

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 13.04.2010**
Judgment delivered on: 17.05.2010

+ **CRL.REV.P. 832/2006**

JITENDER NATH Petitioner
Through: Dr. Harish Uppal, Advocate.

versus

RAM PHAL BANSAL & ANR. Respondents
Through: Mr. Manoj Ohri, APP for the State
with Insp. Mukesh Tyagi, EOW.
Mr. K.K.Sud, Senior Advocate with
Mr. Navin Chawla, Mr. Rajiv
Awasthi and Mr. Kunal Malhotra,
Advocates for respondent no.2.

AND

CRL.M.C. 7311-15/2006

RAJNEESH GOENKA & ORS. Petitioners
Through: Mr. K.K.Sud, Senior Advocate with
Mr. Navin Chawla, Mr. Rajiv
Awasthi and Mr. Kunal Malhotra,
Advocates.

versus

STATE & ANR. Respondents
Through: Mr. Manoj Ohri, APP for the State
with Insp. Mukesh Tyagi, EOW.
Dr. Harish Uppal, Advocate for
respondent no.2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | : | No |
| 2. | To be referred to Reporter or not? | : | Yes |
| 3. | Whether the judgment should be reported in the Digest? | : | Yes |

J U D G M E N T

VIPIN SANGHI, J.

CRL R.P. NO.832/2006 & CRL MC NOS.7311-15/2006

1. By this judgment, I propose to dispose of the aforesaid two petitions.
2. Crl. R.P. No.832/2006 has been preferred by Shri Jitender Nath under section 397 read with section 401 and 403 and section 482 of the Cr. P.C with a prayer to set aside that portion of the order dated 15.9.2006 passed by the learned Metropolitan Magistrate, whereby he has refused to take cognizance of the offence allegedly committed by respondent no.1, Sh. R.P. Bansal under section 201 IPC read with section 120B IPC and, consequently, to issue summons to respondent no.1, who had been named in the charge sheet as accused no.7 in column no.4.
3. Crl M.C. No.7311-15/2006 has been preferred by the petitioners, viz. Rajneesh Goenka, Sh. B.K. Rana, Sh. Kamal Gaiind, Sh. S.R. Chanan and Sh. Sewak Balkishan Gupta, who are named as accused Nos.2 to 6 (not necessarily in the same order) in the charge sheet filed in the Court of the Metropolitan Magistrate, to seek quashing of FIR No.119/1997 under section 448/468/471/120B IPC registered at police station, Chittaranjan Park, New Delhi (investigated by the Crime Branch) and the proceedings emanating therefrom. They also challenge the summoning order dated 15.9.2006 passed by the learned Metropolitan Magistrate, New Delhi pursuant to filing of the

charge sheet, summoning the petitioners/accused under sections 420/448/471/120B IPC. Both the petitions relate to the same FIR and charge sheet.

4. I have heard the arguments of learned counsels in both the petitions and proceed to decide the same by this common judgment.

5. The petitioners in Crl. M.C. Nos.7311-15/2006, who are accused in case FIR No.119/1997 as aforesaid, claim to be the elected representatives of the society called "Shri Sanatan Dharam GK-II Sabha", which is a registered society under the Societies Registration Act. It is stated that the society has approximately 1400 members and its aims and objects (as per the rules and regulations of the society) are to run a temple, a charitable dispensary, a library, a school and to hold various social and religious activities. The affairs of the society are run from a temple known as Sanatan Dharam Mandir, Greater Kailash-II, New Delhi which is situated on a land admeasuring about 2 acres. The said society is functioning for more than 30 years.

6. The petitioners allege that respondent no.2 viz. Shri Jitender Nath was earlier in control of the affairs of the society for more than 20 years. It is alleged that respondent no.2 used his influence and muscle power for carrying out illegal activities and misappropriation of funds, and used the said temple for his personal gains and benefits. It is alleged that the petitioners and other members submitted a requisition to the then General Secretary, Sh. S.M. Aggarwal for holding an Extraordinary General Body Meeting. The Extraordinary General Body Meeting was called on 2.3.1997 and the members present in the

meeting decided to form an ad-hoc committee. It is also alleged that it was further resolved unanimously, that free and fair elections should be held within two months from 2.3.1997. The petitioners claim that petitioner no.1 was elected as the President of the ad-hoc committee. It is stated that free and fair elections were held on 19.4.1997 and the newly elected executive committee took over charge from the ad-hoc committee. It is further alleged that respondent no.2 fearing defeat in the elections, did not participate in the election process.

7. On 10.03.1997, respondent no.2 made a complaint to the local police which was registered as FIR No.119/1997 under section 448 IPC at police station Chittaranjan Park, New Delhi. In the said complaint, it had, inter alia, been alleged that Sh. Rajneesh Goenka and others, on their own, without serving any notice to the General Secretary under clause 12(c) of the constitution of the Sabha called a so-called General Body Meeting and got themselves appointed as President and members of the ad-hoc committee as per their version. It was alleged that no General Body Meeting was ever held. It was alleged that the executive committee is not being allowed to function independently because Sh. Rajneesh Goenka and others had stationed their goondas in the Mandir. It was alleged that the goonda elements deployed by Sh. Rajnish Goenka and others had tampered with the cash chest, almirahs, Secretary's almirahs which were locked and the keys whereof were with the complainant and others. It was alleged that criminal trespass had taken place, for which a regular complaint had been made on 04.03.1997 to the S.H.O., P.S. C.R. Park, New Delhi.

8. It appears that on the basis of the investigation (earlier conducted by the local police of P.S. Chittaranjan Park, which was later transferred to the Economic Offence Wing, Crime Branch) the charge sheet dated 17.03.2006 was filed by the investigating agency, inter alia, alleging that the petitioners had forged three documents, namely, the requisition dated 3.1.1997 for holding Extraordinary General Body Meeting and fresh elections, purportedly signed by 31 persons; notice dated 4.2.1997 purportedly fixing the Extraordinary General Body Meeting on 2.3.1997, allegedly signed by 36 persons; and the attendance register dated 2.3.1997, allegedly signed by 61 persons, and Sh. Ram Phal Bansal committed the offence under section 201 read with section 120B by causing the disappearance of the aforesaid documents.

9. The charge sheet narrates that on the basis of the investigation conducted and bank records, Section 420 I.P.C. was added on 03.03.1998 after material was collected to the effect that a new account in the name of Sanatan Dharam Greater Kailash-II Sabha had been opened at State Bank of Indore, G.K.-II and was being operated instead of the old bank account in the name of Sanatan Dharam, Greater Kailash-II Sabha. As per the charge sheet, as the case was based upon three documents, namely, (i) requisition dated 03.01.1997 to the General Secretary of the Sabha for holding general body meeting and the elections purportedly signed by 31 signatories; (ii) notice dated 04.02.1997 purportedly signed by 36 persons for attending the general body meeting on 02.03.1997 and (iii) extract of

attendance register dated 02.03.1997 purportedly signed by 62 persons, during investigation Sh. B.K. Rana, Sh. Sevak Bal Kishan Gupta, Sh. Rajnish Goenka, Sh. S.R. Chauhan and Sh. Kamal Gaiind were interrogated at length and their specimen signatures and writings were obtained in the light of the three disputed documents. Similarly, the specimen signatures of various persons/members who are named in the three disputed documents were also obtained and the same were referred to GEQD/Chandigarh. Efforts were made to procure the originals of the three disputed documents, but the accused persons did not produce the same. The stand taken by the accused persons was that the documents were sent to the office of their Advocate Sh. R.P. Bansal.

10. As per the charge sheet, the requisition dated 03.01.1997 was purportedly signed by 31 members/signatories most of whom had denied their signatures on this requisition in their statements recorded under Section 161 Cr. P.C. Sh. S.M. Aggarwal, the then General Secretary of the Sabha, had also denied receiving any such requisition. The charge sheet also noted that a look at these three disputed documents showed that most of the names appear in the same serial number, which showed that the documents were signed in one go. These documents had initially been signed by Sh. Rajnish Goenka, meaning thereby that these documents had originated through him. One Sh. S.S. Verma had also sworn an affidavit dated 10.04.1997 stating that all the signatures at serial Nos.51 to 60 on the attendance register were taken at their residence (S-361, Greater Kailash-II), and

they did not attend any general body meeting. In the attendance register dated 02.03.1997 the name of Sh. R.L. Mathur appeared at two serial numbers i.e. 11 & 62.

11. The charge sheet further notes that in Crl. M. (Main) No.661/2008 i.e. the bail application/petition of Sh. Rajnish Goenka, the counsel for the accused Rajnish Goenka, viz. Sh. R.P. Bansal had assured the Court in the hearing held on 05.05.1998 that the necessary documents shall be supplied and that the petitioner shall cooperate with the prosecution, but on 05.08.1998 Sh. R.P. Bansal, counsel for the petitioner, Sh. Rajnish Goenka informed the court that the original documents had been lost and that they are not in a position to produce the originals. As per the charge sheet, from the aforesaid it appeared that these documents were intentionally concealed/destroyed/lost with the motive that they may not be used/verified by the investigating agency and the veracity/genuineness of these documents may not be verified. The charge sheet states that it is, therefore, clear that Sh. R.P. Bansal was very much instrumental in concealing/destroying the three documents aforesaid, which were important in the case. It further records that Sh. R.P. Bansal had been named in FIR No.164/2005 dated 03.05.2005 under Sections 420/468/471/448/341/201/120 IPC registered at P.S. Chandni Chowk, Delhi, which reflects on his conduct. It states that from the version/statement of the signatories on those documents it was apparent that the said documents are forged documents.

12. The charge sheet further records that from the statements of Tek Bahadur, Shiv Narain, Sudershan Kumar Chopra and Tilak Singh it was revealed that on 02.03.1997 Sh. Rajnish Goenka, Sh. B.K. Rana, Sh. S.R. Chahan and Sh. P.R. Gulati entered into the premises of Sanatan Dharam, Greater Kailash-II Sabha and snatched the keys and in this way grabbed the seat and encroached the premises of Sanatan Dharam Greater Kailash-II Sabha. The charge sheet also refers to the statement of Sh. Dalip Singh son of Sh. Bachan Singh (a key maker) which also reveals that accused B.K. Rana along with some other persons showed him a green *Gullak* and asked him to make the keys of the lock of the *Gullak*. On the instructions of Dalip Singh, he made the keys, but the lock could not be opened being junked and they made him to open the cash box (*Gullak*). The charge sheet also refers to the statements of the staff and employees of Sanatan Dharam Greater Kailash-II Sabha about the involvement of the accused persons in the whole episode. The charge sheet lists the names of 31 persons, who denied signing or attending any meeting in their statements under Section 161 Cr.P.C.; 11 persons who filed affidavits denying signing or attending any meeting, and; 12 persons whose specimen signatures had been obtained. The charge sheet also points out a few other discrepancies found in the photocopy of the attendance register dated 02.03.1997 in the following words:

“On giving a look at the photocopy of attendance register dt. 2.3.97, it is found that though the names of Thakur Nanak Singh has been written, but his signatures are not there. Though his signatures are there on the documents dated 3.1.97 and 4.2.97 and but

these signatures are his forged signatures, as per his statement. Serial No.9 is missing in attendance register dated 2.3.97. It is important that the name of Sh. R.L. Mathur is written at two places i.e. serial no.11 & 62 of the same document. Verma family members, who have been mentioned at serial nos.51 to 60 on the document dated 2.3.97 have stated that signatures were taken on the pretext of enrolling new members.”

13. The concluding paragraph of the charge sheet reads as follows:

“From the investigation conducted so far, it is clear that accused persons mentioned in col. 4 hatched a criminal conspiracy and prepared the forged documents i.e. requisition for holding Extraordinary General Body Meeting dt. 3.1.97; Notice dt. 4.2.97 for attending Extraordinary General Body Meeting and attendance register of the extraordinary Body Meeting dt. 2.3.97. Later on, on the basis of those documents accused persons captured the seats of Sanatan Dharam GK-II Sabha and criminally trespassed the offices/premises etc. of Sanatan Dharam GK-II Sabha, as all the three documents in original are not available, therefore, considering the conduct of the accused persons circumstances and the statements recorded, their names have been kept in column no.4 of the chargesheet i.e. on recognizance four accused namely P.R. Gulati, S.R Chanan, S.B.K. Gupta and Kamal Gaind had already been arrested and were released on bail before quashing of the FIR. Thus all the accused persons placed in column no.4 have hatched a criminal conspiracy in collusion and connivance with each other and in pursuance to his an offence punishable u/s 201/420/448/468/471/120B IPC have been committed by them. Accused P.R. Gulati has been reported expired, through the document in this regard is not available. This is sufficient evidence against the accused persons to challan them. Trial of the case may kindly be initiated by calling the accused persons through notices and witnesses through summons.”

14. Mr. K.K. Sud, learned senior advocate made his submissions in Crl MC No.7311-15/2006 on behalf of the five petitioners/accused who have been summoned by the learned Magistrate after the filing of the charge sheet and upon taking cognizance, in respect of the offences under section 420/448/468/471/120B IPC. The submission of Mr. Sud is that the dispute essentially is one between two factions claiming authority to manage the affairs of Shri Sanathan Dharam Sabha, GK-II, New Delhi. The dispute raised by the complainant/respondent no.2 in Crl. MC No.7311-15/2006 related to the requisition of an Extraordinary General Body Meeting; the holding of the meeting and the resolutions passed there at. He submits that these disputes are essentially civil in nature and do not involve any criminality.

15. He submits that the petitioners had filed a writ petition under Article 226 of the Constitution of India being W.P. (Crl) No.3/1998 to seek the quashing of FIR 119/97 registered at police station, Chittaranjan Park, New Delhi, on the complaint of respondent no.2. The said writ petition was allowed by a Division Bench of this court on 16.10.1998, holding that the question whether the petitioners have, or have not been validly elected is a dispute of a civil nature and such disputed questions of fact would have to be decided on the basis of evidence to be lead in the civil suit. It was further held that, in case, during the pendency of the civil suit it is shown that some documents were tampered with, law will take its own course and at that stage prosecution can be directed to be lodged against the persons found to have committed forgery. Similarly, it had been held that the act of

rival group claiming to have come in occupation under a bonafide claim or right, on the basis of a meeting alleged to have been held, would not fall within the category of criminal trespass, but it may at best amount to a trespass of civil nature for which the matter would have to be dealt with and decided in civil proceedings and not in criminal proceedings. The mere fact that the petitioners had opened a fresh account in the name of the society and operated the same, without operating the bank account earlier maintained by the erstwhile executive committee, would not bring their conduct under the mischief of section 420 IPC.

16. Mr. Sud submits that the Supreme Court had set aside the decision of the Division Bench of this court in Criminal Appeal No.561/1999, titled ***Jitendra Nath v. State (NCT of Delhi) & Ors.*** However, the court held that after the completion of investigation, the final form may be submitted either in the shape of a charge sheet or a final report, whereafter the learned Magistrate shall apply his mind and proceed in accordance with law. The court preserved the rights of the petitioners to challenge the summoning order, if the trial court decided to take cognizance and summon the petitioners. The court further clarified that it had not expressed any opinion one way or another on the merits of the case.

17. Mr. Sud further submits that the charge sheet dated 17.3.2006 was filed by the Inspector LBR Section Economic Offence Wing, Crime Branch under section 201/420/448/468/471/120B IPC. In the meantime, a suit had been filed on behalf of Shri Sanatan Dharam GK-

II Sabha through one Sh. A.K. Kohli, who claims to be its treasurer, being Suit No.768/1997 to seek perpetual injunction, inter alia, against the petitioners in Crl MC No.7311-15/2006. The reliefs sought in the suit were to restrain the defendants from interfering in the affairs, working, management, control and possession of property of the plaintiff Sabha. He submits that the said suit had also been premised on the same set of averments, i.e. that the aforesaid three documents: the requisition dated 3.1.1997 for holding Extraordinary General Body Meeting and fresh elections, purportedly signed by 31 persons; notice dated 4.2.1997 purportedly fixing the Extraordinary General Body Meeting on 2.3.1997, allegedly signed by 36 persons; and the attendance register dated 2.3.1997, allegedly signed by 61 persons, were forged and fabricated. Consequently, the same issues arose before the Civil Court in the said suit.

18. The said suit had been listed before the court, inter alia, on 19.3.2002. On the said date, the court while dealing with I.A. No.1230/2000 (which was an application moved by two persons, Sh. M.L. Sharma and Sh. Gopal Krishan Sharma seeking intervention), by agreement of parties, proceeded to direct the holding of fresh elections for the Sabha. For smooth conduct of elections, Hon'ble Mr. Justice J.D. Jain, a retired judge of this court was appointed as an observer. Further orders were passed in this suit on 30.5.2002 in relation to the electoral college.

19. The matter was carried in appeal in FAO (OS) No.204/2002 and the Division Bench made certain orders with regard to the holding of

the proposed elections. The elections were eventually held under the supervision of Hon'ble Mr. Justice J.D. Jain and he submitted his report dated 30.6.2002 before the court. The said report was considered by the court while hearing Suit No.768/1997 on 23.7.2002. The court recorded that fresh elections to the committee had been held and that the new executive committee had taken over and was looking after the management of the trust. Accordingly, it was conceded by the plaintiff in the suit before the court that nothing further survived in the suit and the suit was accordingly disposed of.

20. On the same day, another suit being Suit No.2088/2001, filed by one Sh. B.D. Mehendiratta, also seeking various reliefs of permanent injunction against, inter alia, the petitioners herein on the same premise, was also disposed of, in view of the fact that the elections had been held under the supervision of the court observer and the new executive committee had taken over the complete charge of the management of the society.

21. The submission of Mr. Sud, therefore, is that with the disposal of the aforesaid two suits, all disputes pertaining to elections and management of the said Sabha stood resolved. The issues regarding the authenticity of the aforesaid three documents and the takeover of the management of the Sabha by the petitioners paled into insignificance with the resolution of the dispute regarding elections and management. He submits that such disputes between warring factions do not involve criminality.

22. Mr. Sud also referred to sections 448, 441, 420, 415, 468, 463, 464 and 471 of the IPC to submit that the essential ingredients of the offences contained in the said sections are, prima facie, not made out and therefore, the learned Magistrate has erred in taking cognizance and issuing summons to the petitioners on the basis of the charge sheet filed by the prosecution.

23. Dr. Uppal, learned counsel for respondent no.2, submits that the decision of the Supreme Court, setting aside the judgment of the Division Bench of this Court came to be passed on 19.08.2004, by which date the elections under the supervision of the Court Observer, Mr. Justice J.D.Jain(retd.) had already been held and the aforesaid two suits stood dismissed as withdrawn. He submits that if the contention of the petitioners that with the withdrawal of the aforesaid two suits the conduct of the petitioners, regarding which the FIR No.119/1997 had been registered, stood regularized/condoned, there would have been no occasion for the Supreme Court to have passed the order dated 19.08.2004 setting aside the judgment of the Division Bench of this Court and directing that investigation shall now proceed in accordance with law and upon completion thereof final form shall be submitted, which may either be in the shape of charge-sheet or final report and upon receipt of the same, the learned Magistrate shall apply his mind and proceed in accordance with law.

24. He submits that the holding of the elections under the supervision of the Court Observer had taken place much after the registration of the FIR and the conduct of the petitioners, which was

under investigation in the said FIR, pertained to the period prior to the holding of these elections under the orders of the Court. The criminality involved in the actions of the accused could not be washed away, merely on account of the fact that the subsequent elections had been held under the supervision of the Court Observer. He has also referred to the charge-sheet in question in support of his submission that the learned Magistrate had rightly taken cognizance and summoned the petitioners.

25. Dr. Harish Uppal made submissions in Crl.Rev.No.832/2006 wherein the petitioner, Jitender Nath has challenged that portion of the order dated 15.09.2006 whereby the learned M.M has, inter alia, held that there is no material to show that the respondent, Shri Ramphal Bansal had any common intention with the other accused and therefore did not take cognizance and did not issue summons against him in respect of an offence u/s 201 read with Section 120B IPC.

26. Dr. Uppal submits that the respondent, Shri Ramphal Bansal had knowledge of the fact, or at least had reason to believe that his clients, i.e. accused nos.1 to 6 had committed the offence of forgery and the other offences detailed in FIR No.119/1997.

27. In this regard, he refers to the averments made in respect of the said forged documents in para 9 of Suit No.768/1997. Sh. R.P. Bansal was appearing as the counsel for the defendants in that suit. Moreover, he was appearing as the counsel for the accused in Crl. Misc. (Main) No.661/1998. Shri R.P.Bansal had throughout appeared on behalf of accused nos. 1 to 6 in all proceedings including W.P.

No.3/1998. Shri R.P.Bansal also appeared for the other accused persons before the Supreme Court in Crl. Appeal No.561/1999.

28. Dr. Uppal submits that in Suit No.768/1997, the stand taken by the accused persons was that the documents relating to the affairs of the Sabha had been handed over to the newly appointed committee. The Court was not satisfied with the reply given by the accused persons and the same was found to be vague as there was no mention of the person, time and date to whom the documents were allegedly handed over. The accused were therefore directed to file an affidavit to clarify the position vide order dated 25.09.1997. At that stage an affidavit was filed that the documents had been lost by Shri R.P.Bansal.

29. He further points out that in Crl.M.M 661/1998 preferred by the petitioners on 05.05.1998, the accused persons had assured the Court that the necessary documents would be supplied and that the petitioners/accused shall fully co-operate with the investigation. However, on 10.07.1998, instead of producing the said purportedly original documents, the Court was informed that the documents were not available.

30. He submits that the forged and fabricated documents had admittedly been given to Shri R.P.Bansal and he only had caused the alleged disappearance of the forged and fabricated documents which constituted the evidence of the offence of the commission of forgery, with the intention of shielding the offenders, namely accused nos 1 to 6 from legal punishment by claiming that the same had been misplaced. In this regard he points out that the documents, namely

affidavit dated 21.10.1997 of accused no.6 in the charge-sheet (Shri Rajneesh Goenka), letter dated 20.02.1998 of accused no.4 (Shri Sewak Balkishan Gupta) that he handed over the documents to Shri R.P.Bansal and Co. and the letter dated 19.02.1998 from R.P.Bansal & Co, copy of the reply of the police (DCP, HQ) in CrI.W.PNo.3/1998 and the judgment of the Division Bench in CrI.W.P.3/1998 dated 16.10.1998 show that Shri R.P.Bansal had full knowledge of the criminal acts of his clients who were accused persons in FIR No.119/1997.

31. Dr. Uppal submits that similar modus operandi was adopted by Sh. R.P. Bansal even in the year 1960 while functioning as an executor of the estate of one late Seth Ramlal Kemka. The respondent Sh. R.P. Bansal had claimed to have made payments and taken receipts of about Rs.30,000/- from various beneficiaries. However, vide a letter dated 19.5.1960, Sh. R.P. Bansal instead of producing the said receipts, took the stand that the receipts had been stolen or misplaced.

32. Dr. Uppal points out the stark similarity in the modus operandi allegedly adopted by Sh. R.P. Bansal in the case pertaining to FIR No.164/2005 and the present case. He has resorted to similar tactics of usurping property belonging to a trust on the basis of forged and fabricated documents and when he was required to produce the relied upon documents, he failed to produce the same by making same excuses. He has referred to the various documents placed on record pertaining to FIR No.164/2005 registered at police station Chandni

Chowk under sections 420/468/471/448/331/201/120B IPC against, inter alia, Sh. R.P. Bansal.

33. Dr. Uppal further submits that it is inexplicable as to why Sh. R.P. Bansal was handling the original documents of his clients since it would be the Advocate-on-Record who would deal with the original documents of his clients, and not a senior advocate. He submits that the originals of the forged documents have deliberately been suppressed by the accused including Sh. R.P. Bansal, with a view to avoid their examination by forensic experts. He submits that the Government Examiner of Questioned Documents has stated in his letter dated 14.6.2005 that a report of scientific examination of the documents can only be prepared on the actual examination of the original documents and not on the basis of the reproduction copies. It is further submitted that to avoid the unearthing of the forgery committed by the other accused and the commission of other offences detailed in the charge sheet by the other accused, the forged documents have been suppressed by Sh. R.P. Bansal under a criminal conspiracy.

34. Dr. Uppal has also referred to various judgments in support of his submissions, which shall be dealt with a little later in this judgment.

35. Sh. Awasthi, learned counsel for the respondent, Sh. R.P. Bansal, has adopted the same line of argument, as advance by Sh. K.K. Sud, Senior Advocate to say that the controversy regarding elections was at the base of all the controversies including the alleged forgery and fabrication of documents, and that as the controversy regarding

elections had been resolved by the High Court by holding elections under the supervision of Mr. Justice J.D. Jain (Retd.), no other controversy remained outstanding. He further submits that the orders in the Suit/FAO (OS) No.204/2002 were consent orders passed practically compromising the disputes between the parties. The petitioner did not reserve any right to pursue the criminal action initiated by him by lodging FIR No.119/1997. He submits that there was no mensrea of Sh. R.P. Bansal to commit an offence under section 201 read with section 120B IPC and the observation of the learned Magistrate that Sh. R.P. Bansal did not have any personal interest in the matter has to be read and understood in that context.

36. In rejoinder, Dr. Uppal points out that Sh. R.P. Bansal was a patron of the Sabha and therefore, it cannot be said that he had no personal interest in the matter. He submits that, in any event, the existence of personal interest of the person committing an offence under section 201 is not necessary to constitute the said offence.

37. Having heard the arguments of the learned counsels, perused the record and the decisions relied upon, I am of the view that there is no merit in the petition preferred by the accused persons being CRL MC Nos.7311-15/2006 and the same deserves to be dismissed, as in my view, the accused persons have rightly been summoned by the learned Magistrate and there is no infirmity in the impugned order, qua the petitioners in CRL MC NOs.7311-15/2006. At the same time, I am of the view that the impugned order passed by the learned Magistrate, in so far as it concerns Sh. R.P. Bansal, the respondent in CRL R.P.

No.832/2006, is incorrect, illegal and improper and the learned Magistrate has erred in failing to take cognizance of the offence allegedly committed by Sh. R.P. Bansal under section 201 and section 120B IPC and in failing to summon him along with the other accused.

38. There is no merit in the submission of Mr. Sud, learned senior counsel appearing for the petitioners in Crl MC Nos.7311-15/2006 that dispute between the parties was only of a civil nature and essentially pertained to the conduct of elections and management of the Sabha. No doubt, there was a tussle between the rival factions with regard to the management of the Sabha. However, the allegations against the petitioners/accused is that in their effort to wrest the management of the Sabha, they resorted to forgery and fabrication of documents to legitimize their alleged usurpation of the management of the Sabha, and committed criminal trespass. The alleged acts of forgery and fabrication of documents and criminal trespass would entail penal consequences, if established. Merely because the dispute with regard to the elections and management of the Sabha may had got resolved with the passing of the orders by this court on the original side (directing holding of elections under the supervision of court observer, which were eventually held), it does not put to rest the controversy as to whether or not any forgery or fabrication of documents, and criminal trespass had been committed by the accused/petitioners or not.

39. There is force in the submission of learned counsel for the respondent that had there been any merit in this submission of the petitioners, the Supreme Court would not have passed the order dated

19.08.2004 in Criminal Appeal No.561/1999, whereby while setting aside the judgment of the Division Bench of this court dated 16.10.1998 passed in Crl. W.P. No.3/1998, (quashing FIR No.119/1997), it had directed that the investigation should proceed in accordance with law and a final report should be filed before the learned Magistrate, who would then proceed according to law. Once the judgment of this Court in Crl. W.P. No.3/1998 had been set aside, the petitioners cannot seek to rely on any finding recorded in the said judgment.

40. A perusal of the orders passed by this Court on the original side in the aforesaid suits as well as in the FAO (OS) would show that the same had absolutely no bearing on the aspect of the alleged forgery and fabrication of documents and the alleged criminal trespass.

41. There is no merit in the submission of Mr. Sud that the Complainant, Shri. Jitender Nath, at whose behest the aforesaid FIR was registered, did not reserve to himself the right to pursue the FIR or the proceedings arising therefrom when the suit was disposed of, and consequently, the aforesaid FIR and proceedings arising therefrom deserve to be quashed. There was no question of making any such reservation. Once the FIR had been registered, it was the obligation of the investigating agency to investigate the reported offences and to file the final form before the learned Magistrate. I may also note that a perusal of the plaint in the Suit No.768/1987 would show that no relief of declaration in respect of the said allegedly forged documents or criminal trespass had been sought by the plaintiff in the suit. The said

issues were not directly raised in the said suit. In any event, the civil court did not frame any issues relating to the genuineness of the said documents or the issue of criminal trespass, much less return any finding on those issues. Even if the said issues had been raised and decided, the finding of the civil court would not be binding in criminal proceeding.

42. It would not be appropriate for me at this stage to make any detailed comments and it would suffice to say that I find no merit in the submission of Mr. Sud that the necessary ingredients of the offences under sections 420/448/468/471/120B IPC, prima faice, are not made out on a bare perusal of the charge sheet, upon application of the well established principles that at the stage of taking cognizance and issuing summons, the allegations contained in the charge sheet are assumed to be true. The case set up against the accused nos.1 to 6 in the charge sheet has already been set out herein above and in view thereof, it cannot be said that no prima facie case is made out against the said accused. Consequently, I dismiss Crl. MC Nos.7311-15/2006.

43. Turning to the Criminal Revision Petition No.832/2006 preferred by Sh. Jitendra Nath in respect of the order dated 15.09.2006 passed by the learned Magistrate, whereby he refused to take cognizance of the offences under section 201 read with section 120B IPC and to issue summons to Sh. R.P. Bansal, I find that the learned Magistrate has committed grave illegality while passing the impugned order, qua Sh. R.P. Bansal and the impugned order, to that extent, suffers from material irregularity.

44. A perusal of the impugned order shows that after observing that *"To attract section 201 IPC, it has to be shown that accused had knowledge that some offence had been committed and he intentionally caused the disappearance of the evidence with an intention to screen the offender"*, the learned Magistrate proceeded to adopt a yardstick which is unknown to law, by observing that *"there is no material to show that accused Ram Phal Bansal who is an advocate had any personal interest in the matter or had any common intention with the other accused persons"*. As rightly pointed out by Dr. Uppal, the ingredient of the accused having personal interest in the disappearance of the evidence, is absent in section 201 IPC. The motivation for causing the disappearance of the evidence relating to an offence is not relevant and all that is relevant is that the accused has knowledge or reason to believe that an offence has been committed and that the accused causes the disappearance of the evidence relating to the offence with the intention to screen the offender from legal punishment.

45. The knowledge, or atleast the reason to give rise to the belief that the offence of forgery and fabrication of documents had been committed by the other accused is borne out, inter alia, from the record of Suit No.769/1997. The said suit had been preferred by Shri Sanatan Dharam GK-II Sabha, through its Treasurer A.K. Kohli against seven defendants apart from the SHO, Delhi Police, Chittaranjan Park, New Delhi. Some of the defendants are also the accused named in the charge sheet in question. The suit had been filed to seek a permanent

injunction against the defendants to restrain them from interfering with the affairs, working, management, control and possession of property of the plaintiff Sabha. In paragraph 9 of the plaint, the following averments was made by the plaintiff:

“9. That the defendant no.1 allegedly sent a notice of requisition dt. 3.1.97 under certificate of posting for holding an Extraordinary General Body Meeting which was allegedly signed by 31 members. As a matter of fact it was never received by the Sabha or General Secretary who is the only competent person to call and convene the Extra Ordinary General Body Meeting as per clause 12(e) of the Constitution of the Sabha.

Out of alleged 31 signatories one is duplicate, 8 signatures were obtained by misrepresentation of fact for the purposes of enrolment of new members and not for convening the alleged requisition meeting. Eight affidavits have been filed by plaintiff which were submitted by the said members with the Sabha.

Five signatures namely that of S/Shri S.S. Verma, N.N. Aggarwal, K.L. Bajaj, Mrs. Usha Bajaj and Manohar Lal are not genuine and have been forged. Sh. Manohar Lal and Sh. S.S. Verma have given their affidavits.

Thereafter the defendant No.1 had allegedly sent notice dated 4.2.97 for an extra ordinary General Body Meeting in which the alleged agenda was contrary to the alleged requisition. Even otherwise the alleged requisition was not in conformity with the provision of law as no specific item was mentioned in the aforesaid requisition.

As a matter of fact the alleged notice contained the forged and fabricate signatures of S/Shri S.S. Verma, Mrs. Neena

Gupta, Sh. Upender Gupta, Shri. Ashit Gupta, Mrs. Meenu Gupta, Mrs. Sudesh Gupta, Mr. K.L. Bajaj, Mrs. Usha Bajaj, Mr. Manohar Lal, Sh. Vineet Tewari, Mrs. Babli Tewari.

The attendance register/sheet dt. 2.3.97 contains the forged signatures of the following twelve members. Ten out of twelve have submitted their affidavits in this regard. The name of the said members are as follows:

Sh. S.S. Verma, Upendra Gupta, Sudesh Gupta, Sanjeev Gupta, Ashit Gupta, Neena Gupta, Rajiv Gupta, Meenu Gupta, Meena Gupta, Usha Gupta, K.L. Bajaj and Usha Bajaj.

Signatures of the Sh. S.S. Verma and his 9 family members (Serial No.51 to 60 of sheet of paper) were got signed on 2.3.97 at their residence for enrolling new members".

46. Sh. R.P. Bansal appeared on behalf of the defendants in the said suit on 19.03.2002. He also appeared in FAO (OS) No.204/2002 on behalf of Sh. Rajneesh Goenka, the appellant before the Division Bench on 10.06.2002, which arose from the orders passed in Suit No.768/1997. Consequently, there appears to be much force in the submission of Dr. Uppal that, prima facie, Sh. R.P. Bansal had the reason to believe, if not the knowledge, of the alleged acts of forgery, alleged to have been committed by the other accused in respect of the aforesaid three documents, namely, the requisition dated 3.1.1997 for holding Extraordinary General Body Meeting and fresh elections, purportedly signed by 31 persons; notice dated 4.2.1997 purportedly fixing the Extraordinary General Body Meeting on 2.3.1997, allegedly signed by 36 persons and; the attendance register dated 2.3.1997, allegedly signed by 61 persons.

47. Pertinently, on 25.09.1997, the Court passed an order in Suit No.768/1997 in the presence of Sh. R.P. Bansal, who was appearing for some of the defendants to the effect that the stand taken by the defendants that they had handed over the documents relating to the affairs of the Sabha to the newly appointed committed was vague. There was no disclosure made with regard to the identity of the person to whom the record had been handed over, and the time and date when the same had been done. The Court had directed the filing of an Affidavit to clarify the position.

48. Similarly, in Criminal Misc. (Main) No.661/1998, while appearing for the petitioner, the counsel for the State had informed the Court that the State had not been able to obtain important documents from the petitioner. Sh. R.P. Bansal had assured that the necessary documents shall be submitted and the petitioner shall fully cooperate with the investigation.

49. However, in response to an application moved in Suit No. 768/1997 by the plaintiffs to seek production of the original documents which were allegedly forged and fabricated by the other accused, Sh. R.P. Bansal while appearing as senior advocate for the defendants, made a statement that the said documents had been lost and that the defendants are not in a position to produce the original when the matter came up before the Court on 10.07.1998, Sh. R.P. Bansal appearing for the petitioner stated that the documents in question were not available.

50. The factum of the said original documents (allegedly forged and fabricated) having been delivered to Sh. R.P. Bansal, prima facie, is not in dispute. Sh. Rajneesh Goenka, one of the accused had sworn an affidavit on 21.12.1997 and filed the same in Suit No.768/1997 stating that he was one of the members of the ad-hoc committee. The records concerning the constitution of the ad-hoc committee were handed over by him to Sh. Sewak Balkishan Gupta, who is a member of the newly elected executive committee of the Sabha in the election held on 19.04.1997 and that the record had been handed over to Sh. Sewak Balkishan Gupta on 20.04.1997. In turn, Sh. Sewak Balkishan Gupta had addressed a communication dated 20.02.1998 to the investigating officer, who was investigating the offences under FIR No.119/1997 registered at Chittaranjan Park police station, stating that *“our counsel representing us before the High Court of Delhi and the documents required by you were handed over to them. As per their letter enclosed, the same are not traceable at present and shall be produced as soon as received from them”*. The letter dated 19.02.1998 issued on the letterhead of Sh. R.P. Bansal, Senior Advocate and signed “for R.P. Bansal & Co.” addressed to Sh. Sewak Balkishan Gupta was endorsed which makes a reference to the visit of Sh. Sewak Balkishan Gupta *“regarding certain documents connected with Suit No.768/1997 required by you for the purpose of producing the same before the Crime Branch in connection with FIR No.119/1992”*. It records that *“due to office renovation and shifting of files, the same are not traceable at present and will be made available as soon as the same are traced”*. Reference may also be made to ground ‘O’ taken by the

petitioners/accused in Crl.M.C.No.7311-15/2006. The same reads as follows:-

"Because the present chargesheet is filed solely based on the fact that the petitioners have failed to produce the original documents such as requisition attendance register of 1997 which according to the explanation rendered by the petitioners before the Investigating agency that all the original documents were handed over to their lawyer Shri R.P. Bansal, Sr. Advocate to be filed in the suit pending before this Hon'ble court and as per Mr. R. P. Bansal's version the documents were found untraced from his office due to renovation office and shifting of records etc. and the malafide of the investigating agency has gone to the extent that Mr. R.P.Bansal Sr. Advocate was also made an accused in the said FIR for hatching conspiracy."

51. From the aforesaid materials it, prima facie, appears that the allegedly forged and fabricated documents may have been misplaced from the office of Sh. R.P. Bansal. From the communication of Govt. Examiner of Questioned Documents dated 28.11.2005, it is apparent that to conduct scientific examination of the documents with regard to the alleged forgery and fabrication, it is essential that the original documents, and not reproduction copies, should be produced.

52. I may now examine the nature of allegations made against Sh. R.P. Bansal in the case relating to FIR No.164/2005. The case of the prosecution is that Seth Ramlal Khemka had died on 24.12.1958 having donated his three storied building in Chandni Chowk for charitable purpose. He had created a trust of five persons. Pertinently, Sh. R.P. Bansal was not one of them. According to the prosecution, a managing committee had been constituted by the

trustees. Sh. R.P. Bansal was not a member of the managing committee. The prosecution case is that on 26.12.2003, one Pandur Ram took the ground floor of the Dharamsala for use for a period of three days. However, he did not return the keys and on enquiry, he claimed that he had taken the keys from Giridharilal Tiwari. In turn, Sh. Giridharilal Tiwari stated that he acted on the instructions of Sh. R.P. Bansal. Sh. R.P. Bansal instead of returning the keys, affixed a board on the main gate of the Dharamsala showing his name as a trustee.

53. It appears that Sh. R.P. Bansal had sought to place reliance on a letter dated 17.12.1958 allegedly issued by one Seth Ramlal Khemka, inter alia, appointing Sh. R.P. Bansal as trustee of Seth Ramlal Khemka Dharamsala. According to the prosecution, no such letter existed and it had been fabricated by the accused persons to usurp the Dharamshala. Sh. R.P. Bansal failed to produce the original letter dated 17.12.1958 on which he placed reliance to justify his actions. Sh. R.P. Bansal, instead, swore an affidavit on 14.09.2006 in the aforesaid case stating that the original of the letter dated 17.12.1958 was not in his custody. He stated that the said letter was/is in the power and possession of one Sh. Giridharilal and that a copy of the said letter had been given to him at the time when deed of induction of trustee dated 15.04.2002 was executed. On the basis of the complaint made with the aforesaid accusation, FIR under section 20/468/472/448/341/201/120B IPC was registered against the accused persons at police station

Chandni Chowk on 03.05.2005 bearing No.164/2005. Sh. R.P. Bansal was also named as accused No.2 in the FIR.

54. The said FIR was challenged before this court by filing W.P. (Crl.) Nos.1481-87/2005. This court held that since a civil suit had also been filed questioning the genuineness of the documents relied upon, inter alia, by Sh. R.P. Bansal i.e. the letter dated 17.12.1958 allegedly executed by Seth Ram Lal Khemka appointing, inter alia, Sh. R.P. Bansal, advocate as a trustee of the Dharamsala, parallel proceedings in respect of the FIR should be suspended. The order of the High Court passed in a batch of writ petitions being W.P. (Crl) Nos.1481-87/2005 dated 09.02.2005 was set aside by the Supreme Court in Criminal Appeal No.474/2006 on 28.04.2006.

55. Sh. R.P. Bansal then sought anticipatory bail from the competent court. On 18.09.2006, Sh. N.P. Kaushik, the learned Additional Sessions Judge considered the application moved by the accused, including Sh. R.P. Bansal, for grant of anticipatory bail. A copy of the order dated 18.09.2006 has been placed on record. While observing that the stand taken in the affidavit dated 04.02.2006 and reply dated 05.09.2005 is contradictory, and that there is no explanation for his being in possession of the photocopy of the letter relied upon by him, the learned ASJ dismissed the anticipatory bail application of Sh. R.P. Bansal as the document relied upon had not been produced by him in the court.

56. Pertinently, in the status report filed by the Deputy Commissioner of Police, Economic Offence Wing, New Delhi in Crl. W.P. No.1481-87/2005, it had been inter alia stated as follows:

“That on the other hand Girdhari Lal Didwania and Ram Phal Bansal (petitioner) got registered a Deed of Induction of Trustees in the Trust on 15.4.02 and on 2.2.04, Girdhari Lal Didwania resigned from the trust and the remaining 6 petitioners were inducted as trustees.

That Girdhari Lal Didwania (alleged new trustee, 82 years) has been examined, who categorically stated that Ram Phal Bansal and Girdhari Lal Tiwari had approached him and told him that the old trust was misappropriating the funds and wanted him to join their new trust, for which initially he had given his willingness. Later on, when the original trustees contacted him and apprised him of the facts, he resigned from the trusteeship. He has also stated that no letter dt. 17.12.58 was written by Ramlal Khemka to Ram Phal Bansal, as claimed by Ram Phal Bansal”.

57. The documents produced on record pertaining to the case titled Sh. Bhagwandass & Anr. v. State of NCT of Delhi, prima facie, show that similar accusations have been made against Sh. R.P. Bansal in that case. In the light of the allegations made against the respondent Sh. R.P. Bansal in relation to the case in hand, and the case relating to FIR No.164/2005, it cannot be appreciated as to how the learned Magistrate could have come to the conclusion that even a prima facie case is not made out against him for proceeding under section 201/120B IPC. The observation of the learned Magistrate that, the fact that the documents in question were lost from the office of Sh. R.P.

Bansal and the fact that there is another FIR under the same provisions of the IPC pending against him, are not sufficient to raise a prima facie doubt of the commission of the offence under section 201 read with section 120B IPC by Sh. R.P. Bansal betrays an erroneous approach of the learned Magistrate, in the light of the aforesaid facts, and the principles laid down by the courts upon application of which the trial court should take a decision whether or not to take cognizance and issue summons to the accused. The allegations made against Sh. R.P. Bansal in the case relating to FIR No.164/2005 do strengthen the suspicion against him of his involvement in the disappearance/destruction of the incriminating evidence against the other accused who are charged, inter alia, with forgery and fabrication of the aforesaid three documents.

58. The supreme Court in ***Sukhram V. State of Maharashtra*** 2007 SCC 502 and in ***State of Karnataka V. Madesha & Ors.*** 2007(9) Scale 523 has considered the ingredients of Section 201 IPC. In ***Sukhram*** (supra), the Supreme Court held that to bring home an offence u/s 201 IPC, the ingredients to be established are :

“(i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should have caused disappearance of evidence and (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused.”

59. The Court held that in order to bring home the offence u/s 201 IPC, a mere suspension is not sufficient. There must be on record cogent evidence to prove that the accused knew or had sufficient information to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender. In **Madesha** (supra), the Supreme Court quoted the following extract from its earlier decision in **V.L.Tresa V. State of Kerala, (2001) 3 SCC 549**

“Having regard to the language used, mere suspicion would not be sufficient. There must be available on record cogent evidence that the accused has caused the evidence to disappear in order to screen another known or unknown. The foremost necessity being that the accused must have the knowledge or have reason to believe that such an offence has been committed. This observation finds support in the oft-cited decision of this Court in Palvinder Kaur v. State of Punjab. Further, in Roshan Lai v. State of Punjab, this Court in AIR para 12 of the Report observed:

(12) Section 201 is somewhat clumsily drafted but we think that the expression 'knowing or having reason to believe' in the first paragraph and the expression 'knows or believes' in the second paragraph are used in the same sense. Take the case of an accused who has reason to believe that an offence has been committed. If the other conditions of the first paragraph are satisfied, he is guilty of an offence under Section 201. If it be supposed that the word 'believes' was used in a sense different from the expression 'having reason to believe', it would be necessary for the purpose of inflicting punishment upon the accused to prove that he 'believes' in addition to 'having reason to believe'. We cannot impute to the legislature an intention that

an accused who is found guilty of the offence under the first paragraph would escape punishment under the succeeding paragraphs unless some additional fact or state of mind is proved."

60. The Supreme Court also extracted the relevant portion from the judgment in **Sou.Vijaya@Babu V. State of Maharashtra, 2003(8) SCC 296** which read as follows:-

"6. Section 201 IPC presents a case of accusations after the fact. "An accessory after the fact" said Lord Hale, "may be, where a person knowing a felony to have been committed, receives, comforts, or assists the felon". (See 1 Dale 618.) Therefore, to make an accessory ex post facto it is in the first place requisite that he should know of the felony committed. In the next place, he must receive, relieve, comfort, or assist him. And, generally any assistance whatever given to a felon to hinder his being apprehended, tried or suffering punishment, makes the assister an accessory. What Section 201 requires is that the accused must have had the intention of screening the offender. To put it differently, the intention to screen the offender, must be the primary and sole object of the accused. The fact that the concealment was likely to have that effect is not sufficient, for Section 201 speaks of intention as distinct from a mere likelihood.

7. Section 201 punishes any person, who knowing that any offence has been committed, destroys the evidence of that offence or gives false information in order to screen the offender from legal punishment. Section 201 is designed to penalize "attempts to frustrate the course of justice."

61. Reference may also be made to the decision of this Court for **Sanjeev Nanda v. State** 160 (2009) DLT 775. In relation to the offence under Section 201 IPC, this Court held as follows:

“309. Section 201 is a salutary principle of law to deter those who indulge in the act of destroying the evidence so as to screen the principal offenders of the main offence. The punishments prescribed under this Section for the offenders has been made commensurate depending upon the severity of the offence, evidence of which, has been destroyed by the offenders. The punishment extendable to seven years has been prescribed for destroying the evidence punishable with death and punishment up to three years has been prescribed for destroying the evidence of an offence punishable with imprisonment of life or imprisonment which may extend to 10 years and fine, if the sentence is for a term which does not extend up to 10 years, then the offence is punishable for a term extendable to 1/4th part of the longest term of imprisonment provided for the offence or with fine or with both.

310. Roots of Section 201 IPC can be found in the English Law where the aiders and the abettors have been classified as accessories before the fact, accessories at the fact and accessories after the fact. According to Lord Hale of England "an accessories after the fact may be, where a person knowing a felony to have been committed receives, relieves, comforts or assists the felon. Section 201 IPC deals with a situation where the felony has been committed and the person accused of offence under Section 201 has reasons to believe that a felony has been committed, commits any act so as to weaken the prosecution against the principal offenders. Section 201 IPC thus has been designed to penalize the attempts of all those who create bottlenecks and hindrances in the way of the prosecution to apprehend the culprits of the crime and to ultimately ensure their escapement from the clutches of law. Such offenders are the biggest enemies of the society as through their devious acts they render the investigation blindfolded which in our country is already ill equipped due to the lack of modern and scientific devices to apprehend the criminals.

311.

312. The word 'offence', as used in the above section, does not contemplate that the accused should have the complete knowledge of a particular section of penal code under which the offence is said to have been committed. What the court has to examine is to see as to whether the accused knew or had reason to believe that an offence has been committed. It is certainly for the prosecution to prove that the accused had such sufficient knowledge to form a belief that the offender has committed some offence and to screen him from such offence, particular evidence needed to be destroyed....."

62. On a reading of the aforesaid judgments, *prima facie*, it cannot be said that the charge sheet filed in the case did not disclose the commission of an offence under Section 201 read with Section 120B IPC by Sh. Ram Phal Bansal in relation to the allegedly forged and fabricated three documents aforesaid. Shri Ram Phal Bansal had reason to believe that the offence of forgery had been committed as already explained; he admits to have received the original documents that are alleged to be forged; he was appearing in civil/criminal proceedings for the other accused wherein directions to produce the originals of the allegedly forged documents were made; when the time to produce the documents came, he claimed to have misplaced them in his office.

63. The mere *ipse dixit* of the accused that the incriminating evidence had been misplaced in his office cannot be accepted on its face value and on that basis it cannot be concluded that the offence under Section 201 IPC has not been made out. The sequence of events narrated as well as the conduct of Sh. Ram Phal Bansal *prima facie*

gave rise to a serious suspicion that the incriminating evidence had not merely been inadvertently misplaced in his office, but the same may have been deliberately withheld, suppressed or destroyed to save his clients from being prosecuted for the offence, inter alia, of forgery and fabrication.

64. As to what should be the approach of the Court at the stage of consideration of the matter at the time of framing of charge or taking of cognizance, has been dealt with by the Supreme Court in ***State of Orissa v. Debendra Nath Padhi*** (2005) 1 SCC 568. The Supreme Court has held that at the time of framing of charge *or taking cognizance* the accused has no right to produce any material.

65. In ***Bharat Parikh v. Central Bureau of Investigation*** (2008) 10 SCC 109 while dealing with the approach of the trial Court at the stage of framing of charge, the Supreme Court again relied upon ***Debendra Nath Padhi*** (supra) and held that having regard to Sections 207 & 227 of the Cr.P.C., while framing charges the trial Court can only look into materials produced by the prosecution while giving an opportunity to the accused to show the said materials were insufficient for purpose of framing charge.

66. I may also refer to a decision of this Court in ***Madal Lal Kapoor v. Rajiv Thapar & Ors.*** 150 (2008) DLT 744. The Criminal Revision Petition had been preferred by the petitioner to impugn the order passed by the Additional Sessions Judge, Delhi, whereby the accused had been discharged in the complaint case filed by the petitioner. It

would be useful to set out the submissions advanced by the petitioner as well as the finding of the Court. The same read as follows:

"7. The submission of learned Counsel for the petitioner is that the decision of the Supreme Court in Satish Mehra (supra) stands squarely overruled by the larger Bench decision of the same Court in State of Orissa v. Debendra Nath Padhi MANU/SC/1010/2004 : AIR2005SC359 . In the said decision after discussing the various earlier decisions rendered by it, the Supreme Court in para 23 held that "clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided."

"8. On this basis the submission of learned Counsel for the petitioner is that the impugned decision is in the teeth of the decision of Supreme Court in Debendra Nath Padhi (supra) and that it cannot be sustained. He further submits that the learned ASJ has gone into the evidence to find its probative value which is not permitted in law at the stage of framing of charge. He submits that the material brought on record in the case, namely, the complaint and the evidence of C-1 and C-2 has to be accepted as true at that stage. He relies on State of Maharashtra v. Som Nath Thapa and Ors. MANU/SC/0451/1996 : 1996CriLJ2448 to support the contention that at the stage of framing of charge probative value of material and record cannot be gone into and the material brought on record by the prosecution has to be accepted as true, and if on the basis of materials brought on record the Court could come to the conclusion that commission of the offence is probable, a case for framing of charge is made out. He further submits that at the stage of framing of charge the learned ASJ could not have examined the evidence to appreciate whether it is sufficient or not for convicting the accused. For this proposition, he relies State of M.P. v. Mohan Lal Soni MANU/SC/0434/2000 : 2000CriLJ3504 . The Court has only to examine and be satisfied that

the prima facie case is made out for proceeding further at the stage of framing of charge. He further submits that the learned ASJ while passing the impugned order has gone into the evidence of the complainant meticulously, which could not be done at the stage of consideration of the matter on charge. He relies on State of A.P. v. Golconda Linga Sway and Anr. MANU/SC/0552/2004 : 2004CriLJ3845 in support of this proposition. Charge can be framed if there are materials showing probability about the commission of the crime as against certainty. He has also placed on reliance in Suresh Kumar Tekriwal v. State of Jharkhand and Anr. (2005) 12 SCC 278, which is on the same lines as the decision of the Supreme Court in Debendra Nath Padhi (supra)."

9.

"10. The Supreme Court in Debendra Nath Padhi (supra) has very clearly and in no uncertain terms held that at the time of taking cognizance or framing of charge, the accused has no right to produce any material. As aforesaid, Satish Mehra (supra) has expressly been overruled which held that the trial Court has the powers to consider even materials which the accused may produce at the stage of Section 227 of the Code. While dealing with the meaning of the expression "the record of the case", as appearing in Section 227 of the Code the Supreme Court in Debendra Nath Padhi (supra) has held that though the word 'case' is not defined in the Code, but Section 209 throws light on the interpretation to be placed on the said words. Section 209 deals with the commitment of the case to the Court of Sessions when offence is triable exclusively by it. The said Section provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall send to that Court, the record of the case and the documents and articles, if any, which are to be produced in evidence and notify the public prosecutor of the committal of the case to the Court of Sessions. On this basis, the Supreme Court observed that the record of the case and documents submitted therewith as postulated in Section 227 relates to the case

and the documents referred to in Section 209. The Court further observed that no provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial."

67. What may constitute a possible defence of Sh. Ram Phal Bansal, namely, his version that the three documents had been misplaced in his office, cannot form the basis of the decision of the Magistrate at the time of consideration of the charge sheet for the purpose of taking cognizance.

68. For all the aforesaid reasons, I set aside the impugned order dated 15.09.2006 passed by the learned Metropolitan Magistrate in FIR No.119/1997, P.S. C.R. Park (CB) in so far as the learned Magistrate failed to take cognizance of the offence under Section 201/120B IPC against Sh. Ram Phal Bansal. I direct the learned Metropolitan Magistrate to proceed in accordance with law and in terms of this judgment. Sh. Ram Phal Bansal is directed to appear before the learned Metropolitan Magistrate on 31.05.2010.

(VIPIN SANGHI)
JUDGE

MAY 17, 2010
as/rsk/sr