

ASHISH CHADHA

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v.

SMT. ASHA KUMARI & ANR.

(Criminal Appeal No. 893 of 2005)

DECEMBER 2, 2011

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**[SWATANTER KUMAR AND RANJANA PRAKASH
DESAI, JJ.]**

CONSTITUTION OF INDIA, 1950:

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Article 136 – Locus to file appeal and jurisdiction of Supreme Court – Complaint alleging illegal transfer of Government land – Order of Special Judge framing charges, set aside by High and the case transferred to a different court — Original complainant died – Special leave petition filed by an Ex-Municipal Councillor with a petition for leave to file the SLP – Held: Though in express terms, Article 136 does not confer a right of appeal on a party as such, but it confers discretionary power on Supreme Court to interfere in suitable cases – In the instant case, the allegations made against respondent no.1 are serious – There is a prima facie case against her – By the impugned order not only the charge framed against her but also against all the accused has been quashed – Though the matter has been remanded, the High Court by observing that there is no prima facie case against respondent no.1, has frustrated the purpose of remand order – Besides, without there being any material on record, the High Court has transferred the case to a different court – The High Court's judgment is tainted with legal infirmities and has resulted in miscarriage of justice – Therefore, interference by Supreme Court is necessary in larger public interest – Code of Criminal Procedure, 1973 – s. 401.

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CODE OF CRIMINAL PROCEDURE, 1973:

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A s. 401 – High Court's power of revision – Scope of – Charge framed by Special Court set aside by High Court and the case remanded and transferred to a different court – Held: The High Court has completely misdirected itself in reversing the trial court's order framing the charge – High Court in its
 B revisional jurisdiction appraised the evidence which it could not have done – Ignoring the settled position in law, the High Court discussed the details of the facts and drew inferences – The High Court should have left the final adjudication to the
 C Court unnecessarily observed that the charge is vague – Further, the High Court transferred the case to a different court, without there being any material on record for such an order – It overstepped its revisional jurisdiction – Order of the High Court has resulted in miscarriage of justice and, as such,
 D is set aside – The order framing charge by Special Judge is confirmed and he is directed to proceed further in accordance with law – Constitution of India, 1950 – Article 136.

s. 303 – Right of person against whom proceedings are instituted to be defended – Criminal proceedings against
 E husband and wife – Both represented by one and the same Counsel – Proceedings for framing charges conducted on 15 dates – On the date of framing the charge, the same counsel, who had argued the case on behalf of the wife, stated that he had no instructions to represent her – The wife also filed an
 F application that she wanted to be defended by a counsel of her choice – Application rejected by trial court – Further application for transfer of the case also rejected – In revision, the High Court observing that the applicant had been denied opportunity to be defended by counsel of her choice,
 G remanded the case, but to a different court – Held: The attempt of the applicant to change the counsel was a dilatory tactic – There is no violation of s. 303 of the Code or Article 22 (1) of the Constitution – Constitution of India, 1950 – Article 22 (1).

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ADMINISTRATION OF JUSTICE:

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Transfer of cases by High Court – HELD: Transfers ordered merely on the say-so of a party have a demoralizing effect on the trial courts – Unless a very strong case, based on concrete material is made out, such transfers should not be ordered – Transfer petition.

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A complaint was filed against respondent no.1, who had been the Member of the State Legislative Assembly, her husband (since deceased) and others, stating that they conspired to get wrong entries made in the revenue records and to secure illegal orders regarding conferment of proprietary rights in favour of the servants of the husband of respondent no.1, who finally managed to become owner of the said land. This was stated to have been done by using forged Power of Attorneys and fictitious wills with connivance of revenue officials. The Special Judge, Chamba framed charges against respondent no. 1 for offences punishable u/ss 420, 218, 467, 468, 471 read with s. 120-B IPC. On a criminal revision filed by respondent no.1, the High Court set aside the order of the Special Judge on the ground that the accused were denied an opportunity of being heard and that the trial court's observation that there was a prima facie case against the accused was made without applying mind to the relevant record. The High Court also transferred the matter to the Court of Special Judge, Kangra at Dharmashala on the ground that the apprehension expressed by respondent no.1 that she would not get fair trial in the court at Chamba was well founded. Meanwhile, the original complainant expired and the appellant, an Ex-Municipal Councillor filed the appeal upon permission being granted by the Supreme Court in larger public interest.

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Respondent no.1 besides contesting the appeal on merits, raised a preliminary objection that since the

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A original complainant had died the appellant had no locus to file the instant appeal.

Disposing of the appeal, the Court

B HELD: 1. So far as the preliminary objection is concerned, this Court in *PSR Sadhanantham's case**, while dealing with the scope of Article 136 of the Constitution of India, observed that in express terms it does not confer a right of appeal on a party as such, but it confers wide discretionary power on the Supreme Court to interfere in suitable cases. This Court further observed that it is true that strict vigilance over abuse of the powers of this Court should be maintained and in the criminal jurisprudence this strictness applies a fortiori, but in the absence of an independent prosecution authority easily accessible to every citizen, a wider connotation to the expression 'standing' is necessary for Article 136 to further its mission. No dogmatic proscription of leave under Article 136 to a non-party applicant can be laid down inflexibly. [Para 5-6] [426-H; 427-A-F]

E **PSR Sadhanantham v. Arunachalam* (1980) 3 SCC 141 – relied on.

F 1.2 In the instant case, the allegations made against respondent no. 1 are serious. There is a prima facie case against her. By the impugned order the charge framed against not only respondent no. 1 but against all the accused is quashed. It is true that the matter is remanded, but while remanding the matter the High Court has expressed that there is no prima facie case against respondent no. 1, thus, frustrating the purpose of remand order. Therefore, interference by this Court is necessary in larger public interest. [Para 7] [427-H; 428-A-C]

H 2.1 Though the discretionary power vested in this Court under Article 136 is apparently not subject to any

limitations, it has to be used sparingly and in exceptional cases. But there is no manner of doubt that the instant case is an exceptional one where interference under Article 136 is called for. The High Court has completely misdirected itself in reversing the trial court's order framing charge. The High Court's judgment is tainted with legal infirmities and has resulted in miscarriage of justice. [Para 12] [430-D-E]

2.2 The High Court has in its revisional jurisdiction appraised the evidence which it could not have done. Ignoring the settled position in law, the High Court discussed the details of some selected facts and drew inferences. The facts of the case are inextricably interwoven. It is significant to note that respondent no. 1 made two fraudulent sales in favour of her husband who is stated to have been deeply involved in the alleged conspiracy. In such circumstances, the High Court should have left the final adjudication to the trial court by not quashing the charge. Whether the revenue entries are genuine or not will also have to be decided by the trial court after perusing the evidence led by the parties. The High Court unnecessarily observed that the charge is vague. It overstepped its revisional jurisdiction. [Para 13-14] [430-F; 431-D-H]

Munna Devi vs. State of Rajasthan & Anr. (2001) 9 SCC 631 – relied on.

2.3 Besides, the tenor of High Court's order suggests that it has formed an opinion that there was no prima facie case against respondent no. 1. A prima facie opinion of the High Court in such a strongly worded language is likely to influence the trial court. By expressing opinion on merits of the case, the High Court almost decided the matter in favour of respondent no. 1, thus, frustrating the remand and virtually acquitting her. [Para 15] [432-B-C]

A 3.1 It cannot be said that respondent no.1 was denied
 her right to be defended by a lawyer of her choice. From
 the impugned order and from the order of the Special
 Judge it is clear that the Special Judge conducted the
B proceedings for framing charge on 15 dates from
 6.12.2003 to 4.1.2005. From the Special Judge's order it
 is clear that 'M' was appearing as counsel both for
 respondent no.1 and her husband, but on 4.1.2005, he
 stated that he had no instructions to appear for
 respondent no. 1. Respondent no. 1 filed an application
C that she wanted to be defended by a counsel of her
 choice. The Special Judge rejected the prayer and framed
 the charges observing that 'M' had advanced arguments
 on behalf of respondent no. 1 and since State's reply
 dated 4.12.2004 did not disclose any new facts,
D adjournment was not necessary. The manner in which
 the proceedings were conducted on behalf of respondent
 no. 1, leads this Court to conclude that she wanted to
 delay the framing of charges. Her desire to change the
 counsel was obviously not genuine but was a dilatory
 tactic. The High Court wrongly came to the conclusion
E that respondent no.1 was not given a chance to engage
 a counsel of her choice. In the instant case, there is no
 violation of s 303 of the Code of Criminal Procedure, 1973
 or Article 22 (1) of the Constitution. [para 16-17] [432-D-
F H; 433-A-C-E-F]

F 3.2 It is also significant to note that while the order
 was being dictated by the Special Judge, respondent no.1
 moved an application for transfer of the case stating that
 an opportunity of being heard through an advocate of
 her choice was denied to her. This application was rightly
G rejected by the Special Judge for want of jurisdiction.
 Respondent no.1 then requested the High Court to
 transfer her case from the file of the Special Judge,
 Chamba to the Court of Special Judge, Kangra on the

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ground that she had reasonable apprehension that she would not get a fair trial. The High Court, wrongly transferred the case, as the apprehension expressed by respondent no.1 was baseless and there was no material to substantiate it. Such transfers ordered merely on the say-so of a party have a demoralizing effect on the trial courts. Unless a very strong case based on concrete material is made out, transfers should not be ordered. [para 18] [433-G-H; 434-A-E]

4.1 It must also be noted that the High Court has quashed the charge not only against respondent no.1 but also against all the accused when no such prayer was made. It was improper for the High Court to go beyond the scope of the prayers made by respondent no.1 and quash even the charges framed against all other accused. [para 18] [434-E-G]

Bimal Chand Dhandhia vs. State 1976 CrI. L. J. 1594 – held inapplicable.

4.2 The impugned order has resulted in miscarriage of justice, and is, therefore, set aside. The order dated 4.1.2005 framing charge by Special Judge, Chamba is confirmed and he is directed to proceed further in accordance with law. [para 19] [434-H; 435-A-B]

Sadhanantham v. Arunachalam (1980) 3 SCC 141, *State of Orissa v. Debendra Nath Padhi* 2004 (6) Suppl. SCR 460 = (2005) 1 SCC 568, *Mathai alias Joby vs. George & Another* 2010 (3) SCR 533 = (2010) 4 SCC 358, *Jamshed Harmusji Wadia vs. Port of Mumbai* 2004 (1) SCR 483 = (2004) 3 SCC 214; and *Netraj Singh vs. State of M. P.* 2007 (4) SCR 370 = (2007) 12 SCC 520 – cited.

Case Law Reference:

(1980) 3 SCC 141 cited para 6

- A **2004 (6) Suppl. SCR 460** cited **para 8**
 (2001) 9 SCC 631 **relied on** **para 8 and 13**
 2010 (3) SCR 533 **cited** **para 9**
- B **2004 (1) SCR 483** **cited** **para 9**
 2007 (4) SCR 370 **cited** **para 11**
 1976 CrI. L. J. 1594 **held inapplicable** **para 18**

C **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal**
 No. 893 of 2005.

 From the Judgment & Order dated 29.04.2005 of the High Court of Himanchal Pradesh at Shimla in Criminal Revision Petition No. 20 of 2005.

D **P.S. Patwalia, Meenakshi Arora, Suryanarayana Singh, Pragati Neekhra, Aman Preet Singh Rahi, Naresh K Sharma, N.K. Srivastava for the appearing parties.**

 The following Judgment of the Court was delivered by

E **(SMT.) RANJANA PRAKASH DESAI, J. 1.** The first
 respondent was the member of the Legislative Assembly of
 Banikhet Constituency from the year 1984 to 1990 and 1994
 to 2001. A complaint dated 6.8.1998 was filed against her by
F one Shri Kuldeep Singh, Ex-Municipal Councilor, Dalhousie
 alleging interalia that the first respondent and her husband
 Brijender Singh (since deceased) had in connivance with
 Revenue Officials manipulated the revenue records, forged
 documents and got the land belonging to the Government
 transferred in the name of Brijender Singh. The said complaint
G was inquired into by Vigilance Department and FIR came to
 be registered on 15.12.2001 against the first respondent and
 Brijender Singh and others under Sections 420, 218, 467, 468,
 471 read with Section 120-B of the Indian Penal Code (for
 short, "the IPC"). The Special Judge, Chamba framed charges
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against the first respondent and others on 4.1.2005 under Sections 420, 218, 467, 468, 471 read with Section 120-B of the IPC. The first respondent filed Criminal Revision No. 20 of 2005 before the High Court of Himachal Pradesh at Shimla challenging the order dated 4.1.2005 framing charges. By the impugned order the High Court set aside the said order on the ground that the accused were denied an opportunity of being heard and that the trial court's observation that there was prima facie case against the accused was made without applying mind to the relevant record. The High Court also transferred the matter from the court of Special Judge Chamba to the Court of Special Judge Kangra at Dharmashala on the ground that the apprehension expressed by respondent no. 1 that she would not get fair trial in the Court at Chamba was well founded. A direction was issued that the matter be proceeded with in accordance with the provisions of Sections 239 and 240 of the Code of Criminal Procedure (the "Code" for Short). It may be stated here that the original complainant Shri Kuldeep Singh expired in 2001. The appellant was the elected Municipal Councilor of Dhalhousie Municipal Committee from 1995 to 2000 and from 2000 till it was suspended in 2003. It is the case of the appellant that the State of Himachal Pradesh for political reasons was not interested in challenging the impugned judgment though in this case there is illegal grabbing of Government forest land worth crores of rupees. He has, therefore, filed the instant appeal upon permission being granted by this Court in larger public interest.

2. It is necessary to give brief background of the case.

3. One Raja Laxman Singh the original owner of 85.10 bighas of land situate at Mauza Jandrighat Bhatyat (now Chuwari) expired on 20.5.1971. His properties were inherited by one Raja Prem Singh and after coming into force of the Himachal Pradesh Ceiling on Land Holdings Act, 1972, the said land vested in the State of Himachal Pradesh. Brijender Singh got married to respondent no. 1 in 1978. Between 1977

A and 1978 revenue records were tampered with in connivance
 with the revenue officials and the names of the domestic
 servants of Brijender Singh namely Piar Singh, Arjun Singh,
 Bemí Ram, Narvada Devi, Nand Lal and Laxmi Devi were
 entered in revenue records as non-occupancy tenants in
 B respect of 67.3 bighas of land. After protracted litigation the
 aforesaid persons were declared non-occupancy tenants of
 67.3 bighas of land and proprietary rights in respect thereof
 were conferred upon them vide mutations attested on
 23.6.1987 and 8.12.1987. Thereafter Brijender Singh is stated
 C to have fabricated two Wills – one of Arjun Singh and other of
 Piar Singh. On the basis thereof Brijender Singh is stated to
 have got the land of Piar Singh and Arjun Singh mutated in his
 favour vide mutation dated 29.7.1994. The first respondent is
 stated to have obtained three General Power of Attorneys on
 D 29.1.1993 and 30.1.1993 from Narvada Devi, Nand Lal and
 Bemí Ram authorizing her to sell their land in favour of her
 husband Brijender Singh for consideration. On the basis of the
 said General Power of Attorneys the first respondent is stated
 to have made two sales in favour of her husband Brijender
 E Singh. Thus, in short, the allegation against the first respondent
 and her husband Brijender Singh is that they conspired to get
 wrong entries made in the revenue records and to secure illegal
 orders regarding conferment of proprietary rights in favour of
 the servants of Brijender Singh who finally managed to become
 owner of the said land. This was done by using forged Power
 F of Attorneys and fictitious Wills with connivance of Revenue
 Officials.

4. We have heard learned counsel for the parties at some
 length. We have also gone through the written submissions
 G tendered by them.

5. At the outset we must refer to the preliminary objection
 raised by counsel for respondent no. 1. Counsel submitted that
 the original complainant has expired and as such the present
 H appellant has no locus to file the instant appeal. Counsel

respondent no.1. He is the son of Smt. Chadha a member of legislative assembly. Smt. Chadha had filed election petition against respondent no.1. It was dismissed. The appellant has filed the present petition to settle Smt. Chadha's political scores. Counsel submitted that the appeal is politically motivated and deserves to be dismissed on that ground also. Ms. Arora learned counsel for the appellant has vehemently opposed this submission.

6. So far as the preliminary objection is concerned we may usefully refer to the judgment of this Court in *PSR Sadhanantham v. Arunachalam*¹. There the State not having filed an appeal against the judgment of the High Court acquitting the accused who had allegedly committed the murder of her brother, the petitioner filed petition in this Court under Article 136 of the Constitution of India challenging the said judgment of acquittal. Objection was raised to the maintainability of the said petition. Dealing with the scope of Article 136, this Court observed that in express terms it does not confer a right of appeal on a party as such, but it confers wide discretionary power on the Supreme Court to interfere in suitable cases. This court further observed that it is true that strict vigilance over abuse of the powers of this court should be maintained and in the criminal jurisprudence this strictness applies a fortiori, but in the absence of an independent prosecution authority easily accessible to every citizen, a wider connotation to the expression 'standing' is necessary for Article 136 to further its mission. No dogmatic proscription of leave under Article 136 to a non-party applicant can be laid down inflexibly. This court rejected the objection raised to the maintainability of the petition.

7. In our view the preliminary objection raised by counsel for the first respondent is liable to be rejected in the light of the above judgment. The allegations made against the first respondent are serious. There is a prima facie case against the first respondent. By the impugned order the charge framed

1. (1980) 3 SCC 141.

A against not only the first respondent but against all the accused is quashed. It is true that the matter is remanded, but while remanding the matter the High Court has expressed that there is no prima facie case against the first respondent, thus frustrating the purpose of remand order. We, therefore feel that
 B interference by this Court is necessary. We do not think that the petition is politically motivated. But assuming there is political rivalry between the first respondent and the appellant's aunt in our opinion since the charge is about grabbing of government land in the larger public interest the appeal cannot
 C be dismissed in limine. The preliminary objection is, therefore, rejected.

8. We shall now go to the other submissions advanced by the counsel. Ms. Arora learned counsel for the appellant submitted that the High Court has erroneously come to the
 D conclusion that the first respondent had been denied an opportunity of being heard. In fact the first respondent was given adequate hearing. At the penultimate stage an application for change of counsel was made by her. Counsel submitted that this shows mala fides and motive to delay the proceedings.
 E Counsel submitted that at the stage of charge, the trial court has to peruse the police report and the documents submitted with it and consider whether prima facie case is made out or not. The trial court has rightly come to the conclusion that there is prima facie case and framed the charge. The High Court
 F however, while exercising its revisional jurisdiction wrongly went into the material, analysed the facts and made observation that there was no prima facie case. In this connection counsel relied on *State of Orissa v. Debendra Nath Padhi*² and *Munna Devi V. State of Rajasthan*³. Counsel submitted that the High Court wrongly transferred the case to the Special Judge, Kangra on
 G the basis of baseless allegations made by respondent no.1. Counsel urged that for the aforementioned reasons the impugned judgment and order deserves to be quashed.

2. (2005) 1 SCC 568.

H 3. (2001) 9 SCC 631.

9. Mr. P.S. Patawalia, learned senior counsel for respondent no.1 submitted that the allegations made against the first respondent and her husband Brijender Singh have already been adjudicated by various courts in Himachal Pradesh. The State of Himachal Pradesh through its officer denied the contention that the names of servants of Brijender Singh were recorded as non-occupancy tenants in connivance with Revenue Officials. The High Court therefore, dismissed that writ petition. Counsel submitted that thereafter a civil suit was filed in the court of Civil Judge, Dalhousie by a MLA making the same allegations. Again the State of Himachal Pradesh denied the allegations. The suit therefore came to be dismissed. Counsel submitted that Shri Kuldeep Singh gave written complaint on 6.8.1998. The FIR came to be lodged on 15.12.01. This delay casts shadow of doubt about its genuineness. Counsel submitted that by the impugned order the High Court has merely remanded the matter to the trial court. This is not a case, therefore, where this court should interfere in its jurisdiction under Article 136 of the Constitution of India. In this connection the counsel relied on *Mathai alias Joby vs. George & Another*⁴ and *Jamshed Harmusji Wadia vs. Port of Mumbai*⁵.

10. Counsel further submitted that respondent no.1 got married to Brijender Singh on 19.4.79. She was, therefore, not present in Himachal Pradesh when the names of the tenants were recorded in the revenue records. This important fact is not noted by the trial court. Counsel submitted that the record of the case shows that before the land vested in the Government, the non-occupant tenants were already in possession of the land and were paying annual rent. Smt. Narbada Devi in her bail application before the Sessions Court stated that she had issued General Power of Attorney in favour of respondent no. 1 without any fear or coercion. The report of the forensic expert states that signatures of the persons who

4. (2010) 4 SCC 358.

5. (2004) 3 SCC 214.

A gave Power of Attorneys were not forged and none of the said three persons had made any complaint with regard to the non-receipt of sale amount.

B 11. Counsel submitted that the trial court did not allow respondent no.1 to engage a counsel and framed the charge in the absence of her counsel which has caused great prejudice to her. In this connection counsel relied on *Netraj Singh vs. State of M.P.*⁶ Counsel submitted that the High Court has rightly invoked the revisional jurisdiction, because respondent no.1 was deprived of her legitimate right under C Section 303 of the Code to engage a counsel of her choice. Council submitted that in the circumstances no interference is necessary with the impugned order.

D 12. Counsel for respondent no. 1 is right in submitting that though the discretionary power vested in this Court under Article 136 is apparently not subject to any limitations, it has to be used sparingly and in exceptional cases. But we have no manner of doubt that this indeed is an exceptional case where E interference under Article 136 is called for. In our opinion, the High Court has completely misdirected itself in reversing the trial court's order framing charge. The High Court's judgment is tainted with legal infirmities and has resulted in miscarriage of justice. Following are the reasons for this conclusion of ours.

F 13. The High Court has in its revisional jurisdiction appraised the evidence which it could not have done. It is the trial court which has to decide whether evidence on record is sufficient to make out a prima facie case against the accused so as to frame charge against him. Pertinently, even the trial court cannot conduct roving and fishing inquiry into the G evidence. It has only to consider whether evidence collected by the prosecution discloses prima facie case against the accused or not. In this connection, we may usefully refer to the observations of this court in *Munna Devi vs. State of Rajasthan & Anr.*⁷

H 6. (2007) 12 SCC 520.

7. (2004) 3 SCC 214.

"We find substance in the submission made on behalf of the appellant. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."

14. Ignoring the above settled position in law, the High Court has noticed that fake entries were made in the revenue records during the years 1973-1974; that respondent no. 1 was married to Brijender Singh in 1978 and that there is no evidence that before her marriage, respondent no. 1 was not residing in her parent's house in Madhya Pradesh as is her case but was residing in Chamba with her prospective in-laws. The High Court has then concluded that it cannot be held, prima facie, that respondent no. 1 was a conspirator in bringing about the fake entries in the revenue records in the years 1973-1974. It cannot be forgotten that it is also the prosecution case that respondent no. 1 obtained three Power of Attorneys from three of the tenants in January, 1993 and, on the basis thereof, she made two fraudulent sales in favour of her husband, Brijender Singh. Two Wills are stated to have been fabricated by her husband Brijender Singh to get Government land transferred in his name. The facts are inextricably interwoven. Brijender Singh, the husband of respondent no. 1 is stated to be deeply involved in the alleged conspiracy. In such circumstances, the High Court should have left the final adjudication to the trial court by not quashing the charge. The High Court unnecessarily observed that the charge is vague. It overstepped its revisional jurisdiction. It is contended that the State of Himachal Pradesh

A had taken a stand that concerned revenue entries are genuine. In our opinion, whether concerned revenue entries are genuine or not will also have to be decided by the trial court after perusing the evidence led by the parties.

B 15. Besides, the tenor of High Court's order suggests that the High Court has formed an opinion that there was no prima facie case against respondent no. 1. A prima facie opinion of the High Court in such a strongly worded language is likely to influence the trial court. If the High Court wanted to remand the matter on the ground that respondent no. 1 was denied opportunity to engage a counsel it should have stopped at that. C By expressing opinion on merits of the case, the High Court almost decided the matter in favour of respondent no. 1 thus frustrating the remand and virtually acquitting respondent no. 1.

D 16. We are also not impressed by the submission that respondent no.1 was denied her right to be defended by a lawyer of her choice. From the impugned order and from the order of learned Special Judge it is clear that the Special Judge conducted the proceedings for framing charge on 6.12.2003, E 12.12.03, 3.1.2004, 14.1.2004, 7.2.2004, 15.3.2004, 5.4.2004, 26.4.2004, 10.5.2004, 4.6.2004, 12.7.2004, 6.12.2004, 8.12.2004, 10.12.2004 and 4.1.2005. From the Special Judge's order it is clear that Mr. Malhotra was appearing for respondent no.1 and also for her husband Brijender Singh. It is pertinent to note that during the course of the hearing the F State filed its reply on 4.12.2004. The case was posted for consideration of charge on 8.12.2004. On 8.12.2004 co-accused Brijender Singh raised an objection that copy of the reply dated 7.2.2004 was not supplied to him. He was permitted to inspect the record. Shri Malhotra submitted that G he was not in a position to argue the case on charge. The request for adjournment was disallowed. Shri Malhotra then submitted that he was ready to argue the case even on behalf of respondent no. 1. In fact, he advanced arguments. He, however, stated that he would make further submissions on H 10.12.2004 after inspection of the record. The case was then

adjourned to 10.12.2004. On that day neither the counsel for the first respondent was present nor the first respondent was present. Respondent no. 1 made a telegraphic request for adjournment on the ground that her mother was ill. That application was rejected. On 4.1.2005, Shri Malhotra who had been appearing for respondent no. 1 stated that he had no instructions to appear for respondent no. 1. Respondent no. 1 filed an application that she wanted to be defended by a counsel of her choice. Learned Special Judge rejected the prayer and framed the charge observing that Shri Malhotra had advanced arguments on behalf of respondent no. 1 and since State's reply dated 4.12.2004 did not disclose any new facts adjournment was not necessary. Learned Special Judge rejected the contention of respondent no. 1 that Shri Malhotra was not her counsel because order sheet of 8.12.2004 made it clear that Shri Malhotra had moved application for exemption from personal appearance on behalf of respondent no. 1.

17. The manner in which the proceedings were conducted on behalf of respondent no. 1 leads us to conclude that respondent no. 1 wanted to delay the framing of charges. Shri Malhotra had appeared for respondent no. 1 and also for her husband Brijender Singh. He had made exemption application on behalf of respondent no. 1. Respondent no. 1's desire to change the horse in the midstream was obviously not genuine but was a dilatory tactic. The High Court wrongly came to the conclusion that respondent no.1 was not given a chance to engage a counsel of her choice. We have no hesitation in observing that, in this case, there is no violation of Section 303 of the Code or Article 22 (1) of the Constitution of India.

18. It is also significant to note that while the order was being dictated by learned Special Judge, respondent no.1 moved an application for transfer of the case since allegedly an opportunity of being heard through an advocate of her choice was denied to her. This application was rightly rejected by Special Judge for want of jurisdiction. Learned Special Judge then framed charges against respondent no.1 and other

A accused. Respondent no.1 then requested the High Court to transfer her case from the file of learned Special Judge Chamba to the Court of Special Judge, Kangra on the ground that she had reasonable apprehension that she will not get a fair trial. The High Court, in our opinion, wrongly transferred the case as desired by respondent no.1. Apprehension expressed by respondent no.1 that she would not get a fair trial was baseless. We have already noted the number of dates on which learned Special Judge adjourned the proceedings. It is only when he was satisfied that respondent no.1 was purposely seeking adjournment and that Mr. Malhotra, counsel appearing for respondent no.1 had argued her case that learned Special Judge refused to grant further adjournment. We do not find any material to substantiate the fear expressed by respondent no.1 that she would not get a fair trial. The High Court, therefore, should not have transferred the case to the Special Judge, Kangra. Needless to say that such transfers ordered merely on the say-so of a party have a demoralizing effect on the trial courts. Unless a very strong case based on concrete material is made out, such transfers should not be ordered. We must also note that the High Court has quashed the charge not only against respondent no.1 but also against all the accused when no such prayer was made. Reliance placed by the High Court on the judgment of learned Single Judge of Calcutta High Court in *Bimal Chand Dhandhia vs. State*⁸ is totally misplaced. In that case, learned Single Judge of the Calcutta High Court has observed that learned Magistrate had failed to proceed in accordance with the procedure established by law in framing the charges against the accused. No such case is made out here. It was improper for the High Court to go beyond the scope of the prayers made by respondent no.1 and quash even the charges framed against all other accused.

19. In view of the above, we are of the opinion that the impugned order has resulted in miscarriage of justice. It will have to be, therefore, set aside and is, accordingly, set aside.

H 8. 1976 CRI.L.J. 1594.

We confirm the order framing charge dated 4.1.2005 passed A
by learned Special Judge, Chamba and direct him to proceed
further in accordance with law. We make it clear that if any
observations made by us touch the merits of the case, they
should be treated as prima facie observations. Learned
Special Judge shall deal with the case independently and in B
accordance with law.

20. The appeal is disposed of in the aforestated terms.

R.P.

Appeal disposed of.