of events in detail, in all, according to the Pollution Board that the land in question was described as Gairmumkin Mountain (Pahad) in the revenue record. The provisions of The Punjab Land Preservation Act (in short "the PLPA Act"), 1900 were applicable on reserved forest of land in dispute. The petitioners-accused (in cases mentioned in Schedule A) have totally destroyed the Gairmumkin Mountain (Pahad) and converted it into Farm houses in complete violation of the Aravali Notification and illegally allotted to the petitioners-accused (in cases indicated in Schedule B). Thus, they have degraded the Aravali Hills, damaged their fragile ecology, after the commencement of notification (Annexure P5), did not comply, violated the mandatory provisions of the Act of 1986, Aravali Notification and rendered themselves liable to be prosecuted in this relevant direction. In the background of these allegations, the complainant-Pollution Board filed the complaint (Annexure P20) against all the petitioners-accused for the commission of offence punishable under section 15 read with Section 19 of the Act of 1986 in the manner depicted hereinabove.

(6) Taking cognizance of the complaint and considering the preliminary evidence, the Presiding Officer, Special Environment//Trial Court summoned the petitioners-accused to face the trial for the commission of the offences in question, by virtue of impugned summoning order dated 14.8.2007 (Annexure P22).

(7) Instead of submitting to the jurisdiction of Special/Trial Court, the petitioners-accused, in all the cases, straightway jumped to file their respective petitions to quash the impugned complaints, summoning orders

and all other subsequent proceedings arising therefrom, invoking the provisions of section 482 Cr.PC, leaving this Court in deep lurch to collect the grain from the bundles of chaff and to think twice, as to what extent, the finding should be recorded with regard to the controversy raised in the instant petitions, as the same would naturally have the direct bearing on the real issues between the parties, to be determined by the trial Court, during the course of trial. Be that as it may, but in the interest of justice, the principle of **"safety saves"** has to be kept in focus, while deciding these petitions. That is how I am seized of the matter.

(8) The case set up by the petitioners-accused, in brief in so far as relevant, was that the PLPA Act is applicable to the State of Haryana, including the land in litigation. The petitioners M/s Ansal Properties and Infrastructure Ltd. & others developed the area, measuring about 1200 acres in an around 1988-89, made un-cultivable land (Banjar Qadeem) into cultivable land of village Raisina, District Gurgaon, after obtaining the sanction under the provisions of The Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (hereinafter to be referred as "the Act of 1963") and the Haryana Development and Regulation of Urban Areas Act, 1975 (for brevity "the Act of 1975"), vide letter dated 29.1.1990 (Annexure P2) and have sold the Farm houses, by way of agreement/allotment document, sample of which is annexed as Annexure 1/B. The lists and status of development works were stated to have been sent to the Director, Town and Country Planning, Haryana by the developers, by means of letters dated 14.5.1991 (Annexure P4), 29.6.1993 (Annexure P9) and (Annexures P19/A to P19/C). It was alleged that the land in question was depicted as Gairmumkin Farm houses in the revenue record (Jamabandi/Khasra Girdawari (Annexure P6/T colly) & Aksh-Sizra (Annexure P21). As such, the provisions of notification (Annexure P5) are not applicable. The Director, Town & Country Planning informed the petitioners-accused to take permission from the department, through the medium of letter dated 15.4.1998 (Annexure P10), as per the terms & conditions of the sample agreement dated 18.5.2000 (Annexure P12). The State Government did not constitute a legal/valid committee under the provisions of the Act of 1986. It was alleged that the Regional Officer of the Pollution Board issued show cause notices (Annexures P15 & P18) to the Company, to which, it filed the replies (Annexures P16 & P19), alleging that it had consciously developed the area without applying for and obtaining the prior required sanction and environment clearance.

(9) The case of the petitioners-accused further proceeds that the Ministry of Environment and Forests, Government of India informed the plot owners that in case the plot is a farm house, then the notification (Annexure P5) was not applicable, by virtue of letter dated 1.11.2006 (Annexure P17). The petitionersaccused further set up the plea in the **rejoinder** that as per the Notification dated 10.11.1980 (Annexure P24), site plan (Annexure P25), report dated 29.12.2006 (Annexure P27) of District Revenue Officer, Memo No.756 dated 2.4.2010 (Annexure P28) of Tehsildar, letter dated 29.1.2009 (Annexure P29) of Pollution Board and report dated 4.1.2011 (Annexure P30) of Commissioner, Gurgaon Division, Gurgaon, the Developers have already carved out the Farm houses, after obtaining the requisite permission from the other competent authorities. In this manner, they claimed that they have already completed the development work after obtaining the sanction under the Acts of 1963 and 1975 and since the land in dispute has been described as Gairmumkin Farm houses in the revenue record, so, the provisions of notification (Annexure P5) were not applicable to their case. The Pollution Board was stated to have filed the false complaints against them as they have not committed any offence whatsoever. On the strength of aforesaid grounds, all the petitioners-accused sought to quash the impugned complaints, summoning orders and all other consequent proceedings arising thereto, in the manner indicated hereinbefore.

(10) The complainant-Pollution Board refuted the prayer of the petitioners-accused and filed the reply, by way of affidavit of Dr.C.V.Singh, Scientist, its Regional Officer, inter-alia pleading certain preliminary objections of maintainability of the petition, cause of action, locus standi & non-joinder of Central/State Governments and department of Forest and Dakshin Haryana Bijli Vitran Nigam Limited etc. as necessary parties. It has relied upon the judgment (Annexure R1) of Hon'ble Supreme Court in case M.C.Mehta v. Union of India & Ors. **I.A.Nos.1901 & 1888 in Writ Petition (Civil) No.4677 of 1985.** All the relevant judgments of Hon'ble Apex Court were stated to have been sent to the concerned authorities for implementation, vide letter dated 23.5.2008 (Annexure R2). The sub-committee constituted under the Act of 1986 submitted the report (Annexure R3), demonstrating the violations of different provisions by thepetitioners-accused. As per the report dated 4.12.2006 (Annexure R4) of the Patwari and report dated 7.9.2005 (Annexure R5) of the Tehsildar, the land in litigation was recorded

as Gairmumkin Mountain (Pahad). According to the Pollution Board, as soon as, the Collector, Gurgaon received the information that the then Halqa Patwari, illegally changed the revenue record and entered in the Khasra Girdawari, the kind of land as Gairmumkin Farm houses, instead of factual position of Gairmumkin Mountain (Pahad), immediately, he (Collector) directed all the circle revenue officials to correct the entries in the Khasra-Girdwari of Arvali Mountain as Gairmukin Mountain (Pahad), by means of order dated 23.2.2006 (Annexure R6). Consequently, the records were accordingly corrected.

(11) According to the Pollution Board, all the petitioners-accused have changed the nature of the land after the commencement of the notification (Annexure P5), committed the indicated offences under sections 15 & 19 of the Act of 1986 and no ground for quashing the impugned complaints, summoning orders and all other subsequent proceedings arising therefrom is made out under section 482 Cr.PC. Instead of reproducing the entire contents of the reply and in order to avoid the repetition, suffice it to say that the complainant-Pollution Board has reiterated all the allegations contained in its complaint. However, it will not be out of place to mention here that it has stoutly denied all other allegations contained in the main petitions and prayed for their dismissal.

(12) Assailing the impugned complaints & summoning orders and taking the benefit of their usual ability, the learned counsel appearing for petitionersaccused (in cases mentioned in Schedule-A) have contended with some amount of vehemence that it stands proved on record that the petitioners-accused (developers) have already changed the nature of the disputed land from Gairmumkin Mountain (Pahad) to Gairmumkin Farm Houses, after obtaining the sanctions dated 29.1.1990 (Annexure P2), 5.4.1991 (Annexure P3), 29.6.1993 (Annexure P9), 15.4.1998 (Annexure P10) and 9.2.2001 (Annexure P12-A), in pursuance of applications dated 25.10.1989 (Annexure P1), 14.5.1991 (Annexure P4), 11.5.1993 (Annexure P7) & 7.6.1993 (Annexure P8) and it was so described in the revenue record (Jamabandi/Khasra Girdawari (Annexure P6/T colly) & Aksh-Sizra (Annexure P21), much prior to the commencement of the notification dated 7.5.1992 (Annexure P5). Therefore, the petitioners-accused have not committed any offence.

(13) Likewise, the learned counsel appearing on behalf of the remaining petitioners-accused subsequent vendees/transferees (depicted in Schedule B) have also adopted the same line of arguments as submitted on behalf of the developers. However, additionally, they have submitted that assuming for the sake of arguments, the developers have violated the provisions and committed the offences in question, even then, the subsequent vendees/transferees cannot be prosecuted as they are bona fide purchasers. Hence, they have sought the quashment of the impugned complaints & summoning orders in this relevant direction.

(14) Hailing the impugned complaints and summoning orders, on the contrary, the learned counsel appearing on behalf of complainant-Pollution Board have vehemently urged that all the petitioners-accused have raised disputed questions of facts and relied upon the copies of certain letters, purported to have been issued by the Tehsildar, Director, Town & Country Planning and other irrelevant authorities, which require a legal proof. So, the impugned complaints and summoning orders cannot be quashed on the basis of such unproved letters at this initial stage. Raising a variety of arguments, in all, the Pollution Board claimed that as all the petitioners-accused have committed the indicated offences, therefore, no ground for quashing the impugned complaints and summoning orders by this Court, in exercise of powers under section 482 Cr.PC is made out. Hence, they prayed for dismissal of the petitions.

(15) Having heard the learned counsel for the parties at quite some length, having gone through the relevant material on record and legal position with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant petitions in this context.

(16) At the very outset, it cannot possibly be denied here that the Hon'ble Apex Court has authoritatively held, in a celebrated judgment in case **State of Haryana and others *versus* Ch.Bhajan Lal and others (1),** which was again reiterated in case **Som Mittal *versus* Government of Karnataka (2)** that the criminal prosecution can only be quashed in rarest of rare case at the initial stage as per the following conditions:-

(i) 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.

(1) AIR 1992 Supreme Court 604
(2) 2008 (2) R.C.R.(Criminal) 92

(ii) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

(iii) 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.

(iv) 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 S.155(2) of the Code.

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

(vi) 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.

(vii) 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."

(17) Not only that, again the Hon'ble Supreme Court in case **Jeffery J.Diermeier & Anr. *versus* State of West Bengal & Anr. (3),**

(3) 2010 (3) RCR (Crl.) 183

having interpreted the scope of section 482 Cr.PC, has ruled (para 16) as under:-

> *"16. Before addressing the contentions advanced on behalf of the parties, it will be useful to notice the scope and ambit of inherent powers of the High Court under Section 482 of the Code. The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."*

(18) What cannot possibly be disputed here is that realizing the importance of the prevention and control of pollution for human existence and considering the importance of protection and improvement of environment, Article 48-A was introduced in the Constitution of India, which envisages that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Likewise, Article 51-A (g) further mandates that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

(19) Sequelly, the Parliament has passed the Acts of 1974, 1981 & 1986. The Act of 1986 was brought into force throughout the India w.e.f. 19.11.1986. Section 3 of this Act confers power on the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. 'Environment' includes water,

air and land and the interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. Section 3(2) (iv) authorizes the Central Government to lay down standards for emission or discharge of environmental pollutants from various sources whatsoever. Notwithstanding anything contained in any other law but subject to the provisions of the said Act, the Central Government may under Section 5, in the exercise of its powers and performance of its functions under that Act issue directions in writing to any person, officer or authority and such authority is bound to comply with such directions. The power to issue directions under the said section includes the power to direct the closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of the supply of electricity or water of any other service. Section 9 imposes a duty on every person to take steps to prevent or mitigate the environmental pollution. Section 15 contains provisions relating to penalties that may be imposed for the contravention of any of the provisions of the said Act or directions issued thereunder. The Central Government has framed the relevant rules as well in this regard.

(20) Not only that, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Act of 1986 read with rule 5 of the relevant rules, the Central Government has issued a notification dated 7.5.1992 (Annexure P5), prohibiting the carrying on the following processes and operations, except with its prior permission, in the areas specified in the Table appended in it:-

(i) Location of any new industry including expansion modernization;

(ii) (a) All new mining operations including renewals of mining leases,

(b) Existing mining leases in sanctuaries/national Parks and areas covered under Project Tiger and/or

(c) Mining is being done without permission of the competent authority.

(iii) Cutting of trees;

(iv) Construction of any cluster of dwelling units, farms houses, sheds, community centres, information centres and any other activity connected with such construction (including roads a part of any infrastructure relating thereto);

(v) Electrification (laying of new transmission lines).

(21) As per Table of the Notification (Annexure P5), carrying on the process and any kind of operations without permission is totally prohibited, interalia, in the following areas:-

(i) All reserved Forests, protected forest or any ***other area shown as forest in the land record maintained by the State Government as on the date of*** *this notification in relation of Gurgaon District of Haryana and Alwar District of State of Rajasthan,*

(ii) All areas shown as :

(a) ***Gair Mumkin Pahar,*** *or*

(b) Gair Mumkin Rada, or

(c) Gair Mumkin Behed, or

(d) Banjad beed, or

(e) Rundh

In the land records maintained by the State government as on date of this notification in relation to Gurgaon District of State of Haryana and the Alwar District of State of Rajasthan.

(iii) All the areas covered by Notification issued u/s 4 & 5 of the Punjab Land Preservation Act, 1919 as applicable to the State of Haryana in the District of Gurgaon up to the date of Notification.

(iv) All areas of Sariska National Park and Sariska Sanctuary notified under the Wildlife (Protection) Act, 1972 (53 of 1972).

Similarly, the other specified activities are also prohibited in the agricultural land in the following area :-

(a) (i) topography of the area indicating gradient, aspect & attitude.

(ii) Erodability classification of the proposed land.

*(b) Pollution sources existing within **10 km. Radius***

(c) Distance of the nearest National Pak/sanctuary/Biosphere Reserve/Monuments/heritage site/Reserve Forest;

(d) Rehabilitation plan for Quarries/borrow areas;

(e) Green belt plan.

(f) Compensatory afforestation plan.

(22) Such thus being the statutory legal position and material on record, now the short and significant questions, though important that, arise for determination in these cases are, as to whether all the petitioners-accused have committed the pointed offences and they are liable to be prosecuted, by means of impugned complaints or not ?

(23) Having regard to the rival contentions of the learned counsel for the parties, to me, the answer must obviously be in the affirmative in this connection.

(24) As is evident from the record, that the Pollution Board has prosecuted all the petitioners-accused for the commission of offence punishable under section 15 of the Act of 1986, which postulates that "**whoever fails to comply with or contravenes any of the provisions of this Act** or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the **failure or contravention continues,** with additional fine which may extend to five thousand rupees for every day during which such **failure or contravention continues** after the conviction for the first such **failure or contravention**. If the failure or contravention referred to in sub-section (1) continues beyond

a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years." Sections 16 and 17 deal with the offences committed by the companies and Government departments. Section 2(a) of the said Act defines that the 'environment' includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. Section 2(b) envisages that "environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment. Section 2(c) provides that "environmental pollution" means the presence in the environment of any environmental pollutant.

(25) Admittedly, the Hon'ble Apex Court in case M.C.Mehta v. Union of India & Ors. **2008(6) JT 542** (Annexure R1) has, inter-alia, ruled as under (para 12) :-

> *"In view of the notification under Section 4 when the clearing or breaking up of the land is not permitted that itself is a bar from fresh construction because a construction only can take place if clearing and breaking of an area/land taking place. This prohibition is clearly contained in the notification of 1992. The reliance placed by the applicants on clause (g) is clearly misconceived, inasmuch as the permissible activity allowed within clause (g) is in favour of inhabitants of town and villages within the limits or vicinity of any such area. The admitted case is that the applicants herein have developed plots in the area in question and have sold it to persons who are not inhabitants of towns and villages within such specified living area, but could be anybody from all over the country or outside and therefore clause (g) in Section 4 has no application. The factum of developing a plot and then construct therein would amount to clearing or breaking up of an area or land."*

(26) The definite and clear case of the Pollution Board is that the Conservator of Forests has apprised and directed all the Divisional Forest Officers of South Circle, Gurgaon by name to implement the directions contained in the aforesaid judgment of Hon'ble Supreme Court in letter and spirit, through the medium of letter dated 23.5.2008 (Annexure R2).

(27) A conjoint and meaningful reading of the indicated provisions of the Act of 1986 and relevant rules would reveal that **whoever fails to comply with or contravenes any of the provisions of this Act** or the rules made or orders or directions issued thereunder, shall be liable for punishment under this section. Supplementing the provisions of the Act of 1986 as per the notification dated 7.5.1992 (Annexure P5), if any person is carrying on the processes and operations in any manner, without the prior permission of the Pollution Board in the manner depicted therein and in all reserved forests, protected forests or any other area shown as forest in the land records maintained by the State Government as on the date of this notification in relation to Gurgaon District of State of Haryana and Alwar District of State of Rajasthan and all areas shown as Gairmumkin Pahad, Gairmumkin Behend, Banjad Beed or Rundh, then he is liable to be punished under the provisions of this Act and the Notification (Annexure P5).

(28) Meaning thereby, the petitioners-accused have not only violated the constitutional mandate and specific directions, but have also violated the provisions of the Act of 1986 and the notification (Annexure P5) with impunity. They have completely failed to comply with and contravened the provisions of the said Act, relevant rules, notification, orders & directions issued thereunder after the commencement of Notification (Annexure P5), in the manner discussed hereinabove. Therefore, their action squarely falls within the domain and ambit of offence punishable under section 15 of the Act of 1986.

(29) Ex facie, the contentions of learned counsel for petitioners-accused that it stands proved on record that as the petitioners-accused (developers) have already changed the nature of the disputed land from Gairmumkin Mountain (Pahad) to Gairmumkin Farm Houses, as per the sanctions (Annexures P2, P3, P9, P10 & P12-A)), in pursuance of applications (Annexures P1, P4, P7 & P8) and it was so recorded in the revenue record (Annexures P6/T colly & P21), much prior to the commencement of the Notification dated 7.5.1992 (Annexure P5) and as all the essential ingredients of the pointed offences are not pleaded in the complaint (Annexure P20) and other complaints, therefore, they did not commit any offence, are not only devoid of merit but misplaced as well and deserve to be repelled for more than one reasons.

(30) At the first instance, it is not a matter of dispute that since the provisions of PLPA and Forest Acts are applicable and the land in dispute was recorded as Gairmumkin Mountain (Pahad), so, the provisions of the Act of 1986 and Notification (Annexure P5) were fully applicable at the relevant time in the present cases. Secondly, there are direct allegations in paras 10 to 18 of the impugned complaint (Annexure P20) that the petitioners-accused (developers) have changed the nature of the Mountain (Pahad), after developing the area allotted to various other persons and the entire exercise was done after the issuance of notification (Annexure P5). The show cause notices (Annexures P15 & P18) were issued to them. The committee was constituted. The mere fact that there is some irregularity in formation of the committee, will not advance the cause of petitioners-accused to quash the criminal prosecution, as contrary urged on their behalf. The committee examined the matter and came to the conclusion that the developers have changed the nature of the disputed land and developed the infrastructure for the cluster of 630 Farm houses, out of which 108 Farm houses had been constructed and allotted in violation of the provisions of Aravali Notification by laying the roads, water supply, electricity, berms, barbed wires, fencing and separate gates etc. after the commencement of the notification (Annexure P5). Even the electricity connections were obtained by the allottees after the issuance of this notification.

(31) Therefore, all the essential ingredients of the indicated offences are complete. Moreover, the Hon'ble Apex Court in case **Rajesh Bajaj *versus* State NCT of Delhi and others (5),** has held that "it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage."

(32) Above-all, Section 19 of the Act of 1986 posits that "no court shall take cognizance of any offence under this Act except on a complaint made by the competent person mentioned therein." The word "complaint"

(5) 1999 (3) SCC 259

has been defined under section 2(d) of Cr.PC to mean that any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown has committed an offence.

(33) Meaning thereby, the direct allegations are assigned to the petitioners-accused in the complaint (Annexure P20) & other complaints that they have violated the provisions of the Act of 1986 and committed the pointed offences after the commencement of the notification (Annexure P5). The solitary fact that the developers have informed the Director, Town and Country Planning and other irrelevant authorities under the different Acts, before the issuance of the said notification, is not at all a cogent ground to quash the impugned complaints and summoning orders, because they have not obtained any requisite prior approval/sanction from the competent authority and violated the provisions of the Act of 1986, for which, they have been prosecuted.

(34) Similarly, the next feeble argument of learned counsel that since the land in question was described as Gairmumkin Farm houses in the revenue record, so, the petitioners-accused did not commit any offence, again lacks merit. Again, it is not a matter of dispute that the land in dispute situated in village Raisina was depicted as Aravali Gairmumkin Mountain (Pahad) in the revenue record from the very beginning. Concededly, the developers have got changed the kind of land from Gairmumkin Mountain (Pahad) to Gairmumkin Farm houses. If any Patwari without any legal authority had made the stray entries in the Khasra Girdawari (Annexure P6/T colly) for some consideration and for the reasons best known to him, which were illegal & without any authority and further carried out in the column of Jamabandi (Annexure P6/T colly) and Aksh Sizra (Annexure P21), then, such stray and illegal entries are non est, void and are not sufficient to hold that the land in litigation was Gairmumkin Farm houses. Such entries deserve to be outrightly ignored and kind of land in dispute (Gairmumkin Mountain (Pahad)) would remain the same for all intents and purposes in this relevant behalf.

(35) As indicated earlier, as soon as, this mistake was noticed, the Collector, vide its letter dated 23.2.2006 (Annexure R6) directed all the circle revenue officials to correct the Girdawari of Aravali Mountain as

Gairmumkin Mountain (Pahad) as per the spot. Hence, the mere stray and illegal entries made by a Patwari in the revenue record against the factual position, cannot possibly be termed to be sufficient to hold that the land in question was not Gairmumkin Mountain (Pahad). No implicit reliance can be placed on such void and non-est entries. In this manner, the observations in the judgment of Hon'ble Supreme Court in **Re: Construction of Park At Noida Near Okhla Bird Sanctuary *versus* Anand Arya & Another** with **T.N. Godavarman Thirumulpad v. Union of India & Ors. (6),** relied on behalf of petitioners-accused, are not at all applicable to the facts of the present cases.

(36) Likewise, there can hardly be any dispute that the Acts of 1963 & 1975 operate altogether differently in their respective domain/fields. The purpose, aims, object, scope, jurisdiction, area, manner of operation, ambit, action and remedies of these Acts are entirely different and are not at all relatable in any manner to the provisions of the Act of 1986 and the notification (Annexure P5). Therefore, the letters (Annexures P2, P3, P9, P10 & P12-A) written by the Director, Town & Country Planning, Executive Engineer, Electrical Inspectorate, Haryana etc. under the different Acts and the alleged clarification made by the Additional Director of the Central Government, vide letter dated 1.11.2006 (Annexure P17) (in CRM No.M-51514 of 2007) & (Annexure P12) in (CRM No. M-880 of 2010) and reports of the Patwari/Tehsildar (irrelevant authorities), ipso facto, are not at all sufficient to wipe out the criminal liability/offences committed by the petitioners-accused under the Act of 1986 and notification (Annexure P5), particularly when it is not yet clear/proved that they were legally competent/ authorized to issue such clarification in this respect.

(37) As is clear that in case **Harshendra Kumar D. *versus* Rebatilata Koley and others (7),** relied on behalf of the petitioners-accused, the complainants (therein) were interested in business relationship with Rifa Healthcare (India) Pvt. Ltd. for the sale of bio-ceramic products. The complainants, for the orders they had placed, issued demand drafts in favour of the Company. The company did not deliver the products ordered by the complainants and accordingly they asked the Company for

(6) 2011 (1) SCC 744
(7) 2011 (3) SCC 351

return of their money. Accordingly, for and on behalf of the Company, in discharge of the existing liability, an account payee cheque was issued but the cheque was returned by the complainant's banker on presentation with the endorsement "insufficient funds". The complainant then sent legal notice asking the accused persons to pay the amount of cheque within 15 days from the date of the receipt of the notice but despite service of notice, no payment was made. Thereafter, they filed the complaint under Sections 138 & 141 of the Negotiable Instruments Act, 1881.

(38) The principal contention canvassed was that the appellant (therein) was appointed as Director of the Company on 27.8.2003. He resigned from the directorship on 2.3.2004, which was accepted by the Board of Directors on that day itself with immediate effect. The factum of his resignation was also recorded in Form 32 filed by the Company with the Registrar of Companies on 4.3.2004. The impugned cheques were issued on behalf of the Company to the complainants, much after his resignation. So, on the peculiar facts and in the special circumstances of that case, it was observed by the Hon'ble Apex Court that "it is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents, which are beyond suspicion or doubt, placed by the accused, the accusations against him cannot stand, then those documents can be considered for the purpose of quashing the criminal prosecution."

(39) Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of the petitionersaccused in the present controversy. In the instant case, the petitioners-accused have not produced any such public document, which is per-se admissible in evidence and sufficient to quash the criminal proceedings under the Act of 1986. As discussed hereinabove, the letters, purported to have been written by the other irrelevant authorities, which, otherwise, require a legal proof, are not at all relevant to decide the instant controversy between the parties to quash the criminal prosecution at this initial stage. All the documents brought on record by the petitioners-accused are alien/ foreign to the instant controversy between the parties under the Act of 1986 in this relevant connection.

(40) As to whether the Pollution Board has filed the false complaints against the petitioners-accused, whether the developers have demolished the Gairmumkin Mountain (Pahad) and converted it into Gairmumkin Farm houses after the publication of Notification (Annexure P5), whether the authorities under the Acts of 1963 and 1975, Forest Act or the Additional Director (Environment) have actually granted the clarifications under some authority or otherwise, what would be the effects of such clearance under the other Acts on the commission of offence under the Act of 1986, whether the impugned area falls within the radius of 10 kilometers, all other conditions of Notification (Annexure P5) have been violated or not and all other arguments, relatable to the appreciation of evidence (now sought to be urged on their behalf), would be the moot points to be decided during the course of trial by the trial Court, after receiving the respective evidence of the parties. In case, the admissibility, validity & genuineness or otherwise of these documents and other relatable facts, which require determination by the trial Court, are to be decided by this Court in the garb of petitions under section 482 Cr.PC, then the sanctity of the trial would pale into insignificance and amount to nullify the statutory procedure of trial as contemplated under the Code of Criminal Procedure, which is not legally permissible.

(41) The Hon'ble Apex Court in case **U.P. Pollution Control Board *versus* Dr.Bhupendra Kumar Modi and another (8),** has ruled that "when exercising jurisdiction under Section 482 of the Code, the High Court could not ordinarily embark upon an inquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it the accusation would not be sustained. To put it clear, it is the function of the trial Judge to do so. The High Court must be careful to see that its decision in exercise of its power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution."

(42) Faced with this grave situation, the learned counsel for petitionersaccused (subsequent vendees) (in cases mentioned in Schedule B) then raised another cosmetic submission that in case, it is proved that the developers have violated the provisions and committed the indicated offences, even then, the subsequent vendees/transferees cannot be prosecuted in that regard, as they are bona fide purchasers. At the very

(8) 2009 (2) SCC 147

outset and first instance, the argument appeared somewhat attractive, but when it was legally and deeply analyzed, then, I cannot help observing that the same sans merit as well.

(43) As is apparent that Section 2(n) of Cr.PC defines the word "offence" to mean that any act or omission made punishable by any law for the time being in force. The offence/Acts done also extend to illegal omissions (under section 32 IPC). The act of omission and offence have been defined under Sections 33 & 40 of IPC. Section 35 of IPC postulates that "whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention." According to sections 36 to 38 of IPC, wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence and they may be guilty of different offences by means of that act.

(44) That being the statutory/legal position, the bare reading of these provisions would go to show that where the element of a particular knowledge or a particular intention enters in the composition of a crime, all the co-accused are liable for the same offence. It provides that where several persons are concerned in committing an act, which is criminal only by reason of its being done with a criminal knowledge and whosoever assists in the commission of such offence, each of such persons, who joins in the act with such knowledge is liable for the act in the same manner as if the act were done by him alone with that knowledge. In that eventuality, the criminal law only concerns to the result of the commission of offence and not to the means by which it has been achieved and whosoever cooperates in the cumulative result of the commission of such offence is equally liable in this relevant behalf.

(45) As indicated hereinabove, the subsequent vendees have purchased the offence proned Farm houses from the developers, after the commencement of Notification (Annexure P5). Not only that, after the

purchase even they did not comply with and contravened the provisions of the Act of 1986 and the Aravali Notification as well with impunity. They even did not obtain the requisite permission from the competent authority under the relevant Act till today. In this manner, all the rights and liabilities were also transferred to them for all intents & purposes. The acts committed by the subsequent vendees/transferees are so intermingled and mixed with the same series of the acts and transactions, of the offences committed by the developers and since the acts of these petitioners, culminating into the offences, are still continuing, so, their cases cannot possibly be segregated from the criminal offences committed by the developers. Therefore, they cannot escape the criminal liability in any manner and are liable to be legally punished, as contemplated under Sections 35 to 38 of IPC as well.

(46) The last celebrated contention of learned counsel for all the petitioners-accused that the trial Court did not apply its judicial mind while summoning them, again is not tenable. The perusal of the summoning order (Annexure P22) would reveal that while taking cognizance of the complaint, the trial court has duly considered all the relevant documents/evidence and then came to the definite conclusion that prima facie, the accused have committed the offence and summoned them to face the trial under Section 15 of the Act of 1986. The summoning order is in deep consonance with the Sections 202 to 204 Cr.PC and the ratio of law laid down by the Hon'ble Apex Court in case **U.P. Pollution Control Board *versus* M/s Mohan Meakins Ltd. and others (9),** wherein, it was ruled as under (para 6):-

> *"6. In a recent decision of the Supreme Court it has been pointed out that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a magistrate for passing detailed order while issuing summons vide* ***Kanti Bhadra Shah v. State of West Bengal, 2000(1) RCR(Crl.) 407 : 2000(1) SCC 722****. The following passage will be apposite in this context:*
>
> *"If there is no legal requirement that the trial Court should write an order showing the reasons for framing a*

(9) 2000(3) SCC 745

charge, why should the already burdened trial Courts be further burdened with such an extra work ? The time has reached to adopt all possible measures to expedite the Court procedures and to chalk out measures to avert all (sic) causing avoidable delays. If a Magistrate is to write detailed orders at different stages, the snailpaced progress of proceedings in trial Courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages of the trial." (Emphasis supplied)

(47) Not only that, Sections 202 to 204 Cr.PC posit that at the stage of summoning, all that Magistrate has to see is whether or not there is "sufficient ground for proceeding" against the accused. The Magistrate is not to weigh the evidence so meticulously as he is required to do during the course of trial of main case. The standard to be adopted by the Magistrate in scrutinizing the evidence is not the same as the one which is to be kept in view at the stage of framing charges. This matter is no more res integra and is now well settled.

(48) An identical question came to be decided by the Hon'ble Supreme Court in case **Shivjee Singh *versus* Nagendra Tiwary & Ors. (10)**, wherein the view taken in case **Mohinder Singh *versus* Gulwant Singh (11)** was reiterated and observed (paras 11 & 12) as under:-

*"**11.** The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by*

(10) 2010(7) SCC 578
(11) 1992(2) RCR (Crl.) 134

resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry." (emphasis supplied)

12. *The use of the word 'shall' in proviso to Section 202(2) is prima facie indicative of mandatory character of the provision contained therein, but a close and critical analysis thereof along with other provisions contained in Chapter XV and Sections 226 and 227 and Section 465 would clearly show that non examination on oath of any or some of the witnesses cited by the complainant is, by itself, not sufficient to denude the concerned Magistrate of the jurisdiction to pass an order for taking cognizance and issue of process provided he is satisfied that prima facie case is made out for doing so. Here it is significant to note that the word 'all' appearing in proviso to Section 202(2) is qualified by the word 'his'. This implies that the complainant is not bound to examine all the witnesses named in the complaint or whose names are disclosed in response to the order passed by the Magistrate. In other words, only those witnesses are required to be examined whom the complainant considers*

material to make out a prima facie case for issue of process. The choice being of the complainant, he may choose not to examine other witnesses. Consequence of such nonexamination is to be considered at the trial and not at the stage of issuing process when the Magistrate is not required to enter into detailed discussions on the merits or demerits of the case, that is to say whether or not the allegations contained in the complaint, if proved, would ultimately end in conviction of the accused. He is only to see whether there exists sufficient ground for proceeding against the accused."

Hence, no illegality or procedural irregularity can be assigned to the impugned summoning order (Annexure P22) as well, in this relevant context, as (contrary) urged on behalf of all the petitioners-accused.

(49) Therefore, if the non-compliance of constitutional mandate, directions, contraventions of mandatory provisions of the Act of 1986, Notification (Annexure P5) and the totality of the facts & circumstances oozing out, from the record, as discussed hereinabove, are put together, then, to me, the conclusion is inescapable and irresistible that prima facie it stands proved on record that all the petitioners-accused have committed the indicated offences. If the petitioners-accused have not stopped the pointed violations, adversely affecting the environmental atmosphere and the criminal prosecutions are quashed at this initial stage, then it will inculcate and perpetuate injustice to the public at large in general and to the case of complainant-Pollution Board in particular respectively. The Bench mark and essential ingredients for quashing the criminal prosecution at the initial stage set out in Ch.Bhajan Lal, Som Mittal and Jeffery J.Diermeier's cases (supra) are totally lacking in these cases. Thus, the contrary arguments of learned counsel for all the petitioners-accused "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances, as the ratio of law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of the present cases and is the complete answer to the problem in hand.

(50) No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

(51) In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trials of all the complaints, as there is no merit, therefore, the instant petitions deserve to be and are hereby dismissed as such in the obtaining circumstances of the cases.

(52) Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits, during the trials of the main complaints, as the same has been so recorded for a limited purpose of deciding the present petitions under section 482 Cr.PC. Since the matter is very old, so, the trial Court is directed to take all the effective steps, including day to day proceedings for expeditious disposal of all the complaints in accordance with law. The Registry is directed to send the copies of this judgment to the trial Court forthwith for compliance.

(53) At the same time, the parties through their counsel are directed to appear before the Special/Trial Court on 4.6.2012 for further proceedings.

J.S. Mehndiratta

Before K. Kannan, J.

UDHAM SINGH (DECEASED) THROUGH HIS LRS AND OTHERS—*Petitioners*

versus

HARNEK SINGH AND OTHERS—*Respondents*

RSA No.2027 of 1980

2nd December, 2011

Code of Civil Procedure, 1908 - Hindu Succession Act, 1956 - S.14(1), 15 - Two widows jointly hold estate - On death of one widow estate survived to the other - Property gifted by the surviving widow to her daughter - Suit filed by Reversioner that gift will not bind them -Donee died in 1954 - Possession at the time of passing of the Hindu Succession Act 1956 with the surviving widow (Donee) - Held, by application of Section 14 Clause 1 of 1956 Act, estate enlarged - Reversioner's right mere spes successionis - On death of surviving widow after 1956 due enlargement property will go to her children as heirs under Section 15 of the 1956 Act -Appeal dismissed.