Section 24—Role of Public Prosecutor and Private Counsel in Prosecution

The upshot of this analysis is that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent.So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interests in the prosecution are not prejudiced or jeopardized. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing. Reverting to the case in hand, we are of the opinion that the complainant or informant or aggrieved party who is himself an accomplished criminal lawyer and who has been represented before us by the erudite Senior Counsel, was not possessed of any vested right of being heard as it is manifestly evident that the Court has not formed any opinion adverse to the prosecution. Whether the Accused is to be granted bail is a matter which can adequately be argued by the State Counsel. We have, however, granted a full hearing to Mr. Gopal Subramanium, Senior Advocate and have perused detailed Written Submissions since we are alive to impact that our opinion would have on a multitude of criminal trials. [**Sundeep Kumar Bafna Versus State Of Maharashtra & Anr., (2015) 3 Scc (Cri) 558; (2014) 16 Scc 623,** Criminal Appeal No. 689 Of 2014 [Arising Out Of Slp (Crl.)No.1348 Of 2014**]**

Ss. 31, 427, Penal Code (45 of 1860), Ss. 53, 300 – Sentence of life imprisonment – Implies imprisonment till end of normal life of convict – Cannot be directed to run consecutively

Section 31 of the Code which deals with conviction for several offices at one trial. Section 31(1) deals with and empowers the Court to award, subject to the provisions of Section 71 of the IPC, several punishments prescribed for such offences and mandates that such punishments when consisting of imprisonment shall commence one after the expiration of the other in such order as the Court may direct unless the Court directs such punishments shall run concurrently. The power to award suitable sentences for several offences committed by the offenders is not and cannot be disputed. The order in which such sentences shall run can also be stipulated by the Court awarding such sentences. So also the Court is competent in its discretion to direct that punishment warded shall run concurrently not consecutively. Section 427 (2) carves out an exception to the general rule recognized in Section 427 (1) that sentences awarded upon conviction for a subsequent offence shall run consecutively. The Parliament, it manifest from the provisions of Section 427 (2), was fully cognizant of the anomaly that would arise if a prisoner condemned to undergo life imprisonment is directed to do so twice over. It has, therefore, carved out an exception to the general rule to clearly recognize that in the case of life sentences for two distinct offences separately tried and held proved the sentences cannot be directed to run consecutively. Thus while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, can be awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other. **Muthuramalingam & Ors. V. State Rep. by Insp. of Police, 2016 Cri.L.J. 4165 (SC)**

Sec. 41 - Discussing the law as laid in Joginder Kumar v. State of U.P.(1994) 4 SCC 260 ; Nilabati Behera v. State of Orissa (1993) 2 SCC 746 ; State of M.P. v. Shyamsunder Trivedi (1995) 4 SCC 262 ; Arnesh Kumar v. State of Bihar and another (2014) 8 SCC 273 and Mehmood Nayyar

Azam v. State of Chhattisgarh (2012) 8 SCC 1 held that not only there are violation of guidelines issued in the case of **D.K. Basu v. State of W.B.[(1997) 1 SCC 416]**, there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A of CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in **Sube Singh v. State of Haryana[(2006) 3 SCC 178], Hardeep Singh v. State of M.P.[(2012) 1 SCC 748],** comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, the court think it appropriate to grant a sum of Rs.5,00,000/- (rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if so advised. **Dr. Rini Johar & Anr. V. State of M.P. & Ors. 2016(4) Supreme 397 AIR 2016 SC 2679 (Writ Petition (CRIMINAL) No. 30 Of 2015)**

Sec. 88- Applicability- S. 88 of Code can be availed only in case person for whose appearance or arrest summon or warrant has been issued to be present in such Court- Accused not appearing personally before Court cannot get benefit of S. 88 of Code.

As far as the provisions of Section 88 Cr.P.C. are concerned, as quoted above, such provisions can be availed only in case the person for whose appearance or arrest the summon or warrant has been issued to present in such Court. Section 88 Cr.P.C. also does not speak to exempt the accused without executing the bond with or without sureties for his appearance in the Court. In view of the provisions of Section 90 Cr.P.C., this provisions is also applicable only to every summon and every warrant of arrest issued under this Code. Admittedly, the petitioner has not yet appeared personally before the Court. Therefore, he cannot get the benefit of Section 88 Cr.P.C. **(Arvind Kejriwal v. The State of U.P. & others, 2016 CRI.L.J. 128 ; 2015 (6) ALJ 542)**

Section 99 -Capacity of official discharge - be determined by regular trial after examining the facts, circumstances and evidence on record.

A news item on various dates in the year 2007, allegedly making false implication against Rajiv Trivedi, Additional Commissioner of Police (Crimes and SIT), Hyderabad, Andhra Pradesh, with regard to the Sohrabuddin encounter case was published by the appellants in the respective publications and was telecast on CNN-IBN. A representation was given by the him to the Andhra Pradesh State Government seeking previous sanction under Section 199(4)(b) of the Code of Criminal Procedure (in short Cr.P.C.') for prosecution of the appellants for offences punishable under the provisions referred to supra. Accordingly, the previous sanction was accorded by the State Government in favour of the second respondent permitting him to file complaints against the appellants through the State Public Prosecutor before the appropriate court of law against the individuals connected with electronic and print media.

The determining the question on whether or not the accused while committing the alleged act at the point of time was in the capacity of his official discharge of his public functions or otherwise, is to be determined by regular trial after examining the facts, circumstances and evidence on record. **[Rajdeep Sardesai Vs. State Of Andhra Pradesh & Ors. AIR 2015 SC 2180]**

Section 125- Conviction of husband for bigamy - Justifiable reason - Staying separately.

The wife has not been maintained by her husband. It appears from the record that respondent the husband had been convicted for committing the offence of bigamy but the appeal filed against the said order was pending at the relevant point of time. The wife is not paid any amount of maintenance though she is staying separately. In the aforesaid circumstances, it cannot be said that the wife is staying separately without any justifiable reason and she should be maintained by respondent - husband. **[Smt. Munni Bai v. Bhanwarilal And Anr., AIR 2016 SC 2224]**

Whether Section 125 CrPC is applicable to a Muslim woman who has been divorced.

In view of the law settled in Shamim Bano v. Asraf Khan (2014) 12 SCC 636 : AIR 2014 SC (Supp) 463 ; Union of India (2001) 7 SCC 740 : AIR 2001 SC 3958 and Khatoon Nisa v. State of U.P. (2014) 12 SCC 646, held YES.

It needs no special emphasis to state that when an application for grant of maintenance is filed by the wife the delay in disposal of the application, to say the least, is an unacceptable situation. It is, in fact, a distressing phenomenon. An application for grant of maintenance has to be disposed of at the earliest. The family courts, which have been established to deal with the matrimonial disputes, which include application under Section 125 CrPC, have become absolutely apathetic to the same. (para 12)

As regards the second facet, it is the duty of the Court to have the complete control over the proceeding and not permit the lis to swim the unpredictable grand river of time without knowing when shall it land on the shores or take shelter in a corner tree that stands "still" on some unknown bank of the river. It cannot allow it to sing the song of the brook. "Men may come and men may go, but I go on for ever." (para 13)

Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction.(para 19). **[Shamima Farooqui Versus Shahid Khan AIR 2015 SC 2025]**

Ss. 125 to 128- Maintenance-Generally-Proceedings under-Nature and scope of – S.125 is piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.

The marriage between the petitioner (husband) and the respondent (wife) took place on 24-5-1987. Alleging that the petitioner was not maintaining his wife, the respondent filed an application under Section 125 CrPC for grant of maintenance before JMFC. While the matter was pending, and application was preferred by the parties under Order 23 Rule 3 CrPC on 3-9-1994 stating that the parties had arrived at a compromise, by which the respondent wife had agreed to receive an amount of Rs 8000 towards permanent alimony and that she would not make any claim for maintenance in future or enhancement of maintenance. For this, a consent letter, executed by the wife dated 30-3-1990, in Kanada, was place before the Court in favour of her husband with free will and consent without coercion and misrepresentation.

The respondent wife subsequently filed before the Family Court, an application under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 claiming maintenance @ Rs 2000 per month. The Family Court held by its order dated 15-9-2009 that the compromise entered into between the parties in a proceeding under Section 125 CrPC would not be a be a in entertaining the suit and decreed the suit. The aggrieved petitioner‘s appeal was dismissed by the High Court by its judgment dated 28-3-2011.

Section 125 CrPC is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the staus and personal rights of the parties, which is in the nature of a civil proceeding, though are governed by the provisions of CrPC and the order made under Section 125 CrPC is tentative and is subject to final determination of the rights in a civil court. **(Nagendrappa Natikar v. Neelamma, (2015)1 SCC (Cri) 407).**

Section 125 – Maintenance awarded to minor child – minor child not impleaded as party – Order is well in conformity in law and does not suffer from material illegality.

Argument advanced by learned Counsel for revisionist is that master Aryan, the minor son of revisionist was not made party in the original petition under section 125 Cr.P.C. before, the Trial Court could not have awarded the maintenance of Rs. 15,000/- to his minor son. I am afraid this argument is also misconceived for the simple reason that the provision under section 125 Cr.P.C. is a beneficial provision made precisely to provide instant relief to the estranged wife and the children of feuding couple. While it is true that the respondent No. 2 should have arrayed the minor son as

party or the Family Court should have insisted on arraying the minor children as party in the instant petition. But Family Court is not denuded of its power to provide adequate relief to minor child merely because his/ her parents have forgotten him/her if material on record shows requirement of such action. [**Chetan Anand Parashar alias Rahul Sharma v. State of U.P. and another, 2015(88) ACC 777 (All.H.C.)].**

Reasons - for the order for maintenance - effective from either date of the order or the date of the application

Section 125 of the Cr.P.C., therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354 (6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case. **Jaiminiben Hirenbhai Vyas & Anr. v. Hirenbhai Rameshchandra Vyas & Anr (2015) 2 SCC (Cri) 92 : (2015) 2 SCC 385**

Section 125 Cr.P.C.- Applicability

A muslim woman who has been divorced is also entitled to maintenance under Section 125 Cr.P.C. till the date of remarriage.

Followed-

(1) Shamim Bano v. Asraf Khan, (2014) 12 SCC 636.

(2) Deniel Latif v. Union of India, (2001) 7 SCC 740.

(3) Khatoon Nisa v. State of U.P., (2014) 12 SCC 646.

Cr.P.C. 1973 - Section - Amount of Maintenance - As long as wife is entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity, as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 Cr.P.C. can be passed if a person despite having sufficient means neglects or refuses to maintain the wife.

Sometimes a plea is advanced by the husband that he does not have sufficient means to pay for the does not have job or his business is not doing well. These are only bald excuses and in fact they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 Cr.P.C. unless dis-qualified, in an absolute right.

While determining the quantum of maintenance, in Jasbir Kaur Sehgal v. District Judge, Dehradun and others (1997) 7 SCC 7 is has been observed that-

"The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those, he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance - fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life, she was used to when she lived with her husband, and also that she does not feel handicapped in the prosecution of her case. At the same time the amount so fixed cannot be excessive or extortionate."

In this case Family Court had directed that a sum of Rs. 2500/- should be paid as monthly maintenance allowance from the date of submission of application till the date of judgment and thereafter Rs. 4000/- per month from the date of judgment till the date of remarriage.

The High Court reduced the maintenance allowance to Rs. 2000/- from 01-04-2012 (i.e.

the date of retirement of the husband) till remarriage of the appellant.

Hon'ble the Apex Court in the light of law laid down in the above mentioned case, and considering the amount of pension i.e. Rs. 11535/- and other retiral dues to the tune of 16,01,455/-, set aside the order of the High Court and restored the order of the Family Court. Accordingly appeal was allowed. **Shamim Farooqui v. Shahid Khan, 2015(3) Supreme 129**

S. 125- Endeavour of Court – In all matters civil or criminal and specially in matrimonial matters including proceedings u/s 125 Cr.PC should be to finally resolve the lis

The Endeavour of the Court in all matters civil or criminal and specially in matrimonial matters including proceedings under section 125 Cr.PC which is an outcome of a benevolent legislation should be to finally resolve the lis in between the parties on merit or on the basis of proved compromise deed **[Smt. Suman Devi v. State of U.P. and another 2015 (90) ACC 839]**

Sec. 125—Maintenance

Inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband‟s economic condition is quite good, the wife would be entitled to maintenance. Merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance. [**Sunita Kachwaha & Ors. Versus Anil Kachwaha**, **(2015) 3 Scc (Cri) 589; (2014) 16 Scc 715 Criminal Appeal No. 2310 Of 2014 (Arising Out Of Slp (Crl.) No. 2659/2012]**

Section 125(2) –Maintenance allowance – Order making maintenance payable from the date of application- if recourse to the exception is taken the order must be supported by reasons

Hon‟ble Court observed that it is clear from this sub section makes it clear that ordinary rule is that maintenance to wife is payable from the date of order. Eexception to this ordinary rule is an order making maintenance payable form the date of application. When an exception has to be made in the ordinary rule making the maintenance payable from the date of application by an order, the order must be supported by reason or reasons.

In **Satish Chandra Gupra v. Amt. Aneeta and others, 1994 (31) ACC 563** this Court has held that - - "ordinary rule is that maintenance to wife is payable from the date of order and exception to this ordinary rule is an order making maintenance payable from the date of application and if recourse to the exception is taken the order must be supported by reasons."

Propriety demands that the Courts should give reasons for granting maintenance allowance from the date of application. Any direction of maintenance should generally be prospective. If direction is made retrospective in nature, the person bearing burden of it may be prejudiced unnecessarily, and without any fault. But if it appears to Magistrate that person against whom direction of maintenance is being passed had unnecessarily been delaying the proceedings of the case of misusing process of the Court, then direction for maintenance from retrospective effect (from the date of application) may be passed, but that too after recording specific reasons. **(Smt. Pooja v. State of U.P. and others, 2015 (91) ACC 498)**

Section 133

Appeal filed for challenging order whereby, Magistrate was directed to consider Opposite party's application for removing unlawful obstruction in public way. The question for determination

before the court was whether Magistrate was rightly directed to consider application for removing unlawful obstruction in public way.

Held, Section 133 of CrPC provides power of District Magistrate to remove any unlawful obstruction from any public place. It is undisputed that both parties were allotte plot. The Opposite party had constructed building after allotment of plot but, Petitioners started construction after many years. Rule 115 Q of Rules provides that if land had been allotted for building house then house should be constructed within three years from date of allotment and If allottee fails to do so, then his rights shall be extinguished. It is also evident that constructions were being made after specified period as provided under Rule 115 Q of Rules. No one had right to obstruct public way by raising unauthorized construction. If disputed land had been used for long time as public way, then it could not prevent competent authorities to declare it as public way. Magistrate was rightly directed to consider application for removing unauthorized construction on public way. Petition dismissed. [**Ram Kishore v. Additional Session Judge 2015 (108) ALR 150, 2015 126 RD626]**

Section 145- Proceedings under –Are of summary Nature, went for maintaining Law and order

The contention of learned Counsel for the appellant was that since the appellant had got the possession of disputed property after the direction of Executive magistrate passed in proceedings under section 145 Cr.PC, therefore, his possession is lawful, and on the basis of such lawful entry over disputed land, he is entitled to retain it. This contention is found unacceptable. The proceedings under section 145 Cr.PC are that of summary nature, which are meant for maintaining law and order and preventing the apprehension of breach of peas. **(Ram Naresh v. Bachchi Singh and others, 2016 (130) RD 821)**

Section 145 Cr.P.C.- Effect of proceedings under Section 145 Cr.P.C. on Civil/Legal Proceedings

Rana Shiv Gopal Singh and Rani Amarjeet Kaur had filed petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act 1963, (Act 11 of 1973_ for ejectment of Krishan Lal from premises in question. i.e. House No. 8603-5 New No. 542 Block No.6 Ambala City, alleging them as landlords and Shri Krishan Lal as tenant of the house in dispute at the rate of 70/- p.m. as rent. It was also alleged in the petition that the tenant Krishan Lal committed default in payment of rent for 25 months.

During pendency of the petition Shiv Gopal Singh and Rani Amarjeet Kaur died appellants were substituted on their legal heirs. The defendant Krishan Lal also died and respondents as his legal representatives were substituted.

Written statement was filed in which relationship of Landlord and tenant between the parties was denied. It was also alleged in the written statement that the respondents was the tenant of Deity Shivji, and such the appellants have no right title a interest in the property. It was further pleaded in the written statement that in the proceedings under Section 145 of the Code of Criminal Procedure Code 1973, Tahsildar Ambala was appointed as receiver.

Rent Controller after recording evidence and hearing the parties, accepted the case of the appellants and allowed the petition for ejectment of the respondents.

Aggrieved by the above order the respondents filed Rent Appeal No. 55 of 1996 before the Appellate Authority. The Appellate Authority relying upon certain observations and findings recorded during proceeding drawn under Section 145 Criminal Procedure Code observed that Rama Shiva Gopal Singh was an employee of management committee of the temple of Murti Shivji. After his removal from the post of manager he had no right to collect rent from the respondents. It was further observed by the Appellate Authority that Tahasildar Ambala was appointed as Receiver of the property under Section 145 Cr.P.C. and after the withdrawal of attachment the premises were handed over to Lala Fakirchand the president of the Committee of Temple. For the above reasons the Appellate Authority allowed the appeal and set aside the order of the Rent Controller.

The appellants challenged the order of the Appellate Authority on revision before the High Court, on the ground that the appellate authority had wrongly relied upon the observations and findings recorded in the proceedings drawn under Section 145 Cr.P.C., but the High Court did not accept the above contentions of the appellant and dismissed the revision. Being aggrieved the appellant preferred the appeal in Hon'ble the Apex Court.

Hon'ble The Apex Court relying upon the law laid down in Shanti Kumar Panda v.

Shakuntala Devi (2004)1 SCC 438 observed that-

"A decision given under Section 145 Cr.P.C. has relevance on evidence to show one or more of the following facts-

1. That there was a dispute relating to a particular property.

2. That dispute was between the parties.

3. That such dispute led to the passing of a preliminary order under Section 145(1) Cr.P.C. or an order of attachment under Section 146(1) Cr.P.C.

(4) That the Magistrate found particular party or parties in possession or fictional possession of the disputed property.

Except for the limited purposes enumerated above, the reasoning recorded by the Magistrates or other finding recorded by him will have no relevance and will not be admissible before the competent court.

Therefore the appeal was allowed the order of the High Court was setaside and the matter was remitted to the High Court for fresh adjudication. **Surinder Pal Kaur and another v. Satpal and other, 2015(3) Supreme 103.**

Sec.154-Whether it is necessary to proof FIR in a criminal case and if not, then it is fatal for prosecution case- Held ‗No‘

In the present case an objection has also been raised on behalf of the accused/appellant that, the scribe of the first information report was not examined by the trial court which is fatal for the prosecution case,

Hon‘ble Allahabad High Court held, that court does not agree with this argument because in AIR 2002 Supreme Court 1965, (Krishna Manjhi and others v. State of Bihar), it has been laid down that even if the first information report is not proved, it would not be a ground for acquittal, but the case would depend upon the evidence led by the prosecution. Thus, the prosecution has been able to prove its case beyond reasonable doubt against the accused appellant. **Prem Singh v. State of U.P., 2016 (6) ALJ 354.**

Sec. 154-Whether FIR can be registered on offence of bigamy (S. 494, IPC) - No

Hon‘ble Allahabad High Court held that, admittedly, the offence under section 494 is a non cognizable offence as mentioned in Schedule-1 of the Code of Criminal Procedure. Section 494 I.P.C. deals with substantive offence of Marrying again during life of husband or wife.....",whereas the procedure for redressal of grievance is provided under section 198 Cr.P.C. Section 198 Cr.P.C. Sub clause (1) clearly provided no Court shall take cognizance of an offence under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence.

In view of the provisions referred above, the FIR for the offence of Section 494 I.P.C.which is a non cognizable offence cannot legally be registered under section 154 Cr.P.C.,which clearly deals with information in cognizable cases.

The Code of Criminal Procedure distinctly provides the procedure for redressal of the offences which are defined as cognizable and non cognizable case.

In view of the provisions cited above, the court is of the opinion that the police is not

competent to proceed against the petitioner on the basis of the FIR registered with it under section 494 and 120-B I.P.C., under section 154 Cr.P.C. More so Section 198 Cr.P.C. puts a legal embargo for prosecution by any other mode except by way of complaint by the affected person defined in the section itself. **Vikrant Sharma and others v. State of U.P. and others, 2016 (6) ALJ 729.**

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In criminal cases governed by the Code - the Court - not powerless and may allow amendment in appropriate cases - to avoid the multiplicity of the proceedings.

What court is emphasizing is that even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated. **Kunapareddy @ Nookala Shanka Balaji V. Kunapareddy Swarna Kumari & Anr 2016(4) Supreme 481 ; 2016 LawSuit(SC) 579 ; 2016 AIR(SC) 2519, 2016 (5) JT 365, 2016 AIR(SCW) 2519, 2016 (2) Crimes(SC) 277, 2016 CrLR 600, 2016 (5) Scale 703**

Section 154-- Delay in lodging the FIR - The prosecution version is truthful – Witnesses are trustworthy - The absence of an explanation may not be regarded as detrimental

It is no doubt true that one of the external checks against ante-dating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR "forthwith" ensures that there is no manipulation or interpolation in the FIR. If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it

ought to do so. However, if the court is convinced of the prosecution version‟s truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. [**State Of Rajasthan v. Daud Kha (2016) 1 SCC (Cri) 793; (2016) 2 SCC 607]**

Section 154-- Appreciation of FIR- Delay and correction – Reasonable explanation – Effect

It is true that even before the registration of FIR the inquest was undertaken and the post-mortem was conducted. In this case, the assault was made right in the Courtroom which called for immediate action on part of the investigators to clear the Courtroom as early as possible. The Investigating Officer had initially requested the Presiding Officer to lodge a complaint. Upon his refusal, the Investigating Officer then had to make enquiries and record the complaint of PW 30 Bhanji. In the meantime, if inquest was undertaken and the body was sent for post-mortem, we do not see any infraction which should entail discarding of the entire case of prosecution. We also do not find anything wrong if the first informant soon after the recording of the assailant corrected himself, as a result of which name of the third assailant came to be dropped. So long as the version coming from the eye witnesses inspires confidence and is well corroborated by the material on record, any such infraction, in our view would not demolish the case of the prosecution in entirety. [**Harijan Jivrajbhai Badhabhai v. State of Gujarat AIR 2016 SC2376]**

S. 154- FIR –Delay in lodging- Offence of rape -Effect of

In the present case, according to the chick report, the occurrence took place about 3 to 4 months prior to the lodging of the first information report which was lodged on 28.02.2008 at 16:10 hrs. The distance of the police station from the place of occurrence being 4 Kms. Now it has to be seen, whether any explanation has been given by the prosecution for the delay in lodging the first information report and whether the said delay is reasonable in the peculiar facts of the case.

But in this particular case, the complainant kept mum not for the reputation of her family but she said that she kept mum due to fear and threaten to her life. For a moment, keeping a side this explanation, coming to the incident of 23.02.2008 when the accused again took away the victim who was returned and dropped her at the door of her house on 24.02.2008 but again the informant did not lodge the report and from 24.02.2008 to 28.02.2008, she waited for what, is not clear from the record. Thus, according to the informant, due to fear, she did not report both the matters to the police. The feeling of self-preservation is generally carried by the people but repeated injury to the reputation and self-respect and physical violence with a young daughter should not have been tolerable to the informant.

PW-1 Nirmala has stated that she is ignorant about any litigation between Babban Giri father of the scribe and the accused. Thus, shadow of doubt has been cast on the first information report itself. Hence, I conclude that besides there being inordinate delay in lodging the first information report, there is shadow of doubt on the first information report itself which leads to the conclusion that there are chances of embezzlement and the exaggeration in the first information report. Whereas PW-2 the prosecutrix has admitted that there is enmity between her family and the family of the accused inasmuch as civil and revenue litigation were pending between both the parties so chances of embezzlement and exaggeration in FIR would be possible. Hence FIR would not be reliable. **(Daya Shankar Giri v. State of U.P., 2016 (3) ALJ 659)**

Section 154-- F.I.R.- Second – permissibility

From a bare perusal of second FIR, it is abundantly clear that both the appellants have furnished wrong information to the police as to their names, father‘s name and address during the course of investigation made on the first FIR. This Court is of the view that the offences alleged to have committed by them are mentioned in second FIR, which offences are distinct offences committed by both the appellants and the same have no connection with the offences for which the first FIR was registered against them.

It is well settled principle of law that there can be no second FIR in the event of any further information being received by the investigating agency in respect of offence or the same occurrence or incident giving rise to one or more offences for which chargesheet has already been filed by the investigating agency. The recourse available with the investigating agency in the said situation is to conduct further investigation normally with the leave of the court as provided under sub-Section (8) to Section 173 of Cr.P.C. It follows that if the gravamen of the charges in the two FIRs — the first and the second — is in truth and substance the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 CrPC will be irregular and the court cannot take cognizance of the same. However, this principle of law is not applicable to the fact situation in the instant case as the substance of the allegations in the said two FIRs is different. [**Awadesh Kumar Jha @ Akhilesh Kumar Jha & Anr. Versus The State Of Bihar, AIR 2016 SC 373]**

Police Custody Remand

The instant case, relates to killing of nine persons and injuring large number of villagers of Village Netai of District Paschim Medinipore in West Bengal,on 07.01.2011. First Information Report was lodged on the same day at Police Station Lalgarh in respect of offences punishable under Sections 148, 149, 326, 307, 302 of Indian Penal Code (IPC), and also in respect of offences punishable under Section 25/27 of Arms Act. The investigation of the case was initially done by regular police, but later transferred to Criminal Investigation Department (CID) of the State. Later on the investigation was transferred to Central Bureau of Investigation (for short—the CBI), the appellant before us. During investigation 12 accused were arrested. On completion of investigation, the CBI submitted charge sheet dated 4.4.2011 against 21 accused, including the arrested ones and the absconders. It was mentioned in the charge sheet that further investigation of the case was kept open for the purposes of collection of further evidence and the arrest of the absconders. It was also mentioned that further collected evidence during investigation would be forwarded by filing supplementary charge sheet. In respect of charg sheeted accused charges were framed, trial further proceeded and ten Prosecution Witnesses were examined. However, their cross-examination was deferred at the instance of arrested accused persons, other than the juveniles. Proclaimed offenders Rathin Dandapat, Md. Khaliluddin, Dalim Pandey, Joydeb Giri Tapan Dey, Chandi Karan, and Anuj Pandey were arrested later on. The CBI sought remand in police custody of these accused but all the applications were also refused. Aggrieved by those orders Revisional Applicationwere filed before the High Court. All the Criminal Revisions were disposed of by the High Court against which the criminal appeals were filed.

In view of the above facts, in the present case, held that , the High Court is not justified in upholding refusal of remand in police custody by the Magistrate. The refusal of police remand in the present case is against the settled principle of law The principle of law is settled that police remand can be sought under Section 167(2) CrPC in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. This Court has further clarified that expression _accused if in custody‘ in Section 309(2) CrPC does not include the accused who is arrested on further investigation before supplementary charge sheet is filed. **[Central Bureau of Investigation Versus Rathin Dandapat And Others 2015(8) Supreme 56]**

Section 154

Criminal complaints - in respect of property disputes of civil in nature - the prima facie case makes out - regarding collusion and the intention to cheat - from the very beginning - declining to interfere.

No doubt, where the criminal complaints are filed in respect of property disputes of civil in nature only to harass the accused, and to pressurize him in the civil litigation pending, and there is prima facie abuse of process of law. The accused fraudulently got executed the power of attorney, and one executor was minor (aged nine years) on the date when the deed was said to have been signed by him. It is also alleged that another person who executed the power of attorney, was away from India on the date of alleged execution of the Deed. Thus neither the FIR nor the protest

petition was mala fide, frivolous or vexatious. It is also not a case where there is no substance in the complaint. The prima facie case makes out against the accused persons regarding collusion and the intention to cheat from the very beginning to hand over a huge sum of money to them. Declining to interfere with the criminal proceedings initiated against the accused. **[Ganga Dhar Kalita Versus The State of Assam and others AIR 2015 SC 2304]**

S. 154- FIR –Significance of- Not, material evidence but vital material evidence

It is well settled that the First Information Report is not an encyclopedia of the prosecution and there might be some discrepancy or some facts might have not been mentioned in details. The First Information Report is not material evidence but vital material fact, hence if there is major discrepancy and material improvement, only then that might be fatal to the prosecution case. **[Bhim Sen and others v. State of U.P., 2015 (90) ACC 454]**

S.154 – F.I.R. – Nature – It should be certain essential feature of prosecution case, It cannot be expected to be an encyclopedia of whole prosecution case.

It is well established in law that FIR should contain the essential features of the prosecution case but it cannot be expected to be an encyclopedia of whole prosecution case. It may be quite natural for a friend of the deceased such as PW not to remember the exact figure which was disclosed by the deceased sometime back as the amount demanded by the mother-in-law. Learned counsel for the State also placed reliance upon the judgment of this Court in the case of Satish Chandra and Anr. v. State of Madhya Pradesh, 2014(6) SCC 723, in support of the proposition that if sufficient and good material is available on record then mother-in-law of the victim in a case under Section 304B IPC may lawfully be convicted for such an offence even in the absence of conviction of the husband. **Kanchanben Purshottambhai Bhanderi v. State of Gujarat, 2015(1) Supreme 572.**

S.154 – object of – Only to set Criminal Law in motion - Mentioning names of all witnesses in F.I.R. not required.

There is no requirement of law for mentioning the names of all the witnesses in the FIR, the object of which is only to set the criminal law in motion [Nirpal Singh & Ors. v. State of Haryana, (1977)2 SCC 131: Bhagwan Singh & Ors. v. State of Madhya Pradesh, (2002)4 SCC 85; Raj Kishore Jha v. State of Bihar & Ors., (2003)11 SCC 519]. In this context it is relevant to point out that the statements of all witnesses were recorded by the Investigation Officer in the night of the occurrence day itself. Non mention of the names of PW3 Atmaram and PW4 Chaman Lal in the FIR does not affect the prosecution case as rightly held by the courts below. **Kunwarpal @ Surajpal & Ors. v. State of Uttarakhand And anr., 2015(2) Supreme 93.**

S. 154 - F.I.R. –All minute details and all items relating to demand by way of dowry – May not come to the mind of grieving mother of the deceased while lodging F.I.R. – F.I.R. to contain essential features of the prosecution case and cannot be expected to be an encyclopedia of whole prosecution case.

It is well established in law that FIR should contain the essential features of the prosecution case but it cannot be expected to be an encyclopedia of whole prosecution case. **Kanchanben Purshottambhai Bhanderi v. State of Gujrat, 2015(88) ACC 276 (S.C.).**

F.I.R. - Delay in lodging F.I.R. - If delay explained properly – not fatal for prosecution.

So far as the delay in lodging the F.I.R. is concerned, the prosecution witness belongs to the rural area. The parents of prosecutrix were not residing with her. Her uncle and her aunt went to lodge the report of the incident but admittedly the same has not been lodged in compelling circumstances. P.W.-1 went to Faizabad along with prosecutrix and he gave application to Dy. S.P. City and only after intervention of Dy. S.P. (City), the police came into action and prosecutrix was medically examined through Mahilla Police Station, Faizabad and on the next day on 22.5.2002 the

report was lodged in the concerned police station. In the aforesaid circumstances, I am of the view that prosecution has explained the delay in lodging the first information report. [**Raj Kumar alias Bhillar v. State of U.P., 2015(88) ACC 854(H.C.)].**

When an interim order has been passed in regarding the arrest of the accused is stayed till filing of charge-sheet in court- I.O. may make endorsement in column no. 3 of charge-sheet in that regard – It is obligation on I.O. to intimate the accused in regarding filing of charge-sheet and their presence in the court on that day.

The difficulty arises when an interim order has been passed to the effect that arrest of the accused is stayed till the submission of charge-sheet in Court, then in that situation, the investigating agency may make endorsement in column No. 3 of Charge-sheet that Court has stayed the arrest of the accused till submission of charge-sheet. Simultaneously the Investigating Officer is under obligation to intimate the accused that investigation is ended by filing of the charge-sheet in the Court and shall also intimate the date to the accused persons, on which date to the accused persons, filed in Court.

In the aforesaid situation, the charge-sheet alongwith notices issued to the accused may be filed in Court. In case the accused is not present on the date in concerned Court when the charge-sheet is filed, the Court may proceed to procure the attendance of the accused person in Court by coercive methods provided under the law. **Suraj Kumar (Suraj Chaprasi as alleged in F.I.R.) v. Senior Superintendent of Police, Lucknow and others, 2015(88) ACC 89 (H.C.)].**

Section 154, 155, 156, 157 - FIR in Cognizable Case - Whether the Police Officer is bound to register the case or has discretion

Held-

(1) General Rule - is to register the case. Where the FIR discloses a cause of action and must be strictly followed.

(2) Exceptional Cases - In which preliminary inquiry is permissible - In cases where FIR does not disclose a cognizable offence a preliminary enquiry may be permissible.

Also in - Matrimonial Cases

- Family disputes.
- Commercial Offences
- Medical Negligence Cases
- Corruption Cases.

The purpose of preliminary enquiry is not to test the veracity but simply to see that, whether cognizable offence is made out or not. The preliminary enquiry should be completed within 7 days. **Lalita Kumari v. Govt. of U.P., 2014 (1) SCC (Cri) 524 (Five Judges Bench).**

Sec. 154—FIR - not encyclopedia

FIR is not meant to be an encyclopedia nor is it expected to contain all the details of the prosecution case. It may be sufficient if the broad facts of the prosecution case are stated in the FIR. Complaint was lodged within few hours after the tragic event. PW-1 has lost his young daughter just married before six weeks in unnatural circumstances. Death of a daughter within few days of the marriage, the effect on the mind of the father-PW1 cannot be measured by any yardstick. While lodging the report, PW-1 must have been in great shock and mentally disturbed. Because of death of his young daughter being grief stricken, it may not have occurred to PW-1 to narrate all the details of payment of money and the dowry harassment meted out to his daughter. Unless there are indications of fabrication, prosecution version cannot be doubted, merely on the ground that FIR does not contain the details. [**V.K. Mishra & Anr vs. State of Uttarakhand & Anr., AIR 2015 SC 3043 (Criminal Appeal No.1247 Of 2012) with Rahul Mishra vs. State Of Uttarakhand & Anr.,**

(Criminal Appeal No. 1248 of 2012)]

Sec. 154 – Cr.PC – Delayed FIR- Non-explanation of delay in lodging of FIR fatal for the prosecution case- Entire prosecutions story not to be discarded on the score of delay

The first point regarding delay in lodging of the FIR is being considered. Hon'ble the Apex Court has propounded principles for appreciation of the aspect of delay, if any, caused in lodging of the FIR.

The Hon'ble Apex Court has laid down the following proposition recently in the case of Jai Prakash Singh vs State of Bihar & Another reported in (2012) 4 SCC 379. The relevant paragraph 12 is being reproduced herein below :-

"The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question."

It is settled law that if delay in lodging the FIR cannot be explained satisfactorily it is fatal to the case of prosecution. However, it is obligatory on the part of the Court to take notice of delay and examine the same in the backdrop of the case as to whether any acceptable explanation has been offered by the prosecution and, if such an explanation has been offered whether the same deserves acceptance of being satisfactory.

In view of propositions cited above inference can safely be drawn that the delay should be explained and if, not explained even then the Court has to consider the aspect of delay in the light of totality of evidence and draw inference about the veracity of prosecution version considering the facts and circumstances of the case, which varies from case to case. Mere on the score of delay, the entire story of prosecution cannot be discarded. **(Ahibaran v. State of U.P., 2015 (91) ACC 553)**

Sections 156(3), 401-- At the pre cognizance stage when only a direction has been issued by the Magistrate under section 156(3) Cr.P.C. to investigate, Order challenged through this revision-Held, order was only directing the police to investigated the case- Revisionist were prospective accused persons- No right to challenge.

In the case of Father Thomas v. State of U.P. and another, 2011(72) ACC 564 (F.B.), it has been held “at the pre cognizance stage, when only a direction has been issued by the Magistrate under section 156(3) Cr.P.C. to investigate, the prospective accused has not no locus standi to challenge such direction for investigation of a cognizable case before cognizance or the issuance of process. An order under Section 156(3) Cr.P.C. passed by a Magistrate directing a police officer to investigate a cognizable case is not an order which impinges on the valuable rights of the party. An order by the Magistrate for the investigation is an ancillary step in aid of investigation and trial, and is interlocutory in nature, similar to order granting bail, calling for records, issuing search warrants, summoning witnesses and other like matters which do not infringe upon valuable rights of a prospective accused and hence not amenable to challenge in a criminal revision in view of bar the contained in section 397(2) of the Code.”

In the recent judgment of *Jagannath Verma v. State of U.P., 2015 (88) ACC 1(LB-F.B.)*, another Full Bench of this Court while reiterating the law laid down in *Father Thomas* case has held that a direction to the police to register a first information report in regard to a case involving a cognizable offence and for investigation is interlocutory in nature and, therefore, attracts the bar under sub section 2 of section 397 of the Code. However, if the application under section 156(3)

Cr.P.C. is rejected, the rejection order cannot be termed as interlocutory order and such an order is amenable to the remedy of criminal revision under section 397 Cr.P.C. and in such case the prospective accused or the person suspected of having committed a crime is entitled to an opportunity of being heard.

As in the present case the impugned order is an order directing the police to investigate the case, the revisionists, who are prospective accused persons, have no right to challenge this order by way of revision. **[Brijesh @ Sonu and others Revisionist v. State of U.P. & Another, 2016 (93) ACC 743 (Allahabad High Court)]**

S. 156(3)- Constitution of India, Article 226- Registration of FIR and Investigation – order for mere registration of FIR will not caste any onerous duty upon petitioner for being held guilty of offences –Since no proceedings have taken place against petitioner, hence they cannot raise any grievance that order passed by Magistrate is violative of their fundamental rights enshrined in constitution of India.

Instant writ petition has been filed by the proposed accused petitioners impugning the order dated 9.1.2015 passed on the application moved under section 156 (3) Cr.P.C. which is a pre-cognizance order. The learned Magistrate has not made up his mind against anybody. The learned Magistrate has only sifted the accusations made in the application under section 156 (3) Cr.P.C. so as to cull out as to whether cognizable offence is being disclosed and after hearing the learned counsel for the opposite party no.2 ,he was satisfied that cognizable offence is made out against the petitioners thus he directed the Station House Officer ,Police Station concerned to follow the mandate of law. Since no proceeding has taken against the petitioners, they cannot raise any grievance that the order passed by the learned Magistrate is violative of their fundamental rights enshrined in the Constitution of India.

On receiving the application under section 156 (3) Cr.P.C. the learned Magistrate has applied his judicious mind on the allegation upon which he has ordered the Station House Officer concerned to register and investigate the matter. Mere registration of the first information report will not caste onerous upon the petitioners for being held guilty of the offence. The petitioners will have ample opportunity to put forth their defence which would be considered in the right perspective. The petitioners have got no locus to interfere in the investigation which is a pre-cognizance stage.

Having considered the rival submissions advanced by the learned counsel for the parties this Court culled out that the petitioners are the proposed accused who can appear and say their grievance at the appropriate forum. The petitioners are not deterred from raising their grievance before the appropriate forum. The registration of the first information report and investigation are the integral and inseparable part of pre-cognizance stage. The investigating officer will swing into investigation and after recording the statement of the complainant and the witnesses will submit either charge sheet or final report. At this stage no proceeding has taken place against the petitioner thus they cannot raise their grievance.

In these circumstances, the present writ petition is dismissed . As observed above, the conduct of the petitioners, besides being an abuse of the process of the court, is a fraud played upon the Court, therefore exemplary cost must` be imposed as the petitioners have made a tacit attempt to inveigle the Court to obtain favourable order in his favour and it being a serious abuse of the process of the Court, this Court quantify the cost of Rs. 20,000/- payable by the petitioners which is to be deposited at the head of Registrar General of this Court within one month. **[Smt. Munni and others v. State of U.P. and others, 2015 (9) ACC 528] Section 156(3) Cr.P.C.**

The provision is being misused frequently. So to control it. Hon'ble The Apex Court observed that "The application of 156(3) Cr.P.C. should be filed only after availing recourse to Section 154(1) and 154(3). Moreover application u/s 156(3) Cr.P.C. must be supported by an affidavit giving details of availing provisions of Section 154(1) and 154(3) Cr.P.C.

The Magistrate should also verify the veracity of the applications with the affidavit." (Para

27) **M/s Priyanka Srivastava v. U.P. State, 2015(3) Supreme 152.**

Section 156(3) Cr.P.C.

The power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

28. The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen. **Mrs. Priyanka Srivastava and Another v. State of U.P. and Others, 2015(3)Supreme 129 ; AIR 2015 SC 1758.**

Sec. 157- Faulty or defective investigation- Testimony of eye-witness account cannot be brushed aside only on that ground

In the present matter, place of occurrence was the field of Jwala even though the investigating officer had prepared the defective and wrong sketch map (site plan). He prepared the site plan on the basis of imagination without inspecting the spot that is why adverse comments were made by the trial Court against or illegality is found in the finding recorded by the trial Court.

It may also be mentioned here that only on the ground of faulty or defective investigation in the present matter, as court has recorded above, the testimony of the eyewitness accounts cannot be brushed aside. The law laid down in the case of Kailash Gour (AIR 2012 SC 786) is not applicable in this mater, as the fact of the present case differs from the facts of Kailash Gour‟s case.

In the case of Bhawani (AIR 2003 SC 4230). Full Bench by the Hon‟ble Supreme Court has held that on the ground of defective investigation the prosecution case cannot be thrown out. In the case of Bhawani on the point of preparing of defective site plan and mentioning of wrong details

in the inquest report can safely be applied in the present matter as the prosecution witnesses have clearly and cogently established the date, time and place of occurrence. **(Kali Charan Prabhoodayal and others v. State of U.P., 2015 (6) ALJ 147)**

Sections 161 and 162 of – Evidence Act, Section 145 – Statements to Police-

Section 161 Cr.P.C. titled ―Examination of witnesses by police‖ provides for oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 Cr.P.C can be used at any trial are indicated in Section 162 Cr.P.C.

Section 162 Cr.P.C. bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162 (1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:- (i) of contradicting such witness by an accused under Section 145 of Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court and (iii) the re-examination of the witness if necessary.

Court cannot suo moto make use of statements to police not proved and ask question with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 Cr.P.C. ―if duly proved‖ clearly show that the record of the statement of witnesses cannot be admitted in evidence straightway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. Statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of Evidence Act**, that is by drawing attention to the parts intended for contradiction.**

Under Section 145 of the Evidence Act when it is **intended to contradict the witness by his previous statement reduced into writing,** the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction. [**V.K. Mishra v. State of Uttarakhand, 2015(8) SCALE 270]**

Sec. 161 – Statement under S. 161 –Maker of statement subsequently dies-Statement can be relied as dying declaration

In the present case Hon‟ble Court held that the trial court has not placed reliance on the

statement of deceased Suresh recorded under Section 161 Cr.P.C. as dying declaration on the ground that at the time of recording of statement under Section 161 Cr.P.C., PW-1 was also said to be present. Learned counsel for the appellants has submitted that the statement recorded under Section 161 Cr.P.C. is of no value if the maker of the statement subsequently dies. This submission cannot be accepted. Dying declaration made orally in the presence of any person may be proved in court by the oral evidence of that person. The declaration becomes admissible, if the declarant subsequently dies. If he survives, it will be useful, if made before a Magistrate, or any one other than a Police Officer, to corroborates his oral evidence as a witness in court **(Harihar Singh and others v. State of U.P., 2015 (6) ALJ 354)**

Section 165- Criminal Procedure Code, 1973 *- Section 482-Indian Penal Code, 1860- Sections 364-A, 302 and 201- Quashing of order directing police for sending accused persons for taking their voice sample-Petitioner mother of the deceased allegedly kidnapped and killed by respondent No.2 alongwith seven others for ransom-Calls demanding money made at mobile of the petitioners from different mobile and basic telephones got taped by Superintendent of Police after obtaining approval of Inspector General of Police concerned- Trial Court initially ordered on 8.10.2014 and 31.10.2014 directing the prosecuting agency to get voice sample of accused to be tested with audio C.D. from authorized laboratory. No such testing facility available in the State of U.P.-Trial Court dropped the idea of testing and started to proceed with the trial-Once Trial Court formed opinion for getting the voice sample of accused and to get the same compared with the recorded audio C.D.-Committed error in passing the impugned order rejecting recording of the voice sample of accused merely because there is no testing facility available in the State of U.P.- Trial Court empowered under section 165 of Evidence Act for getting voice sample of accused recorded and tested with recorded audio CD.*

Section 167(2) Proviso, 173(8) and 309(2)

In the incident 9 persons were killed and large numbers of villagers were injured. C.B.I. conducted the investigation and submitted charge sheet against 21 accused, out of them some were arrested and remaining accused had absconded. It was mentioned in the charge sheet that further investigation of the case was kept open for purposes of collection of further evidence and arrest of absconded. It was also mentioned that further collected evidence during investigation, would be forwarded by filling supplementary charge sheet. Eight accused were declared proclaimed offenders, out of which 5 accused were arrested. Whereafter CBI sought their remand in police custody. The Magistrate rejected prayer of CBI. Revision was filed against the order of Magistrate.

High Court relying on Dinesh Dalmia v. CBI, (2007) 8 SCC 77 rejected the revision petition.

Hon‘ble the Apex Court held that the High Court was not justified on the basis of Dinesh Dalmia‘s case in upholding refusal of remand in police custody by the Magistrate, on the ground that the accused stood in custody after his arrest under Section 309 Cr.P.C.

Three judge bench of the Apex Court in State v. Dawood Ibrahim Kaskar & others, (2000)10 SCC 438 has laid down that police remand can be sought under Section 167(2) Cr.P.C. in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. Supreme Court further clarified in Dawood‘s case that the expression _accused if in custody‘ in Section 309(2) Cr.P.C. does not include the accused who is arrested on further investigation before supplementary charge sheet is filed.

So Hon‘ble the Apex Court held that refusal of police remand in the present case is against the settled principle of law. The remand in police custody can be given to the investigation agency in respect of the absconding accused who is arrested only after filing of the charge sheet. [**CBI v. Rathin Dandapat andothers, (2015)9 SCALE 120]**

Section 167 Cr. P. C. - Police report - not as per the legal requirement under section 173 (2) & (5) of Cr.P.C.. - will entitled the accused for default bail – held NO

If some mistake is committed in not producing the relevant documents at the time of submitting the report, it is always open to the investigating officer to produce the same with the permission of the court. The further investigation is not precluded in Criminal Procedure Code, thus there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation and the word "shall" used in 173 (5) Cr.P.C. cannot be interpreted as mandatory, but as directory. Therefore, it is contended that the High Court is justified in refusing to grant Default Bail in favour of the appellant. Therefore, filing of police report containing the particulars as mentioned under Section 173 (2) amounted to completion of filing of the report before the learned ACJM, cognizance is taken and registered the same.

The contention of the appellant that the police report filed in this case is not as per the legal requirement under Section 173 (2) & (5) of Cr.P.C. which entitled him for default bail is rightly rejected by the High Court and does not call for any interference by this Court. **Narendra Kumar Amin v. Cbi & Ors. (2015)2 Scc(Cri) 259 : (2015) 3 SCC 417**

Sec. 167-- Custody - Defined

Custody, detention and arrest are sequentially cognate concepts. On the occurrence of a crime, the police is likely to carry out the investigative interrogation of a person, in the course of which the liberty of that individual is not impaired, suspects are then preferred by the police to undergo custodial interrogation during which their liberty is impeded and encroached upon. If grave suspicion against a suspect emerges, he may be detained in which event his liberty is seriously impaired. Where the investigative agency is of the opinion that the detainee or person in custody is guilty of the commission of a crime, he is charged of it and thereupon arrested. The terms „custody" and „arrest" are not synonymous even though in every arrest there is a deprivation of liberty is custody but not vice versa.

[**Sundeep Kumar Bafna vs. State of Maharashtra & Anr., (2015) 3 Scc (Cri) 558; (2014) 16 SCC 623, Criminal Appeal No. 689 of 2014 [Arising out of Slp (Crl.)No.1348 Of 2014]**

Sec. 167-- Police Custody/Remand

Police custody – the person arrested during further investigation – may be given - subject to the fulfilment of the requirements and the limitation of Section 167

We are, therefore, of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167. [**Central Bureau of Investigation Versus Rathin Dandapat and others, AIR 2015 SC 3285 (Criminal Appeal No.1081 Of 2015) (Arising out of S.L.P. (Crl.) No. 3611 of 2015)]**

Sections 173/228— For framing of charge-sheet along with the accompanying material is to be considered–for subjective satisfaction of the Court

The law on framing of charge is crystal clear that only charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out. It has to be the subjective satisfaction of the Court framing charges. In our opinion, the High Court has only examined the material before it against the prevailing law to reach its conclusions. Thus, the impugned judgment may not be assailable on this ground. [**State of Madhya Pradesh v. Rakesh Mishra, (2016) 1 SCC(Cri) 405; (2015) 13 SCC 8]**

Section 173 Cr.P.C. – Further investigation- meaning of

From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the police report under sub-section (2) on completion of the investigation, the police has a right to ―further‖ investigation under sub-section (8) of Section 173 but not ―fresh investigation‖ or ―reinvestigation‖. The meaning of ―further‖ is additional, more, or supplemental. ―Further‖ investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be. [**Awadesh Kumar Jha @ Akhilesh Kumar Jha & Anr., AIR 2016 SC 373]**

Section 173(8) & 190 – Further Investigation or Re-Investigation by another agency.

In Uma Shankar Singh v. State of Bihar, (2012)9 SCC 460, Hon'ble the Apex Court, scanning the anatomy of Section 190(1)(b) of Cr.P.C. laid down that-

―19. … even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) Cr.P.C.

In Dharam Pal Singh v. State of Haryana AIR 2013 SC 3018:(2014)3 SCC 306, the Constitution Bench, while accepting the view in Kishun Singh v. State of Bihar,(1993)2 SCC 16 has held that-

35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court.‖

Thus Magistrate can disagree with the police report and can take cognizance and issue process and summons to the accused. The Magistrate has the jurisdiction to ignore the opinion expressed by the investigation officer and independently apply his mind to the facts that have emerged from the investigation.

Relying upon the Law laid down by the Constitution Bench in Bhagwan Singh v. Commissioner of Police (1985) 2 SCC 537 and the Division Bench in Vinay Tyagi v. Irshad Ali (2013) 5 SCC 762 the Apex Court held that –

1. In exceptional circumstances, to achieve the ends of Justice the Magistrate can direct further investigation.
2. While exercising the power under Section 173(8) the Magistrate cannot direct any other agency to conduct further investigation.
3. The Magistrate does not have any Jurisdiction to direct reinvestigation. Only Courts of higher jurisdiction depending upon the facts and circumstances can direct reinvestigation or investigation-de-novo.
4. Further investigations conducted under the orders of the Court, including that of the

Magistrate or by police of its own accord and for valid reasons would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Section 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.

[**Chandra Babu @Moses v. State through Inspector of Police, 2015(7) SCALE 529]**

Section 173 (8) of Cr.P.C. - Transfer of investigation to CBCID - FIR lodged by petitioner in a case under section 302, IPC alleging that her husband has been shot dead by unknown miscreants-Investigation completed by civil police and after completing the investigation, charge-sheet has been submitted in the Court of CJM. Thereafter, on an application moved by wife of one of the accused, order of further investigation, transferring it to CBCID has been passed - Order transferring the investigation to CBC has not disclosed any reason and it has been passed in a routine manner without applying the judicial mind. Application moved by wife of accused also did not show any proper reason to transfer investigation to CBCID. Order transferring the investigation has been passed in an arbitrary manner. Same was illegal and liable to be set aside. **Smt. Janaki Devi v. State of U.P., 2015 (89) ACC 764 (HC)**

Sec. 173(2)-- Action on Final Report

In the event the Magistrate disagrees with the police report, he has 43 two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter. If the magistrate was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police, in such an event, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court. [**Chandra Babu @ Moses Versus State Through Inspector Of Police & Ors., AIR 2015 SC 3566 (Criminal Appeal No.866 of 2015) [Arising Out Of Slp (Crl.) No. 5702 Of 2012]**

Sec. 173(8)-- Whether Magistrate has power to direct to investigate by particular agency- Held no

The learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency. Therefore, that part of the order deserves to be lancinated and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the concerned Superintendent of Police. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law. We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case. **[Chandra Babu @ Moses Versus State Through Inspector Of Police & Ors., AIR 2015 SC 3566 (Criminal Appeal No.866 Of 2015) [Arising Out Of Slp (Crl.) No. 5702 Of 2012]**

Sec.174- Inquest report- Non-mentioning of crime number, sections, name of accused and other particulars in inquest report- There is no such requirement under S. 174- Inquest report not invalid on that ground.

So far as the argument of non-mentioning of the crime number, sections, name of the accused and other particulars in the inquest report is concerned, the same is not required under law. Inquest report is prepared under the provisions of Section 174 Cr.P.C. and as per the provisions of said Section, there is no such requirement as submitted by the learned counsel for the appellants.

(Harihar Singh and others v. State of U.P., 2015 (6) ALJ 354)

Sec. 185/186-- Direction for - Investigation by Other Agency- During trial

During trial, leaves one with a choice either to let the ongoing trial casually drift towards its conclusion with the possibility of offence going unpunished or to embark upon investigation belated though, spurred by the intervening developments, to unravel the truth, irrespective of the persons involved. As it is, every offence is a crime against the society and is unpardonable, yet there are some species of ghastly, revolting and villainous violations of the invaluable right to life which leave all sensible and right minded persons of the society shell shocked and traumatized in body and soul. Such incidents mercifully rare though are indeed exceptionally agonizing, eliciting resentful condemnation of all and thus warrant an extra-ordinary attention for adequate remedial initiatives to prevent their recurrence. Even if such incidents otherwise diabolical and horrendous do not precipitate, national or international ramifications, these undoubtedly transcend beyond the confines of individual tragedies and militatively impact upon the society‟s civilized existence. If the cause of complete justice and protection of human rights are the situational demands in such contingencies, order for further investigation or reinvestigation, even by an impartial agency as the CBI ought to be a peremptory measure in the overwhelming cause of justice.

Notwithstanding the pendency of the trial, and the availability of the power of the courts below under Sections 311 and 391 of the Code read with Section 165 of the Evidence Act, it is of overwhelming and imperative necessity that to rule out any possibility of denial of justice to the parties and more importantly to instil and sustain the confidence of the community at large, the CBI ought to be directed to undertake a de novo investigation in the incident. We take this view, conscious about the parameters precedentially formulated, as in our comprehension in the unique facts and circumstances of the case any contrary view would leave the completed process of crime detection in the case wholly inconsequential and the judicial process impotent. A court of law, to reiterate has to be an involved participant in the quest for truth and justice and is not expected only to officiate a formal ritual in a proceeding farseeing an inevitable end signalling travesty of justice. Mission justice so expectantly and reverently entrusted to the judiciary would then be reduced to a teasing illusion and a sovereign and premier constitutional institution would be rendered a suspect for its existence in public estimation. Considering the live purpose for which judiciary exists, this would indeed be a price which it cannot afford to bear under any circumstance. **[Pooja Pal v. Union Of India And Ors., (2016) 1 SCC (Cri) 743; (2016) 3 SCC 135]**

Section 190—Cognizance and process thereafter

The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. to set in motion the process of criminal law against a person is a serious matter.

Under Section 190(1)(b) CrPC , the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence,. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that ―a complaint of facts which constitute such offence‖. Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected.

The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against

whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered alongwith the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed t that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is ot to act as a post office in taking cognizance of each and every compliant filed before him and issue process as a matter to course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered alongwith the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Section 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one‘s dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment. [**Mehmood Ul Rehman Versus Khaziri Mohammad Tunda and others, (2016) 1 SCC (Cri) 124, (2015) 12 SCC 420]**

Section 190 Cr.P.C.

In brief, it was alleged that the accused entered into a criminal conspiracy to cheat the complainant and the Company. Further, accused A1 to A3 made false declaration in regard to record maintained under the provisions of the Companies Act, and filed a false declaration purporting to be an extract of Board Resolution of the Company before Andhra Bank, Sowcarpet Branch, Chennai in order to open a bank account. According to the complainant the signatory to the Board Resolution was not even a Director in the Company on the date the bank account was opened. A series of events alleged in the complaint show how the complainant was induced to invest in the Company by acquiring land for the Company at a cost of Rs. 20 lakhs and make payment for the front end fee to IREDA which had in collusion with the other accused sanctioned the financial assistance to the Company to the extent of Rs. 11.50 crores subject to the condition that the promoters should invest Rs. 4.98 crores as their contribution towards the total project cost of Rs. 16.48 crores.

As can be seen from the complaint the allegations are that the accused conspired with each other to cheat the complainant and a series of transactions gave rise to offence under Section 120B read with Section 420 of the Indian Penal Code as also Section 628 of the Companies Act. It is, therefore, clear that if the Special Court has jurisdiction to try offences under both the aforesaid Acts then the trial can certainly continue in respect of the offences which do not require the complainant to belong to the categories specified under Section 621 of the Companies Act. Thus the trial could certainly continue against those accused under the IPC. The Special Court is empowered to try the offences under the Companies Act alongwith other Acts by virtue of a notification issued by the erstwhile Government of Andhra Pradesh dated 13.3.1981 which empowers such special Courts to try offences under specified enactments such as The Companies Act, 1956, The Income-tax Act, 1961, The Wealth-tax Act, 1957 etc.

Even if a number of persons are accused of offences under a special enactment such as _the Companies Act and as also the IPC‘ in respect of the same transaction or facts and even if some could not be tried under the special enactment, it is the special court alone which would have jurisdiction to try all the offences based on the same transaction to avoid multiplicity of proceedings. **[S. Satyanarayana Versus Energo Masch Power Engineering & Consulting Pvt. Ltd. & Ors.**, **AIR 2015 SC 2066]**

S.190(1)(b) – Taking cognizance – Purpose of – To commence proceedings by issuing

process U/s. 204 to accused.

The whole purpose of taking cognizance of an offence under Section 190(1)(b) Cr.PC is to commence proceedings under Chapter XVI of the CrPC by issuing process under Section 204 CrPC to the accused involved in the case. No doubt, it is not innocence but involvement that is material at this stage. Once the legal requirements to constitute the alleged offence qua one of the accused are taking, there is no point in taking cognizance and proceeding further as against him. **Sanjaysingh Ramrao Chavan v. Dattafray Gulabrao Phalke and others., 2015(1) Supreme 195.**

S.190 – Consideration at the stage of taking cognizance – Magistrate has only see if a prima facie has been made out.

FIR registered on basis of photocopy of undated petition not bearing original signature.

According to the complaint petition, the appellant informed the concerned court that the FIR No.73/2002 was neither filed by her nor signed by her and this FIR facilitated her husband and his relations who were accused to obtain anticipatory bail not only in FIR No.73/2002 but also in the case genuinely filed by the appellant against accused nos. 1 to 8 under Section 498A and 406. IPC in Women‘s Cell, Kirti Nagar, Delhi registered as Complaint No.372/2004 on 15.06.2004. The appellant was also surprised to receive in July 2003 a notice of Divorce Petition filed by respondent no.1 in a Delhi court on 19.5.2003.

Ultimately, even after a CID investigation in favour of appellant‘s case, when no action was taken against the culprits and no copy of the CID report was made available to the appellant, she filed a Writ Petition seeking the record of investigation report of CID and registration of a criminal case against the accused as well as investigation by CBI. In terms of directions of the High Court, the appellant was provided with copy of the CID investigation report and was also permitted to inspect the entire connected record.

Thereafter she filed the instant criminal complaint before the Court of Judicial Magistrate, First Class, Raipur on 07.12.2010.

The Judicial Magistrate issued summons against accused nos. 1 to 9. The High Court, dismissed both the criminal revision petitions preferred by the appellant against grant of relief to accused nos. 6 to 9 and allowed criminal miscellaneous petition of accused nos. 1 to 5 by setting aside the summoning order of the Magistrate and directing the appellant to appear before the Court of Judicial Magistrate for adducing further evidence, if any, to support her allegation in the complaint petition. The High Court thus remitted back the matter with various observations requiring the appellant to produce alleged documents which could prove forgery and also to send the same to expert for examination of the document and signature of the complainant/appellant.

In the present case, on going through the order of the learned Magistrate, court is satisfied that the same suffers from no illegality. The specific case of the appellant that FIR was registered on an undated photocopy of a petition attributed to the appellant but not bearing her original signature could not have been rejected by the learned Magistrate at the present stage especially in view of the report of investigation by the CID which was also called for and there being no dispute that the FIR No.73/2002 was registered only on the basis of a photocopy on which the signature is not in original and hence in our considered view the Hon‘ble High Court grossly erred in exercise of its jurisdiction by directing the appellant/complainant to lead further evidence and produce the original documents to show forgery. If the FIR is admittedly on the basis of only a photocopy of a document allegedly brought into existence by the accused persons, the High Court erred in directing the appellant to produce the original and get the signatures compared. **Sonu Gupta v. Deepak Gupta & Ors., 2015(2) Supreme 193.**

Section 190 Cr. P. C.

Once the Magistrate of competent jurisdiction, on proper application of mind, decides to accept the closure report submitted by the police under Section 173(2) Cr.PC, whether the High

Court is justified in setting aside the same in exercise of its revisional jurisdiction merely because another view may be possible?

Held that the cognizance is a process where the court takes judicial notice of an offence so as to initiate proceedings in respect of the alleged violation of law. The offence is investigated by the police. No doubt, the court is not bound by the report submitted by the police under Section 173(2) of Cr.PC. If the report is that no case is made out, the Magistrate is still free, nay, bound, if a case according to him is made out, to reject the report and take cognizance. It is also open to him to order further investigation under Section 173(8) of Cr.PC. **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others (2015) 2 SCC(Cri) 199(FB) ; (2015) 3 SCC 123 (FB)**

Sec. 190 (1) (b), 200,202 and 204- Taking Cognizance on the protest petition and summoning of the accused

On hearing the present case the Hon‟ble Court had discussed the various case laws it is clear form that case laws that if in any case the final report is submitted by the police, against which protest petition is filed by first informant then magistrate has following three options:-

1- He may accept the final report and drop the proceedings, or

2- He may direct the police for further investigation, or

3- He may summon the accused on further two grounds:

(4) If he chooses to summon the accused on the bases of evidence collected by the Investigation officer, he may do so directly without any further evidence. or

(5) If accused is summoned on the basis of protest petition, relying on extraneous material filed with protest petition, then he has to follow the procedure laid down under chapter XV of Cr. P.C. i.e. to treat the protest petition as complaint and record the evidence u/s 200 and 202 Cr P.C. and cognizance cannot be taken on the basis of extraneous material u/s 190 (1)(b) Cr .P.C, without following the aforesaid procedure.

In the matter in hand the impugned order shows that the Magistrate summoned accused persons presuming that oral evidence on behalf of first informant was adduced on protest petition, which is possible only when the protest petition was ordered to be treated as a complaint. The record shows that neither protest petition was ordered to be registered as complaint not any oral evidence of the witnesses was recorded. Summoning of the accused persons on the basis of the oral evidence indicates that the magistrate was satisfied with the fact that in evidence collected by the I.O. there was not sufficient material for taking cognizance. The learned magistrate has also observed that the I.O. has committed a mistake in not recording the evidence of other witnesses. Summoning is also based on facts mentioned in the protest petition and documentary evidence, as mentioned in the order impugned which is erroneous in view of the law cited above.

Going through the aforesaid discussions, it comes out that learned Magistrate has committed a wrong in summoning the accused persons on extraneous evidence without following the procedure as envisaged in chapter XV of Cr. P.C. Though reference of oral evidence of prosecution witnesses is given but no any such witnesses were ever examined and protest petition was never treated as complaint. Hence setting aside the impugned order, protest petition deserves to be decided afresh, consequently revision succeeds. **(Mukeem and others v. State of U.P. and another, 2015 (6) ALJ 610)**

Sec. 190 (1) (b) and 482 –Charge Sheet has been filed in the Sections of I.P.C., 1860- S. 147, 323, 504, 506 and 452 – Magistrate must applied his judicial mind at the time of taking cognizance

In the present case it is true that the charge-sheet has been filed for the offence punishable under section 147, 323, 504, 506 and 452 IPC but the cognizance has been taken only for the offence punishable under sections 147, 323, 504 and 452 IPC, which in itself is sufficient to show

that the learned Magistrate has applied his mind and he has not summoned the accused for the offence punishable under Section 506 IPC. There may not be sufficient evidence available for taking cognizance under section 506 IPC.

As various judgments of Hon'ble the Apex Court, which discussed in the present case it is clear that a detailed orders are not required to be passed at the stage of issuing process and even it was not necessary to pass a speaking order at the stage of taking cognizance. The only requirement is that he has to satisfy that there is sufficient ground for proceeding against the accused persons.

In these days of computerization, the computer typed orders cannot be said to be bad, nor the inference can be drawn that the mind has not been applied while passing such computer typed orders. However, all the courts of State of U.P. are advised to refrain from passing fill-in-the gap orders i.e. either the whole order should be typed by the type machine or the computer or the whole order should be handwritten but in no case, the rubber stamp can be used even for the routine orders.

As far as the quashing of the entire criminal proceedings are concerned, I do not find any other grounds to quash the proceeding of the criminal case no. 1768 of 2015. **(Aquil Ahmad and others v. State of U.P. and another Opp. Parties, 2015 (91) ACC 527)**

Sec. 193-- Cognizance by Session Court – Against accused not figured in charge sheet - After committal -

Where the Police report which was submitted to the Magistrate, the IO had not included some named as accused persons, here in after referred as dropped accused. The application of the complainant to take cognizance against the dropped accused rejected by the Magistrate. The dropped accused had replied to the said application and after hearing the arguments, the application was rejected by the Magistrate. This order was not challenged. Normally, in such a case, it cannot be said that the Magistrate had played 'passive role' while committing the case to the Court of Sessions. He had, thus, taken cognizance after due application of mind vand playing an “active role” in the process. The position would have been different if the Magistrate had simply forwarded the application of the complainant to the Court of Sessions while committing the case. Notwithstanding the same, the Sessions Court on the similar application made by the complainant before it, took cognizance thereupon. Normally, such a course of action would not be permissible. Aggrieved by the said order, the dropped accused approached the High Court. High Court remanded the matter back to the Sessions Court with a direction to hear the parties and pass further orders. The Sessions Court accorded fresh hearing and thereafter allowed the application once again.

The order of the Magistrate refusing to take cognizance against the appellants is revisable. This power of revision can be exercised by the superior Court, which in this case, will be the Court of Sessions itself, either on the revision petition that can be filed by the aggrieved party or even suo moto by the revisional Court itself. The Court of Sessions was, thus, not powerless to pass an order in his revisionary jurisdiction. Things would have been different had he passed the impugned order taking cognizance of the offence against the appellants, without affording any opportunity to them, since with the order that was passed by the learned Magistrate a valuable right had accrued in favour of these appellants. However, in the instant case, we find that a proper opportunity was given to the appellants herein who had filed reply to the application of the complainant and the Sessions Court had also heard their arguments. [**Balveer Singh & Anr. v. State of Rajasthan & Anr AIR 2016 SC 2266]**

Section 197 Cr.P.C. - no scope for invoking – under Water (Prevention and control of Pollution) Act, 1974 - Section 5 Cr.P.C. - in the absence of specific provisions to the contrary, nothing contained in the Cr.P.C. - would affect any special or local laws - providing any special form or procedure

The question that was posed for consideration before the Division Bench was that both the appellants admittedly being public servants, the prosecution as against them could not have been

lodged under Section 48 of the Water (Prevention and control of Pollution) Act, 1974 [hereinafter called the '1974 Act']. The said contention was raised on the footing that being public servants, sanction under Section 197 Cr.P.C. was required before the prosecution was launched against them. The Division Bench held that by vSection 5 Cr.P.C., the said Section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Cr.P.C. would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. irtue of Section 48 read along with Section 49(1) of the 1974 Act, there was a clear conflict with Sections 415 and 197 of the Criminal Procedure Code and consequently Section 60 of the 1974 Act would operate and, therefore, the protection claimed by the appellants under Section 197 Cr.P.C. cannot be extended to them. Under Section 48, the guilt is deemed to be committed the moment the offence under the 1974 Act is alleged against the Head of the Department of a Government Department. It is a rebuttable presumption and under the proviso to Section 48, the Head of the Department will get an opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence to prevent the commission of such an offence, the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of the 1974 Act would in any manner enable the Head of the Department of the Government Department to seek umbrage under Section 197 Cr.P.C. and such a course if permitted to be made that would certainly conflict with the deemed fiction power created under Section 48 of the 1974 Act.

In this context, when we refer to Section 5 Cr.P.C., the said Section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Cr.P.C. would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for proceeding against a public servant under the 1974 Act. If one can visualise a situation where Section 197 Cr.P.C. is made applicable in respect of any prosecution under the 1974 Act and in that process the sanction is refused by the State by invoking Section 197 Cr.P.C. that would virtually negate the deeming fiction provided under Section 48 by which the Head of the Department of Government Department would otherwise be deemed guilty of the offence under the 1974 Act. In such a situation the outcome of application of Section 197 Cr.P.C. by resorting to reliance placed by Section 4(2) Cr.P.C. would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of the 1974 Act would automatically come into play which has an overriding effect over any other enactment other than the 1974 Act. In the light of the said statutory prescription contained in Section 48, we find that there is no scope for invoking Section 197 Cr.P.C. even though the appellants are stated to be public servants. **V.C.Chinnappa Goudar V. Kar. State Pollution Control Bd.& Anr. (2016) 2 SCC (Cri) 407 ; (2015) 14 SCC 535 (Criminal Appeal No. 755/2010)**

Section 197 Cr.P.C. - no scope for invoking – under Water (Prevention and control of Pollution) Act, 1974 - Section 5 Cr.P.C. - in the absence of specific provisions to the contrary, nothing contained in the Cr.P.C. - would affect any special or local laws - providing any special form or procedure

The question that was posed for consideration before the Division Bench was that both the appellants admittedly being public servants, the prosecution as against them could not have been lodged under Section 48 of the Water (Prevention and control of Pollution) Act, 1974 [hereinafter called the '1974 Act']. The said contention was raised on the footing that being public servants, sanction under Section 197 Cr.P.C. was required before the prosecution was launched against them. The Division Bench held that by vSection 5 Cr.P.C., the said Section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Cr.P.C. would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. irtue of Section 48 read along with Section 49(1) of the 1974 Act, there was a clear conflict with Sections 415 and 197 of the Criminal Procedure Code and consequently Section 60 of the 1974 Act would operate and, therefore, the protection claimed by the appellants under Section 197 Cr.P.C. cannot be extended to them. Under Section 48, the guilt is deemed to be committed the moment the

offence under the 1974 Act is alleged against the Head of the Department of a Government Department. It is a rebuttable presumption and under the proviso to Section 48, the Head of the Department will get an opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence to prevent the commission of such an offence, the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of the 1974 Act would in any manner enable the Head of the Department of the Government Department to seek umbrage under Section 197 Cr.P.C. and such a course if permitted to be made that would certainly conflict with the deemed fiction power created under Section 48 of the 1974 Act.

In this context, when we refer to Section 5 Cr.P.C., the said Section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Cr.P.C. would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for proceeding against a public servant under the 1974 Act. If one can visualise a situation where Section 197 Cr.P.C. is made applicable in respect of any prosecution under the 1974 Act and in that process the sanction is refused by the State by invoking Section 197 Cr.P.C. that would virtually negate the deeming fiction provided under Section 48 by which the Head of the Department of Government Department would otherwise be deemed guilty of the offence under the 1974 Act. In such a situation the outcome of application of Section 197 Cr.P.C. by resorting to reliance placed by Section 4(2) Cr.P.C. would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of the 1974 Act would automatically come into play which has an overriding effect over any other enactment other than the 1974 Act. In the light of the said statutory prescription contained in Section 48, we find that there is no scope for invoking Section 197 Cr.P.C. even though the appellants are stated to be public servants. **V.C.Chinnappa Goudar V. Kar. State Pollution Control Bd.& Anr. (2016) 2 SCC (Cri) 407 ; (2015) 14 SCC 535 (Criminal Appeal No. 755/2010)**

Section 197- Principles - Applied

The principles emerging from the decisions are summarized hereunder:

I. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

II. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

III. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.

IV. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

V. In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

VI. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage,

finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.

VII. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to 39 decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

VIII. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.

IX. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial. [**Devinder Singh & Ors. V. State of Punjab through CBI 2016(3) Supreme 200]**

Section 197 Cr.P.C.

Relying on *Kumar Raghvendra Singh and others v. Ganesh Chandra Jew (2004) 8 SCC 40 ; 2004 SCC(Cri) 2104* AND *Om Prakash and others v. State of Jharkhand Through The Secretary, Department of Home, Ranchi and another (2012) 12 SCC 72 ; (2013) 3 SCC(Cri) 472* held that where the accused exceeded in exercising his power during investigation of a criminal case and assaulted the complainant in order to extract some information with regard to the death of one Sannamma, and in that connection, the respondent was detained in the police station for some time. Therefore, the alleged Conduct has an essential connection with the discharge of the official duty. Under Section 197 of CrPC, in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary. The issue of police excess' during investigation and requirement of sanction for prosecution D. T. Virupakshappa Versus C. Subash (2016) 1 SCC (Cri) 82; (2015) 12 SCC 231. The question, whether sanction is necessary or not, may arise on any stage of the proceedings, and in a case, where where the accused exceeded in exercising his power during investigation of a criminal case and assaulted the complainant in order to extract some information, it may arise at the stage of inception. [**D. T. Virupakshappa Versus C. Subash (2016) 1 SCC (Cri) 82 ; (2015) 12 SCC 231]**

Section 197– Indian Penal Code, Section 304A – Medical Negligence –

Criminal Prosecution of Medical Officers of the Government Hospital is not maintainable without obtaining the sanction from the State Government. Even complaint is also not maintainable in the absence of sanction. [**Dr. Smt. Manorama Tiwari v. Surendra Nath Rai, 2015(9) SCALE 747]**

Section 197- The police officer exercising his power during investigation of a criminal case and assaulted in order to extract some information with regard to the , and in that connection, one person was detained in the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 of CrPC, in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary. **[D. T. Virupakshappa Versus C. Subash AIR 2015 SC 2022]**

Section 197 - Protection from harassment - in public interest - not as shield to protect corrupt officials - cheating, fabrication of records or misappropriation - not discharge of official duty Public servants have, in fact, been treated as special category under Section 197 CrPC, to protect them from malicious or vexatious prosecution. Such protection from harassment is given in

public interest; the same cannot be treated as shield to protect corrupt officials. The indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue.

In such circumstances the view that if at all the view of sanction is to be considered, it could be done at the stage of trial only. **[Inspector of Police and another Versus Battenapatla Venkata Ratnam and another AIR 2015 SC 2403]**

Section 200 Cr.P.C. contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. Then normally three courses are available to the Magistrate. The Magistrate can either issue summons to the accused or order an inquiry under Section 202 Cr.P.C. or dismiss the complaint under Section 203 Cr.P.C. Upon consideration of the statement of complainant and the material adduced at that stage if the Magistrate is satisfied that there are sufficient grounds to proceed, he can proceed to issue process under Section 204 Cr.P.C. Section 202 Cr.P.C. contemplates postponement of issue of process'. It provides that the Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance may, if he thinks fit, postpones the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or have an inquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by some other person for the purpose of deciding whether or not there is sufficient ground for proceeding.

If the Magistrate finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under Section 203 Cr.P.C. A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by complainant by filing the complaint or by the police report about the commission of an offence. Cognizance therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some offence had been committed.

Only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not. Under Section 200 Cr.P.C., when the complainant is examined, the will decide whether a prima facie case is made out for taking cognizance of the offence or not. ―Cognizance of offence means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon facts and circumstances of the particular case. [**S.R. Sukumar Versus S. Sunaad Raghuram AIR 2015 SC 2757]**

Section 200, 202 and 204 CrPC - Allegation against company only - Company was not made a party - whether Managing Director of the Company could be summoned or not?

Appellant is the Managing Director of M/s Sanghi Brothers Indore Ltd., Indore, which is registered company, duly registered under the Companies Act 1957 and is engaged in the business of automobile sale. The respondent/complainant purchased a truck from the above company. Just after the purchase of the Truck the respondent came to know that the above truck before purchase had met with accident as a result of which the engine of the truck was replaced by another engine. Coming to know of this, the respondent filed a complaint alleging that M/s Sanghi Brothers (Indore) Ltd. Indore being represented by the Managing Director Sharad Kumar Sanghi had suppressed the information and deliberately cheated the respondent.

The Learned Magistrate on the basis of Section 200 and 202 Cr.P.C. took cognizance against the appellant. The Session Judge and the High Court confined the Learned Magistrate's

order. Therefore appellant filed Criminal Appeal before the Hon'ble Supreme Court.

In para 9 the Hon'ble Apex Court observed that -

"When a complainant intends to rope in a Managing Director or officer of a company, it is essential to make requisite allegations to constitute the vicarious liability. In Maksud Saiyad v. State of Gujarat, (2008)5 SCC 668 it has been held thus-

"Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is the Company. The Learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body Corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute, Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations, which would attract the provisions constituting vicarious liability."

Relying on the above law Hon'ble the Apex Court found that -

1. The complainant had made allegations against the company.
2. The company was not made a party.
3. The allegations which find place against the Managing Director, in his personal capacity seem to be absolutely vague. There was no specific allegation against the Managing Director.

Therefore cognizance against the appellant/Managing Director could not have been taken. So, order taking cognizance against the Managing Director set aside. Criminal proceedings were also quashed. According Appeal was allowed. **Sharad Kumar Sanghi v. Sangita Rane, 2015(3) Supreme 77.**

Sec. 202 -Magistrate takes cognizance - issues process - in contravention of provisions of Sections 200 and 202 Cr.P.C. - order of the Magistrate may be vitiated - but then the relief not by invoking Section 203 Cr.P.C. - the remedy lies in invoking Section 482 of the Code.

The facts are: The appellant had filed a private complaint under Section 200 of the Code against the respondents for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ("Act" for short). The learned Magistrate, by order dated 04.09.2010, took cognizance of the offence and the complaint was registered as CC No. 41505 of 2010. Thereafter, the learned Magistrate, upon recording the evidence of the appellant and perusing through the documents produced along with the complaint, was satisfied that a prima facie case has been made out for the offence punishable under Section 138 of the Act and issued summons to the respondents by order dated 16.09.2010. After service of summons, the respondents had filed an application under Sections 202, 203 and 245 of the Code questioning the maintainability of the complaint due to lack of territorial jurisdiction of the Court. The learned Magistrate, after hearing the parties, has allowed the said application and proceeded to recall his previous order issuing summons to the respondents and returned the complaint to the appellant, with a direction to present the complaint before the competent Court by order dated 22.09.2011. Being aggrieved by the aforesaid order, the appellant had filed a petition under Section 482 of the Code before the High Court. The High Court while concurring with the view taken by the learned Magistrate has rejected the said petition.

The scheme of the Code does not provide for review of order of issuance of process and prohibits interference by the accused at the interlocutory stage under Section 203. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections

200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code. Hence the High Court is not justified in rejecting the petition filed by the appellant under Section 482 of the Code. **M/S Iris Computers Ltd. V. M/S Askari Infotech Pvt. Ltd.& Ors (2016) 2 SCC (Cri) 389 ; (2015) 14 SCC 399 (Criminal Appeal No. 250 Of 2013)**

Sec. 202 -Magistrate takes cognizance - issues process - in contravention of provisions of Sections 200 and 202 Cr.P.C. - order of the Magistrate may be vitiated - but then the relief not by invoking Section 203 Cr.P.C. - the remedy lies in invoking Section 482 of the Code.

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Being aggrieved by the aforesaid order, the appellant had filed a petition under Section 482 of the Code before the High Court. The High Court while concurring with the view taken by the learned Magistrate has rejected the said petition.

The scheme of the Code does not provide for review of order of issuance of process and prohibits interference by the accused at the interlocutory stage under Section 203. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 3 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code. Hence the High Court is not justified in rejecting the petition filed by the appellant under Section 482 of the Code. **M/S Iris Computers Ltd. V. M/S Askari Infotech Pvt. Ltd.& Ors (2016) 2 SCC (Cri) 389 ; (2015) 14 SCC 399 (Criminal Appeal No. 250 Of 2013)**

202 Cr. P. C.

Magistrate - to call for a report under Section 202 instead of directing investigation 156(3) - controlled by - interest of justice from case to case – if direction under Section 202 - no arrest an accused by police.

The Hon'ble Supreme Court framed following questions for consideration:

(i) Whether discretion of the Magistrate to call for a report under Section 202 instead of directing investigation 156(3) is controlled by any defined parameters?

(3) Whether in the course of investigation in pursuance of a direction under Section 202, the Police Officer is entitled to arrest an accused?

(4) Whether in the present case, the Magistrate erred in seeking report under Section 202 instead of directing investigation under Section 156(3)?"

The Hon'ble Supreme Court answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.

The Hon'ble Supreme Court answer the second question by holding that under Section 202 are cases where material available is not clear to proceed further. The Magistrate is in seisin of the matter having taken the cognizance. He has to decide whether there is ground to proceed further. If at such premature stage power of arrest is exercised by police, it will be contradiction in terms.

The Hon'ble Supreme Court answer the third question by holding that the Magistrate and the High Court rightly held that in the present case report under Section 202 was the right course instead of direction under Section 156(3). The question is answered accordingly. **Ramdev Food Products Private Limited v. State of Gujarat AIR 2015 SC 1742**

Sections 202 and 482 of Cr.P.C. - Sections 302, 328, 392, 201, 119, 167, 364, 197, 504, 506 and 120-B of I.P.C. - Examination of witnesses-Discretion of Magistrate-Applicant is complainant and complaint relates to offence triable by Court of Sessions-Several names given in list of witnesses by complainant-Later on decided by complainant not to examine all of them-As statute of Code of Criminal Procedure required examination of all witnesses given in list in cases exclusively triable by Sessions Court. Therefore, Court below insisted on examination of all witnesses and passed impugned order. In fact for purpose of having satisfaction whether accused should be summoned or not, Magistrate enquires matter under section 202 Cr. P.C. This enquiry is for purpose of looking into sufficiency of evidence for purpose of summoning accused to face trial-This enquiry cannot be limited to certain class of witnesses only - If Magistrate himself desires to examine some witnesses on its own then complainant cannot stop to examine them - It is very much open for Magistrate to proceed to decide on point of summoning of accused on basis of material already produced on behalf of complainant and witnesses whom complainant has already examined-No illegality in adopting such a method-Petition disposed off. **Kashi Nath Rai v. State of U.P., 2015 (89) ACC 467 (Alld.)**

Section 204 CrPC

Powers to summon – if the charge sheet and the documents/material placed along with the charge-sheet disclose sufficient prima facie material to proceed against such a person – order must mention about any incriminating material against them - Criminal liability of a corporation - arise when an offence is committed - in relation to the business of the corporation - by a person or body of persons in control of its affairs

In the first instance, we make it clear that there is no denying the legal position that even when a person is not named in the charge sheet as an accused person, the trial court has adequate powers to summon such a non- named person as well, if the trial court finds that the charge sheet and the documents/material placed along with the charge-sheet disclose sufficient prima facie material to proceed against such a person as well. **Kishun Singh v. State of Bihar (1993) 2 SCC 16 and Dharam Pal v. State of Haryana (2014) 3 SCC 306** are the direct decisions on this aspect. However, in the present case, the learned Special Judge has not stated in the order that after examining the relevant documents, including statement of witnesses, he is satisfied that there is sufficient incriminating material on record to proceed against the appellants as well. The learned Special Judge does not mention about any incriminating material against them in the statement of witnesses or documents etc. On the other hand, the reason for summoning these persons and

proceeding against them are specifically ascribed in this para which, prima facie, are: i) These persons were/are in the control of affairs of the respective companies. ii) Because of their controlling position, they represent the directing mind and will of each company. iii) State of mind of these persons is the state of mind of the companies. Thus, they are described as "alter ego" of their respective companies. It is on this basis alone that the Special Judge records that "in this fact situation, the acts of companies are to be attributed and imputed to them"

The moot question is whether the aforesaid proposition, to proceed against the appellants is backed by law? In order to find the answer, let us scan through the case law that was cited during the arguments. A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of "alter ego" of the company.

It is abundantly clear that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company. [**Sunil Bharti Mittal Versus Central Bureau Of Investigation (2015) 2 SCC (Cri) 678 ; (2015) 4 SCC 609 (Criminal Appeal No. 34 Of 2015)]**

S.204 – Summoning a person not named in charge-sheet – validity of.

We make it clear that there is no denying the legal position that even when a person is not named in the charge sheet as an accused person, the trial court has adequate powers to summon such a non-named person as well, if the trial court finds that the charge sheet and the documents/ material placed along with the charge sheet disclose sufficient prima facie material to proceed against such person as well. **Sunil Bharti Mittal v. Central Bureau of Investigation, 2015(1) Supreme 422 : AIR 2015 SC 923.**

S. 204 Cr. P. C. - Issuing process – should not be an instrument - in the hands of private complainant - to harass the persons needlessly - order summoning the accused - must reflect application of mind - allegation of the complaint - supported by a statement of the complainant on oath - the necessary ingredients of the offence must disclose.

Indisputably, judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly.

It is equally well settled that summoning of an accused in a criminal case is a serious matter and the order taking cognizance by the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court and to quash the proceeding instituted on the complaint but such power could be exercised only in cases where the complaint does not disclose any offence or is vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of power under Section 482.

So far as the complaint alleging the offence under Section 499 IPC is concerned, if on consideration of the allegation the complaint is supported by a statement of the complainant on oath

and the necessary ingredients of the offence are disclosed, the High Court should not normally interfere with the order taking cognizance. **P.S. Meherhomji v. K.T. Vijay Kumar and others, (2015) 1 SCC (Cri) 789, (2015) 1 SCC 788**

Sections 205 and 317-Whether application under Section 205 or Section 317 is maintainable without personal appearance and without furnishing bail bonds- No.

After taking cognizance and issuance of the process, may be summon or warrant, the exemption application under Section 205 or under Section 317, Cr.P.C. is maintainable without personal appearance and without furnishing bail bonds is, therefore, decided accordingly that in case of an accused is warrant trail, the provisions of Section 205 or Section 317, Cr.P.C. will not apply unless the accused has been granted bail and he has furnished bail bonds. **[Arvind Kejriwal v. The State of U.P. & others, 2016 CRI.L.J. 128]**

Under section 2(d) of the Cr.P.C. Act- Suo-moto - Take cognizance of the offence/offences - On the basis of the reports published.

The reports published in the Newspapers were taken into consideration suo-moto by complainant, wherein he has registered the FIR after being satisfied with the material facts published in the Newspapers that there is a cognisable offence to be investigated by the police against the appellant. The same cannot be found fault for the reason that the complainant, who is on deputation to the Lokayukta, is an Inspector of Police attached to the State of Karnataka. Therefore, he has got every power under Section 2(d) of the CrPC, to act suo-moto and take cognisance of the offence/offences alleged to have been committed by the accuse on the basis of the reports published against him, which according to him warranted registration of an FIR and investigate the matter against him in accordance with law. There is no need for the registration of the FIR under Section 9 of the Lokayukta Act, in relation to the matters to be investigated under Section 8 of the Lokayukta Act. **[Yunus Zia Vs. State Of Karnataka & Anr. AIR 2015 SC 2376]**

Ss. 205 and 317 Cr.P.C.– Exemption from personal appearance in complaint case – In complaint case, nine years have passed but applicant is not appearing – and is not on bail he failed to appear and surrender. Application for exemption from personal appearance permanently was held to be rightly rejected by Magistrate.

From the impugned order passed by the learned Magistrate, it appears that earlier also similar application for exemption of his personal appearance was moved on 23.3.2012 under section 205 Cr.P.C. before the Court below and the same was rejected by the Magistrate on 15.06.2012 against which the applicant preferred a petition before this Court but his prayer was not accepted by this Court too. The learned Magistrate was of the view that the applicant is a foreign national and the offence against him is serious nature hence in order to secure his presence before this court it is necessary that he should obtain bail in the case. The conduct of the applicant reflects that he is absconding from the clutches of law for the last 9 years and has no intention to surrender before the law of the land and has flouted the orders of the Court of law even the orders of the Apex Court which has repeatedly granted him indulgence in staying his warrant of arrest but then too he has not appeared not surrender not obtained bail from the competent Court of the country, hence the learned Magistrate has rightly rejected his application under section 205 read with 317 Cr.P.C. **Lee Kun Hee v. State of U.P., 2015 (89) 6 (Alld.)**

Secs. 205, 317 – Exemption from personal appearance – Application for – Not maintainable in case of warrant trial unless accused has been granted bail and he had furnished bail bonds.

The question whether after taking cognizance and issuance of the process, may be summon or warrant, the exemption application under Section 205 or under Section 317 Cr.P.C. is maintainable without personal appearance and without furnishing bail bonds is, therefore, decided accordingly that in case of an accused is warrant trial, the provisions of Section 205 or Section 317 Cr.P.C. will not apply unless the accused has been granted bail and he has furnished bail bonds.

(Arvind Kejriwal v. The State of U.P. & others, 2015 (6) ALJ 542)

Sec. 207 - Scope of - Accused entitled to get a copy of First Information Report at an earlier stage than as prescribed under Section 207 Court thinks it appropriate to record the requisite conclusions and thereafter, proceed to issue the directions:-

1. An accused is entitled to get a copy of the FIR at an earlier stage than as prescribed under Section 207 of the Cr.P.C.
2. An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a FIR can submit an application through his representative agent for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.
3. Once the FIR is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.
4. The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. In case there are connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.
5. The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.
6. The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority would also include concept of privacy regard being had to the nature of the FIR. The examples given are absolutely illustrative and are not exhaustive.
7. If an FIR is not uploaded, needless to say, it shall not ensure per se a ground to obtain the benefit under Section 438 of the Cr.P.C.
8. In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the
9. Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.
10. The competent authority shall constitute the committee within eight weeks from the date of the order.

11. In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.

12. The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016.

Youth Bar Association of India V. Union of India and others, 2016 (6) SCC 536

Ss. 212, 214 - Charge Under section 397 IPC- not framed – but the charges framed adequately encompass all essential facts building up the offences - order of remand was not passed – the case should have been decided on merits - the purpose of framing a charge - to acquaint the accused - with the incriminating facts and circumstances.

Charge-sheet under Sections 120B/302/380/394 and 397 read with Section 34 IPC was laid against them. The trial court framed charges against the respondents-accused under Sections 120B/302/390/392/457 read with Section 34 IPC The High Court, as the impugned judgment and order would reveal, not only did find fault with the trial court in omitting to frame charge under Section 397 IPC the High Court interfered with the conviction of the respondents-accused and remitted the matter to the trial court to frame charge under Section 397 IPC

Having regard to the number of persons allegedly involved in the offences, as disclosed by the prosecution, the crimes committed are of murder in the course of robbery together with lurking house trespass and house breaking by night in order to commit offence punishable with imprisonment with common intention. Though Section 397 IPC deals with robbery or dacoity with attempt to cause death or grievous hurt and prescribes punishment by way of imprisonment of not less than seven years, in our view, the High Court ought to have decided the appeals on merit without remanding the case to the trial court for fresh adjudication after framing charge under Section 397 IPC and recording additional evidence, if deemed necessary.

The purpose of framing a charge against an accused person is to acquaint him with the incriminating facts and circumstances proposed to be proved against him in the trial to follow. The principal objective is to afford him an opportunity of preparing his defence against the charge. The possibility of prejudice to the accused arises, if he is not made conversant with the entire gamut of facts constituting the accusations leveled against him. Though Section 397 IPC, having regard to the case of the prosecution, may not be wholly irrelevant, the charges framed against the respondents-accused by the trial court, do adequately encompass all essential facts building up the offences imputed against them.

In view of the inclusion of Section 34 IPC in the array of offences, for which the respondents-accused had been charged by the trial court, as well as the facts and the evidence sought to be relied upon by the prosecution, in our estimate, the order of remand was not alled for and the appeals should have been decided on merits, on the basis of the charges already framed and the materials on record. The deduction of the High Court that the omission to frame charge under Section 397 IPC has resulted in miscarriage of justice is unconvincing in the facts of this case. That meanwhile more than a decade has passed since the date of the incident, cannot also be readily over-looked. **Bharamappa Gogi V. Praveen Murthy & Ors. Etc. (2016) 2 SCC (Cri) 540 ; (2016) 6 SCC 268 (Criminal Appeal Nos. 2216-2217 Of 2010)**

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Section 216—Court can change or alter the charge - If there is defect or something is left out - The test is - Must be founded on the material - Available on record.

The court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. The test of prejudice is that unless the convict is able to establish the defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities. Conviction order in fact is to be tested on the touchstone of prejudice theory. [**Anant Prakash Sinha @ Anant Sinha v. State of Haryana & Anr., 2016(2) Supreme 385]**

S. 216- Charge can be altered or added at any time before judgment is pronounced

Under the provisions of section 216 Cr.PC the charges can be altered or added at any time before judgment is pronounced. Such alteration or addition shall be read and explained to the accused. Considering the language of section 216 Cr.PC this court is of the view that revisionist can raise this point before the Trial Court to amend or add the charge. The Trial Court if find that added charges are not substantiated with the evidence the same may be modified. **[Vinod Kumar Agarwal and others v. C.B.I., 2015 (9) ACC 360].**

Sections 220 and 223 Cr.P.C.

From the reading of Sections 220 and 223, it is clear that a discretion is vested with the Court to order a joint trial. In fact, in **Chandra Bhal v. State of U.P., (1971) 3 SCC 983,** this Court stated:

Turning to the provisions of the Code, Section 223 embodies the general mandatory rule providing for a separate charge for every distinct offence and for separate trial for every such charge. The broad object underlying the general rule seems to be to give to the accused a notice of the precise accusation and to save him from being embarrassed in his defence by the confusion which is likely to result from lumping together in a single charge distinct offences and from combining several charges at one trial. There are, however, exceptions to this general rule and they are found in Sections 234, 235, 236 and 239. These exceptions embrace cases in which one trial for more than one offence is not considered likely to embarrass or prejudice the accused in his defence. The matter of joinder of charges is, however, in the general discretion of the court and the principle consideration controlling the judicial exercise of this discretion should be to avoid embarrassment to the defence by joinder of charges. On the appellant's argument the only provision requiring consideration is Section 235(1) which lays down that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person then he may be charged with and tried at one trial for every such offence. This exception like the other exceptions merely permits a joint trial of more offences than one. It neither renders a joint trial imperative nor does it bar or prohibit separate trials. Sub-section (2) of Section 403 of the Code also provides that a person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 235(1). No legal objection to the appellant's separate trial is sustainable and his counsel has advisedly not seriously pressed any before us. [at para 5]

We find that the Special Judge, vide the order dated 2.9.2013, has given cogent reasons for not exercising his discretion to order a joint trial. He stated that the evidence in the main case has almost reached the end and as many as 146 witnesses in the main case and 71 witnesses in the second supplementary chargesheet have already been examined, clubbing the two cases together would result in the wastage of the effort already gone into and would lead to a failure of justice. The learned Judge concluded as follows:- In the end I may add that it is not obligatory on the Court to hold a joint trial and provisions of these sections are only enabling provisions.

An accused cannot insist with ulterior purpose or otherwise that he be tried as co-accused with other accused, that too in a different case. It is only a discretionary power and Court may allow it in a particular case if the interest of justice so demands to prevent miscarriage of justice. In the instant case, neither the facts and allegations are common, nor evidence is common nor the accused were acting with a commonality of purpose and, as such, there is no ground for holding a joint trial. I may also add that holding a joint trial at this stage may lead to miscarriage of justice. In my humble view, a Court may not deem it desirable to conduct a joint trial, even if conditions of these Sections are satisfied, though not satisfied in the instant case, that is:

1. when joint trial would prolong the trial;
2. cause unnecessary wastage of judicial time; and
3. confuse or cause prejudice to the accused, who had taken part only in some minor offence.

[Essar Teleholdings Ltd. v. Central Bureau Of Investigation 2015 (7) Supreme 178 ; (2016) 1 SCC (Cri) 1: (2015) SCC 562]

TRIAL AFTER DEATH

Ss. 226, 235 - No legal provision – to continue prosecution - upon death of the accused.

In fact, we find that the learned District Judge could not have proceeded with the attachment proceedings at all since the attachment proceedings were initiated by the State against Ramachandraiah under clause 3 of the Criminal Law Amendment Ordinance, 1944, who was actually dead. Clause 3 contemplates that such an application must be made to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, in respect of property which the State Government believes the said person to have procured by means of the offences. It is incomprehensible, therefore, that such an application could have been made in regard to a dead person who obviously cannot be said to be ordinarily resident or carrying on business anywhere. There is no legal provision which enables continuance of prosecution upon death of the accused. We must record that the proceedings and the decisions of the courts below are disturbing, to say the least. In the first place, though the accused had died, the trial court proceeded with the trial and recorded a conviction two years after his death. Then, this null and void conviction was used as a basis for making an attachment of his properties before the Sessions Court. Astonishingly, all applications succeeded, the attachment was made absolute and over and above all, the High Court upheld the attachment. **U Subhadramma & Ors V. State Of A P : 2016(4) Supreme 700 ; 2016 LawSuit(SC) 638 ; 2016 (6) JT 242, 2016 AIR (SC) 3095, 2016 (7) SCC 797, 2016 (3) SCC(Cri) 236, 2016 (2) AllCriR 2229 (Criminal Appeal No: 1596 of 2011)**

S. 227, 228 - Only Prima facie evidence in sufficient for framing of charges

At the stage of framing a charge only a reasonable doubt in the mind of the Court concerned is sufficient and the Courts are not required to see whether the evidence available on record is sufficient to prove the case of prosecution beyond reasonable doubt. Only prima facie evidence as available on record is to be considered by the Court concerned at the initial stage of framing charges. So far as the instant case is concerned, there appears sufficient prima facie evidence to frame charges against the revisionist and only the basis of the fact that the Judge, Ghaziabad, was faxed to C.J.M., Ghaziabad, it cannot be said that there was no prima facie evidence against the revisionist.

As per settled legal position the Sessions Judge has the power to discharge the accused in the following circumstances;

A- Where the evidence produced is not sufficient;

B- Where there is not legal ground for proceeding against the accused,

C- Where the prosecution is clearly barred by limitation, or

D- Where he is precluded from proceeding because of a prior judgment of High Court

Surendra Sharma V. State of U.P. and another, 2016 (96) ACC 407

Jurisdiction of the Special Court has jurisdiction to try offences under both the special Acts and IPC - Then the trial can certainly continue.

As can be seen from the complaint the allegations are that the accused conspired with each other to cheat the complainant and a series of transactions gave rise to offence under Section 120B read with Section 420 of the Indian Penal Code as also Section 628 of the Companies Act. It is, therefore, clear that if the Special Court has jurisdiction to try offences under both the aforesaid Acts then the trial can certainly continue in respect of the offences which do not require the complainant to belong to the categories specified under Section 621 of the Companies Act. Thus the trial could certainly continue against those accused under the IPC. [**S. Satyanarayana v. Energo Masch Power Engineering & Consulting Pvt. Ltd. & Ors., (2016) 1 SCC (Cri) 399; (2015) 13**

SCC 1]

Section 227-- Discharge Person who is added as an accused under Section 319 of the Cr.P.C - cannot have the effect of the order undone by seeking a discharge under Section 227 of the Cr.P.C

It is apparent that Section 319 AND Section 227 of the Cr.P.C, in essence, have the opposite effect. The power under Section 319 of the Cr.P.C. results in the summoning and consequent commencement of the proceedings against a person who was hitherto not an accused and the power under Section 227 of the Cr.P.C., results in termination of proceedings against the person who is an accused. It does not stand to reason that a person who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof can be allowed to be discharged from the proceedings on the basis of a lesser standard of proof such as a prima facie connection with the offence necessary for charging the accused. The contrary would render the exercise undertaken by a Court under Section 319 of the Cr.P.C., for summoning an accused, on the basis of a higher standard of proof totally infructuous and futile if the same court were to subsequently discharge the same accused by exercise of the power under Section 227 of the Cr.P.C., on the basis of a mere prima facie view. The exercise of the power under Section 319 of the Cr.P.C., must be placed on a higher pedestal. Needless to say the accused summoned under Section 319 of the Cr.P.C., are entitled to invoke remedy under law against an illegal or improper exercise of the power under Section 319, but cannot have the effect of the order undone by seeking a discharge under Section 227 of the Cr.P.C. [**Jogendra Yadav & Ors Versus State Of Bihar & Anr. AIR 2015 SC 2951(Criminal Appeal No. 343 Of 2012]**

Section 228—Initially charged for an offence under Section 306 - At the far end of the trial, the charge framed under Section 302 IPC – No re-call the witnesses – No cross-examine of those witnesses - Not even adjourned - principles of natural justice violated - Trial vitiated.

Where the accused persons were initially charged for an offence under Section 306 of the IPC, and 26 witnesses were examined and cross-examined by the appellants. Obviously, when the appellants are charged with an offence under Section 306, the focus as well as stress in the cross-examination shall be on that charge alone. At the fag end of the trial, the charge is altered with "Alternative Charge" with the framing of the charge under Section 302 IPC. This gives altogether a different complexion and dimension to the prosecution case. In a case like this, addition and/or substitution of such a charge was bound to create prejudice to the appellants. Such a charge has to be treated as original charge. In order to take care of the said prejudice, it was incumbent upon the prosecution to re-call the witnesses, examine them in the context of the charge under Section 302 of IPC and allow the accused persons to cross-examine those witnesses. Nothing of that sort has happened. The case was not even adjourned as mandatorily required under sub-Section (4) of Section 216 of the Code. It hardly needs to be demonstrated that the provisions of Sections 216 and 217 are mandatory in nature as they not only sub-serve the requirement of principles of natural justice but guarantee an important right which is given to the accused persons to defend themselves appropriately by giving them full opportunity. In the instant case, there is no cross-examination of these witnesses insofar as charge under Section 302 IPC is concerned. The trial, therefore, stands vitiated and there could not have been any conviction under Section 302 of the IPC. **[R. Rachaiah v. Home Secretary, Bangalore, AIR 2016 SC 2447]**

Sec. 228 Cr.P.C. – Charge - Effect of Non-framing of a charge under Section 149 IPC

Non-framing of a charge under Section 149 IPC, on the face of the charges framed against the appellants would not vitiate their conviction; more so when the accused have failed to show any prejudice in this regard. In a case where there is mere omission to mention Section 149 in Charges which at the highest may be considered as an irregularity and the Accused have failed to show any prejudice, their conviction and sentence is not at all affected. Tenor of cross-examination of witness by the defence also rules out any prejudice to them.

On a perusal of the evidence on record, the facts and circumstances clearly bring out that there was an unlawful assembly. Each of the accused person was very well aware that they are tried for being a part of the assembly which was armed with weapons and hence, it was unlawful. On a close scrutiny of the evidence on record, it is difficult to hold that any prejudice has been caused to the accused appellants. **Vutukuru Lakshmaiah v. State of Andhra Pradesh 2015(4)Supreme 368.**

Section 232 & 401 – Indian Penal Code, Section 147, 148 149, 341, 342 & 302 –

Accused person were facing trial under Section 147, 148 149, 341, 342 & 302 IPC. The High Court by order dated 10-07-2007 while declining to admit the accused persons to bail, directed that the trial should be concluded as early as possible and in any case within 9 months from date of receipt/production of copy of order. Charges were framed on 10-08-2007. The process against the witnesses were issued on 17-08-2007. Thereafter the Learned Trial Judge issued bailable as well as non-bailable warrants against the informant. The Learned Trial Judge on several occasions recorded that the witnesses were not present and ultimately on 17-05-2008 directed the matter to be posted on 23-05-2008 for order under section 232 CPC on finally as that recorded the judgment of acquittal.

This judgment was challenged in revision before High Court which allowed the revision and the judgment of acquittal was set-aside. The appellant preferred the criminal appeal before the Apex Court.

Hon‘ble the Apex Court explaining the meaning of fair trial and corresponding duty of the courts observed in para 18 that-

Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. Law does not countenance a mock trial‘. It is a serious concern of

the society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The court is duty bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control.

The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial, has a statutory duty to perform. He cannot afford to take things in a light manner. The Court also is not expected to accept the version of the prosecution as if it is sacred. It 1 has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial.‖

So explaining the whole trial as nothing but comparable to an experimentations conducted by a child in a laboratory, observed that such type of trial is neither permissible nor allowable. So order of the High Court affirmed and the criminal appeal was dismissed. [**Bablu Kumar and others v. State of Bihar and others, 2015(8) SCALE 53]**

Sec. 235(2) – Scope of

In this matter it is contended on behalf of the petitioner (Review Applicant) that since no separate date for hearing on sentence was given in the present case by the trial court, as such for violation of Section 235(2) Cr.P.C., the sentence of death cannot be affirmed. We have

considered the argument of Ms. Suri. It is true that the convict has a right to be heard before sentence. There is no mandate in Section 235(2) Cr.P.C. to fix separate date for hearing on sentence. It depends on the facts and circumstances as to whether a separate date is required for hearing on sentence or parties feel convenient to argue on sentence on the same day. Had any party pressed for separate date for hearing on the sentence, or both of them wanted to be heard on some other date, situation could have been different. In the present case, the parties Were heard on sentence by both the courts below, and finally by this Court, as is apparent from the judgment under review. As such, merely for the reason that no separate date is given for hearing on the sentence, the Review Petition cannot be allowed. **B.A. Umesh V. Registrar General, High Court of Karnataka, 2016 (7) Supreme 491**

Section 235-- Hearing Before Sentence

Were heard on sentence by both the courts below, and finally by this Court, as is apparent from the judgment under review. As such, merely for the reason that no separate date is given for hearing onhe requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to Section 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality. The accused would be justified in making a grievance that the trial court actually treated it as a mere formality as is evident from the fact that it recorded the finding of guilt on 31-3-1987, on the same day before the accused could absorb and overcome the shock of conviction they were asked if they had anything to say on the question of sentence and immediately thereafter the decision imposing the death penalty on the two accused was pronounced. In a case of life or death as stated earlier, the presiding officer must show a high decree of concern for the statutory right of the accused and should not treat it as a mere formality to be crossed before making the choice of sentence. If the choice is made, as in this case, without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc., before the court, the court‟s decision on the sentence would be vulnerable. We need hardly mention that in many cases a sentencing decision has far more serious consequences on the offender and his family members than in the case of a purely administrative decision; a fortiori, therefore, the principle of fair play must apply with greater vigour in the case of the former than the latter. An administrative decision having civil consequences, if taken without giving a hearing is generally struck down as violative of the rule of natural justice. Likewise a sentencing decision taken without following the requirements of sub-section (2) of Section 235 of the Code in letter and spirit would also meet a similar fate and may have to be replaced by an appropriate order. The sentencing court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence. We think as a general rule the trial courts should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender.

In the present case, as pointed out earlier, we are afraid that the learned trial Judge did

not attach sufficient importance to the mandatory requirement of sub-section (2) of Section 235 of the Code. The High Court also had before it only the scanty material placed before the learned Sessions Judge when it confirmed the death penalty. [**State Of Haryana Versus Asha Devi And Anr., AIR 2015 Sc 3189 ; (2015) 3 SCC (Cri) 433 ; (2015) 6 SCC 39 (May be repeated) CRIMINAL APPEAL NO. 1953 OF 200]**

Section 250 - Award compensation to the accused - Material must to show - The prosecution has deliberately roped in the accused persons

The learned trial Judge has been guided basically by three factors, namely, that the State Government has not established Forensic Science Laboratories despite the orders passed by this Court; that there has been delay in getting the seized articles tested; and that the seizing officer had not himself verified by using his experience and expertise that the contraband article was opium. As far as the first aspect is concerned, it is a different matter altogether. As far as the delay is concerned that is the fulcrum of the reasoning for acquittal. It is apt to note that the police while patrolling had noticed the accused persons and their behaviour at that time was suspicious. There is nothing on record to suggest that there was any lapse on the part of the seizing officer. Nothing has been brought by way of evidence to show that the prosecution had falsely implicated them. There is nothing to remotely suggest that there was any malice. The High Court, as is noticed, has not applied its mind to the concept of grant of compensation to the accused persons in a case of present nature. There is no material whatsoever to show that the prosecution has deliberately roped in the accused persons. There is no malafide or malice like the fact situation which are projected in the case of Hardeep Singh (supra). Thus, the view expressed by the learned trial Judge that a Court of Session can award compensation to the accused in a case of malicious prosecution and accordingly directed payment of Rs.1,50,000/- each to both the accused persons, is absolutely indefensible and the affirmance thereof by the High Court is wholly unsustainable. [**State of Rajasthan v. Jainudeen Shekh and Anr., (2016) 1 SCC (Cri) 380; (2016) 1 SCC 514].**

Sec. 251 -The particulars of the offence - disclosing to the accused - shall be stated to him.

A perusal of Section 251 leaves no room for any doubt, that "… the particulars of the offence of which he is accused shall be stated to him…". The particulars for an offence postulated for the non-proviso category (- where the activity of a collective investment scheme, is commenced after 25.1.1995), under Section 12(1B) of the SEBI Act, would be the date on which the accused commenced sponsoring or carrying on a collective investment scheme. If such date fell within the period when the initiation of a new collective investment endeavour stood barred under Section 12(1B), the accused had to be accosted of the same. And only thereupon, the accused would have understood, what charge was being levelled against him. Merely mention of the statutory provision, namely, Section 12(1B) of the SEBI Act, would not amount to disclosing to the accused, the particulars of the offence of which they were accused. One cannot lose sight of the fact, that implications for the proviso category (-those who commenced operations before 25.1.1995) and the non-proviso category (-those who commenced operations after 25.1.1995) are different. A perusal of the chargesheet reveals, that the respondents herein were being treated as belonging to the proviso category. But learned counsel for „the Board" desires us to treat them as belonging to the non-proviso category, and to proceed against them for having engaged themselves in activities concerning collective investment, on the basis of the material available on the record of the case. This, in our considered view is clearly impermissible. We are also of the

view, that Section 251 of the Cr.P.C. will not remedy the above defect and deficiency in the complaint. In the above view of the matter, for the reasons recorded hereinabove, and additionally, for the reasons recorded while rejecting the first contention advanced at the hands of the learned senior counsel for „the Board", we find no merit in the submission founded on Section 251 of the Cr.P.C. **Securities and Exchange Board of India V. Gaurav Varshney & Anr. 2016(5) Supreme 417 (Criminal Appeal Nos. 827-830 of 2012)**

Sec. 251 -The particulars of the offence - disclosing to the accused - shall be stated to him.

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Sec. 294- Post-mortem report- Relevancy of - It can be admitted as substantive piece of evidence to prove its concern without doctor concerned being examined.

It is settled position of law that document of which genuineness is not disputed can be read in evidence as genuine without formal proof of such documents by examining the author thereof. As has been mentioned in the earlier part of this judgement, the defence has admitted the genuineness of post mortem report, inquest report, charge-sheet and other police papers, therefore, these papers, admitted by the accused appellant under Section 294 Cr.P.C., become admissible in evidence. Hon'ble Supreme Court in Akhtar and Ors. vs. State of Uttaranchal, (2009)13 SCC 722 ; "it is settled position of law that if genuineness of any document filed by a party is not disputed by one opposite party it can be read as substantive evidence under Sub- Section (3) of Section 294 Cr.P.C. Accordingly, the post mortem report, if its genuineness is not disputed by the opposite party, the said post mortem report can be read as substantive evidence to prove correctness of its contents without a Doctor concerned being examined".

23. Plea has been taken by the learned counsel for the appellant that prosecution has not examined the doctor therefore, it shall be presumed that deceased was not in a condition to speak at the time of making of such dying declarations. It is true that the prosecution had not examined the doctor conducting the post mortem and the investigating officer, who conducted the investigation in the matter. In the facts and circumstances of the case and the proposition of law laid down by the Apex Court in Akhtar and others case (supra), there was no requirement for examining the doctor and the investigating officer, particularly when the papers prepared by them were admitted by the accused appellant as genuine. **(Shambhoo Dayal v. State of U.P., 2015 (6) ALJ 740)**

Section 300 - Discharged in the complaint - Second complaint would not be barred.

The alleged accused had been discharged in furtherance of the complaint, without any trial having been conducted against him. Section 300 of the Criminal Procedure Code, will be an embargo to obstruct the right to file a second complaint, is not justified. Our above determination is

based on the fact, that the alleged accused had not been tried, in furtherance of the previous complaint, under Section 376 of the Indian Penal Code. The explanation under Section 300 of the Criminal Procedure Code clearly mandates that the dismissal of a complaint, or the discharge of an accused, would not be construed as an acquittal, for the purposes of this Section. Thus the proceedings in the second complaint would not be barred, because no trial had been conducted against the respondent, in furtherance of the first complaint. Having so concluded, it emerges that it is open, to press the accusations levelled, through second complaint. **[Ravinder Kaur Versus Anil Kumar AIR 2015 SC 2447]**

Cross examination – the fact denied in the statement under section 313 CrPC- but not challenged specifically in cross examination of witness - barring a bald suggestion to witness – accused would not get benefit.

When examined under Section 313 CrPC the accused did not state a word that the letters were got written from him by Joginder or the letters were got written by police under pressure. Be that as it may, even assuming that it was a plea in the statement recorded under Section 313 CrPC that he had written the letters being pressurized by the police, the said stand does not deserve to be accepted on two grounds, namely, **i)** he had not made that allegation when the letters were shown to him by the Additional Chief Judicial Magistrate and in fact he had admitted the correctness of the letters and **ii)** that in the cross-examination of the witnesses barring a bald question, nothing has been put with regard to the letters. It is apt to be stated here that the Additional Chief Judicial Magistrate has been examined by the prosecution and has unequivocally proven the fact that the letters were produced before him and the accused-appellant had identified the letters and admitted his signature. Nothing has been elicited in the cross-examination. Similarly, there has been really no cross-examination of any of the witnesses that the letters were written under pressure of police. Relying on *State of U.P. V. Nahar Singh (1998) 3 SCC 561 AND Browne v. Dunn (1893) 6 R 67* it is held that in the absence of cross-examination of the witness, barring a bald suggestion to witness, the accused was the author of the letters and the same were not written under any pressure. [**Vinod Kumar Versus State of Haryana 2015(6) Supreme 108]**

300 Cr.P. C. - SECOND COMPLAINT

The respondent had been discharged in furtherance of the complaint made by the appellant, without any trial having been conducted against him (the respondent), was not disputed. The explanation under Section 300 of the Criminal Procedure Code clearly mandates that the dismissal of a complaint, or the discharge of an accused, would not be construed as an acquittal, for the purposes of this Section. Thus Section 300 of the Criminal Procedure Code, will be an embargo to obstruct the right of the appellant to file a second complaint against the respondent, is not justified.We are of the considered view, that proceedings in the second complaint would not be barred, because no trial had been conducted against the respondent, in furtherance of the first complaint. **Ravinder Kaur v. Anil Kumar 2015(4)Supreme 208**

Section 300—Second Complaint

Having perused Section 300, we are satisfied, that the submission advanced at the hands of the learned counsel for the respondent, namely, that Section 300 of the Criminal Procedure Code, will be an embargo to obstruct the right of the appellant to file a second complaint against the respondent, is not justified. Our above determination is based on the fact, that the respondent had not been tried, in furtherance of the previous complaint made by the appellant, under Section 376 of the Indian Penal Code. The contention of the learned counsel for the appellant, that the respondent had been discharged in furtherance of the complaint made by the appellant, without any trial having been conducted against him (the respondent), was not disputed. Based on the above factual contention, learned counsel for the appellant had placed emphatic reliance, on the explanation under Section 300 of the Criminal Procedure Code. The explanation relied upon, clearly mandates that the dismissal of a complaint, or the discharge of an accused, would not be construed as an acquittal, for the purposes of this Section. In this view of the matter, we are

in agreement with the contention advanced at the hands of the learned counsel for the appellant. We are of the considered view, that proceedings in the second complaint would not be barred, because no trial had been conducted against the respondent, in furtherance of the first complaint. Having so concluded, it emerges that it is open to the appellant, to press the accusations levelled by her, through her second complaint, referred to above. [**Ravinder Kaur Versus Anil Kumar, (2015) 3 Scc (Cri) 492; (2015) 8 Scc 286 Criminal Appeal No.457 Of 2008]**

Section 306. - Magistrate exercised his jurisdiction - even after the appointment of a Special Judge under the PC Act - the same is only a curable irregularity - provided the order is passed in good faith.

Sub-section (1) of Section 5, while empowering a Special Judge to take cognizance of offence without the accused being committed to him for trial, only has the effect of waiving the otherwise mandatory requirement of Section 193 of the Code. Section 193 of the Code stipulates that the Court of Session cannot take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code. Thus, embargo of Section 193 of the Code has been lifted. It, however, nowhere provides that the cognizance cannot be taken by the Magistrate at all. There is, thus, an option given to the Special Judge to straightway take cognizance of the offences and not to have the committal route through a Magistrate. However, normal procedure prescribed under Section 190 of the Code empowering the Magistrate to take cognizance of such offences, though triable by the Court of Session, is not given a go-bye. Both the alternatives are available. In those cases where chargesheet is filed before the Magistrate, he will have to commit it to the Special Judge. In this situation, the provisions of Section 306 of the Code would be applicable and the Magistrate would be empowered to exercise the power under the said provision. In contrast, in those cases where Special Judge takes cognizance of offence directly, as he is authorised to do so in view of Section 5(2) of

PC Act, Section 306 of the Code would get bypassed and as the Special Judge has taken cognizance, it is Section 307 of the Code which would become applicable. Sub-section (2) of Section 5 of PC Act makes this position clear by prescribing that it is the Special Judge who would exercise his powers to tender of pardon as can clearly be spelled out by the language employed in that provision. Section 5(2) is to be read in conjunction with Section 5(1) of the PC Act.

We have already held, both the Magistrate as well as the Special Judge has concurrent jurisdiction in granting pardon under Section 306 Cr.P.C. while the investigation is going on. But, in a case, where the Magistrate has exercised his jurisdiction under Section 306 Cr.P.C. even after the appointment of a Special Judge under the PC Act and has passed an order granting pardon, the same is only a curable irregularity, which will not vitiate the proceedings, provided the order is passed in good faith. In fact, in the instant case, the Special Judge himself has referred the application to the Chief Metropolitan Magistrate/Metropolitan Magistrate to deal with the same since the case was under investigation. In such circumstances, we find no error in the Special Judge directing the Chief Metropolitan Magistrate or the Metropolitan Magistrate to pass appropriate orders on the application of CBI in granting pardon to the second respondent so as to facilitate the investigation." **State Through CBI, Chennai V. V. Arul Kumar AIR 2016 SC 2551 (CRIMINAL Appeal No. 499 Of 2016)**

Section 306. - Magistrate exercised his jurisdiction - even after the appointment of a Special Judge under the PC Act - the same is only a curable irregularity - provided the order is passed in good faith.

Sub-section (1) of Section 5, while empowering a Special Judge to take cognizance of offence without the accused being committed to him for trial, only has the effect of waiving the otherwise mandatory requirement of Section 193 of the Code. Section 193 of the Code stipulates that the Court of Session cannot take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code. Thus, embargo of Section 193 of the Code has been lifted. It, however, nowhere provides that the cognizance cannot be taken

by the Magistrate at all. There is, thus, an option given to the Special Judge to straightway take cognizance of the offences and not to have the committal route through a Magistrate. However, normal procedure prescribed under Section 190 of the Code empowering the Magistrate to take cognizance of such offences, though triable by the Court of Session, is not given a go-bye. Both the alternatives are available. In those cases where chargesheet is filed before the Magistrate, he will have to commit it to the Special Judge. In this situation, the provisions of Section 306 of the Code would be applicable and the Magistrate would be empowered to exercise the power under the said provision. In contrast, in those cases where Special Judge takes cognizance of offence directly, as he is authorised to do so in view of Section 5(2) of

PC Act, Section 306 of the Code would get bypassed and as the Special Judge has taken cognizance, it is Section 307 of the Code which would become applicable. Sub-section (2) of Section 5 of PC Act makes this position clear by prescribing that it is the Special Judge who would exercise his powers to tender of pardon as can clearly be spelled out by the language employed in that provision. Section 5(2) is to be read in conjunction with Section 5(1) of the PC Act.

We have already held, both the Magistrate as well as the Special Judge has concurrent jurisdiction in granting pardon under Section 306 Cr.P.C. while the investigation is going on. But, in a case, where the Magistrate has exercised his jurisdiction under Section 306 Cr.P.C. even after the appointment of a Special Judge under the PC Act and has passed an order granting pardon, the same is only a curable irregularity, which will not vitiate the proceedings, provided the order is passed in good faith. In fact, in the instant case, the Special Judge himself has referred the application to the Chief Metropolitan Magistrate/Metropolitan Magistrate to deal with the same since the case was under investigation. In such circumstances, we find no error in the Special Judge directing the Chief Metropolitan Magistrate or the Metropolitan Magistrate to pass appropriate orders on the application of CBI in granting pardon to the second respondent so as to facilitate the investigation." **State Through CBI, Chennai V. V. Arul Kumar AIR 2016 SC 2551 (CRIMINAL Appeal No. 499 Of 2016)**

Sec. 306 - Conviction under section - in a case of suicide - when the relevant and material facts are already part of charge under Section 498-A and 304-B of the IPC.

The issue of conviction under Section 306 of the IPC is definitely not res integra in view of judgment of this Court in somewhat similar circumstances in the case of K. Prema S. Rao and another v. Yadla Srinivasa Rao and others, 2003 1 SCC 217. In that case the acquittal of the husband of the deceased under 304-B IPC was not reversed but this Court while upholding the conviction of the all the three accused under Section 498-A IPC, further convicted the husband of the victim under Section 306 IPC after discussing issues relating to absence of a charge under Section 306 IPC in a case of suicide when the relevant and material facts are already part of charge under Section 498-A and 304-B of the IPC. That judgment rendered by a Bench of Three Judges in somewhat identical facts, in our view leaves no scope for accepting the second contention on behalf of the appellant. **Satish Shetty V. State Of Karnataka 2016(4) Supreme 412 ; 2016 (6) JT 10, 2016 AIR(SC) 2689, 2016 CrLJ 3147, 2016 (2) AllCriR 1840, Criminal Appeal 1358 of 2008**

309 Cr. P. C.

Strict Compliance - cross-examination after a long span of time - not all appreciable - imperative - the cross-examination - be completed on the same day - If continues till late hours - the trial can be adjourned to the next day.

Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

In fact, it is not all appreciable to call a witness for cross-examination after a long span of

time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross- examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute. **Vinod Kumar v. State of Punjab (2015) 2 SCC(Cri) 226 : (2015) 3 SCC 220**

Sec.311 – Recall of a witness cannot be allowed for the asking or reasons related to mere convenience – Change of counsel cannot be a ground for recall.

It is well settled that the exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, as it is the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as filling in a lacuna in the prosecution case‖ unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused resulting in miscarriage of justice. Be it stated, in the said case the court came to held that summoning of the witnesses was necessary for just and fair decision of the case and accordingly it allowed the appeal and set aside the order passed by the High court. **State of Haryana V. Ram Mehar & others 2016 (6) Supreme 462.**

S. 311 – Section 311 Cr.P.C. empowers a court to recall a witness for the purpose of re-examination and not for cross-examination

First of all it may be observed that witness may be cross-examined in order to impeach his testimony with regard to his previous statement and not with regard to the statement which he might give subsequently after having being examined in the court. This process can possibly never end and witnesses may go on giving many statements contrary to the facts about which they have already stated in the court. If before being examined in the court witness had given statements which were contradictory in nature, then he can always be cross-examined with regard to it and his attention may be drawn to the same and he may be confronted under section 145 of the Evidence Act with such previous contradictory statements.

It is so apparent that when a witness is being examined in the court there is no question to cross-examine him with regard to his future statements which he has not yet given. Apart from this as has already been said that if subsequently after the deposition of witness is over, he gives at different forums any other statement incompatible with his earlier deposition in the court, it is so very difficult to know or guess the possible reasons behind the same. If the witness shall be called back to explain such incompatibilities he may offer some kind of explanation or the other in this regard. But thereafter again after leaving the court he may give yet further inconsistent statements. Such kind of situation would lead the courts in utter wilderness and might even result in an anarchic situation. There is no other option for the courts than to proceed according to the procedure established by law.

Apart from this we should also not loose sight of the fact that the power under section 311

Cr.P.C. is not meant for recalling a witness for the purpose of cross-examination. Section 311 Cr.P.C. empowers a court to recall a witness for the purpose of re-examination and not for cross-examination. Recalling and re-examining the witness can be done at the instance of the party which has already examined the witnesses. Re-examination cannot be done by the adverse party who can only cross-examine the witness. It shall be germane to keep in sight the unambiguous language of Section 311 of Cr.P.C. **(Veer Pal and another v. State of U.P. and another, 2016 (3) ALJ 446)**

Sections 311 and 482 Cr.P.C. – Recall of witnesses – Accused has a right to be represented by a lawyer at commencement of trial and during the course of trial. Right to cross-examination prosecution witness is a very valuable right of accused and should not be mechanically or casually be forfeited. Unless there are compelling reasons justifying same, trial Court was under obligation to appoint an amicus curiae to respondent accused unless accused consciously refuses to be represented and takes upon himself mantle of cross-examination and chooses to defend himself personally – Held, rejecting application for recall of prosecution witnesses suffers from legal infirmity – Impugned order set aside – Matter remitted back to pass fresh order on application of applicant for recall of witnesses. **Bhagwan Das v. State of U.P., 2015 (89) ACC 872 (HC)**

Sec. 311– Recall of witness

A conspicuous reading of Section 311 CrPC would show that widest of the powers have been invested with the courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "any" has been used as a prefix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a prefix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the court was only in relation to such evidence that appears to the court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the court. The order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 CrPC and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 CrPC. It is, therefore, imperative that the invocation of Section 311 CrPC and its application in a particular case can be ordered by the court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined is concerned, the court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re- examined has to be ascertained. To put it differently, while such a widest power is invested with the court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution."

There would not be any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. Witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for victims, especially so, of heinous crimes, if they are required

to repeatedly appear in court to face cross-examination. **[AG Versus Shiv Kumar Yadav & Anr. AIR 2015 SC 3501 (Criminal Appeal No.1187 of 2015)]**

Sec. 311-A, (as introduced by Act 25 of 2005) – Power of Magistrate – To order person to give specimen signature or handwriting – Provision is prospective in nature and not retrospective

After referring to Section 5 of the Identification of Prisoners Act, 1980 in Ram Babu Misra's case, this Court suggested that a suitable legislation be made along its lines to provide for investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting. Accordingly, a new Section 311-A was inserted in the Criminal Procedure Code. Section 311-A Cr.P.C. reads as under:-

Section 311A. Power of Magistrate to order person to give specimen signatures or handwriting.-If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding. **Sukh Ram v. State of Himachal, 2016 Cri.L.J. 4146 (SC)**

Sec. 313 – Unnatural deaths in the house – Appellant present – Non disclosure as to how his family members died – Important to believe prosecution story.

After considering the evidence on record, the Sessions Court, District Durg by its judgment and order dated 23.04.2013 in Sessions Case No.96 of 2012 found the appellant guilty of offence punishable under Section 302 IPC on six counts. Though the statement of PW-6 Kejabai in court had not attributed any criminal act to the appellant, in the opinion of the trial court, her version implicating the appellant, as spoken to by PWs 1, 2 , 3 and 5 would be admissible under Section 6 of the Evidence Act. Placing reliance on those statements of PWs 1, 2, 3 and 5 as well as failure on part of the appellant in not offering any explanation how the crime was committed, the trial court found that the Prosecution was successful in bringing home the case against the appellant. Having thus convicted the appellant on six counts under Section 302 IPC, by a separate order of even date, the trial court awarded death sentence to the appellant, subject to confirmation by the High Court in terms of Chapter 28 of the Code. **Dhal Singh Dewangan V. State of Chattisgarh 2016 (6) Supreme 679**

S. 313 – Object and scope of

In this matter appeal was filed against order of High Court dismissing appeal of Accused and confirming conviction of Appellant for offences of murder and imitation of firearm, on the question that whether non-compliance of mandatory provisions of Section 313 of CrPC had vitiated trial and conviction of Accused.

Held that the importance of a statement Under Section 313 Code of Criminal Procedure, insofar as the accused is concerned, can hardly be minimised. The statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances being put against him so that he can give a proper explanation to meet that case. If an objection as to Section 313 Code of Criminal Procedure statement is taken at the earliest stage, the Court can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective Section 313 Code of Criminal Procedure statement is raised in the appellate court, then difficulty arises for the prosecution as well as the accused. When the trial court is required to act in accordance with the mandatory provisions of Section 313 Code of Criminal Procedure, failure on the part of the trial court to comply with the mandate of the law, in our view, cannot automatically enure to the benefit of the accused. Any omission on the part of the Court to

question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. Forensic Science Laboratory Report was relied upon both by Trial court as well as by High Court. Objection as to defective Section 313 of Code, 1973 statement had not been raised in Trial court or in High Court. Omission to put question under Section 313 of Code, 1973, and prejudice caused to Accused was raised before present Court for first time. Accused was prejudiced on account of omission to put question as to opinion of Ballistic Expert which was relied upon by Trial Court as well as by High Court. It was further held that the Trial court should have been more careful in framing questions and in ensuring that all material evidence and incriminating circumstances were put to Accused. Matter was remitted back to Trial Court for proceeding with matter afresh from stage of recording statement of Accused under Section 313 of Code, 1973. Appeal disposed of. **Nar Singh v. State of Haryana, AIR 2015 SC 310, 2015 CriLJ 576, 2014(12) SCALE 622, (2015)1 SCC 496,**

313 Cr. P. C.

Accused giving an evasive or unsatisfactory answer - not justify the Court to return a finding of guilt on this score - burden is cast on the prosecution to prove its case beyond reasonable doubt - Once this burden is met - the Statements under Section 313 assume significance

Refusal to answer any question put to the accused by the Court in relation to any evidence that may have been presented against him by the 54 prosecution or the accused giving an evasive or unsatisfactory answer, would not justify the Court to return a finding of guilt on this score. Even if it is assumed that his statements do not inspire acceptance, it must not be lost sight of that the burden is cast on the prosecution to prove its case beyond reasonable doubt. Once this burden is met, the Statements under Section 313 assume significance to the extent that the accused may cast some incredulity on the prosecution version. It is not the other way around; in our legal system the accused is not required to establish his innocence. We say this because we are unable to subscribe to the conclusion of the High Court that the substance of his examination under Section 313 was indicative of his guilt. If no explanation is forthcoming, or is unsatisfactory in quality, the effect will be that the conclusion that may reasonably be arrived at would not be dislodged, and would, therefore, subject to the quality of the defence evidence, seal his guilt. Article 20(3) of the Constitution declares that no person accused of any offence shall be compelled to be a witness against himself. In the case in hand, the High Court was not correct in drawing an adverse inference against the Accused because of what he has stated or what he has failed to state in his examination under Section 313 CrPC. **Nagaraj v. State Rep. By Inspector Of Police, Salem Town, Tamil Nadu 2015(2)Supreme 598**

S. 313- Object and scope of. Refusal to answer question of evasive or unsatisfactory answer by accused. Effect of-

In murder trial base on circumstantial evidence Madras High Court affirmed the conviction and sentence awarded by the trial court to the accused appellant. The death body of the deceased was recovered after two days of the murder from a room of a hotel in which accused and deceased stayed for short time on 25th July, 2000. The accused surrendered before the Judicial magistrate on 29.11.2001 eighteen months later. It is not in dispute that in this long period the Police had not taken any steps for his interrogation or his arrest. The Charge sheet was filed on 28.11.2002. The motive attributed for the murder was his previous enmity with the deceased because of the non-payment of pending dues but in the opinion of apex court there was no evidentiary foundation for arriving at this conclusion. The accused pleaded not guilty.

When the accused was questioned under Section 313 Cr.P.C., he emphatically denied his complicity in the offence, and said that he had no connection with the deceased and had never visited Sampath Kumar Lodge. According to his Section 313 statement and his written statement, he was in his home in Bargur, and the police stated visiting his home and troubling him; he engaged an advocate and surrendered before the Court; he was taken into custody by PW 11 and was

"coerced" on 11-12-2011 and on 12-12-2011, was made to sign a paper; he has denied that he voluntarily confessed to the crime or that he accompanied the police to any place.

Held-

Section 313 Cr.P.C. is of seminal importance in criminal law jurisdiction and is imperative to enable an accused to explain away any incriminating circumstances proved by the prosecution. It is intended to benefit the accused, its corollary being to benefit the court in reaching its final conclusion; its intention is not to nail the accused, but to comply with the most salutary and fundamental principle of natural justice i.e. audi alteram partem. **Parsuram Pandey v. State of Bihar, (2004) 13 SCC 189: 2005 SCC (Cri) 113; Asraf Ali v. State of Assam, (2008) 16 SCC 328: (2010) 4 SCC (Cri) 278, relied on** Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non- consideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of theirrevisional jurisdiction. **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others (2015) 2 SCC(Cri) 19 ; (2015) 3 SCC 123**

S. 317- D.N.A. Test –Application for- Rejection –Legality of

This revision has been filed seeking quashing of the order dated 1.4.2015 whereby the application of the revisionist for conducting D.N.A. test of Ankur, on the ground that Ankur is not his son rather he is the son of someone else board through the opposite party No. 2 has been rejected.

It has also not been stated anywhere that at the time when Ankur was conceived the opposite party No. 2 was not living in the house of the revisionist and that he had no access to her.

The Supreme Court in the case of Goutam Kundu v. State of W.B. and another (1993) (3) SCC 418 has held in paragraphs 24

24. This section requires the party disputing the paternity to prove non-acces in order to dispel the presumption. ―Access‖ an ―Non –access‖ mean the existence or non- existence of opportunities for sexual intercourse; it does not mean actual cohabitation.

Thus on the facts of the case and the law laid down court did not find any merit in the revision. The impugned order dated 1-4-2015 does not suffer from any illegality or infirmity. The revision is accordingly dismissed. **[Mushafir Yadav v. State of Uttar Pradesh and another, 2015 (9) ACC 911].**

Sections 319 and Section 227 – Whether a person who is summoned under Section 319 Cr.P.C. can be discharge under Section 227 Cr.P.C.? Held – Accused summoned under Section 319 Cr.P.C. ought not to be given an opportunity to avail the remedy of discharge under Section 227 Cr.P.C.

In Sessions Trial No. 4460/2002 under Section 302, read with Section 149, and 323 of the Indian Penal Code and Sections 27 of the Arms Act 1959, the trial court. Additional Sessions Judge on 5.2.2005 issued notices to the appellants asking them to show cause as to why they should not be added as accused.

After giving an opportunity of hearing to the appellants, to file a reply, the Learned Additional Sessions Judge summoned the appellants as accused for being added to the proceedings.

The appellants challenged the above order by preferring an application under Section 482 Cr.P.C. before the High Court. Meanwhile the appellants were discharged under Section 227 of the Cr.P.C. by the Additional Sessions Judge. So the appellants withdraw the applications moved under Section 482 Cr.P.C.

The respondent, State preferred a Criminal Revision Applications against the order of discharge, in the High Court. The High Court allowed the Criminal Revision and set aside the order of discharge. Against this order of the High Court, the appellants preferred the appeal before the Hon'ble Supreme Court.

It was urged by the Learned Counsel for the appellants that in order to avail of the remedies of discharge under Section 227 of the Cr.P.C., the only qualification necessary is that the person should be accused. Learned Counsel submitted that there is no difference between an accused since inception and accused who has been added as such under Section 319 of the Cr.P.C.

The Hon'ble Supreme Court observed in para 9-

It is however not possible to accept this submission since there is a material difference between the two. An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under Section 319 of the Cr.P.C., is necessarily heard before being so added. Often he gets a further hearing if he challenges the summoning order before the High Court and further. It seems incongruous and indeed anomalous if the two sections are construed to mean that a person who is added as an accused by the court after considering the evidence against him can avail remedy of discharge on the ground that there is no sufficient material against him. Moreover, it is settled that the extraordinary power under Section 319 of the Cr.P.C., can be exercised only if very strong and cogent evidence occurs against a person from the evidence led before the Court. It is now settled vide the **Constitution Bench decision in Hardeep Singh v. State of Punjab and Others, (2014) 3 SCC 92,** that the standard of proof employed for summoning a person as an accused under Section 319 of the Cr.P.C., is higher than the standard of proof employed for framing a charge against an accused. The Court observed for the purpose of Section 319 of the Cr.P.C., that-

What is, therefore, necessary for the Court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to the conviction of a person sought to be added as the accused in the case.‖

As regards the degree of satisfaction necessary for framing a charge this Court in **Hardeep Singh v. State of Punjab, (2014) 3 SCC 92,** observed that-

However, there is a series of cases wherein this court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 of the Cr.P.C., has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further‖.

Thus it does not stand to reason that a person who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof can be allowed to be discharged from the proceedings on the basis of a lesser standard of proof such as a prima facie connection with the offence necessary for charging the accused.

The accused under Section 319 Cr.P.C. is summoned on the basis of a higher standard of proof, while the power under Section 227 Cr.P.C. can be exercised only on the basis of a prima facie view. So the exercise of the power under Section 319 of the Cr.P.C. must be placed on a higher pedestal.

So The accused summoned under are entitled to convoke remedy under law against an illegal a improper exercise of the power under section 319 Cr.P.C., but cannot have the effect of the order undone by seeking a discharge under Section 227 of the Cr.P.C. So the order of the High Court was confirmed and the appeal filed against that order was dismissed. [**Jogendra Yadav v. State of Bihar, 2015 (8) SCALE 442]**

Section 321 Cr P C – withdrawal of prosecution – Sole domain of public prosecutor - Recourse of section 91 Cr P C not permissible- Accused person have no role in such proceedings.

The filing of the application for seeking withdrawal from prosecution and application not to press the application earlier filed are both within the domain of Public Prosecutor. He has to be satisfied. He has to definitely act independently and as has been held by the Constitution Bench in Sheonandan Paswan (supra), for he is not a post office. In the present case, as the facts would graphically show, the Public Prosecutor had not moved the application under Section 321 Cr.P.C. but only filed. He could have orally prayed before the court that he did not intend to press the application. We are inclined to think, the court could not have compelled him to assist it for obtaining consent. The court has a role when the Public Prosecutor moves the application seeking the consent for withdrawing from the prosecution. At that stage, the court is required to see whether there has been independent application of mind by the Public Prosecutor and whether other ingredients are satisfied to grant the consent. Prior to the application being taken up being moved by the Public Prosecutor, the court has no role.

If the Public Prosecutor intends to withdraw or not press the application, he is Entitled to do so. The court cannot say that the Public Prosecutor has no legal authority to file the application for not pressing the earlier application. It needs no special emphasis to state that the accused persons cannot be allowed to contest such an application. We fail to fathom, how the accused persons can contest the application and also file documents and take recourse to Section 91 Cr.P.C. The kind of liberty granted to the accused persons is absolutely not in consonance with the Code of Criminal Procedure. If anyone is aggrieved in such a situation, it is the victim, for the case instituted against the accused persons on his FIR is sought to be withdrawn. The accused persons have no role and, therefore, the High Court could not have quashed the orders permitting the prosecution to withdraw the application and granting such liberty to the accused persons. The principle stating that the Public Prosecutor should apply his mind and take an independent decision about filing an application under Section 321 Cr.P.C. cannot be faulted but stretching the said principle to say that he is to convince the court that he has filed an application for not pressing the earlier application would not be appropriate. [**M/s V.L.S. Finance Ltd v. S.P. Gupta and Anr., AIR 2016 SC 721]**

Section 340 Cr.P.C.-

Section 340 of CrPC, prior to amendment in 1973, was Section 479-A in the 1898 Code and it was mandatory under the pre amended provision to record a finding after the preliminary inquiry regarding the commission of offence; whereas in the 1973 Code, the expression _shall' has been substituted by _may' meaning thereby that under 1973 Code, it is not mandatory that the court should record a finding. What is now required is only recording the finding of the preliminary inquiry which is meant only to form an opinion of the court, and that too, opinion on an offence, which appears to have been committed', as to whether the same should be duly inquired into. We are unable to appreciate the submission made by the learned Senior Counsel that the impugned order is liable to be quashed on the only ground that there is no finding recorded by the court on the commission of the offence.

Reliance placed on Har Gobind v. State of Haryana is of no assistance to the appellant since it was a case falling on the interpretation of the pre-amended provision of the CrPC. A three-Judge Bench of this Court in Pritish v. State of Maharashtra[2] has even gone to the extent of holding that the proceedings under Section 340 of CrPC can be successfully invoked even without

a preliminary inquiry since the whole purpose of the inquiry is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed. Merely because an expert has tendered an opinion while also furnishing the basis of the opinion and that too without being conclusive and definite, it cannot be said that he has committed perjury so as to help somebody. And, mere rejection of the expert evidence by itself may not also warrant initiation of proceedings under Section 340 of CrPC. It is significant to note that the appellant‘s opinion that the cartridges appeared to have been fired from different firearms was based on the court‘s insistence to give the opinion without examining the firearm. In other words, it was not even his voluntary, let alone deliberate deposition, before the court. Therefore, it is unjust, if not unfair, to attribute any motive to the appellant that there was a somersault from his original stand in the written opinion. As a matter of fact, even in the written opinion, appellant has clearly stated that a definite opinion in such a situation could be formed only with the examination of the suspected firearm, which we have already extracted in the beginning. Thus and therefore, there is no somersault or shift in the stand taken by the appellant in the oral examination before court. [**Prem Sagar Manocha v. State (NCT of Delhi), AIR 2016 SC 290]**

Process for Death Warrant

Procedure for Issuing Death Warrant after Dismissal of Criminal Appeal from Supreme Court

In the present case, the judgment pronounced on 15.05.2015 confirming the death penalty and within six days of the dismissal of the criminal appeals filed by the convicts, the learned Sessions Judge issued the death warrants on 21.05.2015. This is clearly impermissible and unwarranted for various reasons, as discussed hereinafter: (I) First and foremost reason is that the convicts have not exhausted their judicial and administrative remedies, which are still open to them even if their appeals in the highest Court have failed affirming the imposition of death penalty. Those appeals were filed via the route of Article 136 of the Constitution. However, law gives such persons another chance, namely, to seek review of the orders so passed, by means of filing of review petition. It is to provided under Article 137 of the Constitution. The limitation of 30 days is prescribed for filing such review petitions.

We have to emphasize at this stage that in case of convicts facing death penalty, the remedy of review has been given high procedural sanctity. (II) That apart, right to file mercy petitions to the Governor of the State as well as to the President of India also remains in tact. These remedies are also of substance and not mere formalities. This remedy is again a constitutional remedy as Executive Head is empowered to pardon the death sentence (this power lies with the President under Article 72 and with the Governor of the State under Article 161 of the Constitution). Thus, power to pardon is a part of the constitutional scheme which has been reposed by the people through the Constitution in the Head of the State, and enjoys high status. In exercise of their powers, the President or the Governor, as the case may be, may examine the evidence afresh and this exercise of power is clearly independent of the judiciary. It is clarified by this Court that while exercising such a power, the Executive is not sitting as a Court of Appeal. Rather power to grant remission of sentence is an act of grace, humanity in appropriate cases, i.e. distinct, absolute and unfettered in nature.

Article 21 of the Constitution lays down that nobody shall be deprived of his life and liberty except according to the procedure established by law. After long judicial debate, it now stands settled that the procedure established by law has to be 'due procedure'. By judicial interpretation, this Court has read the principle of reasonableness into the said procedure contemplated by Article 21, holding that it must be 'right and just and fair' and not arbitrary, fanciful or oppressive. Even as per the statute book, this procedure does not culminate with the dismissal of appeals of the convicts by the final Court. No doubt, when an accused is tried of an offence by a competent court of law and is imposed such death penalty and the said death penalty is upheld by the highest Court, the procedure that is established by law has been followed up to this stage.

However, in the statutory framework, further procedural safeguards in the form of judicial review as well as mercy petitions are yet to be traversed. This would also be covered by the expression 'procedure established by law' occurring in Article 21. Therefore, till the time limitation period for filing the review petition and thereafter reasonable time for filing the mercy petition has not lapsed, issuing of death warrants would be violative of Article 21.

There is another facet of right to life enshrined in Article 21 of the Constitution which needs to be highlighted at this juncture, namely, 'human dignity'. Article 21 has its traces in the dignity of human being. It has been recognized as part of Article 21 of the Constitution. [**Shabnam v. Union of India & Ors., AIR 2015 SC 3648]**

Section 340, 195(3) Cr.P.C.- Constitution of India, Article 226- Proceedings under Section 340 Criminal Procedure Code, in writ Jurisdiction, permissibility of.

The Writ Court under no circumstances can be said to be the „Court" under the provisions of **Section 195 read with section 340 Crl.P.C.**

Proceedings under Section 195 is to be proceeded under Section 340 Cr.P.C. therefore, at the time of making application both the sections will be conjointly read. Sub-Section 3 of Section 195 Cr.P.C. speaks about the meaning of the 'Court', which means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a 'Court' for the purposes of this Section. The applicant has made out a case under Sections 193, 196, 199, 200, 463, 471 and 475 IPC, but no FIR has been lodged nor any complaint case was filed nor the applicant proceeded before the Criminal Court to obtain an order. Law is well settled by now that the term 'Court' indicates that there must be power to record evidence and to come to a judicial determination on the evidence so recorded. The words used in the provision are important. The Writ Court is not the Court of evidence. Thus, the Writ Court under no circumstances can be said to be the 'Court' under the provisions of Section 195 read with Section 340 Cr.P.C. In totality, the applications are dismissed, however, without imposing any cost. **Ashish Sharma v. State of U.P., 2015 (33) LCD 1066**

S. 345 (3) - Sentence-Death sentence-Approach and considerations-Each case should be independently considered by property considering the aggravating and mitigating circumstances.

The board principles tailored by the Supreme Court in its various judgments provide guidelines to ensure that the discretion vested in the court is not unbridled. The Supreme Court has evolved the doctrine of ―the rarest of the rare case‖ and put it to test via medium of charting out the aggravating and mitigating circumstances in a case and then balancing the two in the facts and circumstances of the case. As a norm, the most significant aspect of sentencing policy is independent consideration of each case by the court and extricating a sentence which is the most appropriate and proportional to the culpability of the accused. It may not be apposite for the court to decide the quantum of sentence with reference to one of the classes under any one of the heads while completely ignoring classes under the other head. That is to say. What is required is not just the balancing of these circumstances by placing them in separate compartments, but their cumulative effect which the court is required to keep in its mind so as to better administer the criminal justice system and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) CrPC while sentencing**. (Mofil Khan and another v. State of Jharkhand, (2015) 1 Supreme Court cases (Cri) 556).**

Sections 353/361— Judgment-- No where suggested-The judgment should be too lengthy or prolix and disproportionate to the issue involved - The principal objective - Make an effective, practical and workable decision - Reasoning and conclusion must be practical and sufficient

It is no where suggested that the judgment should be too lengthy or prolix and disproportionate to the issue involved. However, it is to be borne in mind that the principal

objective in giving judgment is to make an effective, practical and workable decision. The court resolves conflict by determining the merits of conflicting cases, and by choosing between notions of justice, convenience, public policy, morality, analogy, and takes into account the opinions of other courts or writers (Precedents). Since the Court is to come to a workable decision, its reasoning and conclusion must be practical, suit the facts as found and provide and effective, workable remedy to the winner. While recording the decision with clarity, the Court is also supposed to record sufficient reasons in taking a particular decision or arriving at a particular conclusion. The reasons should be such that they demonstrate that the decision has been arrived at on objective consideration.

When one talk of giving "reasons" in support of a judgment, what is meant by "reasons"? In the context of legal decision making, the focus is to what makes something a legal valid reason. Thus, "reason would mean a justifying reason, or more simply a justification for a decision is a consideration, in a non-arbitrary ways in favour of making or accepting that - decision. If there is no justification in support of a decision, such a decision is without any reason or justifying reason. [**M/s. Shree Mahavir Carbon Ltd v. *Om Prakash Jalan (Financer) & Anr., (2016) 1 SCC(Cri); (2016) 1 SCC] 42***

S. 354- The measure of punishment should be proportionate to the gravity of the offence

It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of the offence and the manner in which it was executed or committed. It is the obligation of the court to constantly remind itself that the right of the victim, and be it said, on certain occasions the person aggrieved as well as the society at large can never be marginalized. The measure of punishment should be proportionate to the gravity of the offence. Object of sentencing should be to protect society and to deter the criminal in achieving the avowed object of law. Further, it is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. The punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must be consistent with the atrocity and brutality which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should „respond to the society‟s cry for justice against the criminal‟ **(Sadan Bhadauriya alias Jagat Pal Singh v. State of U.P. 2016 (3) ALJ 465)**

Section 354 Cr.P.C.- Section 302 and 304 Part II I.P.C.- Sentencing - Duty of Court -

Accused/respondents were convicted under Section *302/304* IPC. In appeal the High Court converted the conviction from 302 IPC to Section 304 Part II and thereby altered the renitence to imprisonment for period already undergone which was only 11 months and further directed to pay a sum of Rs. *350001*- each to the complainant. Both the State and complainant have challenged this alteration of sentence.

Hon'ble the Apex Court upheld the alteration of conviction from Section 302 to Section 304 Part II, but as regards quantum of sentence in para 11 observed that-

"Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. With reference to sentencing by courts, this Court in the decision in State of U.P. v. Shri Kishan (2005) 10 SCC 420 made these weighty observations:

"5. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc…..

6. The object should be to protect the society and to deter the criminal in achieving the

avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stem where it should be.

8. ……..Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

9. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

In the light of above observations and looking in to the gravity of the case, Hon'ble the Apex Court held that punishment must be proportionate to the crime. The sentence of 11 months awarded by the High Court to the respondents for the said conviction is too meager, and not adequate and it would be Travesty of Justice. Therefore the each of the accused/respondents No. 1 to 3 was sentenced to 5 years rigorous imprisonment for the offence under Section 304 Part 2. Accordingly both the appeals were partly allowed. **Tukaram Bnyanoshwar Patil v. State of Maharashtra, 2015(3) Supreme 229.**

Section 357-A— Compensation to the victim of rape - No amount of money can restore the dignity and confidence that the accused took away from the victim - But where the victim is unable to maintain her and no family to support her either emotionally or economically – Compensation warranted.

While going through different schemes for relief and rehabilitation of victims of rape, we have also come across one Scheme made by the National Commission of Women (NCW) on the direction of this court in Delhi Domestic Working Women‟s Forum vs. Union of India and Ors. [Writ Petition (Crl) No. 362/93], whereby this Court inter alia had directed the National Commission for Women to evolve a “scheme” so as to wipe out the tears of unfortunate victims of rape. This scheme has been revised by the NCW on 15th April 2010. The application under this scheme will be in addition to any application that may be made under Section 357, 357A of the Code of Criminal Procedure as provided in paragraph 22 of the Scheme. Under this scheme maximum of Rs.3,00,000/- (Three lakhs) can be given to the victim of the rape for relief and rehabilitation in special cases like the present case where the offence is against an handicapped woman who required specialized treatment and care.

Indisputably, no amount of money can restore the dignity and confidence that the accused took away from the victim. No amount of money can erase the trauma and grief the victim suffers. This aid can be crucial with aftermath of crime.

The victim, being in a vulnerable position and who is not being taken care of by anyone and having no family to support her either emotionally or economically, we are not ordering the respondent-State to give her any lump sum amount as compensation for rehabilitation as she is not in a position to keep and manage the lump sum amount. From the records, it is evident that no one is taking care of her and she is living alone in her Village. Accordingly, we in the special facts of this case are directing the respondent-State to pay Rs.8,000/- per month till her life time, treating the same to be an interest fetched on a fixed deposit of Rs.10,00,000/-. By this, the State will not be required to pay any lump sum amount to the victim and this will also be in the interest of the victim. [**Tekan Alias Tekram v. State Of Madhya Pradesh (Now Chhattisgarh), 2016 (2) Supreme 753]**

Section 357-A—Victim compensation - Acid attack case - Impact on his social, economical and personal life – Requires permanent treatment for the damaged skin be seen -

Can give even more amount of compensation than Rs.3,00,000/- as directed in Laxmi Versus Union Of India case.

The direction given in Laxmi Versus Union Of India & Ors., (2014) 4 SCC (Cri) 802; (2014) 4 SCC 427 is a general mandate to the State and Union Territory and is the minimum amount which the State shall make available to each victim of acid attack. The State and Union Territory concerned can give even more amount of compensation than Rs.3,00,000/- as directed by this Court. It is pertinent to mention here that the mandate given by this Court in Laxmi‟s case nowhere restricts the Court from giving more compensation to the victim of acid attack, especially when the victim has suffered serious injuries on her body which is required to be taken into consideration by this court. In peculiar facts, this court can grant even more compensation to the victim than Rs. 3,00,000/-.

The Guidelines issued by orders in the Laxmi‟s case are proper, except with respect to the compensation amount. We just need to ensure that these guidelines are implemented properly. Keeping in view the impact of acid attack on the victim on his social, economical and personal life, we need to enhance the amount of compensation. We cannot be oblivious of the fact that the victim of acid attack requires permanent treatment for the damaged skin. The mere amount of Rs. 3 lakhs will not be of any help to such a victim. We are conscious of the fact that enhancement of the compensation amount will be an additional burden on the State. But prevention of such a crime is the responsibility of the State and the liability to pay the enhanced compensation will be of the State. The enhancement of the Compensation will act in two ways:-

1. It will help the victim in rehabilitation;
2. It will also make the State to implement the guidelines properly as the State will try to comply with it in its true sprit so that the crime of acid attack can be prevented in future.

In peculiar facts of the case, we are of the view that victim Chanchal deserves to be awarded a compensation more than what has been prescribed by this Court in the Laxmi‟s case (supra). In the instant case, the victim‟s father has already spent more than Rs. 5 lakhs for the treatment of the victim. In consideration of the severity of the victim‟s injury, expenditure with regard to grafting and reconstruction surgery, physical and mental pain, etc., we are of the opinion that the victim (Chanchal) should be compensated to a tune of at least Rs.10 Lakhs. Suffice it to say that the compensation must not only be awarded in terms of the physical injury, we have also to take note of victim‟s inability to lead a full life and to enjoy those amenities which is being robbed of her as a result of the acid attack. Therefore, this Court deems it proper to award a compensation of Rs. 10 lakhs and accordingly. [**Parivartan Kendra v. Union of India and others, (2016) 2 SCC (Cri) 143 ; (2016) 3 SCC 571]**

357-A & 357 Cr.P.C.-Compensation vis-a-vis Interim Compensation

We are of the view that it is the duty of the Courts, **on taking cognizance** of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of **interim compensation**, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory

is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.

In the present case, the impugned judgment shows that the de facto complainant, PW-2 Raman Anand, filed Criminal Revision No.1477 of 2004 for compensation to the family members of deceased Devender Chopra and his son Abhishek Chopra. The same has been dismissed by the High Court without any reason. In fact even without such petition, the High Court ought to have awarded compensation. There is no reason as to why the victim family should not be awarded compensation under Section 357-A by the State. Thus, we are of the view that the State of Haryana is liable to pay compensation to the family of the deceased. We determine the interim compensation payable for the two deaths to be rupees ten lacs, without prejudice to any other rights or remedies of the victim family in any other proceedings. **Suresh & Anr. v. State Of Haryana (2015) 2 SCC(Cri) 45 ; (2015) 2 SCC 227**

Section 375 CrPC- Compensation – to victim – reasonable - the court has to award compensation by the state under section 357a CrPC – when the accused is not in a position to pay fair compensation

It is the duty of the Court to award just sentence to a convict against whom charge is proved. While every mitigating or aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and the society. It is also the duty of the court to duly consider the aspect of rehabilitating the victim. Award of unreasonable compensation has also not been considered. Apart from the sentence and fine/compensation to be paid by the accused, the Court has to award compensation by the State under Section 357A when the accused is not in a position to pay fair compensation as laid down by this Court in Suresh vs. State of Haryana (Criminal Appeal No.420 of 2012 decided on 28th November, 2014). **[State of M.P. Versus Mehtaab (2015) 2 SCC (Cri) 764 ; (2015) 5 SCC 197]**

Sec. 378 – Appeal against acquittal – Two views possible – View favourable to accused should be adopted

The burden of proof in criminal law is beyond all reasonable doubt. The prosecution has to prove the guilt of the accused beyond all reasonable doubt and it is also the rule of justice in criminal law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other towards his innocence, the view which is favourable to the accused should be adopted. **State of Gujarat V. Jayarajbhai Punjabhai Varu, 2016 Cri.L.J. 4185 (SC)**

Sec. 378 – Appeal against acquittal- Consideration of

Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the trial court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

Courts is however of the considered view, that the High Court relied upon cogent evidence, to set aside the order of acquittal passed by the Additional Sessions Judge. We are also satisfied in recording, that the trial Court had overlooked vital evidence recorded on behalf of the prosecution, especially during the cross-examination of the prosecution witnesses, whereupon, the position of there being any second way of viewing the facts, was absolutely out of question. We are of the

considered view, that the statements of the two prosecution witnesses, namely, Mohan Ram – PW-1 and Mohan Lal – PW-15, along with the testimony of the other witnesses, would clearly and unequivocally lead to the inference, that the accused-appellant – Brij Lal was guilty of having committed the offence under Section 302 of the IPC, insofar as his having caused the murders of Om Prakash and Sultan Bhat are concerned. There is absolutely no question of extending the benefit of any doubt to the accused-appellant – Brij Lal, in the present case. **Brij Lal V. State of Rajasthan, 2016 (6) Supreme 365**

Ss. 378 & 379 – Presumption of innocence of accused gets reinforced by acquittal by trial court – If two views are possible, appellate court should not substitute its view for that of the trial court – Judgment of acquittal can be interfered only if found to be perverse.

The scope of interference with a judgment of acquittal, this Court in Sunil Kumar Shabukumar Gupta (Dr.) (supra) echoed the hallowed proposition that if two views are possible, the appellate court should not ordinarily interfere therewith though its view may appear to be the more probable one. While emphasizing that the trial court has the benefit of watching the demeanour of the witnesses and is thus the best judge of their credibility, it was held that every accused is presumed to be innocent unless his guilt is proved and that his presumption of innocence gets reinforced with his acquittal by the Trial court's verdict. It was reiterated that only in exceptionable cases and under compelling circumstances, where the judgement of acquittal is found to be perverse i.e. if the findings have been arrived at by ignoring or excluding relevant materials or by taking into consideration irrelevant/inadmissible material and are against the weight of evidence or are so outrageously in defiance of logic so as to suffer from the vice of irrationality, that interference by the appellate court would be called for. **Raja V. State of Karnataka 2016 (7) Supreme 212**

Sec. 378 – Appeal against acquittal – Scope of interference.

In the criminal jurisprudence, an accused is presumed to be innocent till he is convicted by a competent Court after a full-fledged trial, and once the Trial Court by cogent reasoning acquits the accused, then the reaffirmation of his innocence places more burden on the appellate Court while dealing with the appeal. No doubt, it is settled law that there are no fetters on the power of the appellate Court to review, reappreciate and reconsider the evidence both on facts and law upon which the order of acquittal is passed. But the court has to be very cautious in interfering with an appeal unless there are compelling and substantial grounds to interfere with the order of acquittal. The appellate Court while passing an order has to give clear reasoning for such a conclusion.

It is no doubt true that there cannot be any strait jacket formula as to under what circumstances appellate Court can interfere with the order of acquittal, but the same depends on facts and circumstances of each case. In the case on hand, we have to examine the rationale behind the conclusion of the High Court in convicting the accused and the compelling reasons to deviate from the order of acquittal passed by the Trial Court. **Mahavir Singh V. State of Madhaya Pradesh 2016 (7) Supreme 601**

Sec. 378 – Appeal against acquittal – Two views possible – View favourable to accused should be adopted

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recorded on behalf of the prosecution, especially during the cross-examination of the prosecution witnesses, whereupon, the position of there being any second way of viewing the facts, was absolutely out of question. We are of the considered view, that the statements of the two prosecution witnesses, namely, Mohan Ram – PW-1 and Mohan Lal – PW-15, along with the testimony of the other witnesses, would clearly and unequivocally lead to the inference, that the accused-appellant – Brij Lal was guilty of having committed the offence under Section 302 of the IPC, insofar as his having caused the murders of Om Prakash and Sultan Bhat are concerned. There is absolutely no question of extending the benefit of any doubt to the accused-appellant – Brij Lal, in the present case. **Brij Lal V. State of Rajasthan, 2016 (6) Supreme 365**

Section 378—Criminal Appeal – Principal thereof

In dealing with appeals against acquittal, the appellate court must bear in mind the following:

1. There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court; (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;
2. Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and
3. Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

[**V. Sejappa v. The State By Police Inspector Lokayukta, Chitradurga 2016(3) Supreme 150]**

Section 378—Criminal Appeal - Two views possible - The trial court acquitted - The appellate court should not interfere.

No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate

court to express the right conclusion after re-appreciating the evidence if the charge is proved beyond reasonable doubt on record, and convict the accused. In the present case from the evidence on record, the trial court has taken a view which was not possible from the evidence on record. The trial court has unnecessarily emphasized on the point that there is no direct evidence to connect the accused with the crime. In the facts and circumstances of the case, there was no possibility of direct evidence to be on the record. [**Harijan Bhala Teja v. State of Gujarat 2016(3) Supreme 188].**

S.378 – Grounds for interference with order of acquittal – order of acquittal can be interfered if based on no evidence, or view taken by the court is wholly unreasonable, or is not a plausible views or there is palpable misreading of evidence.

The judgment in Basappa v. State of Karnataka, (2014)5 SCC 154 wherein a detailed survey has been conducted with regard to the scope of interference of the appellate court in an appeal against the judgment of acquittal. After referring to following decisions in K. Prakashan v. P.K. Surenderan, (2008)1 SCC 258 T. Subramanian v. State of Tamil Nadu, (2006)1 SCC 401 Bhim Singh v. State of Haryana (2002)10 SCC 461 Kallu alias Masih and others v. State of Madhya Pradesh, (2006)10 SCC 313 Ramesh Babulal Doshi v. State of Gujarat, (1996)9 SCC 225 Ganpat v. State of Haryana and others, (2010)12 SCC 59 State of Punjab v. Karnail Singh, (2003)11 SCC 271 Chandrappa and others v. State of Karnataka, (2007)4 SCC 415 which have dealt with the issue, this Court held that unless the judgment of acquittal is based on no material or is perverse or the view taken by the court is wholly unreasonable or is not a plausible view or there is non-consideration of any evidence or there is palpable misreading of evidence, the appellate court will not be justified in interfering with the order of acquittal. While endorsing and reaffirming those principles, we are of the considered view that on the facts of the present case, there has been a palpable misreading of evidence by the trial court. As we have already discussed herein above, the conclusions drawn by the trial court is apparently against the weight of evidence and thus perverse, and it is so perverse that no reasonable man could reach conclusion. **Vijay Pal Singh and others v. State of Uttarakhand, 2015(1) Supreme 521 : AIR 2015 SC 684.**

S. 386- Tenability of new plea at appeal

So far as the question of ante timing of lodging of F.I.R. is concerned, it is evident from the record that no question was ever put to the eye-witnesses with regard to the possibility of ante timing of the F.I.R. before the trial court, the appellant cannot be permitted to take such plea at this stage that the F.I.R. was ante timed. The learned counsel failed to show any circumstances which could possibly be taken into consideration for holding the F.I.R. ante timed. **(Bhura alias Jitendra s/o Jaipal Singh and another v. State of U.P., 2016 (3) ALJ 319)**

Section 389 Cr. P. C.- Ground to stay the order of conviction - irreversible consequences or injustice to the respondent - foreign country is not granting permission to visit- cannot be a ground

If some foreign country is not granting permission to visit the said country on the ground that the person has been convicted of an offence and has been sentenced for five years of imprisonment under the Indian Law, the said order cannot be a ground to stay the order of conviction. If an order of conviction in any manner is causing irreversible consequences or injustice to the respondent, it was open to the court to consider the same. If the court comes to a definite conclusion that the irreversible consequences/injustice would cause to the accused which could not be restored, it was well within the domain of the court to stay the conviction. **[State Of Rajasthan Versus Salman Salim Khan AIR 2015 SC 2443]**

Section 389 – Opportunity – To Public Prosecutor – Service of copy of appeal and application for bail on Public Prosecutor by appellant – Would not satisfy the requirement of first proviso to section 389 Cr.P.C. – Admittedly no such opportunity was granted to the State as contemplated under first proviso of section 389 Cr.P.C. – Therefore the impugned orders to the extent of release of private respondents on bail are set aside.

All the private respondents have been convicted by the Court of Additional Sessions Judge, Azamgarh under sections 147, 148 and 149 read with section 302, 120-B of the Indian Penal Code (45 of 1860) (hereinafter referred to as _IPC') and section 7 of Criminal Law (Amendment) Act, 2013 and they have been awarded sentence of imprisonment for life with fine. Altogether seven accused have been convicted: however bail is granted only to four.

The main contention of the appellant is that the procedure contemplated under section 389 proviso has not been complied with while releasing them on bail and, hence, the order passed by the High Court is liable to be set aside.

Service of a copy of the appeal and application for bail on the Public Prosecutor by the appellant will not satisfy the requirement of first proviso to section 389 Cr.P.C. The Appellate Court may even without hearing the Public Prosecutor, decline to grant bail. However, in case the Appellate Court is inclined to consider the release of the convict on bail, the Public Prosecutor shall be granted an opportunity to show cause in writing as to why the appellant be not released on bail. Such a stringent provision is introduced only to ensure that the Court is apprised of all the relevant factors so that the Court may consider whether it is an appropriate case for release having regard to the manner in which the crime is committed, gravity of the offence, age, criminal antecedents of the convict, impact on public confidence in the justice delivery system, etc. Despite such an opportunity being granted to the Public Prosecutor, in case no cause is shown in writing, the Appellate Court shall record that the State has not filed any objection in writing. This procedure is intended to ensure transparency, to ensure that there is no allegation of collusion and to ensure that the Court is properly assisted by the State with true and correct facts with regard to the relevant considerations for grant of bail in respect of serious offences, at the post conviction stage.

To sum up the legal position.

1. The Appellate Court, if inclined to consider the release of a convict sentenced to punishment for death or imprisonment for life or for a period of ten years or more, shall first give an opportunity to the Public Prosecutor to show cause in writing against such release.
2. On such opportunity being given, the State is required to file its objections, if any, in writing.
3. In case the Public Prosecutor does not file the objections n writing, the Appellate Court shall, in its order, specify that no objection had been filed despite the opportunity granted by the Court.
4. The Court shall judiciously consider all the relevant factors whether specified in the objections or not, like gravity of offence, nature of the crime, age, criminal antecedents of the convict, impact on public confidence in Court, etc. before passing an order for release.

Admittedly, no such opportunity was granted to the State as contemplated under the first proviso of section 389 Cr.P.C. in these appeals. Therefore, the impugned orders to the extent of release of the private respondents on bail are set aside. The High Court shall consider the matters afresh. **Atul Tripathi v. State of U.P. and another, 2015(88) ACC 525(S.C).**

Section 389 Cr.P.C. – Second bail application during pendency of appeal in Case of double murder. Multiple grievous injuries inflicted on both deceased. Enormity of injuries, site where they were inflicted and their severity does not admit of any other inference than one drawn by Trial Court. Appellants used their respective blunt weapons wielded in a deadly manner. Post mortem of both deceased lends clinching corroboration to their participation in crime as same reveals multiple lacerated wounds and contusion all over body. Case of co-accused who have been granted bail entirely on a different footing as injuries received by deceased persons not attributable to weapon used by him. Detention of 8 years cannot constitute a sufficient ground as sole basis of releasing appellants on bail. Therefore bail prayer of appellants refused. **Shiv Sagar v. State of U.P., 2015 (89) ACC24 (Alld.)**

Ss. 397 to 401 – Revisional powers of High Court Exercise of – While exercising revisional power an order cannot be interfered merely because another view possible, It can interfere if impugned order is perverse or untenable in law or grossly erroneous or judicial discretion is exercised arbitrarily or capriciously.

The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to401 of CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously the courts may not interfere with decision in exercise of their revisional jurisdiction. **Sanjaysingh Ramrao Chavan v. Dattafray Gulabrao Phalke and others., 2015(1) Supreme 195.**

Sections 397(1) and 156(3) – Magistrate rejected the prayer for register & investigate the case U/s. 156(3) Cr.P.C. – Affects the valuable right of the complainant and is a matter of the moment – Access to remedy of revision under section 397(1) not barred – Such an order not an interlocutory order.

In the proceedings in which the present reference to the Full Bench has been occasioned, an application was moved before the Chief Judicial Magistrate, Ambedkar Nagar against the petitioners by opposite party No. 2 under section 156(3). The Magistrate, after considering the contents of the complaint, came to the conclusion that there was no ground for directing the police to register and investigate the case, upon which the application under section 156(3) was rejected. Aggrieved, opposite party No. 2 preferred a revision before the Sessions Judge which was allowed and while setting aside the order of the Chief Judicial Magistrate, the latter was directed to decide the application under section 156(3) afresh. Aggrieved by that order of the Sessions Judge, this Court was moved by the petitioners. The submission of the petitioners was that - (i) the Sessions Judge decided the revision without furnishing to them an opportunity of hearing though, according to them, they were necessary parties before the Revisional Court since their ―valuable rights‖ were going to be affected by the order that was sought before and was eventually passed by the Revisional Court; (ii) in view of the decision of the Full Bench in Father Thomas, the remedy of a criminal revision was barred under section 397(2) since an order passed by a Magistrate on an application under section 156(3) is an interlocutory order.

Where an order is passed by the Magistrate declining to order an investigation under section 156(3), such an order affects the valuable rights of the complainant and is a matter of moment. Access to the remedy of a revision under section 397(1) is not barred since such an order is not an interlocutory order under sub-section (2). Nor can access to the statutory remedy of a revision under section 397 (1) be defeated on the ground that the complainant may avail of the procedure prescribed in Chapter XV of the Code. [**Jagannath Verma and others v. State of U.P. and another, 2015(88) ACC 1. (H.C.-L.B.-F.B.)].**

Section 397(2) – "Interlocutory order" – Merely regulates procedure and does not affect rights and liabilities.

An interlocutory order merely regulates the procedure and does not affect rights or liabilities. Bearing in mind these principles, the Supreme Court noted that in that case, the appellants had been released by the Judicial Magistrate upon the submission of a final report by the police and a revision to the Additional Sessions Judge had failed. The appellants were held to have acquired a valuable right of not being put on trial unless a proper order was made against them. When a complaint was thereafter filed which again was dismissed by the Judicial Magistrate, the Sessions Judge remanded the proceedings. In pursuance of the remand, when the Judicial Magistrate summoned the appellants, the question of the appellants being put to trial arose for the first time. This was held to be a valuable right which the appellants possessed and which was being

denied to them by the order of the Judicial Magistrate. The order of the Judicial Magistrate was, in the circumstances, a matter of moment in the view of the Supreme Court and a valuable right was regarded as having been taken away by the Magistrate in passing an order prima facie, in a mechanical fashion without application of mind. Hence, the revision was held to be maintainable. [**Jagannath Verma and others v. State of U.P. and another, 2015(88) ACC 1. (All. H.C.-L.B.-F.B.)].**

Ss. 397, 401 Cr.P.C.- Revision- A person accused of crime in the complaint can claim right of hearing in a revision.

The learned Additional Sessions Judge after adumbrating the facts and taking note of the submissions of the revisionist, set aside the impugned order and remanded the matter to the trial Court with the direction that he shall hear the complaint again and pass a cognizance order according to law on the basis of merits according to the directions given in the said order. Be it noted, the learned Additional Sessions Judge heard the counsel for the respondent No.3 and the learned counsel for the State but no notice was issued to the accused persons therein. Ordinarily, we would not have adverted to the same because that lis is the subject matter in the appeal, but it has become imperative to do only to highlight how these kind of litigations are being dealt with and also to show the respondents had the unwarranted enthusiasm to move the courts. The order passed against the said accused persons at that time was an adverse order inasmuch as the matter was remitted. It was incumbent to hear the respondents though they had not become accused persons. A three-Judge Bench in Manharibhai *Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and others [(2012) 10 SCC 517]* has opined that in a case arising out of a complaint petition, when travels to the superior Court and an adverse order is passed, an opportunity of hearing has to be given. The relevant passages are reproduced hereunder: **Mrs. Priyanka Srivastava and Another v. State of U.P. and Others 2015(3) Supreme 152**

Sec. 401—Rivisional Jurisdiction

The learned Single Judge has dwelled upon in great detail on the statements of the witnesses to arrive at the conclusion that there are remarkable discrepancies with regard to the facts and there is nothing wrong with the investigation. In fact, he has noted certain facts and deduced certain conclusions, which, as the Hon'ble Supreme Court find, are beyond the exercise of revisional jurisdiction. It is well settled in law that inherent as well as revisional jurisdiction should be exercised cautiously. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the Court. [**Chandra Babu @ Moses Versus State Through Inspector Of Police & Ors., AIR 2015 SC 3566 (Criminal Appeal No.866 Of 2015) [Arising Out Of Slp (Crl.) No. 5702 Of 2012]**

Section 407, Cr.P.C. – Transfer of case – Trial is pending in Rampur just about 50-60 km. away from Bareilly – Lucknow is more than 300 km. from Rampur. This Court could not understand as to why no attempt has been made by State to seek transfer of trial, if it was really necessary, to competent Court at Bareilly and also to transfer accused persons detained at Lucknow to Bareilly

– Which could be done by Police Administration on administrative side itself – Moreover, all accused could have been kept by police, either in same jail or any other nearby Jail, near district Rampur, if for security or other reasons, it was not expedient to detain all of them in one jail. State Government is interested only to have trial transferred to Lucknow and its approach in this regard does not appear to be bona fide. Lack of transparency and bona fide on part of State is also shadowed from some more facts evident from record. State is inclined to get five persons transferred from Bareilly jail to Lucknow Jail – But no reason could be assigned as to why lesser number of accused detained at Lucknow would not be convenient to be transferred to Bareilly – No substance in shallow

apprehensions expressed by State in name of safety and security – Application dismissed. **State of U.P. though I.G. Jail, Lucknow v. Sharif @ Suhail @ Shajid @ Ali @ Anware @ S. Baranwal, 2015(89) ACC 378 (Alld.)**

Section 407, Cr.P.C. - Transfer of criminal case-Advocate not attending Court due to resolution of general strike it - self not a ground for transfer of case - Fact that Counsel of complainant is President of Bar Association of Civil Court, wholly irrelevant to justify a transfer of a case to another judgeship - Mere apprehension not enough unless it is supported with some material-Ground taken by applicant is vague and wholly unsubstantiated. No ground justifying transfer made out - Petition dismissed with cost.

Mere suspicion by the party that he will not get justice would not justify transfer. There must be a reasonable apprehension to that effect. A judicial order made by a Judge legitimately cannot be made foundation for a transfer of case. Mere presumption of possible apprehension should not and ought not be the basis of transfer of any case from one case to another. It is only in very special circumstances, when such grounds are taken, the Court must find reasons exist to transfer a case, not otherwise.

The justice delivery system knows no caste, religion, creed, colour etc. It is a system following principle of black and white, i.e., truth and false. Whatever is unfair, that is identified and given its due treatment and whatever is good is retained. Whoever suffers injustice is attempted to be given justice and that is called dispensation of justice. The prevailing system of dispensation of justice in country, presently, has different tiers. At the ground level, the Courts are commonly known as "Subordinate Judiciary" and they form basis of administration of justice. Sometimes it is said that subordinate judiciary forms very backbone of administration of justice. Though there are various other kinds of adjudicatory forums, like, Nyaya Panchayats, Village Courts and then various kinds of Tribunals etc. but firstly they are not considered to be the regular Courts for adjudication of disputes, and, secondly the kind and degree of faith, people have, in regular established Courts, is yet to be developed in other forums. In common parlance, the regular Courts, known for appropriate adjudication of disputes basically constitute the District Court, the High Courts and the Apex Court. **Sanjeev Gupta v. State of U.P., 2015 (89) ACC 586 (HC)**

Sections 407, 326, 408 and 311 of Cr.P.C. - Indian Penal Code, 186D-Sections 409, 420, 467, 468, 471, 120-B, 204 and 201 & I.P.C. - Prevention of Corruption Act, 1988- Sections 7, 13(I)(d) read with section 13(2). Case listed for writing judgments by the then Presiding Officer Lalloo Singh-He was transferred from that Court and took charge in the same Sessions Division of Lucknow as Additional Sessions Judge (Special Judge Gangsters Act)-Akhilesh Dubey after transfer took charge of the Court of Anti-Corruption (UPSEB)-Application for transfer of case to the Court presided over by Lalloo Singh under section 408 Cr.P.C. dismissed as soon as the Presiding Judge is transferred from a particular Court, he ceases to exercise his jurisdiction in all pending cases before him on the date of his transfer. Accused have no right to get the case decided by the Judge who partly or wholly recorded evidence in the case-Judgment rendered by the Court in Punjab Singh's case and judgment rendered by the Apex Court in Pyare Lal's case of no help to the applicants-Petition dismissed.

From a comparative reading of sub-section (1) of section 350 as it stood prior to its amendment in 1955 and as it stands since then with the change in its numeral and inclusion of the word "Judge" therein we find that the discretion earlier given to the Presiding Officer of the Court to act on the evidence recorded by his predecessor or partly recorded by him still remains. But so far as the other option is concerned, while earlier he could re-summon the witnesses and recommence the inquiry or trial-which necessarily meant a de novo trial. But he can now only re-summon a witness who has already been examined for further examination and discharge him after such further examination, cross-examination and re-examination, if any. It is evident therefore that now the Magistrate or Judge can exercise his judicial discretion only for further examination of a witness already examined and not for fresh examination of witnesses for a fresh trial. Obviously,

keeping in view the inevitable frequent changes in the office of the Magistrate and Judge and in order to provide a speedy trial the legislature has taken away the well-established right of the accused to claim a de novo trial and that of the Court to so direct by express words of the amending statute of 1955. **Anil Kumar Agarwal v. State of U.P. & ors, 2015 (89) ACC 723 (HC)**

Sec. 432 - For remission – the factors to be seen

The High Court has opined that the State of Gujarat is the appropriate Government. It is because it has been guided by the principle that the first respondent was convicted and sentenced in the State of Gujarat. The most important thing is that the High Court has referred to, as has been indicated earlier, many aspects of human rights and individual liberty and, if we allow ourselves to say so, the whole discussion is in the realm of abstractions. The Court has not found that the order passed by the State of Gujarat was bereft of appropriate consideration of necessary facts or there has been violation of principles of equality. The High Court has not noticed that the order is bereft of reason. It has been clearly stated in the impugned order that the convict was involved in disruptive activities, criminal conspiracy, smuggling of arms, ammunitions and explosives and further he had also been involved in various other activities. It has also been mentioned that the prisoner under disguise of common name used to purchase vehicles for transportation and his conduct showed that he had wide spread network to cause harm and create disturbance to National Security. Because of the aforesaid reasons remission was declined. In such a fact situation, the view expressed by the High Court to consider the case on the basis of the observations made by it in the judgment is not correct. **State Of Gujarat & Anr V.**

Lal Singh @ Manjit Singh & Ors : 2016(4) Supreme 657 ; 2016 LawSuit(SC) 608 ; 2016 (6) JT 519, 2016 AIR(SC) 3197, 2016 (8) SCC 370 (Criminal Appeal No: 171 of 2016)

Ss.432, 433 - Multiple sentences for imprisonment for life - cannot be directed to run consecutively - Such sentences - be super imposed - so that any remission or commutation in one - does not ipso facto result for the other.

The legal position is, thus, fairly well settled that imprisonment for life is a sentence for the remainder of the life of the offender unless of course the remaining sentence is commuted or remitted by the competent authority. That being so, the provisions of Section 31 under Cr.P.C. must be so interpreted as to be consistent with the basic tenet that a life sentence requires the prisoner to spend the rest of his life in prison. Any direction that requires the offender to undergo imprisonment for life twice over would be anomalous and irrational for it will disregard the fact that humans like all other living beings have but one life to live. So understood Section 31 (1) would permit consecutive running of sentences only if such sentences do not happen to be life sentences. That is, in our opinion, the only way one can avoid an obvious impossibility of a prisoner serving two consecutive life sentences.

While multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other. **Muthuramalingam & Ors. V. State Rep. by Insp. Of Police AIR 2016 SC 3340 ; 2016(5) Supreme 581 [Five Judges Bench] (Criminal Appeal Nos.231-233 Of 2009).**

Sec. 432 - For remission – the factors to be seen

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S.433-SENTENCE REDUCTION

The accused was aged around 75 years. Out of three accused two have expired. Litigation was pending for quite some time. The appellant has undergone five months in jail. The submission that the sentence of the accused should be reduced to that of "already undergone" as against his total sentence of 2 years is not accepted as, it would be too lenient in the facts of the case. Having regard to the totality of the circumstances such as nature of offences committed and findings recorded by the Court, the sentence awarded to the appellant can be reduced from "two years" to "one year". **Nirmal Dass V. State Of Punjab AIR 2016 SC 2562 (Criminal Appeal No.531 OF 2016)**

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Sec. 434 - The Court can - direct - to undergo the term sentence - before the commencement of life sentence.

The accused has been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The Trial Court‟s direction affirmed by the High Court is that the said term sentences shall run consecutive. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the Court below calls for any modification or alteration is a matter with which we are not concerned. The Regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs. **Muthuramalingam & Ors. V. State Rep. by Insp. of Police AIR 2016 SC 3340 ; 2016(5) Supreme 581 [Five Judges Bench] (Criminal Appeal Nos.231-233 Of 2009)**

Whether the court has been given judicial discretion to levy no fine or a fine of less than five thousand rupees under Section 85(a)(i)(b) of the Employees‘ State Insurance Corporation Act - held No – but can reduce the sentence of imprisonmen - as per proviso

Section 85(a)(i)(b) of the Employees‟ State Insurance Corporation Act prescribes punishment for a particular offence as imprisonment which shall not be less than six months and the convict shall also be liable to fine of five thousand rupees. The proviso however empowers the court that it may, "for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;". The question to be answered is whether the court has been given judicial discretion only to reduce the sentence of imprisonment for any term lesser than six months or whether it also has discretion to levy no fine or a fine of less than five thousand rupees.

In our considered view, the clause "shall also be liable to fine", in the context of Indian Penal Code may be capable of being treated as directory and thus conferring on the court a discretion to impose sentence of fine also in addition to imprisonment although such discretion stands somewhat impaired. But clearly no minimum fine is prescribed for the offences under the IPC nor that Act was enacted with the special purpose of preventing economic offences.

The object of creating offence and penalty under the Employees‟

State Insurance Act, 1948 is clearly to create deterrence against violation of provisions of the Act which are beneficial for the employees. Non-payment of contributions is an economic offence and therefore the Legislature has not only fixed a minimum term of imprisonment but also a fixed amount of fine of five thousand rupees under Section 85(a)(i)(b) of the Act. There is no discretion of awarding less than the specified fee, under the main provision. It is only the proviso which is in the nature of an exception whereunder the court is vested with discretion limited to imposition of imprisonment for a lesser term. Conspicuously, no words are found in the proviso for imposing a lesser fine than that of five thousand rupees. In such a situation the intention of the Legislature is clear and brooks no interpretation. The law is well settled that when the wordings of the Stature are clear, no interpretation is required unless there is a requirement of saving the provisions from vice of unconstitutionality or absurdity. Neither of the twin situations is attracted herein.

Hence, it is held that the amount of fine has to be Rupees five thousand and the courts have no discretion to reduce the same once the offence has been established. The discretion as per proviso is confined only in respect of term of imprisonment. **Employees State Insurance Corporation V. A.K. Abdul Samad & Anr. (2016) 2 SCC (Cri) 470 ; (2016) 4 SCC 785 (Criminal Appeal Nos.1065-1066 Of 2005)**

PARITY IN SENTENCE

Parity claimed – in sentence – must be contrued in accordance with the circumstances under which the previous sentence was ordered.

On behalf of the appellants it has been highlighted that the other three co-accused who were convicted for similar offences were ordered by the High Court to be released on probation of good conduct for the term of imprisonment. Although such relief was granted to those three co-accused mainly on consideration of their old age varying between 85 to 75 years, the appellants claim parity on account of similar role assigned to all the five convicts. The parity claimed by the appellants is misconceived. The concession shown to other three convicts was mainly on the ground of their extreme old age and that in our view justified the special treatment extended in their case. The High Court enhanced the sentence from three years to five years RI for the main offence because it was concerned and moved by the suffering of the injured Budhram on account of the sole head injury caused by lathi. Budhram was brought to court but was unable to depose because of mental impairment suffered by him. Had the prosecution witnesses been able to pinpoint the accused who caused the head injury on Budhram, we would have definitely treated him to be responsible of a graver offence meriting higher punishment but unfortunately no such specific role has been assigned to any of the five convicts. In such a situation, considering the other facts and circumstances, particularly the genesis of the occurrence which was on account of a dispute between the parties over a right to have a drain in a passage, we are persuaded to reduce the period of sentence for the offences under Section 325 read with Section 149 of the IPC in respect of both the appellants from five years to three years RI. However, the amount of fine and conviction and sentence for other offences are left intact. **Bijender @ Papu and Anr. V. State of Haryana 2016(4) Supreme 434 ; AIR 2016 SC 2710 (CRIMINAL APPEAL NO.463 OF 2016)**

FOR PARDON / REMISSION / FOR PAROLE

Parole - power is administrative in character - does not affect the power of the High Court under Article 226 of the Constitution.

So far as direction for grant of parole is concerned, we find that the learned Judge has directed parole to be granted for three months forthwith. In Sunil Fulchand Shah v. Union of India and others, 2000 3 SCC 409 the Constitution Bench while dealing with the grant of temporary release or parole under Section 12(1) and Section 12(1-A) of the Conversation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) had observed that the exercise of the said power is administrative in character but it does not affect the power of the High Court under Article 226 of the Constitution. However, the constitutional court before directing the temporary release where the request is made to be released on parole for a specified reason and for a specified period should form an opinion that request has been unjustifiably refused or where the interest of justice warranted for issue of such order of temporary release. The Court further ruled that jurisdiction has to be sparingly exercised by the Court and even when it is exercised, it is appropriate that the Court should leave it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu. **State Of Gujarat & Anr V. Lal Singh @ Manjit Singh & Ors : 2016(4) Supreme 657 ; 2016 Law Suit(SC) 608 ; 2016 (6) JT 519, 2016 AIR(SC) 3197, 2016 (8) SCC 370 (Criminal Appeal No: 171 of 2016)**

S.433 – Commutation of Sentence – Power of Court – Limitation – Court cannot direct appropriate Govt. to exercise its sovereign powers.

When the appropriate Government commutes the sentence, it does so in exercise of its sovereign powers. The court cannot direct the appropriate Government to exercise its sovereign powers. The Court can merely give a direction to the appropriate Government to consider the case for commutation of sentence and nothing more. This legal position is no more res integra. **State of Rajasthan v. Mohammad Muslim Tagala, 2014(8) Supreme 702.**

Section 436—Bail – Disposal – Consideration

After considering the gravity of the offence, circumstances of the case, particularly, the

allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the appellants and the fact that the investigation is held up as the custodial interrogation of the accused could not be done due to the anticipatory bail, the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon was rightly cancelled. [**Sudhir v. The State of Maharashtra and another, (2016) 1 SCC(Cri) 234; (2016) 1 SCC 146]**

Law of Bail, Sec. 437-- The Conundrum of Cognizance, Committal & Bail

The provisions of cognizance to committal are subsumed in Cr. P.C. from the section 190 to the Section 209 to commit the case to Sessions. What is to happen to the accused in this interregnum; can his liberty be jeopardized! The only permissible restriction to personal freedom, as a universal legal norm, is the arrest or detention of an accused for a reasonable period of 24 hours. Thereafter, the accused would be entitled to seek before a Court his enlargement on bail. In connection with serious offences, Section 167 CrPC contemplates that an accused may be incarcerated, either in police or judicial custody, for a maximum of 90 days if the Charge Sheet has not been filed.

An accused can and very often does remain bereft of his personal liberty for as long as three months and law must enable him to seek enlargement on bail in this period. Since severe restrictions have been placed on the powers of a Magistrate to grant bail, in the case of an offence punishable by death or for imprisonment for life, an accused should be in a position to move the Courts meaningfully empowered to grant him succour. It is inevitable that the personal freedom of an individual would be curtailed even before he can invoke the appellate jurisdiction of Sessions Judge. The Constitution therefore requires that a pragmatic, positive and facilitative interpretation be given to the CrPC especially with regard to the exercise of its original jurisdiction by the Sessions Court. We are unable tolocate any provision in the CrPC which prohibits an accused from moving the Court of Session for such a relief except, theoretically, Section 193 which also only prohibits it from taking cognizance of an offence as a Court of original jurisdiction. This embargo does not prohibit the Court of Session from adjudicating upon a plea for bail. It appears to us that till the committal of case to the Court of Session, Section 439 can be invoked for the purpose of pleading for bail. If administrative difficulties are encountered, such as, where there are several Additional Session Judges, they can be overcome by enabling the accused to move the Sessions Judge, or by further empowering the Additional Sessions Judge hearing other Bail Applications whether post committal or as the Appellate Court, to also entertain Bail Applications at the pre-committal stage. Since the Magistrate is completely barred from granting bail to a person accused even of an offence punishable by death or imprisonment for life, a superior Court such as Court of Session, should not be incapacitated from considering a bail application especially keeping in perspective that its powers are comparatively unfettered under Section 439 of the CrPC. [**Sundeep Kumar Bafna Versus State Of Maharashtra & Anr., (2015) 3 Scc (Cri) 558; (2014) 16 Scc 623, Criminal Appeal No. 689 Of 2014 [Arising Out Of Slp (Crl.)No.1348 Of 2014]**

The principles for bail - culled out

The principles which can be culled out, for the purposes of the instant case, can be stated as under:

1. The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed afalse or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.
2. The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest

of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

3. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

4. There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plentitude of Section 438 must be given its full play. There is no requirement that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

5. The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

6. It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

7. In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

8. Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

9. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

The following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

1. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
2. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
3. The possibility of the applicant to flee from justice;
4. The possibility of the accused's likelihood to repeat similar or other offences;
5. Where the accusations have been made only with the object of in juring or humiliating the applicant by arresting him or her;
6. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
7. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;
8. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;
9. The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
10. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused in entitled to an order of bail.

[**Bhadresh Bipinbhai Sheth Versus State Of Gujarat & Another, AIR 2015 SC 3090, Criminal appeal nos. 1134-1135 of 2015 [arising out of Special Leave Petition (Crl.) Nos. 6028-6029 of 2014]**

Role of pariry & criminal history in granting bail .

When a stand was taken that the accuded was a history sheeter, it was imperative on the part of the Court to scrutinize every aspect and not capriciously record that the accused is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the 2nd respondent has been charge sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this court would tantamount to travesty of justice, and accordingly we set it aside. [**Neeru Yadav Versus State Of U.P And Another**, **(2015) 3 Scc (Cri) 527; (2014) 16 Scc 508** Criminal Appeal No.2587 Of 2014 (Arising Out Of S.L.P. (Crl.) No. 8469 Of 2014)]

Sec. 437- Statutory bail- After grant of statutory bail if accused is charge sheeted- Tenure of proceedings gets altered –Accused has to get regular bail in respect of substantive offences whereof charge sheet had been filed –He cannot insist upon continuation of statutory bail

This application under Section 482 Cr.P.C. has been filed contending that the applicant cannot be compelled to seek a fresh bail under the substantive offences punishable under Sections 409, 420 IPC and Section 13(2) read with Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 inasmuch as the applicant is already on bail pursuant to the orders passed by

the trial court on 10.9.2012 in terms of Section 167 (2) Cr.P.C. for the alleged commission of offences as defined under Section 120-B IPC read with Section 409, 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

In my opinion, the arguments of the learned counsel for the C.B.I. has force inasmuch as the applicant has been subsequently charge sheeted and it is the offences thereunder in which he has been formally charged and has therefore to seek bail. There cannot be a presumption in relation to the charges at the stage of Section 167 Cr.P.C. The charges are framed only after completion of investigation and the filing of the charge sheet. It is quite possible in any case that the allegations if not made out, such a charge should be dropped while filing of the charge sheet. In view of this the arguments of the learned counsel for the applicant cannot be accepted as such a presumption cannot come to the aid of the applicant at the stage of Section 167 Cr.P.C.

Thus, the charge sheet having been subsequently filed the applicant has to have regular bail in respect of the substantive offences in respect whereof the charge sheet has been filed. The tenor of the proceedings gets altered after the charge sheet is filed and consequently once a formal charge is altered and offences are added then the accused has to get himself bailed out under the said section.

This is necessary inasmuch as unless the learned Special Judge proceeds to pass any orders on the allegations of offences as contained in the charge sheet, it will not be possible to treat an accused to be deemed on bail as per the order under Section 167(2) Cr.P.C. which is only in relation to the offences during the period of remand and not in relation to any charges added in the charge sheet. **(Abhay Kumar Bajpai v. C.B.I., 2015 (5) ALJ 552)**

S.439 – Grant of bail – Factors to be considered – Seriousness of allegations are determinative of grant of refusal of bail but delay in commencement and completion of trial is also an important factor. Accused cannot be kept in custody for indefinite period.

It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. **Dr. Vinod Bhandari v. State of M.P., 2015(1) Supreme 513.**

Section 439 Cr.P.C. – Ss. 376, 511 and 354 IPC – Application for bail rejected as daughter was subjected to sexual harassment by her own father. Sanctity of relationship between father and daughter recognized throughout ages in all races and in all parts of the world without exception. When debased promiscuity of an outlaw violates such pious relationship, social ramifications which follow are outrageous. Alleged sexual crime committed by father against his daughter is apparently a scandalous blasphemy, not to speak of culpability of offence or degree and enormity of crime. Trial of applicant is still to take place. Looking to gravity of charges, nature of crime and material evidence available on record and also in view of overall facts and circumstances of case. No ground to release applicant on bail – Bail rejected.

There are certain relationships which are so sacrosanct that nothing except faith and affection and complete trust signifies them. The sanctity of the relationship between father and daughter has been recognized throughout ages in all races and in all parts of the world without exception. When the debased promiscuity of an out law violates such pious relationship, the social ramifications which follow are outrageous. Such amorous delinquents become a threat to the society because they violate and disrupt the time honoured social fabric of relationship which exists between men and men, and men and women. The alleged sexual crime committed by the father

against her daughter is apparently a scandalous blasphemy, not to speak of the culpability of the offence or the degree and enormity of the crime which the applicant has been charged for. Innumerable girls suffer in silence when they are subjected to sexual offences for the fear of the infamy which the disclosure of such offence begets on them. It is infinitely more difficult to come out in the open against the offender when he is none else then her own father. Fear of being ostracized, the awe of being nicknamed and the apprehension of being exposed to the countless social jeers impel the victims of such outrages to cringe and shrivel, and tamely submit to their misfortune and learn to get reconciled. It is indeed upsetting to note that in this case even the other of the victim girl could not mobilize enough courage to put any successful resistance or protest against the aforesaid sexual inroads which were being made by her husband on her own daughter. To the contrary the girl has even complained that even her mother was seen at times taking the side of the culprit.

The trial of the applicant is still to take place and this Court, therefore, abstains to enter into a threadbare discussion of the details of the evidence or material collected on behalf of the prosecution, lest it might cause prejudice to either side. But suffice it to say that looking to the gravity of the charge and the nature of material evidence available on record and also in view of the overall facts and circumstances of the case, there is absolutely no ground to release the applicant on bail. **Ram Prakash Sunar v. State of U.P., 2015 (89) ACC 11 (Alld.)**

Sec. 439-- Cancallation of bail-- Jurisdiction for cancallation of bail - when an individual behaves in a disharmonious manner ushering in disorderly things - which the society disapproves - the legal consequences are bound to follow.

The liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.

It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court. **[Neeru Yadav Versus State Of U.P And Another, (2015) 3 SCC (Cri) 527; (2014) 16 SCC 508 Criminal**

Appeal No.2587 Of 2014 (Arising Out Of S.L.P. (Crl.) No. 8469 Of 2014)]

Section 439- Indian Penal Code, 1860- Sections 323 , 308 and 506- Bail-Grant of- Some important factors must be consider like as- circumstances of case, nature of evidence, period of detention already undergone, unlikelihood of early conclusion of trial and also absence of any convincing material to indicate possibility of tampering with evidence

After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of unlikelihood of early conclusion of trail and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this court is of the view that the applicant may be enlarged on bail. **(Munna v. State of U.P., 2015 (91) ACC 146)**

S. 451- Application for release of Vehicle -Rejection of –Legality

A FIR was lodged against Sanjay the son of revisionist along with others in Crime No. 14/2006 under Section 364A IPC, P.S. Sadar Bazar, District Agra with the allegation that Dipendra @ Dipu aged about 17 years was kidnapped. On 10.1.2006 the complainant received telephonic message by Visheshwar Dayal that they are reaching with Dipendra @ Dipu at Rohata Nahar and instructed the complainant to reach at Rohta Nahar with five lacs rupees. On this information, the police party along with complainant reached at Rohta Nahar where accused Gaurav Sharma and Kishan Sharma who were on two motorcycles were arrested and kidnappee Dipendra @ Dipu also recovered. Two accused who were on third motorcycle succeeded to escape from the recovery place. The accused persons, who were arrested on the spot, are said to have disclosed the name of escaped accused. The son of revisionist namely Sanjay was named as an accused in the FIR and Maruti Car No. U.P. 83B 6273 was alleged to be used in the said kidnapping. It is stated by the revisionist in the application that his driver namely Raja took the said vehicle on 18.12.2005 for the purpose of attending a function and came back on 22.12.2005 in the morning and stated that his cousin was seriously ill and died, hence he could not return within time. It is also stated that he had no concern or knowledge with the alleged incident. Since the vehicle is lying in open place of police station and day by day the condition of the said vehicle is being ruined. The son of the applicant namely Sanjay had been granted bail. Therefore, the applicant approached for release of vehicle but the said application was rejected by the learned Special Judge (D.A.A.) Agra by saying that the car being case property was alleged to be used in kidnapping.

Aggrieved from the said order, present revision has been filed.

In this case, revisionist is the registered owner of the vehicle in question and he is not the accused. Kidnappee was recovered from the accused who were on motorcycle. As per co-accused's statement, the vehicle in question was said to be used in crime but nothing was recovered from the vehicle. No useful purpose would be served by keeping the vehicle in police station and there is likelihood of the condition of the said vehicle being deteriorated and ultimately the vehicle may become junk.

Hence the revision is allowed and the impugned order dated 29.4.2006 is hereby set aside. The Special Judge (D.A.A.) Agra is directed to release the vehicle, i.e., Maruti 800 bearing No. U.P. 83-B 6273 in favour of the revisionist on his executing a personal bond with one surety in the like amount to the satisfaction of the Judge concerned subject to the condition that during the pendency of the case the revisionist will not make any internal or external change in the said vehicle, he will not transfer the same to any person and will produce the same at his expenses before the Court concerned or any other authority as and when he is directed to produce the same. **[Mahavir v. State of U.P., 2015 (90) ACC 810]**

Sections 451 and 482 – Disposal of property pending trial – When remedy is available for filing revision in subordinate Court - Then High Court does not find any ground to invoke in its Inherent jurisdiction.

The present application under section 482 Cr.P.C. has been filed by the applicant with the

prayer to quash the order dated 14-9-2005 passed by the Additional Chief Judicial Magistrate, Northern Railway, Ghaziabad in Case No. 2275 of 2004 (State v. Anis and others) under sections 379/411 I.P.C., Police Station G.R.P., District – Ghaziabad whereby the Court below has allowed the release application of the informant/complainant and release the currency note recovered in the matter in favour of the informant/complainant.

From a perusal of the entire record, it is clear that the said currency note, which has been released in favour of the informant/ complainant, was in the custody of the Court below. Therefore, the provisions enumerated under section 451 Cr.P.C. are clearly applicable to the present matter and the order passed on the release application under section 451 Cr.P.C. is revisable one. The Apex Court in the case of Sunderbhai Ambalal Desai v. State of Gujarat, 2003(46) ACC 223(SC), has held that the property in the custody of the Court should be released at the earliest.

Since the applicant has approached this Court directly without availing statutory remedy of filing revision, this Court does not find any ground to invoke its inherent jurisdiction and to analyse /adjudicate the matter on merits. It is open to the applicant to file revision before the concerned District and Sessions Judge against the impugned order and may raise all questions, raised by him in this Court, which shall be dealt with/ considered by the Revisional Court. [**Anis v. State of U.P. and another, 2015(88) ACC 29 (H.C.)].**

24 and 301 Cr. P. C.

Transfer of a case by the Hon'ble Supreme court - under Section 406 of the Code - the transferee State - steps into the shoes of the transferor State - effectively becomes the prosecuting State - It can and does appoint a Public Prosecutor to prosecute the case - a Public Prosecutor who is answerable to the government of the transferee State only - the Public Prosecutor appointed by one State is certainly not answerable to the government of another State.

The only reasonable interpretation that can be given to the scheme laid out in Sections 24, 25, 25-A and 301(1) of the Code is that a Public Prosecutor appointed for the High Court and who is put in charge of a particular case in the High Court, can appear and plead in that case only in the High Court without any written authority whether that case is at the stage of inquiry or trial or appeal. Similarly, a Public Prosecutor appointed for a district and who is put in charge of a particular case in that district, can appear and plead in that case only in the district without any written authority whether that case is at the stage of inquiry or trial or appeal. So also, an Assistant Public Prosecutor who is put in charge of a particular case in the court of a Magistrate, can appear and plead in that case only in the court of a Magistrate without any written authority whether that case is at the stage of inquiry or trial or appeal. Equally, a Special Public Prosecutor who is put in charge of a particular case can appear and plead in that case only in the court in which it is pending without any written authority whether that case is at the stage of inquiry or trial or appeal. In other words, Section 301(1) of the Code enforces the 'jurisdictional' or 'operational' limit and enables the Public Prosecutor and Assistant Public Prosecutor to appear and plead without written authority only within that 'jurisdictional' or 'operational' limit, provided the Public Prosecutor or the Assistant Public Prosecutor is in charge of that case. The converse is not true, and a Prosecutor (Public Prosecutor, Assistant Public Prosecutor or Special Public Prosecutor) who is put in charge of a particular case cannot appear and plead in that case without any written authority outside his or her 'jurisdiction' whether it is the High Court or the district or the court of a Magistrate. In other words, Section 301(1) of the Code maintains a case specific character and read along with Sections 24, 25 and 25-A of the Code maintains a court or district specific character as well. **K. Anbazhagan Versus State of Karnataka and Ors. 2015(3) Supreme 705 31 Cr.P.C.**

Full discretion - order sentences - for two or more offences - to run concurrently – if court does not order the sentence to be concurrent - one sentence may run after the other

As pointed out earlier, Section 31 Cr.P.C. deals with quantum of punishment which may be

legally passed when there is - (a) one trial and (b) the accused is convicted of two or more offences. Ambit of Section 31 is wide, covering not only single transaction constituting two or more offences but also offences arising out of two or more transactions. (Para 19)

Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. Normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the Court does not order the sentence to be concurrent, one sentence may run after the other. **O.M. Cherian @ Thankachan v. State Of Kerala & Ors. (2015) 2 SCC (Cri) 123 : (2015) 2 SCC 501**

Section 465 of the Cr.P.C

Omissions and/or irregularities - in matters of procedure - be overlooked – if it does not occasion ―failure of justice‖.

Section 465 of the Cr.P.C. pertains to omissions or irregularities in matters of procedure. It is, therefore, that both the sub-Sections of Section 465, pointedly refer to proceedings under the Cr.P.C. Added to the above it is of some significance, that Chapter XXXV of the Cr.P.C. include Sections 460 to 466. The heading of the instant Chapter is "Irregular Proceedings". Not only that, each one of the Sections in Chapter XXXV of the Cr.P.C. make pointed reference only to matters of procedure. There can be no doubt, therefore, that omissions and/or irregularities in matters of procedure can be overlooked, subject to the condition, that such an omission or irregularity does not occasion "failure of justice".

Having so interpreted Section 465 of the Cr.P.C., we may also indicate, that material facts constituting the offence, for which an accused is being charged, must mandatorily be put to the accused. Lack of material facts, which are vital to establish the ingredients of an offence, cannot be viewed as a procedural omission. The above requirement is not procedural, but substantive. **Securities and**

Exchange Board of India V. Gaurav Varshney & Anr. 2016(5) Supreme 417 (Criminal Appeal Nos. 827-830 of 2012)

Section 468 & 482 – Indian Penal Code Section 307

Incident in question took place on 11.02.1992. Two cross cases under Section 307 IPC were registered. Investigation agency charge sheeted respondent No. 2 and after trial respondent No. 2 along with 3 other was convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for seven years vide judgment dated 23-09-2009 by Sessions Judge.

Another case Cri. No. 37/92 was registered on behalf of respondent No. 2. On 11-08-2005 respondent No. 2 filed an application for summoning progress report of Crime No. 37/92. No order was passed on that application but it was only on 01-02-2008 that respondent No. 2 filed another application asking the progress report of the case Crime No. 37/92. Application was disposed of in view of report of police that the appellants were exonerated during investigation.

On 03-05-2008 the respondent No. 2 filed impugned complaint alleging that the appellants on 11-02-92 had committed offence under Section 307 IPC.

On 03-06-2009 the appellants were summoned by the Learned Magistrate. The appellants then filed the petition for quashing the complaint.

This petition was dismissed by the Hon'ble High Court. Then appeal was filed before the Apex Court.

Hon'ble the Apex Court observed in para 17 and 18

"17. …… mere delay in completion of proceedings may not be by itself a ground to quash proceedings where offences are serious, but the Court having regard to the conduct of the parties, nature of offence and the extent of delay in the facts and circumstances of a given case, may

quash the proceedings in exercise of jurisdiction under Section 482 Cr.P.C. in the interest of justice and to prevent abuse process of the court.

18. In the present case, conduct of the complainant can certainly be taken into account. Admittedly, the complainant stood convicted in a cross case. At least for ten years after commencement of the trial, the complainant did not even bother to seek simultaneous trial of the cross case, the step which was taken for the first time in the year 2005 which could certainly have been taken in the year 1995 itself when the trial against respondent No.2 commenced. Having regard to the nature of allegations and entirety of circumstances, it will be unfair and unjust to permit respondent No. 2 to proceed with a complaint filed 16 years after the incident against the appellants."

According appeal was allowed and the proceedings of the complaint case quashed. [**Sirajul v. The State of U.P., (2015)(7) SCALE 523]**

Sections 468 and 473 - Limitation - Bar to take cognizance - Extention of period-Held, not a universal mandate that no cognizance can be taken of offence punishable with fine only or for imprisonment up to one year and extending from one year to three years after expiry of period of limitation-Period of limitation may be extended vi- when delay occasioned is appropriately explained.

In view of above, it is obvious that it is not a universal mandate that no cognizance can be taken of offences punishable with fine only or for imprisonment upto one year and extending from one year to three years as described under section 468 Cr.P.C. after expiry of period of limitation. The period of limitation may be extended in two circumstances as laid down under section 473 Cr.P.C ; first one is to take place when delay occasioned is appropriately explained and the second one is barred in interest of justice i.e. when it is necessary so to do in the interest of justice.

Certainly, the learned Magistrate while proceeding further with the case summoning order has perhaps not indicated specifically about any finding on limitation in taking cognizance of the offence and issuing summons against the applicant. The point of limitation as raised before this Court at this stage can be suitably dealt with by the Court below, if so urged. Therefore, it would not be in the fitness of this that this Court should usurp the right of the Magistrate, under Section 473 Cr.P.C. and decide the point of limitation as to whether the cognizance of the offence can be taken and the applicants can be proceeded with or not; as it is the jurisdiction of the Magistrate alone at this point of time**. Amar Singh v. State of U.P., 2015 (89) ACC 749 (HC)**

Sec. 482 r/w sec. 138, Negotiable Instruments Act, 1881 – Quashing petition – Court to proceed on the basis of complaint – Defence of accused cannot be considered.

The parameters of jurisdiction of the High Court in exercising of its jurisdiction under Section 482 of the Code of Criminal Procedure are now well settled. Although it is the wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well known legal principles involved in the matter. **Sampelly Satyanarayana Rao V. Indian Renewable Energy Development Agency Limited, 2016 (6) Supreme 733**

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Section 482 -- Quashing of proceedings

Where the exoneration of the person in the adjudication proceeding was not on merits or that he was not found completely innocent, it would not be right and justified in accepting the

prayer for quashing of the proceedings. **[Air Customs Officer, IGI, New Delhi v. Pramod Kumar Dhamija, (2016) 2 SCC (Cri) 253; (2016) 4 SCC 153].**

Section 482 – Indian Penal Code Section 406, 409 and 420

A society was constituted for charitable work and social service – Appellants No. 1, 2 and 3 were President, Secretary and Treasurer respectively while appellants 4 to 7 were Directors of the Society. A piece of land was purchased by the society vide Registered Sale deed dated 28-01-1978. A criminal complaint was filed by respondent No.1 alleging that appellants 1 to 7 being members of the Executive and Directors of the Society misusing the position held Board meetings facilitating sale of that land in favour of their relatives (appellants 7 to 12). It was further alleged that the appellants 7 to 12 executed sale deeds in the same year in favour of Directors of the Society. Such Sale deeds were executed in the year of 1996. Criminal complaint was registered under Section 406, 409 and 420 IPC. Held that –

1. Complainant was not a member of the society.
2. The complainant had raised the issue of mala fide execution of sale deed after a period of 12 years of its execution.
3. From the contents of the complaint nowhere reflected that the complainant was deceived or he or anyone else was induced to deliver the property by deception.

So complaint was rightly quashed by the High Court. [**Mr. Robert John D. Souza & others v. Mr. Stephen v. Gomes & others, (2015)8 SCALE 95]**

Section 482 Cr.P.C. – Section 138– Negotiable Instruments Act, 1881 – Section 420 – Indian Penal Code, 1860. Summoning order sought to be quashed by the accused-applicant on ground that there is no mention in the complaint regarding date and manner of service of notice on the accused. Cheque bounced twice for insufficiency of funds. Sending notice through registered post itself capable of presumption of service. Mentioning of manner of service no requirement of law – Service in due course has to be presumed – No good ground to interfere with the summoning order or the proceedings under challenge – Application dismissed.

This Court cannot loose sight of the fact that it is one of the prime aims of the Negotiable Instruments Act to generate an ambience of trust and implied faith on the Indian Banking system, which is one of the very significant arms of the Indian economy. Unscrupulous people who have the intent to dupe the innocent person often use the modus operandi of issuing cheques, even though they never desire the same to be honoured. Sometimes at the time of issuing cheques there may be fund in the Bank but at the time the cheque is presented at the Bank the amount is withdrawn prior to the same by the drawer. Sometimes there is a clandestine contrivance adopted by the mala fide drawer, who on the one hand issues the cheque and on the other hand gives instructions to the Bank to stop payment of the same and not to honour the cheque.

In the present case twice the cheque got dishonoured because of insufficiency of funds while on the third time when the same was presented, the cheque got dishonoured under somewhat extra ordinary circumstances, as, though momentarily, the amount was sent to the account but soon thereafter was withdrawn, as per instructions given by the accused to the Bank. As is so obvious, the complainant was every time getting the dirty end of the stick. The legislature has aimed to discourage such kinds of exploitation of innocent persons, through the instrumentally of the ill use of Banking Institutions.

It has been further argued as to how the service was effected and the details of the service have not been furnished in the complaint. Both the above quoted sections of the Evidence Act as well as the General Clauses Act squarely takes care of such technical arguments, whenever, they are raised.

The combined reading of the above noted provisions of the Evidence Act as well as the General Clauses Act makes it clear that the twin provisions are well sufficient to answer the

submissions advanced on behalf of the applicant. Though in the present matter also the language of complaint does not disclose whether the service was effected or not and if the notice was served then when, how and in what manner was it effected, but in view of the Court, the omissions of the details about the manner of service would not strike either at the maintainability of the complainant or the consequent proceedings hereupon. Sending notice through registered post by itself would be capable to raise the resumption of service and mentioning the other details of manner of service does not seem to be the requirement of law.

Elaborately dealing with the situation where the notice could not be served on the addressee for one or the other reason, such as his non availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere etc; it was observed that if in each such case, the law is understood to mean that there has been no service of notice, it could completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce or sometime after issuing the cheque so that the requisite statutory notice can ever be served upon him and consequently he can never be prosecuted. It was further observed that once the payee of the cheque issues notice to the drawer of the cheque, the cause of action to file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under Clause (c) of the proviso to section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the notice, which may be returned with an endorsement that the addressee is not available on the given address. This Court held: We cannot also lose sight of the fact that the drawer may by dubious means manage to get an incorrect endorsement made on the envelope that the premises has been found locked or that the addressee was not available at the time when postman went for delivery of the letter. It may be that the address is correct and even the addressee is available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are proved, it may amount to refusal of the notice. If the complainant is able to prove that the drawer of the cheque knew about the notice and deliberately evaded service and got a false endorsement made only to defeat the process of law, the Court shall presume service of notice.

This, however, is a matter of evidence and proof. Thus even in a case where the notice is returned with the endorsement that the premises has always been found locked or the addressee was not available at the time of postal delivery, it will be open to the complainant to prove at the trial by evidence that the endorsement is not correct and that the addressee, namely the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive notice. Therefore, it would be premature at the stage of issuance of process, to move the High Court for quashing of the proceeding under section 482 of the Code of Criminal Procedure. **Apurva (Proprietor) A.D. Builder v. State of U.P., 2015 (89) ACC 47 (Alld.)**

Section 482, Cr.P.C. - Claim of father that his daughter was minor as per High School certificate and at the time of incident she was 17 years six months and 5 days. But as per her statement re- corded under section 164, Cr.P.C. she stated her age 21 years. She further stated that she voluntarily went with applicant and on her own sweet will married with accused-She wanted to go with her husband-But finding her minor, Lower Court found it proper for sending her to Nari Niketan till she attained majority. The question of applicant being minor is irrelevant as a minor cannot be kept in protective home against her will. Thus, it is a clear cut case of illegal confinement of minor against her wishes violating fundamental rights. Impugned order set aside-Direction issued to Superintendent of Nari Niketan to release victim to go according to her own wish. **Gajraj Sing v. State of U.P., 2015 (89) ACC 532 (Alld.)**

Section 482 - Indian Penal Code, 1860 - Sections 147, 148, 149, 302 and 307/34- Over whelming evidence against the petitioner found by C.B.C.I.D.-Charge- sheet submitted against the

accused persons-Petitioner canvassing his right of fair trial and investigation- Himself getting investigation transferred time and again and lingering on the case in such process-Claiming investigation to be tainted, unfair and defective without realizing that points raised by him are points of defence already investigated by the C.B.C.I.D. Petitioner approached the Court time and again adopting dilatory tactics of filing petitions. Plea that he has been falsely implicated on account of political enmity and that he was present at Lucknow when the incident occurred. Petitioner can exercise his right to defend himself and prove his case before the Trial Court by leading cogent evidence-Investigation twice transferred at his instance-Again transferred for further investigation after filing of the charge-sheet. Prayer of petitioner for transfer of further investigation to any other independent investigating agency not justified. Investigation, further investigation and de novo or reinvestigation can only be ordered by the High Court in rarest of rare cases. Submission that charge-sheet filed against the petitioner on basis of tainted and unfair investigation is liable to be quashednalso without any basis - Prayer for transfer of further investigation and to quash the charge-sheet rejected. Accused persons directed to surrender before the Court concerned. **Udai Bhan Kanwariya v. State of U.P., 2015 (89) ACC 805 (HC)**

Section 482— No quash even after settelment of amount

The allegation against the respondent is „forgery" for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication, science & technology etc. have led to an enormous increase in economic crimes viz. phishing, ATM frauds etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at public at large. The inherent power of the High Court under Section 482 Cr.P.C. should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi"s case, the order of the High Court cannot be sustained. [**Central Bureau Of Investigation Versus Maninder Singh, AIR 2015 SC 3657 (CRIMINAL APPEAL NO. 1496 OF 2009)]**

In criminal cases governed by the Code - the Court - not powerless and may allow amendment in appropriate cases - to avoid the multiplicity of the proceedings.

What court is emphasizing is that even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated.

Kunapareddy @ Nookala Shanka Balaji V. Kunapareddy Swarna Kumari & Anr 2016(4) Supreme 481 ; 2016 LawSuit(SC) 579 ; 2016 AIR(SC) 2519, 2016 (5) JT 365, 2016 AIR(SCW) 2519, 2016 (2) Crimes(SC) 277, 2016 CrLR 600, 2016 (5) Scale 703