Udskrift af retsbogen Højesteret for Himachal Pradesh, Chandigarh:

BEFORE HON'BLE MR.JUSTICE SURESHWAR THAKUR, J.

Denzong Nang-Ten Sung –Kyob Tsogpa …Petitioner.
VERSUS
State of H.P. & Ors. ...Respondents.
Cr.Revision No.161 of 2012.
Reserved on: 01.06.2015.
Decided on: July 06, 2015.

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Code of Criminal Procedure, 1973- Section 321- Currency of Rupees one crore recovered from a vehicle during search-fake documents showing fake identity of the person carrying the currency and the sale and purchase of land also collected during the investigation-case under sections 419, 420, 467 I.P.C etc. registered-respondent No. 3 shown to have conspired with the co-accused—withdrawal of the prosecution sought against him on the ground of paucity of evidence and on the ground that the Respondent No. 3 was a Dharam Guru and the withdrawal was in the interest of maintaining the law and order- application was allowed- held that there is sufficient material on record to incriminate the accused-permission for withdrawal from prosecution was unjustified and result of the non application of mindRevision allowed and application for withdrawal dismissed. (Para- 15 & 16)

Code of Criminal Procedure, 1973- Section 321- Prosecution applied under section 321 Cr.P.C for withdrawal from the prosecution -Intervener application by a stranger to the prosecution case to oppose the prayer for withdrawal from the prosecution of the caseIntervener petitioner being stranger to the prosecution case has no locus standi to oppose the application under section 321 Cr.P.C. (Para 11)

Code of Criminal Procedure, 1973- Section 397- Revision in a criminal case- even if the intervener petitioner/ Revisionist had no locus standi to file the Revision, still the court can suo moto examine the order to judge the correctness or otherwise of the findings rendered by the inferior court. (Para-11)

Cases referred:
Sheonandan Paswan versus State of Bihar & Ors., 1983(1) SCC 438
Sheonandan Paswan versus State of Bihar and others, (1987)1 SCC 288
A.R. Antulay versus Ramdas Sriniwas Nayak and another, (1984)2 SCC 500
P.D. Dinakaran (2) versus Judges Inquiry Committee and another, (2011)8 SCC 474
Commissioner of Wealth Tax versus Dr. Karan Singh and others, 1993 Suppl.(4) SCC 500
V.S. Achuthanandan versus R. Balakrishna Pillai and others (1994)4 SCC 299
Abdul Karim and others versus State of Karnataka and others, (2000)8 SCC 710
Janata Dal versus H.S. Chowdhary and others, (1992)4 SCC 305

For the petitioners: Mr.K.K.Rai, Sr.Advocate with Mr.S.K.Pandey, Advocate and Mr. R.S. Jaswal, Advocate, for the petitioner.

For respondents No.1 and 2: Mr.Shrawan Dogra, Advocate General with Mr.Vivek Singh Attri, Deputy Advocate General.
For Respondent No.3: Mr.Vikas Pahwa, Senior Advocate with Mr.Narender Pal Singh, Advocate with Mr.C.N. Singh, Advocate.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge:
The instant criminal revision petition is directed against the impugned orders rendered on 21.05.2012 by the learned Judicial Magistrate 1st Class, Una, District Una, H.P., whereby, the latter Court allowed/accepted the application preferred before it, by the State of Himachal Pradesh under Section 321 of the Cr.P.C., seeking its permission for withdrawal from prosecution against respondent No.3 herein. The petitioner herein claims the relief of quashing of the aforesaid order rendered by the learned Judicial Magistrate 1st

Class, Una, besides, seeks a direction from this Court for reinvestigation of the case by an independent agency, on conclusion whereof, it be directed to file a supplementary charge sheet before the Criminal Court of competent jurisdiction.

2. The facts necessary for adjudication of this revision petition are that on 26.01.2011, the police party headed by ASI Manoj Kumar was present at Mehatpur Barrier. At about 3.35 P.M., a Scorpio vehicle bearing No. HP36A-0444 came from Una to Nangal side. On a checking of the vehicle, its driver disclosed his name as Sanjog Dutt son of Ravinder Nath and the person sitting on the front seat disclosed his name as Ashutosh Sharma son of Ravinder Nath. Both of them exhibited their identity cards issued by Divya Himachal. The word ―Press‖ was displayed on the front and back mirrors of the vehicle. On suspicion, when the police proceeded to search the vehicle in the presence of Sh.Chanchal Bali and Sh.Vivek Kumar, then Sh.Sanjog Dutt displayed a Certificate bearing No.OR/DKD/AMB/14/2011 of 25.01.2011, issued by Corporation Bank, Ambala. As per the certificate, cash amounting to Rupees one crore was displayed therein to be carried in the vehicle in the name of Shri K.P. Bhardwaj. On a checking of the vehicle, a plastic gunny bag branded EZY COOK was found concealed on the back side of the driver's seat of the vehicle and on checking of the same, one more plastic gunny bag within the gunny bag was found and it was found containing eight bundles (80 lakhs) of 1000 currency, four bundles (20 lacs) of 500 currency and in total currency of Rupees one crore was recovered. Five bundles having the notes of denomination of Rs.1000/- and three bundles having the notes of denomination of Rs.500/-, were having the strip of HDFC Bank, Delhi and three bundles having the notes of denomination of Rs.1000/- and one bundle having the notes of denomination of Rs.500/- were having the strip of ICICI Bank, Delhi. In opposition to the certificate, the aforesaid seized currency was not found to be issued from Corporation Bank, Ambala and the identity of both the persons sitting in the vehicle was found suspicious, inasmuch as theirs being not though revealed by them to be correspondents with Divya Himachal. It transpired that the currency recovered was earned from anti-social activities or illegal sources and it was to be utilized for illegal business. The recovered currency, vehicle in question along with other articles were taken into possession by the police. Thereafter, an FIR under Sections 419, 420, 467, 468, 471 and 120-B, IPC was registered in the police station. The investigation into the offences was conducted by ASI Manoj Kumar and thereafter the investigation was conducted by Shri K.G. Kapoor, Additional Superintendent of Police, Una, Sh. Rakesh Singh, SDPO, Jawali, Sh. Dinesh Kumar, SDPO, Kangra, SHO/SI Yashpal, Investigating Officers, Police Station, Una, SI/SHO Negi Ram, Police Station Chintpurni, ASI Kaur Chand and H.C. Satish Kumar No.94. During Investigation spot map was prepared by visiting the spot. The currency amounting to Rupees one crore, two press identity cards and one certificate of Corporation Bank, Ambala were taken into possession. The statements of the witnesses under Section 161 of the Cr.P.C. were recorded on the spot. The accused Sanjog Dutt and Ashutosh were interrogated and arrested for offences as per law. Shri Ragvay Chhosang, Cashier of the Karma Garchin Trust was associated in the investigation and he produced the documents relating to the purchase of land in the name of Karma Garchin Trust to the police but he could not produce the permission letter of the government for the sale of land. It was found during the course of the investigation that on 25.01.2011, Ragvay Chhosang has handed over Rupees one Crore to Sanjog Dutt at Majnu Ka Tilla, Delhi and thereafter, in the intervening night, he himself carried a sum of Rs.21 lacs to Karma Garchin Trust, Sidhwari. On 27.01.2011, the investigation of the case was carried out at Gyto Monastery, Sidhwari and during course thereof, currency of different countries along with registers and three pen drives were taken into possession vide separate recovery memos. On 28.01.2011, accused Devinder Kumar, Bank Manager of Corporation

Bank, Ambala was also associated in the investigation with respect to issuance of certificate aforesaid. On 29.01.2011, Kul Prakash Bhardwaj was also associated in the investigation at Vankhandi and interrogated. On 29.01.2011, at the instance of accused Ragvay Chhosang, the police recovered foreign currency from the tenanted premises occupied by Gompo Tisring in the house of Shakuntla and prepared memos in this regard. The police also prepared the spot map in this regard. Thereafter, accused Ragvay Chhosang gave identification of his room and office of Gayato Monastery Complex at Sidhwari to the police and the police prepared the memo in this regard. On 29.1.2011, the police conducted the search of Hotel Central Point, Dharamshala and took into possession three general power of attorneys as also recorded the statements of witnesses under Section 161 of the Cr.P.C. On 30.01.2011, during a search operation in the guest house of Rinjin Wagmo at Majnu Ka Tilla, Delhi, a CPU, certificate, attorney charges and Bulk Sale Register were taken into possession. On

31.1.2011, while counting the recovered Indian currency, two notes of the denomination of 500/500 were found bogus and the same were taken into possession by the police vide separate memo. In this regard, a case under Section 489 of the IPC was registered. On 01.02.2011, the police took into possession vehicle bearing No. HR-3H-6194 along with its documents, a video cassette and one laptop millennium marka along with its charger/lead vide separate memos. On 3.2.2011, a memo regarding production and taking into possession, a diary for the year 2008 on which ―Executive Diary‖ was written has been prepared. On the same day, statement of Mali Ram Dogra was recorded under Section 164 of the Cr.P.C., before the learned Judicial Magistrate 1st Class, Court No.II. On 03.02.2011, Rinjin Wagmo and Karma Kukehapa were associated in the investigation and interrogated accordingly. They were arrested and information with respect to their arrest was given as per law to their relatives. On 5.2.2011, a memo regarding production and taking into possession, the records pertaining to account No.11329127388 was prepared. On 05.03.2011, a memo regarding production and taking into possession, the hard disk of computer and the documents relating to land of Karma Garchen Trust, Sidhwari were taken into possession by the police. The specimens of handwriting and signatures of accused, namely, Devinder Kumar Dhar, Rinjin Wagmo, Ragway Chhosang and Kul Praksh Bhardwaj were taken before the Court and the same were sent to RFSL, Dharamshala for comparison and report whereof has been received. According to the report of RFSL Dharmshala, it was found that the specimens of handwriting and signatures resemble with the supplied documents. During the investigation of the case, search qua the strips and slips appended on the currency notes was under taken in Delhi at ICICI and HDFC Bank and it was found that a sum of Rs.1 Crore was not withdrawn from these banks and a certificate to this effect has also been received from the concerned Branch Managers. The hard disc was taken into possession from Gompo Tisiring and when the print out was taken from the hard disc, it was found that the sale of 52 canals of land was made for Rs.5 Crores instead of 2 and half Crores. The hard disc along with print out was sent to FSL, Junga for comparison and report whereof has been received. During the course of investigation, cash book and other registers from Karma Garchen Trust, Sidhwari were taken into possession by the police and audit whereof was conducted by the Chartered Accountant. Gompo Tisiring, Tenzin Namgayal, Dr. Swatanter Mahajan and Sher Singh, during the course of investigation unraveled the fact that they have put their signatures on the sale deed. During the course of investigation, Tehsildar Dharamshala, TCP Dharamshala and Karma Garchan Sidhwari were asked questions regarding registration of Karma Garchan Trust, issuance of NOC for purchase and sale of land, they gave divergent replies in writing which were not found satisfactory. In this regard opinion was sought from prosecution agency, Una which was of the opinion that the Trust and sale deed were illegal. In the investigation conducted until

now, it was found that accused Ragway Chhosang along with Karma Kukhempa took foreign currency from Gayato Monastery, Sidhwari to Manju Tilla, Delhi and there on 25.01.2011, accused Rinjin Wangmo after converting this foreign currency into Indian currency gave Rs.1 crore and 21 lacs to Ragway Chhosang whereas according to accused Rinjin Wangmo this amount of Rs.1 Crore and 21 lacs was given by him to Ragway Chhosang as a donation and Ragway Chhosang himself, after taking 21 lacs, went to Karma Garchan Trust, Sidhwari, Dharamshala. Accused Ragway Chhosang and Rinjin Wagmo gave Rs.1 crore to Sanjog Dutt, the driver of K.P. Bhardwaj for its transmission by him to accused K.P. Bhardwaj. Devinder Kumar Dhar, the Bank Manager in a well planned manner has already at his own instance prepared a fictitious certificate and has given the same to Sanjog Dutt. Then Sanjog Dutt along with Malli Ram Dogra brought the aforesaid amount of Rs.1 crore from Delhi to Chandigarh in K.P. Bhardwaj‘s vehicle i.e. Alto Car No. HR-03 H-6194 in a well planned manner. On 26.01.2011, Sanjog Dutt after wrapping Rs.1 crore in a plastic bag and hiding it, inside other luggage put it in K.P. Bhardwaj‘s vehicle No. HP-36B-0444, and took his brother also with him from Chandigarh to Dharamshala. Accused Sanjog Dutt has already apprised his brother Ashutosh about the sum of Rs.1 crore. Both of them, showed their identity cards of ―Press‖ issued by Divya Himachal. Investigations, revealed that Sanjog Dutt was not the employee of Divya Himachal and his identify card was found to have been forged. It was also found that the word ―Press‖ written on the front and back mirrors of the vehicle of accused K.P. Bhardwaj was fictitious. During the course of investigation, it was found that accused K.P. Bhardwaj, who was the owner of the vehicle in question, was neither an employee of the Press nor the aforesaid vehicle was related to the Press. It was found that the aforesaid persons conspired to deceive the law by mentioning the word ―Press‖ on the front and rear mirrors of the vehicle bearing No. HP-36B-0444 and accused Sanjog Dutt possessed an invalid press card. The recovered amount of Rs. One Crore was deposited with the government treasury as per the orders of the Court. Further, when foreign currency and Indian Currency amounting to Rs.53,65,265/-, which was

recovered from Dharamshala, was checked at SBP Branch, Una as per the orders of the Court, it was found that two notes of the denomination of 500 were bogus. The same were sent for analysis and as per the report of Analyst, these two notes of five hundred each were also found fake. Indian currency notes of Rs.53,64,265/- and two fake notes of rupees five hundred each are lying deposited in the Malkhana of police station and the certificate issued by accused D. K. Dhar in which it is found mentioned that K.P. Bhardwaj has deposited rupees one crore earned by selling land at Delhi, in his account at Ambala Bank, were also found false because it has come in the investigation that neither K.P. Bhardwaj had sold any land in Delhi nor he has any account in Corporation Bank at Ambala. It has also come in the investigation that the sale deed qua fifty two kanals of land executed between accused Ragvey Chhosang, member of Karma Garhin Trust Sidhwari and owners Kul Praksh etc., was shown for rupees two and half crore yet according to the record of computer hard disk, the sale deed was executed for rupees five crore. Foreign currency received in Karma Garchen Trust, Sidhwari, Dharamshala could not be exchanged in Indian currency at Dharamshala and Sidhwari for which Trust had sought permission for exchange of money from FERA which was refused and the Trust was facing hindrances in carrying out the functions of the Trust. Whenever money was required for sale-purchase of land, construction of buildings, Ragvey Chhosang, Cashier of Trust stealthily used to go to Rinjhin Wangmo and Karma Kukey Khampa, who have one guest house and business of foreign exchange in Majnu Tilla, Delhi and brought money to Sidhwari Trust after exchange, which was illegal. It was also revealed in the investigation that Rs. one core aforesaid was neither lawfully exchanged in Delhi nor any donation from outside was received by Rinjhin Wangmo

because as per branches of ICICI and HDFC Bank, Delhi, this money was not withdrawn from their banks. The entire money is ―Hawala‖ and the Chairman of the Trust, 17th Gyalwang Karmapa Ogyen Trinley Dorge was also interrogated who told that accounts of Karma Garchen Trust were operated by its employees and work of sale and purchase of land was used to be done by a committee and he has no knowledge about it. However, as per the report of Tehsildar, Dharamshala, 17th Gyalwang Karmapa Ogyen Tirinley Dorge is Chairman of the said Trust. In this context, it is proved that sale-purchase of land for the Trust and whatever amount was paid by them to K.P. Bhardwaj, 17th Gyalwang Karmpa Ogyen Trinley Dorge was having knowledge. He has not obtained permission under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act from the Himachal Government to purchase land though he is a non Himachali/non agriculturist and in Himachal sale-purchase of land is done with the permission of the government. Full and final payment has been made to K.P. Bhardwaj before the registration of the sale deed. The whole process of purchase of land was within the knowledge of 17th Gyalwang Karmapa Ogyen Trinley Dorge being the Chairman of the Trust and he was having full knowledge. Hence, the offence under Section 120 B IPC has been proved against him. The registers and cash books of Karma Garchen Trust, Sidhwari have been taken into possession by the police and got audited from Hari Narayan Chittu, C.A., Una and the report to this effect has been procured. As per the report, tax evasion worth Rs.3 crore has been found in the Trust. The sale deed executed inter se the Trust and accused K.P. Bhardwaj, Dr. Swatanter Mahajan and Sher Singh was with a purpose to earn the benami property because, if they had revealed the entire money, in that event they would have to pay more tax. According to hard disk recovered by the police, the deal was for Rs.5 crores but the sale deed was executed for Rs.2.5 crores. During the course of the investigation, the police took into possession the records relating to the payments made in connection with the sale and purchase of the land by the members of the Trust to Mr. K.P. Bhardwaj, Dr. Swatanter Mahajan and Sher Singh. According to the record, the total value of the land of K.P. Bhardwaj measuring 27 kanal, 11-1/4 marla was about 1 crore 37 lakh i.e. 5 lakh per kanal but as per record K.P. Bhardwaj received Rs. one crore and eight lakhs by means of cheque and cash. Similarly, Swatanter Mahajan has received Rs.19 lakh and 85 thousand in lieu of land measuring 18 kanal 6 marla, while Sher Singh received Rs.11 lakhs and 47 thousand and five hundred in lieu of land measuring 4 kanal 7 marla. Rupees one crore recovered by the police were being claimed by him to be his money and he has filed an application before the Court for its release. Before this, all the money involved in this transaction was received differently by K.P. Bhardwaj, Swatanter Mahajan and Sher Singh. Dr.Swatanter Mahajan and Sher Singh have not given power of attorney to K.P.Bhardwaj to receive the money. As per sale deed, balance amount of K.P.Bhardwaj is about 28 lakh 25 thousand rupees whereas he has claimed that he himself had already received rupees one crore. Thus, it appears that the deal was finalized for 5 crore and not for 2.5 crore. As per specimen of handwritings and signatures and statements of the witnesses a challan for the offences under Sections 419,420, 467, 468, 471 and 120-B of the IPC has been prepared against accused entered in Column No.11. Hence, a case under Sections 419,420, 467, 468, 471 and 120-B of the IPC

has been prepared against accused Sanjog Dutt, Ashutosh, Ragvay Chhosang, Kul Prakash Bhardwaj, Devender Kumar Dhar, Karma Kukempa, Rinzin Wagmo, Tenzin Namgayal, Gompo Tisring and 17th Gyalwang Karmapa Ogyen Trinley Dorge.

3. The petitioner herein had moved an application before the learned Judicial Magistrate 1st Class, Una opposing the move of the government to withdraw from prosecution against respondent No.3 herein. On 21.5.2012 the learned Judicial Magistrate 1st Class, Una, District Una, H.P., under the orders impugned before this Court rather

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allowed the application of the public prosecutor for permission to withdraw from prosecution against respondent No.3 herein.

4. The petitioner herein before the learned Judicial Magistrate 1st Class, Una, had filed an intervener application, with a disclosure therein of his opposition as well as remonstrance, to the prayer made by the State of Himachal Pradesh in its application under Section 321 of the Cr.P.C., for the according of necessary permission by the Court, for withdrawal from prosecution against respondent No.3 herein. In trite, the portrayal in the application instituted at the instance of the petitioner herein before the learned Judicial Magistrate 1st Class, Una against the prayer of the Government of Himachal Pradesh being accepted, by the Judicial Magistrate concerned, was embedded in the fact that, with the Investigating Officer during course of his carrying/conducting investigations, having concluded that the respondent No.3 herein being head of the Trust in whose favour a sale deed qua 52 kanals of land without the statutory permission as envisaged under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act of the Government concerned, was executed by the vendors and the sum of money unearthed from the vehicle intercepted by the police on 26.01.2011 as also the money unearthed from the premises of respondent No.3 herein at Gyuto Monastery, Dharamshala, both constituted the consideration for the acquisition of property for and on behalf of the Trust of which respondent No.3 herein was Chairman, as such, the unearthing of the aforesaid money per se in entwinement with its user for the acquisition of property for the benefit or use of the Trust, manifested the knowledge of the Chairman of the Trust, the respondent No.3 herein, qua the unaccounted money recovered, both from the vehicle intercepted by the police as also recovered from the premises of respondent No.3 at Gyuto Monastery, Dharamshala and qua its user for a shady land transaction. Consequently, the offence under Section 120-B of the IPC as portrayed in the report under Section 173 of the Cr.P.C., was made out against respondent No.3 herein. In sequel, it was manifested in the apposite application preferred by the petitioner herein/intervener, that the application under Section 321 of the Cr.P.C., instituted by respondents No.1 and 2 before the learned Judicial Magistrate 1st Class, Una, seeking its permission for withdrawal from prosecution against respondent No.3 herein, suffered from lack of objective appraisal of the material on record, besides obvious non application of mind. Moreover, the impugned orders rendered thereon by the learned Judicial Magistrate 1st Class, Una, too are now portrayed to be also suffering from a similar taint.

5. The learned counsel appearing for the respondent No.3 before making any submission qua the tenacity of the reasoning afforded by the learned Judicial Magistrate concerned, in allowing the application preferred before it by the Government of Himachal Pradesh under Section 321 of the Cr.P.C., for permission to withdraw from prosecution against respondent No.3 herein, has with much vigour contended before this Court that the intervener, before the learned Judicial Magistrate 1st Class concerned, the petitioner herein, had no locus standi either to contest the application preferred before the learned Judicial Magistrate 1st Class concerned by the State of Himachal Pradesh under Section 321 of the Cr.P.C. for permission to withdraw from prosecution against respondent No.3 herein nor also the intervener therein, has the necessary locus standi to institute the instant criminal revision petition before this Court, for assailing or setting aside the orders rendered by the learned Judicial Magistrate 1st Class concerned, whereby it accorded permission to the State of Himachal Pradesh, on its application preferred before it, to withdraw from prosecution against respondent No.3 herein. He has besides contended on the strength of the pronouncement of the Hon'ble Apex Court in ***Sheonandan Paswan versus State of Bihar & Ors., 1983(1) SCC 438*** that even otherwise the factors or parameters necessitating

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satisfaction for validating the impugned orders, as enshrined in paragraph No.120, which paragraph stands extracted hereinafter, had both met accomplishment and satiation, inasmuch as the portrayals in the record of the government seized with, processing the matter for rendering a direction to the Public Prosecutor concerned, to institute an application under Section 321 of the Cr.P.C., before the Judicial Magistrate concerned for

seeking the latter‘s permission for withdrawal from prosecution, depict its having applied its mind incisively as well as thoroughly qua the factum of not only there being paucity or scanty evidence existing against respondent No.3 herein, besides its having also applied its mind to the factum that with the respondent No.3 herein, being a ―Dharam Guru‖, who has an immense following and has been afforded political asylum by the Government of India, besides is the successor of His Holiness Dalai Lama, hence, in the event of withdrawal from prosecution against respondent No.3 herein, being not permitted, it shall entail a law and order problem and would lead to strained relations between the Indian Government and the Tibetan Government in exile. In sequel, he contends with vehemence before this Court that in light thereof, the impugned order suffers from no taint and necessitates vindication. Paragraph No. 120 of the aforesaid citation reads as under:-

―120. The last in the series is the case of R. K. Jain v. State. After review of the various cases of this court, the court laid down the following propositions :

1. Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the executive.
2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.
3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.
4. The government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.
5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes sans Tammany Hall enterprises.
6. The Public Prosecutor is an officer of the court and responsible to the court.
7. The court performs a supervisory function in granting its consent to the withdrawal.
8. The court's duty is not to re-appreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or

withholding its consent to withdrawal from the prosecution.‖

The citation aforesaid as relied upon by the learned senior counsel appearing for respondent No.3 herein, delineates the salient or fundamental principles which are to be borne in mind by a Criminal Court of competent jurisdiction while granting permission to the Public Prosecutor for withdrawal from prosecution against an accused. There is no whisper or any pronouncement therein qua the fact whether the intervener therein, who had opposed the prayer of the learned Public Prosecutor for his being permitted by the Court concerned on his application under Section 321 of the Cr.P.C., to withdraw from prosecution against the accused therein, had while his being a private individual any locus standi to contest the application of the learned Public Prosecutor. Obviously with silence having been maintained by the Hon‘ble Apex Court in the citation aforesaid qua the locus of a private individual therein to as an intervener oppose and contest the prayer of the learned Public Prosecutor as canvassed in an application under Section 321 of the Cr.P.C., for permission to withdraw from prosecution against the accused therein, no obvious guidance there-from emanates qua the fact whether the petitioner herein while being a private individual has the necessary locus to assail or challenge the impugned order rendered by the learned Judicial Magistrate 1st Class, Una. However, in the subsequent decision rendered by the Hon‘ble Apex Court reported in **Sheonandan Paswan versus State of Bihar and others, (1987)1 SCC 288**, the minority view explicitly foisted locus upon a private individual/citizen to contest an application instituted by the Public Prosecutor for permission of the Court concerned for

withdrawal from prosecution against an accused. The relevant paragraph No.14 stands extracted hereinafter:-

The learned counsel on behalf of Dr. Jagannath Mishra also raised another contention of a preliminary nature with a view to displacing the locus standi of Sheonandan Paswan to prefer the present appeal. It was urged that when Shri Lallan Prasad Sinha applied for permission to withdraw the prosecution against Dr. Jagannath Mishra and others, Sheonandan Paswan had no locus to oppose the withdrawal since it was a matter entirely between the Public Prosecutor and the Chief Judicial Magistrate and no other person had a right to intervene and oppose the withdrawal and since Sheonandan Paswan had no standing to oppose the withdrawal, he was not entitled to prefer an appeal against the order of the learned Chief Judicial Magistrate and the High court granting permission for withdrawal. We do not think there is any force in this contention. It is now settled law that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. It is for this reason that in A. R. Antulay v. R. S. Nayak (1984)2 SCC 500 this court

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pointed out that (SCC p.509, para 6) "punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus standi. . ". This court observed that locus standi of the complainant is a concept foreign to criminal jurisprudence. Now if any citizen can lodge a first information report or file a complaint and set the machinery of the criminal law in motion and his locus standi to do so cannot be questioned, we do not see why a citizen who finds that a prosecution for an offence against the society is being wrongly withdrawn, cannot oppose such withdrawal. If he can be a complainant or initiator of criminal prosecution, he should equally be entitled to oppose withdrawal of the criminal prosecution which has already been initiated at his instance. If the offence for which a prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have locus to initiate a prosecution as also to resist withdrawal of such prosecution, if initiated. Here in the present case, the offences charged against Dr. Jagannath Mishra and others are offences of corruption, criminal breach of trust etc. and therefore any person who is interested in cleanliness of public administration and public morality would be entitled to file a complaint, as held by this court in A. R. Antulay v. R. S. Nayak and equally he would be entitled to oppose the withdrawal of such prosecution if it is already instituted. We must therefore reject the contention urged on behalf of Dr. Jagannath Mishra that Sheonandan Paswan had no locus standi to oppose the withdrawal of the prosecution. If he was entitled to oppose the withdrawal of the prosecution, it must follow a fortiorari that on the turning down of his opposition by the learned Chief Judicial Magistrate he was entitled to prefer a revision application

to the High court and on the High court rejecting his revision application he had standing to prefer an appeal to this court. We must therefore reject this contention of the learned counsel appearing on behalf of Dr. Jagannath Mishra.‖

The aforesaid portion of the judgment delineating the minority view of the Bench voices the tenet that an intervener before the learned Court concerned before whom an application under Section 321 of the Cr.P.C., is preferred for permission to withdraw from prosecution against the accused therein, even when he is not the complainant or the Investigating Agency, has the necessary locus standi to oppose as an intervener, an application preferred by the Public Prosecutor concerned before the Criminal Court of competent jurisdiction wherein a prayer is made for permission to withdraw from prosecution against the accused

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therein. The minority view obviously does not hold good. Its effect having come to be muted as well as silenced by the majority view which rather has held, that the view expressed by the minority whereby the locus was held to inhere in an intervener even while his donning the capacity of a private individual to oppose the application preferred by the Public Prosecutor for permission to withdraw from the prosecution against an accused, postulates an incorrect proposition of law.

6. The learned Senior Counsel appearing for the intervener/petitioner herein has with much vigour contended before this Court that with a loud expression existing in paragraph 14 which stands extracted hereinabove, even if by a minority, yet the view therein being embedded or entrenched upon a decision of the Hon'ble Apex Court in **A.R. Antulay versus Ramdas Sriniwas Nayak and another, (1984)2 SCC 500** which decision comprises a decision by a five Judge Bench of the Hon'ble Apex Court, its effect cannot face subsidence or dilution by a mere expression of dissent by the majority, without supplemental ad nauseam reasoning vis-à-vis each of the expositions by the minority. However, the above contention is unacceptable to this Court, inasmuch as even if the said argument may stand to garner sustenance, yet the factum that in ***A.R. Antulay's case supra***, the Hon'ble Apex Court was seized of the locus of a private individual to institute a private complaint for commission of an offence under the Prevention of Corruption Act and the concomitant empowerment and jurisdiction vested in the Special Judge concerned under the Act aforesaid to take cognizance thereupon. The factual matrix therein being in dire contradiction to the factual matrix of the instant case wherein the intervener/petitioner has rather taken to contest the application of the State of Himachal Pradesh preferred before the Court concerned for permission to withdraw from prosecution against respondent No.3 herein enfeebles its legal vigour and renders frail its applicability. The Hon'ble Apex Court in the afore referred case had held that a private individual has legal competence to institute a private complaint and on the institution of a private complaint, under the Prevention of Corruption Act, the Special Judge concerned is empowered to take cognizance thereupon. However, for reiteration, distinctively in the instant case, the intervener/the petitioner herein, even when has not instituted a private complaint before the Special Judge under the provisions of the Prevention of Corruption Act, yet has opposed the prayer made in the application under Section 321 of the Cr.P.C., instituted by the Assistant Public Prosecutor before the Court concerned for the according of permission to withdraw from prosecution against respondent No.3 herein. Obviously, the transparent salient fact of distinctivity inter se the status of a private complainant therein as well as his legal competence to invoke the jurisdiction of the Special Judge appointed under the Prevention of Corruption Act, through a complaint instituted before it, vis-à-vis an intervener, who opposes the prayer of the learned Public Prosecutor seeking permission of the Court concerned to withdraw from prosecution against the accused besides, with the mandate enshrined in ***A.R. Antulay's case supra***, investing legal competence in a private individual to institute a private complaint before the Special Judge under the Prevention of corruption Act and its not vesting or clothing any right in a private individual to, as an intervener oppose an application preferred by the learned Public Prosecutor before the Court concerned under Section 321 of the Cr.P.C., for permission to withdraw from prosecution against the accused. Consequently, the reliance, if any, by the counsel for the petitioner herein upon the decision of the Hon'ble Apex Court in ***A.R. Antulay's case supra*** carries no force or vigour. In other words, when a private individual/citizen is clothed with a firm legal right to institute a complaint under the Prevention of Corruption Act before the Special Judge concerned for hence warranting cognizance by the Court concerned, now when the petitioner herein has contradistinctly instituted an application opposing the prayer made by the Assistant Public

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Prosecutor in the latter's application preferred under Section 321 of the Cr.P.C., before the learned Judicial Magistrate 1st Class concerned for permission to withdraw from prosecution against respondent No.3, the minority view of the Hon'ble Apex Court anchored upon ***A.R. Antulay's case supra***, is an inapt reliance by the counsel for the petitioner for concluding that an intervener opposing an application of the State moved through the learned Public Prosecutor before the Criminal Court of competent jurisdiction for permission to withdraw from prosecution against the accused, too has the locus standi to manifest a protest or objection to the application aforesaid, besides does not rejuvenate his contention, especially with the minority view losing its vigour and strength in the face of the majority having not accepted it.

7. The learned Senior Counsel appearing for the petitioner has proceeded to also rely upon a judgment of the Hon'ble Apex Court reported in ***P.D. Dinakaran (2) versus Judges Inquiry Committee and another, (2011)8 SCC 474*** , the relevant paragraph No.13 whereof stands extracted hereinafter, to contend before this Court that with the majority having not explicitly dealt with ad nauseam with each of the expostulations of the minority view, hence, the majority view declining locus to the intervener in an application under Section 321 of the Cr.P.C., ought not to hold sway or command. Paragraph No.13 of the aforesaid judgment reads as under:-

―13. Shri Patil then argued that by making investigation prior to the framing of charges, the Committee has acted in violation of the scheme of the Act and the petitioner has a bona fide apprehension that the investigation to be made hereinafter will be an empty formality. Shri Patil relied upon the judgments of this Court in Sub-Committee on Judicial Accountability v. Union of India, 1991 4 SCC 699, Sarojini Ramaswami v. Union of India, 1992 4 SCC 506 and Krishna Swami v. Union of India and others, 1992 4 SCC 605 as also the judgments of the Kerala, Bombay and Allahabad High Courts in V. Padmanabha Ravi Varma Raja v. Deputy Tehsildar, Chittur, 1963 AIR(Ker) 155, Mahendra Bhawanji Thakar v. S.P. Pande, 1964 AIR(Bom) 170 and Prem Prakash Gupta v. Union of India, 1977 AIR(All) 482 and argued that the minority view expressed by K. Ramaswamy, J. in Krishna Swami's case on the interpretation of Sections 3 and 4 of the Act should be treated as law declared under Article 141 of the Constitution because the majority did not express any view on the questions framed by the three-Judge Bench. Learned senior counsel further argued that in the absence of any contrary view by the majority, the minority opinion is binding on all including this Court unless the same is overruled by a larger Bench. Shri Patil finally argued that violation of the mandate of Section 3 has the effect of vitiating the proceedings of the Committee and, therefore, the charges framed against the petitioner are liable to be quashed.‖

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However, in the hereinabove extracted paragraph of the aforesaid judgment, the majority view was held to be not holding the field qua the questions formulated by the Hon'ble Three Judge's Bench, inasmuch as the majority had omitted to express any view contrary to the one expressed by the minority. Nonetheless, the aforesaid extracted portion of the judgment of the Hon'ble Apex Court cannot be read to befittingly apply to the facts at hand especially when the majority view has explicitly and expressly pronounced its disconcurrence or dissent with the minority view, hence, when has not omitted to express/communicate its divergence/difference with minority, which fact of divergence of opinion being omitted to be communicated by the majority in the afore referred judgment relied upon by the learned senior counsel for the petitioner herein hence left open space for the minority view to hold sway. In sequel, with the expression of open dissent by the majority with the minority view, in ***Sheonandan Pawan's case (1987)1 SCC 288 supra***, hence, the majority view holds sway, command and legal clout.

8. The learned Senior Counsel appearing for the petitioner herein has besides, relied upon a judgment of the Hon'ble apex Court reported in ***Commissioner of Wealth***

Tax versus Dr. Karan Singh and others, 1993 Suppl.(4) SCC 500, the relevant paragraph No.11 whereof is extracted hereinafter, in canvassing the view that with the majority having not openly differed with the minority view, in sequel, the majority is to be construed to have acquiesced with the minority view. Paragraph No.11 reads as under:-

—11. Mr. Sorabjee further contended that whatever has been said in the judgment of Mitter, J. , must be treated to be the majority view. In support of this proposition, Mr Sorabjee relied upon the observations in Guardians of Poor v. Guardians of Poor and Overseers of Manchester v. Guardians of Ormskrik Union. Describing the views expressed by D. D. Basu on Article 141 in his Commentary on the Constitution of India (6th edn. , Volume H, at pages 14 and 15 as the correct approach of interpreting a judgment where the Judges holding the majority give independent judgments, Mr Sorabjee contended that when one of the judges expounds the law on a particular point, but others do not openly dissent from it, it must be taken that all the judges concurring in the majority decision agreed to that exposition. He relied on the following observations from the case of Guardians of Poor v. Guardians of Poor:

"We know that each of them considers the matter separately, and then they consider the matter jointly, interchanging their judgment, so that every one of them has seen the judgments of others. If they mean to differ in their view, they say so openly when they come to deliver their judgments and if they do not do this, it must be taken that each of them agrees with the judgments of the others. "the learned counsel also recommended adoption of the practice followed in England for considering the judgments of the House of

Lords indicated in case of Overseers of Manchester v. Guardians of Ormskrik Union in the following terms:

"Where in the House of Lords one of the learned Lords gives an elaborate explanation of the meaning of a statute, and some of the other learned Lords present concur in the explanation, and none express their dissent from it, it must be taken that all of them agreed in it. "by way of further elaboration Mr Sorabjee contended that this principle is applicable even to the views of dissenting judges, unless the majority opinion expressly disagrees with the same. He referred to the decision in Rustom Cavasjee Cooper v. Union of India as an illustration of this proposition where the observations in the judgment of Ray, J. cannot be treated to be the majority view for the reason that at page 561-G reservation was expressed by Shah, J. in express terms. The argument, therefore, is that since in the judgment of Sikri, C. J. we do not find any dissent or reservation from the views of Mitter, J. on the nonapplicability of Entry 86 of the Wealth Tax Act, the said view must be treated to be that of all the four judges forming the majority. Reliance was also placed on paragraph 20 of the judgment in Ramesh Birch v. Union of India.

However, the said pronouncement by the Hon‘ble Apex Court is inappositely and feebly concerted to be applicable to the facts at hand especially when the majority view in the citation relied upon by the senior counsel for the respondent No.3 while ousting the locus of an intervener to oppose or contest an application under Section 321 of the Cr.P.C., has loudly and with formidability in the opening paragraph of the judgment, rendered by the Hon‘ble Judge, who authored it, for the Bench which constituted the majority, expressed his dissent with the view of locus inhering in an intervener as expressed by the minority. Consequently, with an open dissent by the majority with the minority view, there is no room for the learned senior counsel for the petitioner herein to contend on the strength of the

citation aforesaid, applicable only in the event of lack of open dissent by the majority with the minority view, hence, conveying its acquiescence with the minority view, that his submissions anchored upon the citation aforesaid marshal any strength or vigour to oust the vigour of the majority view especially when it has expressed its loud and open divergence with the minority view. The learned Senior Counsel appearing for the petitioner has been unable to place before this Court any judgment of the Hon'ble Apex Court portraying the fact that a single line of dissent as found existing in the dis-concurrent view of the majority with the minority is inabundant as well as insufficient to be construable to be an expression of dissent from the minority view. Consequently, with the inability of the learned Senior Counsel for the petitioner herein to, hence, cite before this Court any pronouncement of the Hon'ble Apex Court that the explicit single line of dissent existing in the opening paragraph of the judgment of the Hon'ble Judge of the Hon'ble Apex Court, who authoured it for the majority is insufficient to constitute it to be a proclamation of an open dissent with the minority view, dehors the ad nauseam expostulation by the majority on each of the pronouncements existing in the minority view, as a corollary it has to be concluded that the single line of dissent manifested in the opening line of the judgment of the Hon'ble Judge,

who authoured the majority view, is sufficient and abundant to countervail the effect of the minority view.

9. The learned Senior Counsel appearing for the petitioner has proceeded to rely upon a judgment of the Hon'ble Apex Court reported in ***V.S. Achuthanandan versus R. Balakrishna Pillai and others (1994)4 SCC 299*** wherein the Hon'ble Apex Court had permitted the petitioner therein to question the validity of the order passed by the High Court, whereby, it set aside the order passed by the learned Special Judge declining to give permission to the Public Prosecutor to withdraw from prosecution against the accused therein, as such, too vesting in the petitioner herein the necessary locus standi, to also question the validity and tenacity of the order rendered by the learned Judicial Magistrate 1st Class, Una in permitting the Government of Himachal Pradesh to withdraw from prosecution against respondent No.3 herein. However, the reliance as placed by the learned Senior Counsel for the petitioner in canvassing that hence the petitioner herein too, has the locus to assail the validity of the impugned orders passed by the learned Judicial Magistrate 1st Class, Una whereby it permitted the Government of Himachal Pradesh to withdraw from prosecution against respondent No.3, is misplaced, inasmuch as in the case cited/relied upon, it is manifestly elucidated in paragraph 8, that the Apex Court had not embarked upon or entered into the facet of testing the locus of the petitioner therein, especially when the locus of the appellant/petitioner therein was not disputed before the Hon'ble Apex Court, constituted in the fact of his being an acknowledged public figure of the State concerned, which equipped him with the necessary locus to institute an appeal before the Hon'ble Apex court for setting aside the order rendered by the High Court whereby it had set aside the orders rendered by the learned Special Judge, whereby the latter Court had declined to give consent to the Public Prosecutor for withdrawal from prosecution against the accused therein. Ensuably, then the said decision which had permitted the appellant therein, who was a private individual to assail by way of an appeal the decision rendered by the High Court only on the score of his locus having come to be not contested by the parties to the lis, obviously, then with the acquiescence of the parties to the lis therein qua his having the necessary locus to institute an appeal before the Hon'ble Apex Court had constrained the Hon'ble Apex Court to not delve into or embark upon the factum of his having the necessary locus to institute an appeal before the Hon'ble Apex Court, would not facilitate the espousal by the learned Senior Counsel appearing for the petitioner herein that the petitioner herein, too when unlike the decision as relied upon by the learned Senior Counsel has a contentious or disputed locus, has too the legal competence to institute a revision before this Court for contesting the validity of the orders rendered by the learned Judicial Magistrate 1st Class.

10. Moreover, the learned counsel appearing for the petitioner herein has also proceeded to rely upon a judgment of the Hon'ble Apex Court reported in ***Abdul Karim and others versus State of Karnataka and others, (2000)8 SCC 710*** wherein too, the Hon'ble Apex Court had permitted a private individual to institute an appeal before it against the order permitting the withdrawal from prosecution against the accused therein. Nonetheless, the relevant paragraph No.33 of the judgment aforesaid as relied upon by the learned Senior Counsel appearing for the petitioner underlines the fact that the appellant in the case aforesaid was permitted to, even as a private individual, when otherwise he may not have any locus to institute an appeal to assail the orders rendered by the competent Court, permitting the government concerned to, on an application preferred before it by the Public Prosecutor, withdraw from prosecution against the accused therein, contest it, merely for non existence of any contest on the part of the parties to the lis qua the fact of his having the necessary locus standi to institute the said appeal before the Hon'ble Apex Court.

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Obviously then when in the aforesaid case too, there was no contest qua the locus standi of the appellant before the Hon'ble Apex Court, his locus to institute an appeal before the Hon'ble apex Court was neither embarked upon nor delved into by the Hon'ble apex Court. However, in the instant case, when the parties to the lis before this court have portrayed an acerbic contest qua the locus of the petitioner herein to institute the instant revision petition before this Court assailing the impugned orders rendered by the learned Judicial Magistrate 1st Class, Una, as a corollary, the reliance, if any, by the learned Senior Counsel appearing for the petitioner upon the aforesaid decision of the Hon'ble Apex Court with a salient loud postulation therein of a private individual therein being permitted to institute an appeal before it only on, his locus having remained unassailed or un-contested, is of no avail nor does it provide any legally sinewed weapon to the learned Senior Counsel appearing for the petitioner, especially when unlike the case as relied upon, for reiteration, the locus of the petitioner herein is under a volatile contest, hence ousting the foisting of locus upon the petitioner herein. In the judgment reported in ***Sheonandan Paswan versus State of Bihar and others, (1987)1 SCC 288*** wherein the majority view held that a private individual /citizen had no locus standi to assail the orders rendered by the Court of the Chief Judicial Magistrate whereby it had accorded permission to the Public Prosecutor on an apposite application instituted before it, to withdraw from prosecution against the accused therein. However, even the Hon'ble Judges, who propounded the majority view had not abstained from testing the validity of the orders rendered by the learned Chief Judicial Magistrate concerned permitting the withdrawal from prosecution to the Public Prosecutor against the accused therein, on his apposite application, instituted before the Court concerned. It had embarked upon, an incisive analysis of the grounds meted out in the application, instituted under Section 321 of the Cr.P.C., before the Court concerned and had ad nauseam dwelt upon, besides enunciated whether they, in entwinement with the material as existed before the Court concerned justified the according of permission for withdrawal from prosecution against the accused therein by the Court concerned to the Public Prosecutor, on his apposite application instituted before it. The embarking upon by the majority view in ***Sheonandan Paswan's case supra*** qua the facet of satiation by the Public Prosecutor with the legal prescriptions propounded in the apt authoritative pronouncements for facilitating the success of his application under Section 321 of the Cr.P.C., as instituted for the according of permission by the Court concerned to withdraw from prosecution against the accused therein, does also give latitude to this Court to, dehors the fact that the petitioner herein has no locus standi to assail the impugned orders rendered by the learned Judicial Magistrate 1st Class, Una, proceed to, in the exercise of its revisional jurisdiction which is a plenary jurisdiction, the width and scope whereof has been construed by the Hon'ble Apex Court in a judgment reported in ***Janata Dal versus H.S. Chowdhary and others, (1992)4 SCC 305,*** *the relevant paragraphs No. 128, 129, 130 and 134* are extracted hereinafter, to be vesting jurisdiction in this Court to, even on its own motion on examination of records unearthing patent illegalities and irregularities in the orders rendered by the Courts below, reverse them. Paragraphs No.128 to 130 and 134 reads as under:-

―128. Sections 397,401 and 482 of the new Code are analogous to Ss.435, 439 and 561(A) of the old Code of 1898 except for certain substitutions, omissions and modifications. Under S. 397, the High Court possesses the general power of superintendence over the actions of Courts subordinate to it which the discretionary power when administered on administration side is

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known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this Section, the High Court can, at any stage, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in Section 435 are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the

regularity of any proceeding of any subordinate Court.
129. By virtue of the power under S. 401, the High Court can examine the proceedings of inferior Courts if the necessity for doing so is brought to its notice in any manner, namely, (1) when the records have been called for by itself, or (2) when the proceedings otherwise come to its knowledge.
130. The object of the revisional jurisdiction under S. 401 is to confer power upon superior criminal Courts - a kind of paternal or supervisory jurisdiction - in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted, on the one hand, or on the other hand in some undeserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.
134. This Court in Dr. Raghubir Sharan v. State of Bihar, (1964) 2 SCR 336 : (AIR 1964 SC 1) had an occasion to examine the extent of inherent power of the High Court and its jurisdiction when to be exercised. Mudholkar, J. speaking for himself and Raghubar Dayal, J. after referring a series of decisions of the Privy Council and of the various High Courts held thus:
".....every High Court as the highest Court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of Justice .....Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate Court of its powers ....."

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Obviously, then when the records of the entire case are before this Court, as a natural corollary even dehors the fact that the petitioner has no locus standi, this Court, with Section 397 of the Cr.P.C., whereunder the instant petition is laid, empowering it to gauge or fathom the legality or otherwise of the impugned orders passed by the learned Judicial Magistrate 1st Class, Una, by a circumspect and keen discernment of the record can, hence, proceed to determine ad nauseam whether the impugned order permitting respondents No.1 and 2 to withdraw from prosecution against respondent No.3 herein, has begotten satiation of the salient principles or of the legal prescription enshrined in various judgments of the Hon'ble Apex Court for its, hence, being construable to be a legally sustainable order.
11. The application under Section 321 of the Cr.P.C., was instituted by the learned Assistant Public Prosecutor before the learned Judicial Magistrate 1st Class, Una. The grounds portrayed therein for constraining the latter Court to accord permission to withdraw from prosecution against respondent No.3 herein were harboured upon the factum of there being paucity of evidence against respondent No.3 herein. Besides, the factum of his being a ―Dharam Guru‖, hence, his having an immense following, moreover, his being the likely the successor to His Holiness Dalai Lama, as such, to hence not vitiate relations inter se the Indian Government and the Tibetan Government in exile, are the mainstay of the grounds meted out in the application preferred under Section 321 of the Cr.P.C., by the learned Assistant Public Prosecutor for the permission of the Court concerned to withdraw from prosecution against respondent No.3 herein being sought. The grounds meted in the application instituted under Section 321 of the Cr.P.C., before the learned Judicial Magistrate 1st Class, Una have to withstand the test of theirs owing their existence therein to an objective appraisal of the material on record by the authority concerned besides, their has to be a manifest unfoldment therein, of the authority concerned, having dispassionately applied its mind to the fact whether the material on record denoted the existence or not of a role of criminal conspiracy, as attributed to the respondent No.3 herein, by the Investigating Officer. In case, short shift was made to the exhaustive and detailed report furnished by the Investigating Officer, naturally then, the application instituted by the learned Assistant Public Prosecutor before the Court concerned for according permission to

withdraw from prosecution against the respondent No.3 herein would stand vitiated, it being ridden with the vice of its being hinged upon extraneous considerations, besides it having excluded the relevant and germane material from consideration, obviously would rendering it to be suffering from the taint of thorough non application of mind.

12. In case, the attribution of a role of criminal conspiracy to respondent No.3 herein by the Investigating Officer in his report filed under Section 173 of the Cr.P.C., before the Criminal Court of competent jurisdiction is not hinged upon or anchored upon any adequate material on record, as a sequel, the formation of an opinion by the authority concerned that there is paucity and scanty evidence against respondent No.3 herein would be foisted with soundness of reasoning. On the other hand, if the material on record does display that the Investigating Officer in his report under Section 173 of the Cr.P.C., had a sound legal basis in connoting a role of conspirator to respondent No.3 herein, constituted by the fact of his being the Chairman of the Karma Garchen Trust, Sidhwari, in whose favour, the land was transferred by Shri K.P. Bhardwaj, Swatantar Singh and Sher Singh for a consideration of Rs.5 crores, concomitantly his having the knowledge of the shady the land transaction, naturally then the inevitable inference which would ensue, is that the role as ascribed by the Investigating Officer of his being a conspirator would gain a strong legal foothold. In aftermath, for the reasons aforesaid and hereinafter, given the fact that the attribution of a role of a conspirator to respondent No.3 herein stands loudly manifested on

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an incisive discernment of a well reasoned exhaustive report of the Investigating Officer, in sequel, the ground as agitated/meted by the learned Assistant Public Prosecutor in his application for according permission to withdraw from prosecution against respondent No.3 herein of there being scarce or in-abundant evidence against respondent No.3 herein, is rendered rudderless.

13. The role as ascribed to respondent No.3 herein is that of a conspirator. For determining, whether he had conspired with the other accused in begetting the illegal land deal struck with tainted consideration of Rs.5 crores, the factum of his being a Chairman of the Karma Garchan Trust, Sidhwari, in whose favour the land was purchased, cannot be slighted. The prime position of his occupying the Chairmanship of the Karma Garchan Trust, Sidhwari, cannot absolve him from the attribution of an inculpatory role to him, merely on the ground that he was not a signatory to the relevant documents nor the tainted money comprising the sale consideration, for the land transaction having flowed out from his hands to the vendors. The role of a criminal conspirator as imputed to respondent No.3 herein is a discreet role, it gains a legal foothold not by direct evidence but by existence of indirect evidence. The indirect evidence which was concluded by the Investigating Officer to be portraying a legitimized attribution of a role of a criminal conspirator to him, was embedded in the factum of his being the Chairman of the Karma Garchan Trust, Sidhwari, in whose favour the property was purchased. His occupying the position of Chairman of the Trust per se is magnificatory of his having knowledge qua acquisitions or additions to the estate of the Trust. The aforesaid indirect evidence or material on record, cannot forestall the invincible inference, that the role as attributed by the Investigating Officer to respondent No.3, of his while being the Chairman of the Karma Garchan Trust, Sidhwari, having knowledge of the land transaction as also having knowledge qua the flow of tainted money to the vendors for acquiring land from the latter, besides concomitantly his being an obscure or hidden back player, as such, a conspirator was a tenable as well as a sound conclusion in law.

14. The learned Judicial Magistrate 1st Class, Una, while accepting the prayer made in the application preferred before it under Section 321 of the Cr.P.C., by the Assistant Public Prosecutor for permission to withdraw from the prosecution against respondent No.3 herein appears to have in a rough shod and in a short shift manner overlooked and abandoned the aforesaid material on record pronouncing the tenable foisting of a role of criminal conspiracy upon