* **HONOURABLE SRI JUSTICE T.SUNIL CHOWDARY**

+ CRIMINAL PETITION No.13117 of 2016

% Date**:** 09.12.2016

Nara Chandrababu Naidu, S/o.late Kharjura Naidu
... Petitioner

and

$ The State of Telangana, represented by
its Public Prosecutor and another

... Respondents

! Counsel for the Appellant : Sri Siddharth Luthra,
Learned senior counsel representing Sri P.Subbarao

^ Counsel for the respondent No.1: Sri V.Ravi Kiran Rao,
Learned Standing Counsel for the ACB, Telangana
Counsel for the respondent No.2: Sri P. Sudhakar Reddy

< GIST:

➢ **HEAD NOTE**:

? CASES REFERRED:

1) (2002) 3 SCC 722
2) (2016) 9 SCC 313
3) (2001) 8 SCC 607
4) (2012) 12 SCC 754
5) (2014) 2 SCC 687
6) 1966 CriLJ 677
7) (1970) 1 SCC 653
8) (2012) 2 SCC 688
9) 2008 CriLJ 2179
10) 2008 CriLJ 1515 (1)
11) (XLI) 2000 ACC 435
12) 2011 CriLJ 2278
13) AIR 1965 SC 507 (1)
14) (2010) 3 SCC 732
15) (2015) 6 SCC 287
16) (2013) 10 SCC 705
17) (2015) 6 SCC 439
18) 2008 Law Suit (All) 235
19) 2008 Law Suit (All) 47

20) (1977) 4 SCC 551
21) AIR 2016 SC 4245
22) (1974) 4 SCC 396
23) (1983) 2 SCC 422
24) (2011) 2 SCC 654
25) (1984) 2 SCC 500
26) (1976) 3 SCC 252
27) 1999 CriLJ 3909
28) (2014) 2 SCC 1
29) (2001) 6 SCC 181
30) (2013) 6 SCC 348
31) (2007) 12 SCC 641
32) (2006) 1 SCC 627
33) (2006) 4 SCC 584
34) 1987 Cri.LJ 1605 (Karala HC)
35) 2001 (1) ALT (Crl.) 17
36) 1980 LawSuit (KAR) 260 = 1980 (2) KarLJ 400
37) (2006) 9 SCC 601
38) (2013) 10 SCC 591
39) (1991) 3 SCC 756
40) (1992) 4 SCC 653
41) (2013) 10 SCC 465
42) (2016) 6 SCC 669
43) (2010) 12 SCC 599
44) (1980) 3 SCC 141
45) AIR 2005 SC 540
46) AIR 1984 SC 718
47) (2012) 3 SCC 64
48) (2007) 1 SCC 1
49) (2012) 1 SCC 59
50) (2007) 7 SCC 407
51) (1986) 3 SCC 67
52) (2015) 11 SCC 260
53) (1987) (sup) SCC 89
54) (1983) 2 SCC 384
55) (2006) 7 SCC 1
56) 2004 LawSuit (Chh)13
57) AIR 1998 SC 2120
58) 1955 CriLJ 181
59) AIR 1955 CriLJ 108
60) AIR 1992 SC 604
61) AIR 1960 SC 866

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.13117 OF 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C., seeking to quash the order dated 29.8.2016 as well as the proceedings in CCSR No.958 of 2016 in Crime No.11/ACB-CR-1-HYD/2015 on the file of the Court of the Principal Special Judge for SPE and ACB cases, Hyderabad (the Special Court/the Special Judge).

Pleadings of the petitioner

2. The petitioner filed the present petition contending that the second respondent, who is a Member of Legislative Assembly (MLA) representing Mangalagiri Constituency in Andhra Pradesh, belongs to YSR Congress Party, and who has no connection with Crime No.11/ACB-CR-1-HYD/2015 on the file of ACB Police Station, City Range-I, Hyderabad (neither informant nor a witness), filed the private complaint (CCSR No.958 of 2016) against the petitioner before the Special Court on 08.8.2016. The complaint was filed basing on the same allegations in the above Crime, in which a charge sheet had been filed on 27.7.2015. It is pertinent to note that the complaint does not disclose about the filing of the charge sheet in the Crime. The impugned order dated 29.8.2016 passed by learned Special Judge in CCSR No.958 of 2016 directing the ACB to conduct thorough investigation and file report under Section 156(3) Cr.P.C., is legally not sustainable, as the power under section 156(3) Cr.P.C., is not available to post cognizance

stage i.e., after filing of charge sheet. If the impugned order is allowed to stand, it would result in an anomalous situation of registration of second First Information Report (FIR), in connection with the same incident. The alleged incident is relating to the elections to the Legislative Council of the State of Telangana for which the second respondent is no way concerned. The second respondent filed the complaint, as a weapon, to wreak vengeance against the petitioner. The second respondent has no *locus standi* to file the private complaint, especially, with a request to invoke the provisions of Section 210 Cr.P.C., as he is neither a victim nor an aggrieved person. The relief under Section 210 Cr.P.C., cannot be granted, as it mandates pre-existence of a private complaint before the Magistrate, which is not the case herein. The second respondent has not followed the procedure contemplated under the Cr.P.C., in filing the complaint; therefore, the complaint is not maintainable.

3. The complaint was not supported by affidavit. The second respondent filed the complaint with a prayer to take cognizance of his complaint and to proceed further in terms of Section 210 Cr.P.C., whereas the learned Special Judge ordered investigation under Section 156(3) Cr.P.C., which is contrary to the relief sought by the second respondent. Mere endorsement of the learned Special Judge that he has gone through the complaint, documents and heard the complainant is not sufficient to come to a conclusion that he has applied his mind at the time of passing the impugned order under Section 156(3) Cr.P.C. The learned Special

Judge passed the impugned order without applying his judicial mind to the facts of the case and therefore, the order is not sustainable under law.

4. The petitioner has not committed any offence much less the offence as alleged by the second respondent. The complaint does not disclose any cognizable offence either to take it on file or to refer it to the ACB for investigation. The allegations made in the complaint are vague, untenable and false. In Criminal Petition No.5520 of 2015 filed by Jerusalem Mathai (A.4), this Court, by order dated 03.6.2016, quashed the proceedings against A.4 in Crime No.11/ACB-CR-1-HYD/2015. As per the observations made and findings arrived at by this Court in Criminal Petition No.5520 of 2016, there is no criminal conspiracy in this case; therefore, the Prevention of Corruption Act, 1988 (the PC Act) has no application to the facts and circumstances of the case (which judgment, though challenged before the Hon'ble apex court, is not stayed or set aside so far). Keeping in view the above findings, the learned Special Judge acted with undue haste and contrary to judicial propriety though he has no jurisdiction either to entertain the complaint or to refer it to the Police for investigation.

5. Hence, the petitioner prays this Hon'ble Court to quash the complaint in CCSR No.958 of 2016 pending on the file of the Special Court as well as the order dated 29.8.2016 passed therein.

Pleadings of the first respondent

6. The first respondent filed the counter with the following averments: It is a fact that the Anti Corruption Bureau, Telangana

State (the ACB) had initially registered Crime No.11/ACB-CR-1-HYD/2015 against four persons, investigated into the matter and had filed charge sheet against A.1 to A.4 under Section 173(2) Cr.P.C., before the Special Court on 27.7.2015. As on today, the investigation in the above crime is still pending against one Sandra Venkata Veeraiah, MLA, who is subsequently arraigned as A.5, and others. In the charge sheet, the ACB has specifically mentioned as follows:

> "The investigation in this case is still under investigation against the Accused No.5 Sri Sandra Venkata Veeraiah (who was arrested on 06.07.2015 and was produced before this Hon'ble Court on 07.07.2015) and other accused. Any other material which comes to light during the further course of investigation against A.1 to A.4 and others, the same would be placed before this Hon'ble Court by filing supplementary charge sheet."

7. The learned Special Judge had taken cognizance of the offence against A.1 to A.3 in Crime No.11/ACB-CR 1-HYD/2015, numbered the charge sheet as C.C.No.15 of 2016 and A.1 to A.3 made their appearance before the Special Court on 29.9.2016. Against the order of this Court dated 03.6.2016 in Criminal Petition No.5520 of 2015 quashing the proceedings against A.4 in Crime No.11/ACB-CR 1-HYD/2015, the ACB filed SLP No.5248 of 2016 before the Hon'ble apex Court on 06.7.2016 and notice was ordered to A.4. The matter is now pending before the Hon'ble apex Court.

8. In respect of the same incident, giving rise to one or more cognizable offences, there can be no second FIR. The ACB has filed a Memo before the Special Court on 31.8.2016 stating that "*The transaction subject matter of the investigation done by the ACB*

Telangana in Cr.No.11/ACB-CR-1-HYD/2015 and the subject matter in the complaint filed by Sri Alla Ramakrishna Reddy, M.L.A, Mangalagiri in C.C.SR. No.958/ 2016 are one and the same and the same is under investigation as submitted above."

9. There is no prayer in the complaint of the second respondent to refer the same for investigation under Section 156(3) Cr.P.C. The second respondent filed the complaint with a prayer to deal with the matter under Section 210 Cr.P.C., only. The provisions of Section 210 Cr.P.C., can be pressed into service when a private complaint is filed in relation to a transaction, which is the subject matter of a Crime pending for investigation. *Locus standi* is alien to criminal jurisprudence. Hence, this Court may be pleased to pass appropriate orders in the facts and circumstances of the case.

Pleadings of the second respondent

10. The second respondent filed the complaint under Sections 190 and 200 Cr.P.C., before the Special Court alleging that on 28.5.2015 one Mr.Elvis Stephenson, MLA, representing Anglo-Indian Community (hereinafter referred to as 'the *de facto* complainant') submitted a report to the Director General of Police, ACB, Hyderabad, Telangana State, who in turn forwarded the same to the Deputy Superintendent of Police, ACB, City Range-I, Hyderabad to verify the contents of the report and take action as per law. In the said report the *de facto* complainant alleged that one Mr.Jerusalem Mathai (A.4) approached him and offered an amount of Rs.2.00 crores to vote in favour of Telugu Desam Party (TDP) Candidate in MLC elections in the State of Telangana or in

alternative offered a ticket to leave the country if he wants to abstain from the voting. It is further alleged that the *de facto* complainant was also contacted by Mr.Bishop Harry Sebastian (A.2), who offered him a sum of Rs.5.00 crores, to abstain from casting his vote in the elections to be held on 01.6.2015 or to vote in favour of TDP candidate and that the entire transaction would be dealt with by Revanth Reddy (A.1), MLA of Kodangal Constituency, Telangana.

11. The DSP, ACB, City Range-I, Hyderabad took up inquiry into the matter and kept watch on the above named persons and came to know that A.2 and A.4 are the followers of TDP (Christian Cell). On 30.5.2015 at about 10.30 AM the *de facto* complainant informed the DSP, ACB that A.1 and A.2 were coming to his house situated at H.No.6-2-101/1/7, New Bhoiguda for discussions on the deal. Immediately, the DSP, ACB rushed to the residence of the *de facto* complainant and got arranged electronic gadgets. At about 12.00 Noon, A.2 along with A.1 came to the house of the *de facto* complainant and A.1 requested him to cast his vote in favour TDP Candidate, offering Rs.2.50 crores towards *quid pro-quo*. A.1 also invited the *de facto* complainant to talk to the petitioner directly on the deal and assured that such meeting would be 100% confidential.

12. On 30.5.2015 at about 4.00 PM, A.2 made calls to the mobile of the *de facto* complainant, three or four times, and informed that the petitioner is busy and he would make him (the petitioner) to call to the *de facto* complainant whenever the

petitioner finds leisure. Accordingly, at 4.00 PM A.2 made a call to the de-facto complainant through his mobile number and informed him that the petitioner wants to talk to him and handed over the phone to the petitioner, who in turn spoke to the *de facto* complainant saying that:

> *"Hello! Good evening brother, how are you,*
> *Manavallu briefed me. I am with you, Don't bother*
> *For everything I am with you, what all they spoke will honour.*
> *Freely you can decide. No problem at all.*
> *That is our commitment. We will work together.*
> *Thank you."*

13. After getting seeming approval from the petitioner for enhancing the bribe amount from Rs.2.5 crores to Rs.5.00 crores, A.1 and A.2 persuaded the operation further and informed the *de facto* complainant that on 31.5.2015 they would be coming, but requested him to change the place to handover the proposed bribe amount. Upon which, the *de facto* complainant informed A.1 and A.2 to come to the house of Malcolm Taylor at Pushpa Nilayam, Plot No.204 to handover the bribe amount. The *de facto* complainant informed the Investigating Officer about the visiting of A.1 and A.2 to the house of Malcolm Taylor at Pushpa Nilayam to handover the bribe amount. The Investigating Officer, after receiving the said information, laid a trap by implanting audio and video recorders at the house of Mr. Malcolm Taylor and kept a watch. On the same day at about 4.00 PM, A.1 and A.2 came to Plot No.204, Pushpa Nilayam along with cash bag containing Rs.50.00 lakhs. A.1 and A.2 negotiated with the *de facto* complainant and offered Rs.5.00 crores as bribe for casting his vote in favour of TDP Candidate in MLC elections to be held on

01.6.2015. On the directions of A.1, Rudra Udaya Simha (A.3) opened the cash bag and kept the currency bundles on the T-Poy as advance bribe amount. In the meanwhile, the Investigating Officer came to the spot and seized the cash and cell phones and prepared panchanama. On 31.5.2015, the Investigating Officer registered a case in Crime No.11/ACB-CR-1-HYD/2015 against A.1, A.2, A.3 and A.4 and subsequently one Sandra Venkata Veeraiah, MLA was arraigned as A.5. During the course of investigation, the Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C.

14. It is further alleged that in spite of scientific investigation done up to a certain point by the Investigating Agency in unearthing such a gruesome offence of bribery and unfortunately it was busted due to the involvement of the petitioner.

15. It is clearly evident that the petitioner being a party to the criminal conspiracy hatched up a plan along with A.1, A.2 and others, and abetted the *de facto* complainant to vote in favour of their party candidate in the MLC elections to be held on 01.6.2015. In reward of the same, the petitioner offered Rs.5.00 crores as bribe and paid Rs.50.00 lakhs towards advance. In furtherance of the conspiracy, A.1, A2 and others have conspired with each other and committed the offence. It is further alleged that the *de facto* complainant being the MLA is a public servant and his casting of vote as per free will in the biennial elections for the Legislative Council is a public duty required to be performed by him, whereas A.1, A2 and others, in pursuance of the criminal conspiracy,

offering of bribe to influence him by corrupt means to vote against his free will, is an offence under Section 12 of the PC Act. The oral and documentary evidence proves the meeting of minds and collusion between the A.1, A2 and others. Therefore, the petitioner is liable for punishment for the offences under Section 12 of the PC Act and Section 120-B of IPC.

16. The preliminary charge sheet was filed on 27.7.2015 and the Investigating Officer, in the Memo filed before the Special Court on 31.8.2016, has clearly stated that the investigation is still continuing. The Investigation Agency failed to conduct the basic investigation with regard to the involvement of the petitioner. The silence on the part of the Investigating Agency made the second respondent to step into the shoes of the Investigating Agency, which abandoned its statutory duty and purposefully failed to conduct basic investigation, nab and bring the prime offender before the Court of law. This respondent sent the disputed telephonic conversation between the petitioner and the informant and the admitted voice of the petitioner to the Forensic Laboratory by name Helic Advisory, Bombay for comparison and report. As per the report of the Laboratory, the disputed conversation matches with the voice of the petitioner.

17. The present criminal petition is not maintainable in view of Section 19(3)(c) of the PC Act. When the learned Special Judge forwarded the complaint to the ACB for investigation under Section 156(3) Cr.P.C., it is obvious that he has not taken cognizance of the offence, and therefore, it is a pre-cognizance stage and cannot

be equated with post cognizance stage. The impugned order directing the ACB to investigate the cognizable offence and file report is an interlocutory order, against which no revision lies in view of the bar contained in Section 397(2) of Cr.P.C. Bar of revision cannot be circumvented by filing a petition under Section 482 Cr.P.C.

18. The contention of the petitioner that this respondent has no *locus standi* to file the complaint is not sustainable either on facts or in law. In other words, the principle that any one can set the criminal law in motion remains intact unless contra is indicated by the statutory provision. This respondent had filed the complaint praying the Special Court to invoke the power under Section 210 Cr.P.C., and even assuming but not conceding that the learned Special Judge has no jurisdiction to invoke Section 156(3) Cr.P.C., a bear reading of the impugned order discloses that though it is mentioned as under section 156(3) Cr.P.C., it should be treated as a direction to the ACB to file a report on the contents of the complaint under Section 202(1) Cr.P.C.

19. The contention of the petitioner that "*the order of the Special Judge directing investigation and report under Section 156(3) Cr.P.C., would result in anomalous situation as it would be a second FIR being registered with respect to the same transaction after filing a preliminary charge sheet*", is unfounded and there could never be a situation where a second FIR being registered with respect to the same transaction as it was totally not taken into consideration and that it is not a normal IPC case where the police should register

the FIR if a cognizable offence is brought to their notice and investigate into the same. But here it is a case under the PC Act wherein on receipt of the complaint, without registering an FIR, a discrete enquiry should be conducted as per Point 78 in page 31 contained in Chapter-7 in the ACB Manual, which is also incorporated in Chapter-9 of the Vigilance Manual.

20. The complaint is filed under Sections 190 and 200 Cr.P.C., praying the Special Court to take cognizance against the petitioner as there is a simultaneous investigation going on in respect of the same offence and hence the contention of the petitioner that the complaint is not maintainable for non-filing of the sworn affidavit is not sustainable. It is submitted that as the allegations in the complaint are grave against the petitioner, the learned Special Judge thought it fit to refer it for investigation and report, and the learned Special Judge has got three options for getting a report from the Investigating Agency i.e., Section 156 (3) Cr.P.C, 210 Cr.P.C., and 202 Cr.P.C., and the intention is only to get a report from the Investigating Agency. The allegations made in the complaint attract the ingredients of Section 12 of the PC Act and Section 120-B of IPC; therefore, it is not a fit case to quash the proceedings.

21. The petitioner, being the Chief Minister of the State of Andhra Pradesh, by offering bribe through his stooges i.e., A.1, A.2 and others to another Legislative Member of Telangana State to influence him to vote in favour of TDP candidate in the MLC elections, is guilty of a high crime, misdemeanour and that

agreement to bring about such a state of things constitutes a criminal conspiracy. Hence the petition may be dismissed.

Rival contention of the parties

22. Heard Sri Siddharth Luthra, learned senior counsel representing Sri P.Subbarao, learned counsel for the petitioner, Sri V.Ravi Kiran Rao, learned standing counsel for the first respondent–ACB for the State of Telangana and Sri P.Sudhakar Reddy, learned counsel for the second respondent.

23. The learned counsel for the second respondent strenuously submitted that the petition is not maintainable under law as the impugned order passed by the learned Special Judge is an interlocutory order, against which no revision lies, in view of legal embargo under Section 19(3)(c) of the PC Act. When there is a specific bar under the PC Act, filing of the petition under Section 482 Cr.P.C., is nothing but circumventing the provisions of the PC Act, which is not permissible under law. He further submitted that Section 482 Cr.P.C., has no application to the PC Act. *Per contra*, the learned senior counsel for the petitioner submitted that any interlocutory order passed under the provisions of the PC Act can be assailed by an aggrieved party by invoking Section 482 Cr.P.C., and the bar is for filing a revision or a stay petition only. *Refuting* the contentions made by the learned counsel for the second respondent, learned standing counsel for the first respondent submitted that the petition is maintainable under Section 482 Cr.P.C.

24. In view of the complexity of the issues relating to facts and law being involved, this court is inclined to resolve them under separate headings.

Whether the petition under Section 482 Cr.P.C., is maintainable or not?

25. When the very maintainability of petition itself is under serious challenge, the Court has to address that issue at the threshold, so as to get itself satisfied about the maintainability of the petition, before adverting to the other aspects in detail.

Whether the provisions of the PC Act excludes the application of Section 482 Cr.P.C.?

26. For better appreciation of the rival contentions, it is apposite to extract hereunder Section 19(3)(c) of the PC Act, which reads as follows:

> **19. Previous sanction necessary for prosecution**
> (1) ...
> (2) ...
> (3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-
> (a) ...
> (b) ...
> (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

27. A perusal of clause (c) of Sub-section (3) of Section 19 of the PC Act, at a glance, clearly demonstrates that no court shall stay or revise any interlocutory order passed under the PC Act. The provision does not create a legal embargo to challenge the interlocutory orders by invoking extraordinary jurisdiction of High Courts under Section 482 Cr.P.C.

28. It is a cardinal principle of law of interpretation that the Court has to interpret the statutes in such a manner so as to

achieve the object for which a particular provision is inserted in the statute. The primary test, which can safely be applied, is the language used in the Act and therefore, when the words are clear and plain, the Court must accept the expressed intention of the legislature. The provisions of Cr.P.C., should be construed so as to advance cause of justice and legislative object sought to be achieved.

29. In ***Harbhajan Singh v Press Council of India***[1], the Hon'ble apex Court, at para No.9, held as follows:

> 9. *Cross in Statutory Interpretation* (3rd Edn., 1995) states:
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> "The governing idea here is that if a statutory provision is intelligible in the context of ordinary language, it ought, without more, to be interpreted in accordance with the meaning an ordinary speaker of the language would ascribe to it as its obvious meaning, unless there is sufficient reason for a different interpretation.... Thus, an 'ordinary meaning' or 'grammatical meaning' does not imply that the Judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and un-researched context and purpose in and for which they are used. By enabling citizens (and their advisers) to rely on ordinary meanings, unless notice is given to the contrary, the legislature contributes to legal certainty and predictability for citizens and to greater transparency in its own decisions, both of which are important values in a democratic society." (p. 32, *ibid*)
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> The learned author cites three quotations from speeches of Lord Reid in the House of Lords cases, the gist whereof is: (*i*) in determining the meaning of any word or phrase in a statute, ask for the natural or ordinary meaning of that word or phrase in its context in the statute and follow the same unless that meaning leads to some result which cannot reasonably be supposed to have been the legislative intent; (*ii*) rules of construction are our servants and not masters; and (*iii*) a statutory provision cannot be assigned a meaning which it cannot reasonably bear; if more than one meanings are capable you can choose one but beyond that you must not go.....

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[1] (2002) 3 SCC 722

30. In ***Vijay Kumar Mishra v High Court of Judicature at Patna***[2], the Hon'ble apex Court, at para 25, held as follows:

> 25. It is a settled principle of rule of interpretation that one must have regard to subject and the object for which the Act is enacted. To interpret a statute in a reasonable manner, the Court must place itself in a chair of reasonable legislator/ author. So done, the rules of purposive construction have to be resorted to so that the object of the Act is fulfilled. Similarly, it is also a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in the sense in which they best harmonise with the object of the statute and which effectuate the object of the legislature. (*see* Interpretation of Statutes, 12th Edn., pp.119 and 127 by G.P. Singh). ... ...

31. If the argument of the learned counsel for the second respondent is accepted, without looking into the other relevant legal aspects, an accused, who is facing trial under the provisions of the PC Act, has no right whatsoever to challenge an interlocutory order passed under the PC Act regardless of its illegality, irregularity or impropriety, except filing of appeal against conviction and sentence. Thus, Section 482 Cr.P.C., becomes redundant or a dead letter in the Statute (Cr.P.C) so far as the PC Act is concerned. If that so, various High Courts might not have entertained the petitions under Section 482 Cr.P.C., so far as the PC Act is concerned. The Hon'ble apex Court also entertained the SLPs filed challenging the orders passed by various High Courts under Section 482 Cr.P.C. Under the Old Cr.P.C., the High Court can exercise inherent powers under Section 561-A Cr.P.C.

32. The Parliament enacted the PC Act in the year 1947. By that time, Section 561-A Cr.P.C., was in force. In 1947 PC Act, there is no specific provision excluding the application of Section 561-A

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[2] (2016) 9 SCC 313

Cr.P.C. The PC Act was re-enacted in the year 1988, which came into force with effect from 09.9.1988, by which time Section 482 Cr.P.C., was in the Statute. If the intention of the Parliament is to exclude the PC Act from the purview of Section 482 Cr.P.C., the same would have been depicted in any of the provisions of the PC Act like Section 19(3)(c) of PC Act. The Court has to strictly adhere to the provisions of a statute in letter and spirit.

33. If any submission made by a learned counsel is contrary to the provisions of a statute, the same has no force in the eye of law. The Parliament in its wisdom incorporated Section 482 Cr.P.C., (Section 561-A of old Cr.P.C.,) conferring inherent jurisdiction on Constitutional Courts with an avowed object to safeguard personal liberty of an individual from frivolous and vexatious prosecution launched by unscrupulous litigant with an ulterior motive. There are instances where complaints are being filed with vague, bald and frivolous allegations, despite they being prohibited by law, with an ulterior motive to wreak vengeance against their opponents. In such factual scenario, if such criminal proceedings are allowed to continue, thereby forcing the accused to face rigour of trial, certainly it would amount to miscarriage of justice and infringement of personal liberty of an individual as enshrined under Article 21 of the Constitution of India. The Parliament taking note of the then prevailing political and socio-economic scenario, as well as visualising the future, incorporated Section 482 Cr.P.C., to protect the citizens of this country from biting the bullet in the form of malicious prosecution. There is no straight jacket formula under

which circumstances Section 482 Cr.P.C., can be pressed into service. The yardstick to press into Section 482 Cr.P.C., which is applicable to other criminal cases launched under different enactments, equally applies to the provisions of the PC Act. If the proposition of law advanced by the learned counsel for the second respondent is glibly swallowed, it amounts to depriving an accused person from challenging the illegal or irregular interim orders passed under the PC Act. Simply because a person is facing trial under the PC Act, that itself will not take away the legitimate and legal right of such an accused person to challenge interlocutory order by knocking the doors of the Constitutional Courts invoking the provisions of Section 482 Cr.P.C., in order to prevent abuse of process of law or to secure the ends of justice.

34. Let me consider the case-law on which the learned counsel for the second respondent has placed reliance, in the backdrop of the foregoing discussion.

35. In ***Satyanarayana Sarma v State of Rajasthan***[3] the Hon'ble apex Court, at para No.17, held as follows:

> 17. Thus in cases under the Prevention of Corruption Act, there can be no stay of trials. **We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted.** However, even if petition under Section 482 of the Criminal Procedure Code is entertained, there can be no stay of trials under the said Act. It is then for the party to convince the court concerned to expedite the hearing of that petition. However, merely because the court concerned is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily.
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> (emphasis supplied)

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[3] (2001) 8 SCC 607

36. The principle enunciated in the above case, in fact, negates the contention of the second respondent that the present petition is not maintainable under Section 482 Cr.P.C. In the same judgment at para No.29, the Hon'ble apex Court observed that several High Courts are granting stay of proceedings under the PC Act overlooking Section 19(3)(c) of the Act.

37. In ***State of Uttar Pradesh v Pragyesh Misra***[4], the Hon'ble apex Court reiterated the principle enunciated in ***Satyanarayana Sarma*** and held that Section 19(3)(c) of PC Act contains a specific bar to stay criminal proceedings.

38. In order to appreciate the contention of learned counsel for the second respondent with regard to the maintainability of petition under Section 482 Cr.P.C., against an interim order under the PC Act, it is apposite to refer pars Nos.2 and 3 of the decision in ***Pragyesh Misra***, which read as follows:

> 2. The State of U.P. has preferred this special leave petition being aggrieved by the observations made by the High Court while deciding the petition under Section 482 of the Code of Criminal Procedure (CrPC) which was filed by the present respondent. The apprehension of the petitioner is that the observations of the High Court are likely to influence the proceedings in the trial.
>
> 3. The apprehension of the petitioner is misconceived and unfounded. The observations in the impugned order[5] are confined to the consideration of the petition under Section 482 CrPC. Obviously, in this view of the matter, such observations cannot and shall not have any bearing in the course of trial or the proceedings before the trial court in any manner whatsoever. The trial court shall consider the matter on its own merits uninfluenced by any observations as made in the impugned order of the High Court.

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[4] (2012) 12 SCC 754

[5] Pragyesh Misra v State of U.P., Crl.MC.No.1099 of 2011, order dated 14.3.2011 (All). Since the details in the judgment delivered by the Supreme Court are limited, the impugned order is being published along with it.

39. In the above case, the Hon'ble apex Court has not held that Section 482 Cr.P.C., has no application to the interlocutory orders passed under the PC Act.

40. As per the principle enunciated in the cases cited supra, the High Court shall not grant stay to hamper the progress of trial in cases arising under the PC Act.

41. The learned counsel for the second respondent also laid stress on paragraph Nos.29 to 32 of the judgment in ***Shahid Balwa v Union of India***[6]. In the said paragraphs, the Hon'ble apex Court has dealt with the speedy trial in 2G Scam case. The Hon'ble apex Court made it clear that when it transfers cases from one High Court to another High Court or to the Supreme Court, the affected party cannot file an application under Section 482 Cr.P.C., or under Article 226 or 227 of the Constitution of India before any High Court for redressal. The observations made by Hon'ble apex Court are confined to 2G scam case only. The learned standing counsel for the first respondent has also placed reliance on this decision.

42. To substantiate the arguments, the learned senior counsel for the petitioner has drawn the attention of this Court to the following decisions:

(i) In ***M.Sejappa Madimallappa v State of Mysore***[7], the Mysore Bench of Karnataka High Court, at para No.7, held as under:

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[6] (2014) 2 SCC 687
[7] 1966 CriLJ 677

(7) It does not appear to us that the decision of the Privy Council in *Emperor v. Khwaja Nazir Ahmed,* (1945) 47 BOMLR 245, can support the proposition placed before us by Mr. Government Pleader that in no case could we stop the investigation commenced by the police. The amplitude of our power under S.561-A is wide enough us in a proper case to stop the investigation which should never have commenced or to make which there is no power under the Code of Criminal Procedure. This view which we take receives support from what Lord Porter said in Nazir Ahmed's case. He said thus:

> "No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation and for this reason Newsam J. may well have decided rightly in Chidambaram Chettiar v. Shanmugham Pillai, AIR 1938 Mad 129."

The enumeration made by the noble Lord as to the category of cases in which the police would have no authority to undertake an investigation is of course not exhaustive. Likewise it would be neither necessary nor possible to make an enumeration of all those cases in which this Court could under S.561-A exercise its inherent power with respect to an investigation commenced by the police. That power is always exercisable where there is a misuse of power by the police or there is the commencement of an investigation without the requisite authority and the Court considers it necessary to exercise its inherent power to secure the ends of justice.

(ii) In ***S.N.Sharma v Bipen K. Tiwari***[8], the Hon'ble apex Court, at para No.11, held as follows:

> 11. ... ... It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases **an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution** under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. ... .
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> (emphasis supplied)

(iii) In ***Imtiyaz Ahmad v State of U.P.***[9], the Hon'ble apex Court, at Para No.55, held as under:

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[8] (1970) 1 SCC 653
[9] (2012) 2 SCC 688

> 55. Certain directions are given to the High Courts for better maintenance of the rule of law and better administration of justice:
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> While analysing the data in aggregated form, this Court cannot overlook the most important factor in the administration of justice. The authority of the High Court to order stay of investigation pursuant to lodging of FIR, or trial in deserving cases is unquestionable. But this Court is of the view that the exercise of this authority carries with it the responsibility to expeditiously dispose of the case. The power to grant stay of investigation and trial is a very extraordinary power given to the High Courts and the same power is to be exercised sparingly only to prevent an abuse of the process and to promote the ends of justice. It is therefore clear that:
>
> (*i*) Such an extraordinary power has to be exercised with due caution and circumspection.
> (*ii*) Once such a power is exercised, the High Court should not lose sight of the case where it has exercised its extraordinary power of staying investigation and trial.
> (*iii*) The High Court should make it a point of finally disposing of such proceedings as early as possible but preferably within six months from the date the stay order is issued.

43. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am unable to accede to the contention of the learned counsel for the second respondent that Section 482 Cr.P.C., has no application to the PC Act. There is no legal embargo to challenge the interlocutory orders passed under the provisions of the PC Act by filing petition under Section 482 Cr.P.C. The contention of learned counsel for the second respondent that the present petition is liable to be dismissed at the threshold is not sustainable either on facts on in law. Therefore, I am of the considered view that the petition is maintainable under Section 482 Cr.P.C.

Whether an order passed under Section 156(3) Cr.P.C., is a judicial order or an administrative order?

44. The learned counsel for the second respondent strenuously submitted that the order passed by the learned Special Judge

under Section 156(3) Cr.P.C., is purely an administrative order, but not a judicial order and hence, the same cannot be challenged either under Section 397 Cr.P.C., or under Section 482 Cr.P.C. *Per contra,* the learned senior counsel for the petitioner and learned standing counsel for the first respondent vehemently opposed the proposition of law submitted by the learned counsel for the second respondent and submitted that an order passed under Section 156(3) Cr.P.C., is a judicial order.

45. To substantiate the argument, the learned counsel for the second respondent has placed reliance on the following decisions:

(i) In ***Siya Ram Agrahari v State of U.P.***[10], the Allahabad High Court, at Para Nos.5 and 6, held as under:

> 5. .. .. In para 22 of the decision in the case of Chandan v. State of U.P. (supra) as under:
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> ...No doubt, as has been held by me hereinbefore, that the order under Section 156(3) Cr.P.C. is a judicial order but it is administrative in nature because of it's placement under chapter XII, Cr.P.C., relating to power of the police to investigate a matter.
>
> 6. Therefore, it had already been observed in this decision that the order passed under Section 156(3), Cr.P.C. is the judicial order but it is administrative in nature. In such circumstances, the impugned orders passed under Section 156(3), Cr.P.C. cannot be interfered with in a petition filed under Section 482, Cr.P.C. on behalf of the prospective accused.

(ii) In ***Prof. Ram Naresh Chaudhry v State of U.P.***[11] the Allahabad High Court held as under:

> Order passed under Sec.156(3) Cr.P.C., at pre-cognizance stage though a judicial order is administrative in nature. Such order cannot be challenged by the proposed accused by means of revision or moving an application u/S.482 Cr.P.C., since no accused can stop the registration of F.I.R against him.

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[10] 2008 CriLJ 2179
[11] 2008 CriLJ 1515 (1)

46. The above two decisions were rendered by learned Single Judges of Allahabad High Court. In ***Ajay Malviya v. State of U.P.***[12] a Division Bench of Allahabad High Court held that an order under Section 156(3) Cr.P.C., is a judicial order. Incidentally, this point was also urged before the Full Bench of Allahabad High Court in ***Father Thomas v. State of U.P***[13]. The Full Bench made the following observation in para 54.

> 54. As on the basis of the aforesaid reasoning, we have already held the order under Section 156 (3) Cr.P.C., not be amenable to challenge in a criminal revision or an application under Section 482 Cr.P.C., it is not necessary for this Court to go into the further question whether the said order is administrative in nature as urged by Sri G.S.Chaturvedi and the learned Government Advocate or judicial in nature as contended by Sri D.S.Mishra and Sri Dileep Gupta. Following the decision of the Hon'ble apex Court in *Asit Bhattacharjee v Hanuman Prasad Ojha*, (2007) 5 SCC 786, we are also not inclined to express any opinion on this issue, and leave the question open for decision in a subsequent proceeding where an answer to this question may become necessary.

47. When there is a conflict of opinion expressed by a learned Single Judge and a Division Bench, the opinion expressed by the Division Bench will prevail, in view of the judicial propriety. Therefore, I am agreeing with the view expressed by the Division Bench of the Allahabad High Court in ***Ajay Malviya*** that the order passed under Section 156(3) Cr.P.C., is a judicial order.

48. To substantiate their arguments, learned senior counsel for the petitioner aand learned standing counsel for the first respondent have placed reliance on the decision in ***Shankarlal***

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[12] (XLI) 2000 ACC 435
[13] 2011 CriLJ 2278

Aggarwala v Shankarlal Poddar[14], wherein the Hon'ble apex Court, at para 13, held as under:

> 13. It is perhaps not possible to formulate a definition which would satisfactorily distinguish, in this context, between an administrative and a judicial order. That the power is entrusted to or wielded by a person who functions as a Court is not decisive of the question whether the Act or decision is administrative or judicial. But we conceive that an administrative order should be one which is directed to the regulation or supervision of matters as distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property which are the subject of adjudication before the Court. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority, particularly if that authority were a Court, and if the discretion has to be exercised on objective, as distinguished from a purely subjective, consideration, it would be a judicial decision.

49. The learned standing counsel for the first respondent also placed reliance on the decision in ***Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity***[15], wherein the Hon'ble apex Court, at para No.40, held as follows:

> 40. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. *"The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind."* Vide *State of Orissa v. Dhaniram Luhar* {AIR 2004 SC 1794; and *State of Rajasthan v. Sohan Lal and Ors.*, {(2004) 5 SCC 573}.

50. These two decisions eloquently dealt with the distinction between an administrative order and a judicial order. Whether an

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[14] AIR 1965 SC 507 (1)
[15] (2010) 3 SCC 732

order is a judicial order or administrative order depends on the following two conditions: (i) whether any discretionary power is left over to the Magistrate and if so, exercising of such discretionary power should be based on sound principles of law; and (ii) the order passed by the Magistrate directly or indirectly or by necessary implication affects the rights of the parties to the proceedings. If the order passed by the Magistrate satisfies the above two conditions, it is a judicial order. If not, it is only an administrative order. In other words, passing of a judicial order mandates application of mind by the Court as the same eventually affects the rights and personal liberty of an individual. An administrative order is one which regulates the proceedings of the Court without affecting the rights of the parties to the proceedings. For example: (i) issuance of summons, (ii) payment of batta, etc. The test to be applied is whether the impugned order passed by the learned Special Judge affects the rights and liabilities of the petitioner or not. If the answer is affirmative, it falls within the ambit of "judicial order" and if the answer is negative, it falls within the ambit of "administrative order".

51. Let me consider whether the impugned order passed under Section 156(3) Cr.P.C., is an administrative order or a judicial order. In order to appreciate the rival contentions, it is imperative to consider certain provision of the Cr.P.C. Sections 190 and 200 Cr.P.C., deal with filing of a private complaint. Section 190 Cr.P.C., postulates four modes of taking cognizance of offence by the Magistrate having jurisdiction: (1) Upon a complaint; (2) Upon

a police report; (3) Upon information received from any person, or (4) Upon his own knowledge.

52. Section 156(3) Cr.P.C., contemplates that the Magistrate having jurisdiction to take cognizance of offence basing on a complaint is empowered to forward the same to the concerned police for investigation and report. On filing of the complaint under Section 190 and 200 Cr.P.C., the competent Court can take the cognizance of offence and proceed further under Sections 202, 203 and 204 Cr.P.C., or can forward the complaint to the concerned Police for investigation and report. These two provisions (Section 190 and Section 156(3) Cr.P.C.,) explicitly confer discretion to the learned Special Judge. Such discretion has to be exercised by applying judicial mind.

53. The Hon'ble apex Court in ***Priyanka Srivastava v State of U.P***[16], ***Anil Kumar v M.K. Aiyappa***[17] and ***Ramdev Food Products Private Limited v State of Gujarat***[18] held that while forwarding the complaint under Section 156(3) Cr.P.C, the learned Magistrate has to apply his mind to the facts of the complaint. In the two decisions viz., ***Siya Ram Agrahari*** and ***Prof. Ram Naresh Chaudhry*** rendered by Single Judges of Allahabad High Court, and relied upon by the learned counsel for the second respondent, it was held that the order passed under Section 156 (3) Cr.P.C., is judicial order but administrative in nature. Even according to those two decisions also, the order under Section 156(3) Cr.P.C., is

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[16] (2015) 6 SCC 287
[17] (2013) 10 SCC 705
[18] (2015) 6 SCC 439

not purely an administrative order as contended by the learned counsel for the second respondent.

54. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am unable to agree with the submission of the learned counsel for the second respondent on this aspect. In view of the legal consequences flow from the order passed under Section 156(3) Cr.P.C., by any stretch of imagination, it cannot be an administrative order but, it is a judicial order.

Whether the order passed under Section 156(3) Cr.P.C., is not amenable to Section 482 Cr.P.C., in view of the bar to file a revision under Section 397(2) Cr.P.C.?

55. The predominant contention of the learned counsel for the second respondent is that the impugned order is interlocutory in nature; therefore, no revision lies in view of Sub-section (2) of Section 397 Cr.P.C. In such circumstances, filing of the petition under Section 482 Cr.P.C., is nothing but circumventing the provision under Section 397(2) Cr.P.C. *Per contra*, learned senior counsel for the petitioner and learned standing counsel for the first respondent submitted that an interlocutory order can be challenged under Section 482 Cr.P.C., despite the bar contained in Sub-section (2) of Section 397 Cr.P.C.

56. To substantiate the argument, learned counsel for the second respondent has drawn the attention of this Court to the decisions rendered by the Single Judges of Allahabad High Court

in ***Siya Ram Agrahari***, ***Gulam Mustafa @ Jabbar v State of U.P.***[19], ***Harpal Singh v State of U.P.***[20], and ***Prof. Ram Naresh Chaudhry***. As per the principle enunciated in these cases: (i) no revision lies against the orders passed under Section 156(3) Cr.P.C., at the instance of the prospective accused, in view of the legal embargo in Sub-section (2) of Section 397 Cr.P.C., and (ii) in view of the bar contained in Sub-section (2) of Section 397 Cr.P.C., the order passed under Section 156(3) Cr.P.C., cannot be challenged under Section 482 Cr.P.C.

57. In ***Father Thomas***, a Full Bench of the Allahabad High Court formulated the following three questions for consideration:

> A. Whether the order of the Magistrate made in exercise of powers under Section 156(3) Code of Criminal Procedure directing the police to register and investigate is open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued?
>
> B. Whether an order made under Section 156(3) Code of Criminal Procedure is an interlocutory order and remedy of revision against such order is barred under Sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973?
>
> C. Whether the view expressed by a Division Bench of this Court in the case of Ajay Malviya v. State of U.P. and Ors. (XLI) 2000 ACC 435, that as an order made under Section 156(3) of the Code of Criminal Procedure is amenable to revision, no writ petition for quashing an F.I.R. registered on the basis of the order will be maintainable, is correct?

And answered the above three questions as under:

> A. The order of the Magistrate made in exercise of powers under Section 156(3) Code of Criminal Procedure directing the police to register and investigate is not open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued.
>
> B. An order made under Section 156(3) Code of Criminal Procedure is an interlocutory order and remedy of

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[19] 2008 Law Suit (All) 235
[20] 2008 Law Suit (All) 47

> revision against such order is barred under Sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973.
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> C. The view expressed by a Division Bench of this Court in the case of Ajay Malviya v. State of U.P. and Ors. (XLI) 2000 ACC 435 that as an order made under Section 156(3) of the Code of Criminal Procedure is amenable to revision, and no writ petition for quashing an F.I.R registered on the basis of the order will be maintainable, is not correct.

58. The view expressed, in the above decisions, is either revision or quash petition is not maintainable against an order passed under Section 156(3) Cr.P.C. Confuting the submissions of the learned counsel for the second respondent, learned senior counsel for the petitioner has drawn the attention of this court in ***Priyanka Srivastava***, ***Anil Kumar*** and ***Ramdev Food Products Private Limited***. As per the principle in the cases cited, an order passed under Section 156(3) Cr.P.C., can be assailed under Section 482 Cr.P.C.

(i) In ***Madhu Limaye v The State of Maharashtra***[21], the Hon'ble apex Court, at Para No.10, held as follows:

> 10 .....In our opinion, a happy solution of this problem would be to say that the bar provided in Sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. **But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court.** But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the

[21] (1977) 4 SCC 551

> quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of Autrefois Acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.
>
> (emphasis supplied)

As per the principle enunciated in the above case, an interlocutory order can be challenged under Section 482 Cr.P.C., in spite of bar to file revision.

(ii) In ***Prabhu Chawla v State of Rajasthan***[22] a three Judge Bench of the Hon'ble apex Court while reaffirming the principle laid down in ***Madhu Limaye***, at Para No.6, held as follows:

> 6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Code of Criminal Procedure is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante Clause to state: "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. "*abuse of the process of the Court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more.*" We venture to add a further reason in support. Since Section 397 Code of Criminal Procedure is attracted against all orders other than

[22] AIR 2016 SC 4245

interlocutory, a contrary view would limit the availability of inherent powers Under Section 482 Cr.P.C.

59. The law declared or observations made by the Hon'ble apex Court are binding on the High Courts as well as Subordinate Court, in view of Article 141 of the Constitution of India. Therefore, the decisions of learned Single Judges and the Full Bench of the Allahabad High Court have no legal force.

60. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, the contention of the learned counsel for the second respondent that the order passed under Section 156(3) Cr.P.C., is not amenable to Section 482 Cr.P.C., in view of the bar to file a revision under Section 397(2) Cr.P.C., holds no water.

Whether the learned Special Judge has wrongly quoted Section 156(3) Cr.P.C., in the impugned order?

61. The learned counsel for the second respondent strenuously submitted that the learned Special Judge passed the impugned order for limited purpose of calling for preliminary report; therefore, it can be treated as an order passed under Section 202(1) Cr.P.C., instead of an order passed under Section 156(3) Cr.P.C. He further submitted mere quoting of wrong provision by itself will not change the nature of the order. To substantiate the stand, he has drawn the attention of this Court to the judgment passed by a Division Bench of this Court in W.A.No.239 of 2016 dated 22.03.2016. The Division Bench, while following the judgments of the Hon'ble apex Court, in ***H.L.Mehra v Union of***

India[23], ***Municipal Corporation of City of Ahmedabad v Ben Hiraben Manilal***[24] and ***Kedar Shashikant Deshpande v Bhor Municipal Council***[25]. In the last decision, at para No.12.4, it was held as follows:

> 12.4 It is thus clear from the judgments of the Supreme Court, that wrong reference or quoting wrong provision of the Statute while exercising power, under which action has been taken by the authority, would not per se vitiate that action or invalidate the decision, if it could be otherwise justified under some other provision/power under which such action could be lawfully taken. In other words, merely quoting wrong provisions of the statute while exercising power would not invalidate the decision/resolution made by the authority, including the authority such as the House, if it is shown that such decision/resolution could be traced to some other provision of the statute/ Constitution.

62. *Per contra*, learned senior counsel for the petitioner submitted that the learned Special Judge consciously passed the order under Section 156(3) Cr.P.C., and not under any other provision of the Cr.P.C. He further submitted that the question of mere quoting of wrong provision of law does not arise in this case. He has drawn the attention of this Court to the decision in ***Ramdev Food Products Private Limited***. On the other hand, learned standing counsel for the first respondent submitted that the stand taken by the second respondent is imaginary and contrary to the provisions of the Cr.P.C.

63. At this juncture, the crucial question that falls for consideration is whether the impugned order passed by the learned Special Judge can be treated as an order passed under Section 202(1) Cr.P.C. In order to resolve the controversy, the court has to

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[23] (1974) 4 SCC 396
[24] (1983) 2 SCC 422
[25] (2011) 2 SCC 654

consider the true legal concept of '*taking of cognizance*'. The phrase '*taking of cognizance of offence*' is not defined under the provisions of Cr.P.C. In legal or common parlance, taking cognizance of offence by the Magistrate means application of his judicial mind to the facts of the case. To put it in another way, whether the allegations made in the complaint *prima facie* constitute the offence alleged or not? is the sole criterion for taking cognizance of offence. If the allegations made in the complaint are *ex facie* taken to be true and correct, no *prima facie* case is made out, then the Magistrate can decline to take cognizance of offence. If the Magistrate feels that if the allegations made in the complaint *prima facie* disclose a cognizable offence, then he can take cognizance of such offence. Therefore, '*taking cognizance of offence*' is nothing but application of judicial mind to the facts of the case. Otherwise, the Parliament might not have deployed the words, "***of facts which constitute such offence***" in Clause (a) of Sub-Section (1) of Section 190 Cr.P.C.

64. It is a settled principle of law that the Magistrate has no power whatsoever to conduct an enquiry or direct investigation by the Police under Section 202(1) Cr.P.C., prior to taking cognizance of offence under clause (a) of Sub-section (1) of Section 190 Cr.P.C. There has been no gain-saying that the learned Special Judge has not taken cognizance of offence against the petitioner by exercising jurisdiction under Section 190(1)(a) Cr.P.C., on the complaint filed by the second respondent.

65. Chapter XII Cr.P.C., deals with information to the police and their power to investigate. Section 156 Cr.P.C., falls under Chapter XII of the Code. Section 190 Cr.P.C., forms integral part of Chapter XIV, which deals with the conditions requisite for initiation of proceedings. Chapter XV deals with complaint to Magistrate which encompasses in it Sections 200 to 203 Cr.P.C. Chapter XVI deals with commencement of proceedings before the Magistrate. Section 210 Cr.P.C., falls under Chapter XVI. Section 156 (3), 190 and 202 Cr.P.C., are placed suitably under different Chapters of Cr.P.C., with a particular object i.e., to avoid overlapping and confusion.

66. Section 156(3) and Section 202(1) Cr.P.C operate in two different spheres. Sections 156(3) and 202(1) Cr.P.C., will not go together. An order passed under Section 156(3) Cr.P.C., cannot be equated with an order passed under Section 202(1) Cr.P.C., or vice versa. The Magistrate can exercise the jurisdiction under Section 156(3) Cr.P.C., before taking cognizance of offence. The Magistrate can direct the police to investigate into the matter under Section 202(1) Cr.P.C., after taking cognizance of offence. Section 156(3) Cr.P.C., can be pressed into service at the pre-cognizance stage, whereas Section 202 (1) Cr.P.C., comes into operation at post cognizance stage.

67. Chapter XII deals with statutory powers of the Investigating Agency right from registration of the FIR till filing of final report under Section 173(2) Cr.P.C. Section 190 Cr.P.C., contained in Chapter XIV deals with taking of cognizance. A perusal of Section

2(d) Cr.P.C., clearly demonstrates that complaint does not include police report. Section 2(r) Cr.P.C., defines police report.

68. On receipt of a complaint under Sections 190 and 200 Cr.P.C., the Magistrate has two avenues to follow–(1) He can take cognizance of offence under Section 190 Cr.P.C., and proceed further under Sections 200 to 204 Cr.P.C., (2) If the Magistrate is not inclined to take cognizance of offence, he can forward the complaint to the concerned police under Section 156 (3) Cr.P.C., for investigation and report. The learned Magistrate can choose any one of the two options available to him basing on the facts and circumstances of each case. The complainant has no right whatsoever to compel the Magistrate to follow the option of his (complainant's) choice. A fascicular reading of Sections 190 and 156(3) Cr.P.C., clearly spell out that the Magistrate, who is competent to take cognizance of offence, can forward the complaint to the police for investigation and report.

69. In ***A.R. Antulay v Ramdas Sriniwas Nayak***[26], at Para 31, the Hon'ble apex Court held as under:

> 31. ... ... Upon a complaint being received and the court records the verification, it is open to the court to apply its mind to the facts disclosed and to judicially determine whether process should or should not be issued. It is not a condition precedent to the issue of process that the Court of necessity must hold the inquiry as envisaged by Section 202 or direct investigation as therein contemplated. The power to take cognizance without holding inquiry or directing investigation is implicit in Section 202 when it says that the Magistrate may "if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer..., for the purpose of deciding whether or not there is sufficient ground for proceeding". Therefore, the

[26] (1984) 2 SCC 500

> matter is left to the judicial discretion of the court whether on examining the complainant and the witnesses if any as contemplated by Section 200 to issue process or to postpone the issue of process. This discretion which the court enjoys cannot be circumscribed or denied by making it mandatory upon the court either to hold the inquiry or direct investigation. Such an approach would be contrary to the statutory provision. ... ...

As per the principle enunciated in the above decision, on receipt of the complaint, the court has judicial discretion either to enquire into the case or direct for investigation. In the case on hand, after perusing the complaint and other relevant documents, the learned Special Judge, by arriving at the conclusion that it is conducive to justice, forwarded the complaint to the ACB under section 156(3) Cr.P.C., for investigation and report.

70. The Hon'ble apex Court considered the scope of Section 190(1)(a), Section 156(3) and Section 200 of Cr.P.C in ***Devarapalli Lakshminarayana Reddy vs. V.Narayana Reddy***[27], and at Para No.17 held as under:

> 17. Section 156(3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under Sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire

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[27] (1976) 3 SCC 252

> continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge sheet under Section 173. On the other hand Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct within the limits circumscribed by that section, an investigation "*for the purpose of deciding whether or not here is sufficient ground for proceeding*". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

71. Recently, the Hon'ble apex Court reiterated and reaffirmed the above principle in ***Ramdev Food Products Private Limited***. Viewed from any dimension, the impugned order cannot be treated as an order passed under Section 202(1) Cr.P.C., as the learned Special Judge has not taken the cognizance of offence basing on the complaint of the second respondent. There is no other provision under Cr.P.C., enabling the learned Special Judge to call for the report from the ACB, except under Section 156 (3) Cr.P.C. If the learned Special Judge had taken cognizance of offence and ordered investigation by mentioning the provision of law as Section 156 (3) Cr.P.C., certainly the submission made by the learned counsel for the second respondent has some legal force.

72. Having regard to the facts and circumstances of the case, I am of the considered view that the learned Special Judge, while passing the impugned order, quoted Section 156(3) Cr.P.C., knowing fully well that he has no power to direct investigation under Section 202(1) Cr.P.C., in view of non-taking of cognizance of offence under Clause (a) of Sub-section (1) of Section 190 Cr.P.C., basing on the complaint. In view of the facts and

circumstance of the case, it cannot be presumed that the learned Special Judge quoted wrong provision of law. Viewed from any angle, either on facts or in law, the contention of the learned counsel for the second respondent has no legs to stand.

Whether the learned Special Judge had passed the order without application of mind?

73. The learned senior counsel for the petitioner as well as the learned standing counsel for the first respondent have strenuously submitted that the learned Special Judge exercised jurisdiction under Section 156 (3) Cr.P.C., without applying his mind; therefore, the impugned order is not sustainable. They further submitted that if the order of the learned Special Judge is allowed to stand, certainly, it would amount to miscarriage of justice.

74. The learned counsel for the second respondent strenuously submitted that the words "*non application of mind*" is not defined in Cr.P.C; therefore, question of application of mind does not arise at all and that word has no legal sanctity. He further submitted that the learned Special Judge perused the material on record and forwarded the complaint to the ACB under Section 156(3) Cr.P.C., and hence the impugned order is in consonance with the settled principles of law.

75. For appreciation of rival contentions, it is apposite to quote Sub-section (3) of Section 156 Cr.P.C.

> **156. Police officer's power to investigate cognizable case**
>
> (1) …
>
> (2) …
>
> (3) Any Magistrate empowered under section 190 may order such investigation as above mentioned.

Section 190 (1) (a) Cr.P.C., reads as follows:

190. Cognizance of offence by Magistrates:

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence –

(a) upon receiving a complaint of facts which constitute such offence.

76. A fascicular reading of clause (a) of Sub-section (1) of Section 190 and Sub-section (3) of Section 156 Cr.P.C., clearly demonstrates that the Magistrate, having jurisdiction to take cognizance of offence, can forward the complaint to the concerned Police for investigation and report.

77. To buttress the argument, learned senior counsel for the petitioner has drawn the attention of this court to the following decisions:

(i) In ***Ramdev Food Products Private Limited***, the Hon'ble apex Court, at Para No.22.1, held as follows:

> 22.1. 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 the issuance 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.

(ii) In ***Priyanka Srivastava***, the Hon'ble apex Court, at paras 20, 27 and 34, held as under:

> 20. The learned Magistrate, as we find, while exercising the power Under Section 156(3) Code of Criminal Procedure has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power Under

Section 156(3) Code of Criminal Procedure, cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:

156. *Police officer's power to investigate cognizable case.*-(1) ...

(2) ... ...

(3) Any Magistrate empowered Under Section 190 may order such an investigation as above-mentioned.

27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction Under Section 156(3) Code of Criminal Procedure and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

34. In view of the aforesaid analysis, we allow the appeal, set aside the order passed by the High Court and quash the registration of the FIR in case Crime No.298 of 2011, registered with Police Station, Bhelupur, District Varanasi, U.P.

(iii) In **Guruduth Prabhu & Ors. v. M.S. Krishna Bhat and Ors.**[28], the Hon'ble apex Court, at Para No.10, held as under:

10. ... ... When the allegation made in the complaint does not disclose cognizable offence, the Magistrate has no jurisdiction to order police investigation under Sub-section (3). In the present case, the learned Magistrate without applying his mind had directed an investigation by the police. Such an order which is passed without application of mind is clearly an order without jurisdiction. Therefore, the order passed directing the police to investigate under Sub-section (3) of Section 156, Cr. P.C, passed without jurisdiction is liable to be quashed by this Court either under Section 482, Cr.P.C, or under Article 226 of the Constitution of India. We find from the materials on record, the learned Magistrate has not at all applied his mind before directing police investigation under Section 156(3),

[28] 1999 CriLJ 3909

> Cr. P.C. If the Magistrate had applied his mind, the Magistrate could have found that no cognizable offence is made out even if the entire allegations made in the complaint are accepted. We have already come to the conclusion that none of the complaints filed by the complainants disclose a cognizable offence alleged under Section 167, IPC. On this count alone the direction given by the Magistrate is liable to be quashed. The Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, 1992 CriLJ 527 has held that the High Court could either exercise its power under Article 226 of the Constitution of India or under Section 482, Cr.P.C and quash the investigation to prevent abuse of the process of law or to secure the end of justice. It has been held that where uncontroverted allegations made in the complaint do not disclose the commission of a cognizable offence justifying an investigation by police, the High Court is empowered to quash such an investigation. ...

As per the principle enunciated in the cases cited supra, an order passed by the Magistrate under Section 156(3) Cr.P.C., without application mind, is not sustainable. The learned standing counsel for the first respondent also placed reliance on the proposition laid down in ***Priyanka Srivastava***.

(iv) In ***Anil Kumar***, the Hon'ble apex Court, at paras 3 and 11, held as follows:

> 3. On receipt of the complaint, the Special Judge passed an order on 20.10.2012 which reads as follows:
>
> "On going through the complaint, documents and hearing the complainant, I am of the sincere view that the matter requires to be referred for investigation by the Deputy Superintendent of Police, Karnataka Lokayukta, Bangalore Urban, Under Section 156(3) of Code of Criminal Procedure. Accordingly, I answer point No. 1 in the affirmative.
>
> Point No. 2: In view of my finding on point No. 1 and for the foregoing reasons, I proceed to pass the following:
>
> **ORDER**
>
> The complaint is referred to Deputy Superintendent of Police - 3 Karnataka Lokayukta, Bangalore Urban Under Section 156(3) of Code of Criminal Procedure for investigation and to report."
>
> 11. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in *Maksud Saiyed* case (supra) examined the requirement of the application of mind by the Magistrate

> before exercising jurisdiction Under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Code of Criminal Procedure, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter Under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation Under Section 156(3) Code of Criminal Procedure, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

78. The learned counsel for the second respondent submitted that the second respondent filed the complaint under Sections 190 and 200 Cr.P.C., seeking a relief under section 210 Cr.P.C., whereas the learned Special Judge passed the impugned order under Section 156(3) Cr.P.C. He further submitted that though the order passed by the learned Special Judge was labelled as an order under Section 156(3) Cr.P.C., the same can be treated as an order passed under Section 202(1) Cr.P.C.

79. Let me consider whether the learned Special Judge has followed the principle enunciated in the cases cited supra. The second respondent filed the complaint under Sections 190 and 200 Cr.P.C., against the petitioner for the offences punishable under Sections 12 of the PC Act and Section 120-B of IPC. The learned Special Judge has to satisfy himself that the allegations made in the complaint *prima facie* disclose the offences punishable under Section 12 of P.C Act and Section 120-B of IPC. Whether the learned Special Judge has applied his mind to the allegations made

in the complaint or not is the question to be decided. It is needless to say that the learned Special Judge need not pass an elaborate order while forwarding the complaint under Section 156 (3) Cr.P.C. That does not mean that the learned Special Judge can pass a cryptic and slipshod order, without application of mind. Suffice it to say that the application of mind shall be depicted in the order passed. The objective satisfaction of the Magistrate is *sine qua non* to forward the complaint under Section 156(3) Cr.P.C. If the learned Special Judge has applied his mind to the facts of the mind, then this Court has no right whatsoever to interfere with the impugned order. If not, this Court can quash the proceedings by exercising jurisdiction under Section 482 Cr.P.C., in view of the principle enunciated in cases cited supra.

80. In order to appreciate the contention of the learned senior counsel for the petitioner it is apposite to extract the impugned order hereunder:

> Heard the learned counsel for the petitioner/ complainant. Perused the entire record filed by the petitioner/complainant. The material filed along with the complaint is to be required to be enquired and investigated thoroughly by the concerned police.
>
> In the facts and circumstances of the case, I am of the firm view that the complaint filed by the complainant is required to be forwarded to the concerned police under Section 156 (3) Cr.P.C for thorough investigation and report. The office is directed to send all the records along with complaint to the concerned police, duly indexed by 29.09.2016.

81. There is no mention in the impugned order that the allegations made in the complaint *prima facie* constitute the offences punishable under Section 12 of PC Act and Section 120-B of IPC which requires a thorough investigation and report. Mere

using of words "*Heard the learned counsel for the petitioner/complainant. Perused the entire record filed by the petitioner/complainant*" does not denote or connote application of mind. Application of mind is some thing more than the perusal of the record. In ***Anil Kumar***, which also arises under PC Act, the Court has forwarded the complaint under Section 156 (3) Cr.P.C. The prospective accused challenged the order of the learned Special Judge by way of filing a Writ Petition before Karnataka High Court for quashing of the same. The Karnataka High Court quashed the orders of the Special Court. The complainant preferred SLP before the Hon'ble apex Court and the same was dismissed. The facts of the case on hand are almost identical to the facts of the case.

82. A perusal of the impugned order clearly manifests that the learned Special Judge has not applied his mind to the allegations made in the complaint and passed the order under Section 156 (3) Cr.P.C., in a laconic manner.

83. The other contention of the learned senior counsel for the petitioner is that the second respondent did not file affidavit along with the complaint; therefore, the learned Special Judge ought not to have entertained the complaint. The learned counsel for the second respondent submitted that the second respondent filed the complaint seeking relief under Section 210 Cr.P.C., hence there is no necessity to file affidavit. To substantiate the argument learned senior counsel for the petitioner has drawn the attention of this court to the decision in ***Priyanka Srivastava***, wherein at paras 30 and 35, it was held as follows:

> 30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC 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 the 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.
>
> 35. A copy of the order passed by us be sent to the learned Chief Justices of all the High Courts by the Registry of this Court so that the High Courts would circulate the same amongst the learned Sessions Judges who, in turn, shall circulate it among the learned Magistrates so that they can remain more vigilant and diligent while exercising the power under Section 156(3) CrPC.

84. As per the principle enunciated in the case cited supra, filing of affidavit along with private complaint is mandatory in order to forward the same to the concerned Police under Section 156 (3) Cr.P.C., for investigation and report. In para 35, the Hon'ble apex Court directed all the High Courts to circulate copy of the judgment among the learned Magistrates. This court also circulated the copy of the judgment in ***Priyanka Srivastava*** to all the Magistrates in the State of Telangana and the State of Andhra Pradesh. For one reason or the other, the learned Special Judge has not considered filing of the affidavit in support of the complaint, before passing the impugned order under Section 156 (3) Cr.P.C. This aspect also goes to prove, non application of the mind by the learned Special Judge.

85. In view of the foregoing discussion, I have no hesitation to hold that learned Special Judge passed the impugned order

without application of mind, therefore the same is liable to be quashed by exercising inherent jurisdiction under Section 482 Cr.P.C.

Whether the registration of second FIR is permissible basing on same set of facts?

86. The learned senior counsel for the petitioner strenuously submitted that if the impugned order is allowed to stand, the ACB has to register second FIR, basing on the same set of facts, which is not permissible under law; therefore, the impugned order is liable to be set aside. The learned standing counsel for the first respondent concurred with the submission of the learned senior counsel for the petitioner, on this aspect. Refuting the above submissions, leaned counsel for the second respondent submitted that in pursuance of the impugned order, the ACB can conduct discrete enquiry and file preliminary report, without registering the FIR much less the second FIR in the same crime. He further submitted that the learned Special Judge only called for the report of the ACB and therefore, the impugned order is legally sustainable.

87. The crucial question that falls for consideration is whether the ACB can conduct discrete enquiry and file preliminary report in this case without registering the FIR. Before considering the case law, it is imperative to mention few relevant facts. The ACB registered the Crime, basing on the complaint lodged by the *de facto* complainant. The second respondent filed complaint against the petitioner before the Special Court on 08.8.2016. The learned Special Judge passed the impugned order on 29.8.2016. On

31.8.2016, the ACB filed a Memo before the Special Court stating that the allegations in the complaint case and the Crime are one and the same. It is not the case of the second respondent that the allegations made in Crime No.11/ACB-CR 1-HYD/2015 and the complaint are not one and the same. The learned Special Judge has taken cognizance of offence against A.1 to A.3 and numbered the charge sheet as C.C.No.15 of 2016 on 29.8.2016. On the same day, i.e., 29.8.2016, the learned Special Judge had passed the impugned order. By the time of passing of the impugned order, the learned Special Judge is very much aware that basing on the same set of facts, the ACB registered the Crime, investigated into and filed the charge sheet.

88. The second respondent has taken a specific plea, in paragraph No.33 of the counter, that ACB is entitled to conduct enquiry without registration of second FIR in view of point No.78 of Chapter-7 of ACB Manual. Of course, the second respondent has not produced copy of the Manual. The learned senior counsel for the petitioner submitted that even if there is a Manual, the same has no statutory enforcement. He further submitted that if there is a conflict between the provisions of Cr.P.C., and the Manual of the concerned department, the provisions of Cr.P.C., will prevail.

89. To substantiate the argument, learned senior counsel for the petitioner also placed reliance on paragraph No.89 of the decision

in ***Lalita Kumari v Government of Uttar Pradesh***[29], which reads as follows:

> 89. Besides, the learned Senior Counsel relied on the special procedures prescribed under the CBI Manual to be read into Section 154. It is true that the concept of "preliminary inquiry" is contained in Chapter IX of the Crime Manual of CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that CBI is constituted under a special Act, namely, the Delhi Special Police Establishment Act, 1946 and it derives its power to investigate from this Act.

As per the principle enunciated in the case cited supra, the ACB Manual is meant for internal administrative guidance without any statutory force. The ACB has to follow the provision of the Cr.P.C., in letter and spirit regardless of their Manual.

90. Having regard to the facts and circumstances of the case and the principle enunciated in the case cited supra, I am of the considered view that the ACB Manual will not prevail over the provisions of the Cr.P.C.

91. The second limb of the argument of learned counsel for the second respondent is that the Investigating Agency can conduct discrete enquiry and file preliminary report, without registering the second FIR. The word "*discrete enquiry*" does not find place in Chapter–XII of Cr.P.C., which envisages investigation and filing of report. It is a settled principle of law that the Investigating Officer has to investigate the case within the four corners of Chapte-XII of

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[29] (2014) 2 SCC 1

Cr.P.C. In the absence of a specific provision in the Cr.P.C., the Investigating Officer has no right whatsoever to conduct discrete enquiry and file preliminary report. Section 154 Cr.P.C., mandates registration of FIR immediately after receipt of the information about the commission of a cognizable offence. Therefore, I am unable to accede to the contention of the learned counsel for the second respondent that the Investigating Agency has power to conduct discrete enquiry without registration of FIR.

92. To substantiate the argument, learned counsel for the second respondent has drawn the attention of this court to the decision in ***Lalita Kumari***. Para 120.1, 120.5 and 120.6 read as follows:

> 120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> 120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
>
> 120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
>
> (*a*) Matrimonial disputes/family disputes
> (*b*) Commercial offences
> (*c*) Medical negligence cases
> (*d*) Corruption cases
> (*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

93. The learned counsel for the second respondent has mainly placed reliance on para 120.6, wherein the Hon'ble apex Court observed that a preliminary enquiry is to be conducted in certain

type of cases. In para 120.5, the Hon'ble apex Court made an observation that preliminary enquiry is only to ascertain whether information reveals any cognizable offence. In para 120.1, the Hon'ble apex Court made an observation that registration of FIR is mandatory in view of Section 154 Cr.P.C. The principle enunciated in ***Lalita Kumari*** also did not support the contention of the learned counsel for the second respondent.

94. To substantiate the argument, learned senior counsel for the petitioner has drawn the attention of this court to the following decisions:

(i) In ***T.T.Anthony v State of Kerala***[30]. Relevant portion in Para 28 reads as follows:

> 28. ... ... The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of CrPC as pointed out above, therefore, the investigation undertaken and the report thereof cannot but be invalid. We have, therefore, no option except to quash the same leaving it open to the investigating agency to seek permission in Crime No. 353 or 354 of 1994 of the Magistrate to make further investigation, forward further report or reports and thus proceed in accordance with law.

(ii) In ***Amitbhai Anil Chandra Shah v CBI***[31], relevant portions in paras 38 and 60 read as follows:

> 38. ... ... As a matter of fact, the aforesaid proposition of law making registration of fresh FIR impermissible and violative of Article 21 of the Constitution is reiterated and reaffirmed in the following subsequent decisions of this Court: (*1*) *Upkar Singh* v. *Ved Prakash*, (2004) 13 SCC 292, (*2*) *Babubhai* v. *State of Gujarat*, (2010) 12 SCC 254, (*3*) *Chirra Shivraj* v. *State of A.P.*, (2010) 14 SCC 444, and (*4*) *C. Muniappan* v. *State of T.N.*, (2010) 9 SCC 567. In *C. Muniappan*, this Court explained the "consequence test" i.e. if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then

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[30] (2001) 6 SCC 181
[31] (2013) 6 SCC 348

> offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the offences covered in both the FIRs shall have to be treated as a part of the first FIR.
>
> 60. In view of the above discussion and conclusion, the second FIR dated 29-4-2011 being RC No.3(S)/ 2011/Mumbai filed by CBI is contrary to the directions issued in judgment and order dated 8-4-2011 by this Court in *Narmada Bai* v. *State of Gujarat,* (2011) 5 SCC 79 and accordingly the same is quashed.

(iii) In ***Dilawar Singh v. State of Delhi***[32], the Hob'ble apex Court, at para 11, held as follows:

> 11. ... ... Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

(iv) In ***Mohd. Yousuf v Afaq Jahan***[33], the Hon'ble apex Court, at para 11, held as under:

> 11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. **For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR.** There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. **Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered,** it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.
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> (emphasis supplied)

95. As per the principle enunciated in the cases cited supra, the Investigating Agency has no right whatsoever to conduct

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[32] (2007) 12 SCC 641
[33] (2006) 1 SCC 627

preliminary enquiry without registering FIR. The purpose of conducting of preliminary enquiry is to ascertain whether the allegations made in the complaint discloses commission of cognizance offence and not to ascertain the truthfulness or otherwise of the allegations made in the complaint. As observed earlier, the complaint in this case is replica of the charge sheet. In such circumstances, if the impugned order is allowed to stand, the ACB has no other alternative except to register the second FIR basing on the same set of facts, which is not permissible under law. Viewed from this angle also, the impugned order is not sustainable.

Whether the second respondent can seek the relief under Section 210 Cr.P.C., in view of peculiar facts and circumstances of the case?

96. The predominant contention of learned counsel for the second respondent is that the second respondent filed the complaint seeking relief under Section 210 Cr.P.C., and therefore, the learned Special Judge ought to have followed the procedure as contemplated under Section 210 Cr.P.C. The learned senior counsel for the petitioner strenuously submitted that the relief sought by the second respondent is misconceived. He further submitted that the very purpose of Section 210 Cr.P.C., is to protect the interest of the accused and not of the complainant. He also submitted that in view of the relief sought by the second respondent, the complaint itself is not maintainable. The learned standing counsel for the first respondent submitted that ultimately the learned Special Judge has to take a decision either to resort to Section 156(3) Cr.P.C., or to Section 210 Cr.P.C.

97. In support of the contention, learned senior counsel for the petitioner has placed reliance on the following decisions:

(i) In ***Sankaran Moitra v Sadhna Das***[34], the Hon'ble apex Court, at Paras 77, 78 and 79, held as follows:

> 77. The object of enacting Section 210 of the Code is threefold:
>
> (*i*) it is intended to ensure that private complaints do not interfere with the course of justice;
>
> (*ii*) it prevents harassment to the accused twice; and
>
> (*iii*) it obviates anomalies which might arise from taking cognizance of the same offence more than once.
>
> 78. The Joint Committee of Parliament observed:
>
> "It has been brought to the notice of the Committee that sometimes when a serious case is under investigation by the police, some of the persons file complaint and quickly get an order of acquittal either by cancellation or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the Committee has provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report (under Section 173) is received in the case, the Magistrate should try together the complaint case and the case arising out of the police report. But if no such case is received the Magistrate would be free to dispose of the complaint case. ***This new provision is intended to secure that private complainants do not interfere with the course of justice.***"
>
> 79. It is thus clear that before Section 210 can be invoked, the following conditions must be satisfied.
>
> (*i*) there must be a complaint pending for inquiry or trial;
>
> (*ii*) investigation by the police must be in progress in relation to the same offence;
>
> (*iii*) a report must have been made by the police officer under Section 173; and
>
> (*iv*) the Magistrate must have taken cognizance of an offence against a person who is accused in the complaint case.
>
> (emphasis supplied)

(ii) In ***Dilawar Singh***, the Hon'ble apex Court, at paragraph No.13, held as follows:

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[34] (2006) 4 SCC 584

> 13. The principle has been statutorily recognised in Section 210 CrPC which enjoins upon the Magistrate, when it is made to appear before him either during the inquiry or the trial of a complaint, that a complaint before the police is pending investigation in the same matter, he is to stop the proceeding in the complaint case and is to call for a report from the police. After the report is received from the police, he is to take up the matter together and if cognizance has been taken on the police report, he is to try the complaint case along with the GR case as if both the cases are instituted upon police report. The aim of the provision is to safeguard the interest of the accused from unnecessary harassment.

(iii) In ***Geevarghese Yohannan v Philipose***[35] the Kerala High Court, at para 11, held as follows:

> 11. This is not a case where there was a private complaint and the Magistrate had already taken cognizance of the offence on the basis of the private complaint and subsequently it was made to appear to the Magistrate, during the course of the inquiry that investigation by Police was in progress in relation to the offence which was the subject matter of the inquiry or trial held by him. Therefore S. 210 of the Criminal P.C. does not authorize the Magistrate to proceed as if both cases were instituted on police report.

The decision in ***Namathoti Sankaramma v State of A.P.***[36] also deals with the scope of Section 210 Cr.P.C.

98. The learned counsel for the second respondent, in support of the contention, has placed reliance on para 14 of the decision in ***Dilawar Singh***, which reads as follows:

> 14. The provisions of Section 210 CrPC are mandatory in nature. It may be true that non-compliance with the provisions of Section 210 CrPC, is not ipso facto fatal to the prosecution because of the provision of Section 465 CrPC, unless error, omission or irregularity has also caused the failure of justice and in determining the fact whether there is a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. But even applying the very same principles it is seen that in fact the appellant was in fact prejudiced because of the non-production of the records from the police.

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[35] 1987 Cri.LJ 1605 (Karala HC)
[36] 2001 (1) ALT (Crl.) 17

99. In ***Hanumanth v State of Karnataka***[37], the High Court of Karnataka, at para 4, held as follows:

> 4. ... ... The combined effect of these provisions (Subsections (1), (2) and (3) of Section 210 Cr.P.C.,) is: where the accused mentioned in the police report and those mentioned in the private complaint are one and the same, the case instituted on the private complaint stands merged with the police case, and no separate inquiry in the complaint case is necessary. The Magistrate has to inquire into and try both the cases together, as if they were instituted on police report. However, where the accused mentioned in the police report and those mentioned in the complaint case are different or only some are common and others different, the Magistrate has to proceed with the inquiry or trial of the case as against those all or the remaining accused in the case instituted on the private complaint.

100. The ratio laid down in ***Narmada Prasad Sonkar v Sardar Avtar Singh Chabara***[38] is that the High Court is not justified in quashing the complaint itself for non-following of the procedure simply because the Magistrate issued the process (under Section 202 Cr.P.C.,) without following the procedure and without application of mind.

101. As per the principle enunciated in the cases cited supra, the underlying object of Section 210 Cr.P.C., is three fold: (1) to prevent the complainant to interfere with the investigation, (2) to safeguard the interest of the accused, (3) to conduct joint trial basing on the complaint case and police report. Now, it should be considered whether the facts of the case on hand are fit in the conditions enumerated in the cases cited supra.

102. On 28.5.2015, the *de facto* complainant submitted a complaint to the Director General of Police, ACB and the same was

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[37] 1980 LawSuit (KAR) 260 = 1980 (2) KarLJ 400
[38] (2006) 9 SCC 601

forwarded to the Deputy Superintendent of Police, ACB, Range-I, Hyderabad to take necessary action. The ACB registered the FIR on 31.5.2015 in Crime No.11/ACB-CR-1-HYD/2015 against A1 to A4 and subsequently A5 was added. On 28.7.2015, the ACB laid the charge sheet before the Special Court against A1 to A4. In the charge sheet, it is categorically stated that the investigation is in progress so far as A5 is concerned. As per the prosecution version, the investigation is still pending for the reasons mentioned in the charge sheet. On 29.8.2016, learned Special Judge has taken cognizance of offences under Section 12 of the PC Act and Section 120-B IPC against A1 to A3 basing on the police report.

103. Admittedly, the petitioner is not an accused in the Crime. A.1 to A.3 and A5 in the Crime are not parties to the complaint. The learned Special Judge has not examined the complainant and witnesses on his behalf as postulated under Section 200 Cr.P.C. The learned Special Judge has not taken the cognizance of offence under clause (a) of Sub-section (1) of Section 190 Cr.P.C. It is not the case of the second respondent that the learned Special Judge, while conducting enquiry under Section 202 Cr.P.C., came to know about the pendency of investigation in the Crime. Even assuming, but not conceding, that the learned Special Judge has taken cognizance of offence basing on the complaint, the conditions stipulated in Sub-section (2) of Section 210 Cr.P.C., are not fulfilled in this case. The learned Special Judge has no power whatsoever to proceed under Section 210 Cr.P.C., without staying the proceedings in the complaint. Section 210(3) Cr.P.C., applies

in two situations: (1) where the police report does not relate to any accused in the complaint case; or (2) if the Magistrate does not take cognizance of offence on the police report at all. Even the conditions enumerated in Sub-section (3) of Section 210 Cr.P.C., are also not satisfied in this case.

104. Having regard to the facts and circumstances of the case and the principle enunciated in the cases cited supra, I am of the considered view that the second respondent, as a matter of right, is not entitled to seek the relief under Section 210 Cr.P.C., for the following reasons:

a) When the Special Court has not taken the cognizance of offence basing on the complaint, neither conducted an enquiry under Section 202(2) Cr.P.C., nor stayed the proceedings under Section 210(1) Cr.P.C., seeking of relief under Section 210 Cr.P.C., by the second respondent is like engaging a Priest to prepare horoscope of an unborn child.

b) If the second respondent is really seeking the relief under Section 210 Cr.P.C., nothing prevented him to challenge the impugned order passed by the Special Court under Section 156(3) Cr.P.C.

c) Advancing the argument that though the order was passed under Section 156(3) Cr.P.C., the same can be construed as a direction to conduct discrete enquiry and file a preliminary report, itself expressly indicates that the second respondent is very much satisfied with the impugned order.

d) Having accepted and welcomed the impugned order, the second respondent cannot now put the clock back and seek direction to follow the procedure postulated under Section 210 Cr.P.C.

e) The second respondent cannot blow hot and cold viz., supporting the impugned order on one hand by way pleadings in paragraph Nos.22 Ground 1.a), 2.a), b), c), e), 23, 24, 32, 36, 37 and 43 of the counter, and seeking the relief under Section 210 Cr.P.C., on the other.

f) The two reliefs sought by the second respondent in “reason e)” are mutually self-destructive.

Whether the second respondent is entitled to file complaint by obtaining documents, by not adopting the procedure established by law?

105. The learned senior counsel for the petitioner submitted that the second respondent has obtained the Court documents including Section 164 Cr.P.C., statements without following the procedure. The learned counsel for the second respondent submitted that obtaining of documents in illegal manner is not a valid ground to quash the complaint.

106. It is needless to say that the statements recorded under Section 164 Cr.P.C., shall be in the custody of the court. Normally, Section 164 Cr.P.C., statements will not be furnished even to the accused unless the court satisfies that the exigencies so warrant. Even the accused is not entitled for the certified copies of the FIR and Section 161 Cr.P.C., statements without following the procedure contemplated under the Criminal Rules of Practice.

107. The learned senior counsel for the petitioner has drawn the attention of this court to Rule 192, 204, 205, 206, 207, 211 and 212 of Criminal Rules of Practice. It is not the case of the second respondent that he obtained documents from the Special Court by following the procedure contemplated under Criminal Rules of Practice. There is no explanation much less convincing explanation forthcoming from the second respondent how, when and where he got the copies of documents filed along with the complaint. The fact remains that the second respondent is not in a position to convince the court that he obtained the documents by strictly

adhering the procedure contemplated under Criminal Rules of Practice.

108. The learned counsel for second respondent submitted that the Court has to take into consideration the substance of the documents placed before it and not the mode and method of obtaining such documents. To substantiate the arguments, he has relied upon para 35 of the decision in ***Umesh Kumar v State of A.P.***[39], which reads as follows:

> 35. It is a settled legal proposition that even if a document is procured by improper or illegal means, there is no bar to its admissibility if it is relevant and its genuineness is proved. If the evidence is admissible, it does not matter how it has been obtained. However, as a matter of caution, the court in exercise of its discretion may disallow certain evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. More so, the court must conclude that it is genuine and free from tampering or mutilation. This Court repelled the contention that obtaining evidence illegally by using tape recordings or photographs offends Articles 20(3) and 21 of the Constitution of India as acquiring the evidence by such methods was not the procedure established by law.

109. In view of the principle enunciated in the case cited supra, I am of the considered view that production of the documents by illegal methods by itself is a sole ground to dismiss the complaint.

Whether the second respondent has locus standi to file the complaint?

110. The learned senior counsel for the petitioner strenuously submitted that the second respondent has no *locus standi* to file the complaint before the Special Court. He further submitted that the second respondent filed the complaint with an ulterior motive to take vengeance against the petitioner though he is neither a de

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[39] (2013) 10 SCC 591

facto complainant, nor a victim, or having any semblance of interest whatsoever in the matter.

111. The learned standing counsel for the first respondent submitted that the second respondent made bald allegations against the investigating agency without any basis. He further submitted that the second respondent has no right whatsoever to interfere with the investigation being conducted by the State ACB. *Per contra*, the learned counsel for the second respondent vehemently submitted that locus standi is alien to criminal jurisprudence; therefore, any person who came to know about commission of a cognizable offence can set law in motion. He further submitted that the petitioner and the first respondent are hand in glove and derailed the investigation basing on the single window programme.

112. In support of the arguments, the learned senior counsel for the petitioner has drawn the attention of this Court to the following decisions:

(i) In ***Janata Dal v HS Chowdhary***[40], the Hon'ble apex Court, at Para Nos.25, 26 and 27, held as follows:

> 25. It is most relevant to note that none of the appellants before this Court save the Union of India and CBI is connected in any way with the present criminal proceeding initiated on the strength of the first information report which is now sought to be quashed by Mr H.S. Chowdhary. Although in the FIR, the names of three accused are specifically mentioned none of them has been impleaded as a respondent to these proceedings by any one of the appellants. Even Mr Martin Ardbo, former President of M/s A.B. Bofors, who was impleaded as a pro forma respondent in Criminal Appeal No. 310 of 1991 has been given up by the Solicitor General. Therefore, under these circumstances, one should not lose sight of the significant fact that in case this Court pronounces

[40] (1991) 3 SCC 756

its final opinion or conclusions on the issues other than the general issues raised by the appellants as public interest litigants, without hearing the really affected person/persons, such opinion or conclusions may, in future, in case the investigation culminates in filing a final report become detrimental and prejudicial to the indicated accused persons who would be totally deprived of challenging such opinion or conclusions of this apex court, even if they happen to come in possession of some valuable material to canvass the correctness of such opinion or conclusions and consequently their vested legal right to defend their case in their own way would be completely nullified by the verdict now sought to be obtained by these public interest litigants.

26. **Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.**

27. We, in the above background of the case, after bestowing our anxious and painstaking consideration and careful thought to all aspects of the case and deeply examining the rival contentions of the parties both collectively and individually give our conclusions as follows:

1. *Mr H.S. Chowdhary has no locus standi* (*a*) to file the petition under Article 51-A as a public interest litigant praying that no letter rogatory/request be issued at the request of the CBI and he be permitted to join the inquiry before the Special Court which on February 5, 1990 directed issuance of letter rogatory/request to the Competent Judicial Authorities of the Confederation of Switzerland; (*b*) to invoke the revisional jurisdiction of the High Court under Sections 397 read with 401 of the Code of Criminal Procedure challenging the correctness, legality or propriety of the order dated August 18, 1990 of the Special Judge and (*c*) to invoke the extraordinary jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure for quashing the first information report dated January 22, 1990 and all other proceedings arising therefrom on the plea of preventing the abuse of the process of the court.

2. In our considered opinion, the initiation of the present proceedings by Mr H.S. Chowdhary under Article 51-A of the Constitution of India cannot come within the true meaning and scope of public interest litigation.

3. Consequent upon the above conclusions (1) and (2), the appellants namely, Janata Dal, Communist party of India (Marxist) and Indian Congress (Socialist) who are before this Court equally have no right of seeking their impleadment/ intervention. For the same reasons, Dr P. Nalla Thampy Thera also has no right to file the Writ Petition (Criminal) No. 114 of 1991 as a public interest litigant.

(emphasis supplied)

(ii) In ***Simranjit Singh Mann v Union of India***[41], the Hon'ble apex Court, at Para No.7, held as follows:

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[41] (1992) 4 SCC 653

> 7. ... ... The person to suffer for the unilateral act of the third party would be the accused! Many such situations can be pointed out to emphasise the hazard involved if such third party's unsolicited action is entertained. Cases which have ended in conviction by the apex court after a full gamut of litigation are not comparable with preventive detention cases where a friend or next of kin is permitted to seek a writ of habeas corpus. We are, therefore, satisfied that neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the Court after a regular trial. On first principles we find it difficult to accept Mr Sodhi's contention that such a public interest litigation commenced by a leader of a recognised political party who has a genuine interest in the future of the convicts should be entertained. In *S.P. Gupta* v. *Union of India {1981 Supp SCC 87}*, Bhagwati, J. observed: (SCC p. 219, para 24)
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> "But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others ...."
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> These observations were made while discussing the question of 'locus standi' in public interest litigation. These words of caution were uttered while expanding the scope of the 'locus standi' rule. These words should deter us from entertaining this petition. This accords with the view expressed by this Court in *Krishna Swami* v. *Union of India {(1992) 4 SCC 605}*.

(iii) In ***Subramanian Swamy v. Raju***[42], the Hon'ble apex Court, at Para Nos.8 and 9, held as under:

> 8. The administration of criminal justice in India can be divided into two broad stages at which the machinery operates. The first is the investigation of an alleged offence leading to prosecution and the second is the actual prosecution of the offender in a court of law. The jurisprudence that has evolved over the decades has assigned the primary role and responsibility at both stages to the State though we must hasten to add that in certain exceptional situations there is a recognition of a limited right in a victim or his family members to take part in the process, particularly, at the stage of the trial. The law, however, frowns upon and prohibits any abdication by the State of its role in the matter at each of the stages and, in fact, does not recognise the right of a third party/stranger to participate or even to come to the aid of the State at any of the stages. Private funding of the investigative process has been disapproved by this Court in *Navinchandra N. Majithia* v. *State of Meghalaya*, (2000) 8 SCC 323, and the following observations amply sum up the position: (SCC p.329, para 18)

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[42] (2013) 10 SCC 465

> "*18.* Financial crunch of any State treasury is no justification for allowing a private party to supply funds to the police for conducting such investigation. Augmentation of the fiscal resources of the State for meeting the expenses needed for such investigations is the lookout of the executive. Failure to do it is no premise for directing a complainant to supply funds to the investigating officer. Such funding by interested private parties would vitiate the investigation contemplated in the Code. A vitiated investigation is the precursor for miscarriage of criminal justice. Hence any attempt, to create a precedent permitting private parties to supply financial assistance to the police for conducting investigation, should be nipped in the bud itself. No such precedent can secure judicial imprimatur."

9. Coming to the second stage of the system of administration of criminal justice in India, this Court in *Thakur Ram* v. *State of Bihar*, AIR 1966 SC 911, while examining the right of a third party to invoke the revisional jurisdiction under the 1898 Code, had observed as under: (AIR p.912)

> "... The criminal law is not, however, to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book."

(iv) In ***Amanullah v State of Bihar***[43], the Hon'ble apex Court, at Para Nos.19 and 20, held as under:

> 19. The term "*locus standi*" is a Latin term, the general meaning of which is "place of standing". *Concise Oxford English Dictionary*, 10th Edn., at p. 834, defines the term "locus standi" as the right or capacity to bring an action or to appear in a court. The traditional view of "locus standi" has been that the person who is aggrieved or affected has the standing before the court that is to say he only has a right to move the court for seeking justice. Later, this Court, with justice-oriented approach, relaxed the strict rule with regard to "locus standi", allowing any person from the society not related to the cause of action to approach the court seeking justice for those who could not approach themselves. Now turning our attention towards the criminal trial, which is conducted, largely, by following the procedure laid down in CrPC. Since, offence is considered to be a wrong committed against the society, the prosecution against the accused person is launched by the State. It is the duty of the State to get the culprit booked for the offence committed by him. The focal point, here, is that if the State fails in this regard and the party having bona fide connection with the cause of action, who is aggrieved by the order of the court cannot be left at the mercy of the State and without any option to approach the appellate court for seeking justice.

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[43] (2016) 6 SCC 669

20. In this regard, the Constitution Bench of this Court in *P.S.R. Sadhanantham {(1980) 3 SCC 141}* has elaborately dealt with the aforesaid fact situation. The relevant paras 13, 14 and 25 of which read thus: (SCC pp. 146-48 & 150-51)

"*13.* It is true that the strictest vigilance over abuse of the process of the court, especially at the expensively exalted level of the Supreme Court, should be maintained and ordinarily meddlesome bystanders should not be granted 'visa'. It is also true that in the criminal jurisdiction this strictness applies a fortiori since an adverse verdict from this Court may result in irretrievable injury to life or liberty.

14. Having said this, we must emphasise that we are living in times when many societal pollutants create new problems of unredressed grievance when the State becomes the sole repository for initiation of criminal action. Sometimes, pachydermic indifference of bureaucratic officials, at other times politicisation of higher functionaries may result in refusal to take a case to this Court under Article 136 even though the justice of the lis may well justify it. While 'the criminal law should not be used as a weapon in personal vendettas between private individuals', as Lord Shawcross[•] once wrote, in the absence of an independent prosecution authority easily accessible to every citizen, a wider connotation of the expression "standing" is necessary for Article 136 to further its mission. There are jurisdictions in which private individuals—not the State alone—may institute criminal proceedings. The Law Reforms Commission (Australia) in its Discussion Paper No. 4 on 'Access to Courts — I Standing: Public Interest Suits' wrote:

'The general rule, at the present time, is that anyone may commence proceedings and prosecute in the Magistrate's Court. The argument for retention of that right arises at either end of the spectrum — the great cases and the frequent petty cases. The great cases are those touching Government itself — a Watergate or a Poulson. However independent they may legally be any public official, police or prosecuting authority, must be subject to some government supervision and be dependent on government funds; its officers will inevitably have personal links with the Government. They will be part of the "establishment". There may be cases where a decision not to prosecute a case having political ramifications will be seen, rightly or wrongly, as politically motivated. Accepting the possibility of occasional abuse the Commission sees merit in retaining some right of a citizen to ventilate such a matter in the courts.'

Even the English System, as pointed by the Discussion Paper permits a private citizen to file an indictment. In our view the narrow limits set in vintage English Law, into the concept of person aggrieved and "standing" needs liberalisation in our democratic situation. In *Bar Council of Maharashtra v M.V.Dabholkar*, (1975) 2 SCC 702, this Court imparted such a wider meaning. The American Supreme Court relaxed the restrictive attitude towards "standing" in the famous case of *Baker* v. *Carr,* 1962 SCC OnLine US SC 40. Lord Denning, in the notable

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[•] The Times, 26-5-1977, 20

case of *Attorney General of Gambia* v. *N'jie*, 1961 AC 617 spoke thus: (AC p. 634)

'... the words "person aggrieved" are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him;'

Prof. S.A. de Smith takes the same view:

'All developed legal systems have had to face the problem of adjusting conflicts between two aspects of the public interest — the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome interloper to invoke the jurisdiction of the courts in matters that do not concern him[**44],

Prof. H.W.R. Wade strikes a similar note:

'In other words, certiorari is not confined by a narrow conception of locus standi. It contains an element of the actio popularis. This is because it looks beyond the personal rights of the applicant; it is designed to keep the machinery of justice in proper working order by preventing inferior tribunals and public authorities from abusing their powers.

In *Dabholkar case {(1975) 2 SCC 702}*, one of us wrote in his separate opinion: (SCC p. 720, para 59)

'*59. ... The possible apprehension that widening legal standing with a public connotation may unloose a flood of litigation which may overwhelm the Judges is misplaced because public resort to court to suppress public mischief is a tribute to the justice system.*'

This view is echoed by the Australian Law Reforms Commission.

* * *

25. In India also, the criminal law envisages the State as a prosecutor. Under the Code of Criminal Procedure, the machinery of the State is set in motion on information received by the police or on a complaint filed by a private person before a Magistrate. If the case proceeds to trial and the accused is acquitted, the right to appeal against the acquittal is closely circumscribed. Under the Code of Criminal Procedure, 1898, the State was entitled to appeal to the High Court, and the complainant could do so only if granted special leave to appeal by the High Court. The right of appeal was not given to other interested persons. Under the Code of Criminal Procedure, 1973, the right of appeal vested in the States has now been made subject to leave being granted to the State by the High Court. The complainant continues to be subject to the prerequisite condition that he must obtain special leave to appeal. The fetters so imposed on the right to appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even

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[44] ** Quoted in Standing and Justiciability by V.S.Deshpandi, Journal of the Indian Law Institute, April-June 1971 Vol.13, No.2, p.174

> though it is held by a superior court. The Law Commission of India gave anxious thought to this matter, and while noting that the Code recognised a few exceptions by way of permitting a person aggrieved to initiate proceedings in certain cases and permitting the complainant to appeal against an acquittal with special leave of the High Court, expressed itself against the general desirability to encourage appeals against acquittal. It referred to the common law jurisprudence obtaining in England and other countries where a limited right of appeal against acquittal was vested in the State and where the emphasis rested on the need to decide a point of law of general importance in the interests of the general administration and proper development of the criminal law. But simultaneously the Law Commission also noted that if the right to appeal against acquittal was retained and extended to a complainant the law should logically cover also cases not instituted on complaint. It observed:
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> '58. ... Extreme cases of manifest injustice, where the Government fails to act, and the party aggrieved has a strong feeling that the matter requires further consideration, should not, in our view, be left to the mercy of the Government. To inspire and maintain confidence in the administration of justice, the limited right of appeal with leave given to a private party should be retained, and should embrace cases initiated on private complaint or otherwise at the instance of an aggrieved person.'
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> However, when the Criminal Procedure Code, 1973 was enacted, the statute, as we have seen, confined the right to appeal, in the case of private parties to a complainant. This is, as it were, a material indication of the policy of the law."

The learned standing counsel for the first respondent has also placed reliance on the decision in ***Amanullah***.

113. In ***National Commission For Women v State of Delhi***[45], the Hon'ble apex Court, at Para Nos.14 and 15, held as follows:

> 14. The Court then examined the implications of completely shutting out a private party from filing a petition under Article 136 on the locus standi and observed thus: (P.S.R. Sadhanantham vs. Arunachalam *{(1980) 3 SCC 141}*, SCC p. 147, para 14)
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> "*14.* Having said this, we must emphasise that we are living in times when many societal pollutants create new problems of unredressed grievance when the State becomes the sole repository for initiation of criminal action. Sometimes, pachydermic indifference of bureaucratic officials, at other times politicisation of higher functionaries may result in refusal to take a case to this Court under Article 136 even though the justice of the lis may well justify it. While 'the criminal law should not be

[45] (2010) 12 SCC 599

> used as a weapon in personal vendettas between private individuals', as Lord Shawcross once wrote, in the absence of an independent prosecution authority easily accessible to every citizen, a wider connotation of the expression 'standing' is necessary for Article 136 to further its mission."
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> 15. A reading of the aforesaid excerpts from the two judgments would reveal that while an appeal by a private individual can be entertained but it should be done sparingly and after due vigilance and particularly in a case where the remedy has been shut out for the victims due to mala fides on the part of the State functionaries or due to inability of the victims to approach the Court. In the present matter, we find that neither the State which is the complainant nor the heirs of the deceased have chosen to file a petition in the High Court. As this responsibility has been taken up by the Commission at its own volition this is clearly not permissible in the light of the aforesaid judgments.

114. To substantiate the arguments, the learned standing counsel for the first respondent relied on the ratio laid down in ***P.S.R. Sadhanantham v Arunachalm***[46], wherein the Hon'ble apex Court, at Para No.26, held as under:

> 26. .....In every case, the court is bound to consider what is the interest which brings the petitioner to court and whether the interest of the public community will benefit by the grant of special leave. In a jurisprudence which elevates the right to life and liberty to a fundamental priority, it is incumbent upon the court to closely scrutinise the motives and urges of those who seek to employ its process against the life or liberty of another. In this enquiry, the court would perhaps prefer to be satisfied whether or not the State has good reason for not coming forward itself to petition for special leave....."

115. In ***Dattaraj Nathuji Thaware v State of Maharashtra***[47], the Hon'ble apex Court, at para Nos.9 and 11, held as under:

> 9. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-

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[46] (1980) 3 SCC 141
[47] AIR 2005 SC 540

> oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.
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> 10. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows:
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> "Public interest law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

116. On the other hand, to substantiate the argument, the learned counsel for the second respondent has drawn the attention of this Court to the following decisions.

(i) In ***A.R.Antulay v Ramdas Srinivas Nayak***[48], the Hon'ble apex Court, at para No.6, held as under:

> 6. .....the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [See Section 2(*n*) CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of

[48] AIR 1984 SC 718

> the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception.....

(ii) In ***Subramanian Swamy v Manmohan Singh***[49], the Hon'ble apex Court, at para No.28, held as under:

> 28. There is no provision either in the 1988 Act or the Code of Criminal Procedure, 1973 (CrPC) which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence. Therefore, the argument of the learned Attorney General that the appellant cannot file a complaint for prosecuting Respondent 2 merits rejection. A similar argument was negatived by the Constitution Bench in *A.R. Antulay* v. *R.S. Nayak {(1984) 2 SCC 500}*.

(iii) In ***Prakash Singh Badal v State of Punjab***[50], the Hon'ble apex Court, at para Nos.64 and 67, held as under:

> 64. The above sub-section corresponds to Section 154 of the old Code of 1898 to which various amendments were made by Act 26 of 1955 and also to Section 154 of the Code of Criminal Procedure of 1882 (Act 10 of 1882) except for the slight variation in that expression "local Government" had been used in 1882 in the place of "State Government". Presently, on the recommendations of the Forty-first Report of the Law Commission, sub-sections (2) and (3) have been newly added but we are not concerned with those provisions as they are not relevant for the purpose of the disposal of this case except for making some reference at the appropriate places, if necessitated. Section 154(1) regulates the manner of recording the first information report relating to the commission of a cognizable offence.
>
> 67. It has to be noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Sections 41(1)(*a*) or (*g*) of the Code wherein the expressions "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Sections 41(1)(*a*) and (*g*) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or

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[49] (2012) 3 SCC 64
[50] (2007) 1 SCC 1

> "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that "every complaint or information" preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that "every complaint" preferred to an officer in charge of a police station shall be reduced in writing. The word "complaint" which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(*c*) of the Code. An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

(iv) The same principle was reiterated in ***K. Karunakaran v State of Kerala***[51], wherein the Hon'ble apex Court, at para No.5, held as under:

> 5. The residual question therefore is whether mala fides are involved. As is noted in *Parkash Singh Badal case* even though there is an element of personal or political rivalry, it is ultimately to be seen whether materials exist to substantiate the allegations. In that sense it is not the credibility of the person who makes the allegations but the existence of materials necessitating investigation which is relevant.

(v) In ***Samaj Parivartan Samudaya v State of Karnataka***[52], the Hon'ble apex Court, at para Nos.63 and 64, held as under:

> 63. We must notice that the criminal offences are primarily offences against the State and secondarily against the victim. In this case, if the investigation by specialised agency finds that the suspect persons have committed offences with or without involvement of persons in power, still such violation undoubtedly would have been a great loss to the environmental and natural resources and would hurt both the State and national economy. We cannot expect an ordinary complainant to carry the burden of proving such complex offences before the court of competent jurisdiction by himself and at his own cost. Doing so would be a travesty of the criminal justice system.

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[51] (2012) 1 SCC 59
[52] (2007) 7 SCC 407

> 64. It was ever and shall always remain the statutory obligation of the State to prove offences against the violators of law. If a private citizen has initiated the proceedings before the competent court, it will not absolve the State of discharging its obligation under the provisions of Cr.PC and the obligations of the rule of law. The Court cannot countenance an approach of this kind where the State can be permitted to escape its liability only on the ground that multifarious complaints or investigations have been initiated by private persons or bodies other than the State. In our considered view, it enhances the primary and legal duty of the State to ensure proper, fair and unbiased investigation.

117. From a perusal of the ratio laid down in the above cases the following principles can be deduced.

a) Any person can set the criminal law into motion on coming to know about the commission of a cognizable offence.

b) No qualification is prescribed under the provisions of Cr.P.C or P.C. Act to set the criminal law in motion.

c) A stranger or a third party to the criminal proceedings, as a matter of right, is not entitled to intervene or implead under the guise of public interest.

d) If there is any substance in the allegations made in the complaint, mala fides attributed or political affiliation of the complainant are relegated to secondary or may be ignored as the case may be.

e) The Court has to meticulously scrutinise whether the third party approached the Court bona fidely or not; for that the Court has to unveil the mask of the public interest. If the court comes to the conclusion that the intervener is not an aggrieved person, and filed the complaint for personal or political gain, then the Court should not allow such persons to intervene in the criminal proceedings.

118. The complaint starts with the quotation of Albert Einstein which commenced with:

"The world will not be destroyed by those who do evil, but by those who watch them without doing anything"

and ends with the quotation of Abraham Lincoln about democracy, which reads thus:

"of the people,
by the people,
and for the people"

119. Lord Krishna expounded in Bhagavad-Gita contained in Chapter-IV Text (8):

> "To deliver the pious and to annihilate the miscreants, as well as to re-establish the principles, I myself appear, millennium after millennium."

120. In para No.5 of the counter, the second respondent has taken a specific plea that he has been serving the poor and down trodden since long time and fought even at the cost of his life whenever there is breach of law. The second respondent, by referring the above three quotations, made every attempt to create an impression in the mind of the court that he approached the court motivated by purity in thoughts, and with an open heart for the cause of others, without any semblance of selfish or political motive. If any ordinary prudent man has perused the averments in the complaint and the counter, it creates an impression as if the second respondent approached the Court with the sole object of unearthing the truth eventually to see that rule of law will prevail in the society. Whether creating such an impression will withstand the judicial scrutiny or not? is the core issue.

121. Let me consider the facts of the case on hand in the light of the above legal principles. At the cost of repetition, this Court is inclined to refer a few facts. On 27.7.2015 the investigating agency filed charge sheet against A.1 to A.4 on 29.8.2016, learned Special Judge has taken cognizance of offences under Section 120-B of IPC against A.1 to A.3. The prosecution also filed a memo stating that

investigation is in progress so far as A.5 and others are concerned. The first respondent has taken a specific stand in the counter that though the charge sheet is filed, still investigation is in progress.

122. The learned senior counsel for the petitioner has taken this Court to the nomenclature of the complaint which reads, "*Complaint filed in Cr.No.11/ACB-CR 1-HYD/2015 for the offences punishable under Section 12 of the PC Act and Section 120-B of IPC*". He strenuously submitted that the second respondent will not fall within the ambit of 'complainant' and utmost he may be an intervener or impleader. It is a settled principle of law that the Court has to take into consideration the sum and substance of the complaint and should not be carried away with the nomenclature of the complaint. The relief sought in the complaint is as follows:

> "Hence, it is prayed that this Hon'ble Court may be pleased to take the complaint on the file and deal with the Accused for the offences u/s 12 of the P.C. Act, 1988 and 120-B I.P.C. and it is humbly submitted that as the Police investigation is simultaneously proceeding in the same offence the Hon'ble Court may be pleased to invoke Section 210 Cr.P.C and deal with the Accused as per Law in the interest of justice."

123. A perusal of the relief indicates that the second respondent filed the complaint seeking the sole relief under Section 210 Cr.P.C. Whether the second respondent has *locus standi* to file the complaint or not depends on various aspects to be discussed infra. It is not in dispute that the second respondent filed the complaint in Cr.No.11/ACB-CR1-HYD/2015.

124. The complaint was filed on 08.08.2016, by which time, the Investigating Officer laid charge sheet in the above crime before the Special Court. The copy of the charge sheet was annexed as one of

the list of documents along with the complaint. For the reasons best known, the second respondent did not mention in the complaint about filing of the charge sheet, which has material bearing on the issue. The learned senior counsel for the petitioner magnified this aspect as if the second respondent approached the Court by suppressing material facts. Even assuming but not conceding that the second respondent intentionally and wilfully concealed the factum of filing of the charge sheet, that itself is not a sole ground to dismiss the complaint without considering the other relevant aspects. However, the Court shall not lose sight of this aspect.

125. The learned standing counsel for the first respondent submitted that the second respondent made several allegations as if the Investigating Agency has not conducted any investigation in all these days. He further submitted that the Investigating Agency is meticulously following the procedure so as to avoid the future legal complications. His entire endeavour is to impress the Court that the Investigating Agency is proceeding systematically by taking assistance and aid of the Experts in the fields of science and technology in order to unearth the truth as well as to ascertain the involvement of others. He further submitted that if any hasty step is taken by the Investigating Agency that may demolish the very foundation of the investigation. The learned standing counsel further submitted that the second respondent has not produced any track record to convince this Court that he has been fighting for the sake of poor and downtrodden by way of filing Public

Interest Litigation petitions. The gist of the submissions of the learned counsel first respondent is that the second respondent has no *locus standi* to file the complaint as he is no way connected with the Crime.

126. In ***A.R.Antulay*** the complainant alone collected the material and approached the Court due to apathy on the part of the Investigating Agency. The learned senior counsel for the petitioner also placed reliance on the decision in ***Subramanian Swamy***. It is not out of place to extract the relevant portion in para No.2 of ***Subramanian Swamy,*** which reads thus: "*for the last more than three years, the appellant has been vigorously pursuing, in the public interest, the cases allegedly involving loss of thousand of crores of rupees to the public exchequer due to arbitral and illegal grant of licence at the behest of Mr. A.Raju-second respondent who was appointed as Minister of Communication and Information Technology by the President on the advice of Dr. Manhomhan Singh*". This clearly indicates that the complainant therein has collected the information on his own accord and filed the complaint in public interest. In the case on hand, the second respondent has not collected any new information, to justify his intervention. As observed earlier, the complaint is nothing but replica of the charge sheet filed by the ACB, except making some bald allegations against the Investigating Agency and the petitioner. The petitioner, who belongs to State of Andhra Pradesh, has no control whatsoever over the administration of State of Telangana in general and the ACB in particular. In such circumstances, influencing the ACB, Telangana by the petitioner is only imaginary of the second respondent. No specific allegation is made against

the ACB, Telangana, highlighting the laches if any on their part. It is very easy to make bald and unfounded allegations against anybody. If any information is placed before the Court in support of such allegation, then the Court can take judicial notice of the same. Mere making of allegations against the Investigating Agency and the petitioner, without any substance, itself is not a sufficient ground to allow the second respondent to come on record.

127. The second respondent has taken a specific stand in the complaint that the silence on the part of the Investigating Agency made him to step into the shoes of the Investigating Agency, which abandoned its statutory duty and purposefully failed to conduct basic investigation, nab and bring the prime offender. This clearly indicates that the second respondent came forward to shoulder the responsibility of investigation. It is the statutory duty of the Investigating Agency to investigate into the cognizable offences. The Investigating Agency has been discharging its duties on behalf of the State. It is a settled principle of law that a private individual cannot be entrusted with the responsibility of the investigation. A private individual cannot be entrusted with the statutory duties. For any reason, if a private individual is allowed to investigate a case, which is already under investigation by the ACB, undoubtedly, it creates a suspicion in the mind of the public as well as it may affect the morality of the ACB. If the courts liberally allow the private individuals, who has no interest whatsoever in the case, to enter into the shoes of the Investigating Agency, the same leads to chaos. The learned standing counsel for the first

respondent strenuously submitted that if the second respondent is allowed to step into the shoes of ACB, Telangana, it is nothing but intervening with the administrative affairs of the State of Telangana, which is not permissible under law. The ACB filed a Memo before the Special Court stating that the investigation is in progress, which negates the contention of the second respondent that the ACB abandoned its statutory duty.

128. As rightly pointed out by the learned standing counsel for the first respondent if the persons like the second respondent are allowed to intervene with the investigation, thousands of people may also file similar type of petitions for intervening under the guise of public interest. If everyone is allowed to intervene, without scrutinising the bona fides and other relevant factors, there will be no end point to the investigation.

129. It is the primary duty of the investigating agency to investigate into the matter in order to unearth the truth. Fair and proper investigation ensures the identification of perpetrator of the crime. It is the statutory duty of the Investigating Agency to conduct investigation on its own lines without any interruption form any corner. If the Investigating Agency failed to discharge its statutory duties, the aggrieved person will be the de-facto complainant or his kith and kin if there is any legal disability on the part of the de-facto complainant to pursue the proceedings. It is not the case of the second respondent that the de-facto complainant, in collusion with the Investigating Agency and the petitioner, derailed the investigation in order to protect the

petitioner. The second respondent has not taken a specific plea in the complaint as well as the counter filed in this criminal petition that he is very much aware of Section 39 of Cr.P.C., but he has not acted so.

130. In the State of Andhra Pradesh, TDP is in power and YSRCP is in the opposition. The petitioner is the Chief Minister of State of Andhra Pradesh and belongs to TDP. The second respondent was elected as MLA from Mangalagiri Constituency in the State of Andhra Pradesh on YSRCP ticket. The petitioner and the second respondent belong to two different rival political parties in the State of Andhra Pradesh. The alleged incident has taken place in the State of Telangana in connection with the elections to the Legislative Council of the State of Telangana. Admittedly, the second respondent is not one of the members of electoral rolls of the Legislative Council in the State of Telangana. The alleged incident neither directly nor indirectly or by necessary implication would affect the second respondent in any manner even so remotely. The de-facto complainant is a Member of Legislative Assembly of State of Telangana who is pursuing the issue in his own way. This Court is very much conscious of the scope of public interest litigation.

131. In view of the prevailing scenario in the State of Andhra Pradesh, the possibility of filing the complaint by the second respondent in order to take political and personal vengeance against the petitioner cannot be ruled out completely. It is not uncommon to file petitions in the Court of law by the members of

political parties in order to attract the attention of the general public and media regardless of the truthfulness or otherwise of the allegations. Airing rumours and allegations, without any substance, knowing fully well that those allegations will not withstand to judicial scrutiny, is the order of the day. Therefore, a duty is cast on the Courts to meticulously scrutinize the intervener's petitions. Access to justice and public interest litigations do not mean that the Court of law can be used as a forum to take political and personal vendetta. The underlying object of 'access to justice' and 'public interest litigation' is to safeguard the interest of the persons who are incapable of espousing their cause due to lack of financial resources, lack of legal awareness or due to educational, social and cultural backwardness. A person, who approached the court under the guise of public interest with a hidden agenda, cannot be permitted to use the court as a forum to settle the personal and political scores. As per the ratio laid down in ***National Commission For Women, Janata Dal*** and ***Simranjit Singh Mann,*** the second respondent will not fall within the ambit of 'aggrieved person'. The second respondent is altogether a stranger to the proceedings; therefore, he is not legally entitled to intervene in the proceedings.

132. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am of the considered view that the second respondent has no *locus standi* to file the complaint.

Whether the proceedings in CCSR No.958 of 2016 is liable to be quashed or not?

133. The next question that falls for consideration is whether the allegations made in the complaint prima facie constitute the offence alleged to have been committed by the petitioner.

134. The contention of the learned senior counsel for the petitioner is that the allegations made in the complaint do not constitute the offence alleged to have been committed by the petitioner. *Per contra*, the learned counsel for the second respondent submitted that the allegations made in the complaint prima facie constitute the alleged offence; therefore, the petition is liable to be dismissed. He further submitted that the Court cannot consider the evidentiary value of the material available on record at this juncture.

135. To substantiate the argument, learned counsel for the second respondent has drawn the attention of this court to the following decisions:

(i) ***J.P. Sharma v Vinod Kumar Jain***[53], wherein the Hon'ble apex Court, at para No.46, held that if no offence was made out, then only the High Court is justified in quashing the proceedings in exercise of its power under Section 482 of Code of Criminal Procedure. For better appreciation the relevant paragraph is extracted hereunder:

> 46. The power under Section 482, Criminal Procedure Code, has been examined by this Court in Municipal Corporation of Delhi v. Ram Krishan Rohtagi and Ors. {1983 CriLJ 159}. It was laid down clearly that the test

[53] (1986) 3 SCC 67

> was that taking the allegations and the complaint as these were, without adding or subtracting anything, if no offence was made out then only the High Court would be justified in quashing the proceedings in exercise of its powers under Section 482 of CrPC. There this Court observed that the power under Section 482 should be used very sparingly……..

(ii) ***Taramani Prakash v State of M.P***[54]., wherein the Hon'ble apex Court at para No.12 made an observation as follows:

> 12. 9. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court's process, quashing jurisdiction can be exercised.

(iii) ***State of Punjab v Dharam Singh***[55], wherein the Hon'ble apex Court held that the Court can scrutinise the averments contained in the FIR, but cannot traverse beyond and examine further.

(iv) ***State of Punjab v Devinder Kumar***[56], wherein the Hon'ble apex Court, at para No.9, held as follows:

> 9. Before concluding we should observe that the High Court committed a serious error in these cases in quashing the criminal proceedings in different magistrates' courts at a premature stage in exercise of its extraordinary jurisdiction under Section 482 Criminal Procedure Code. These are not cases where it can be said that there is no legal evidence at all in support of the prosecution. The prosecution has still to lead its evidence. It is neither expedient nor possible to arrive at a conclusion at this stage on the guilt or innocence of the accused on the material before the Court. While there is no doubt that the onus of proving the case is on the prosecution, it is equally clear that the prosecution should have sufficient opportunity to adduce all available evidence.

136. Let me consider the facts of the case, in the light of the above legal principles. As per the allegations made in the complaint, the second respondent sent the *'admitted'* voice of the petitioner along with the disputed telephonic conversation to Helik Advisory,

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[54] (2015) 11 SCC 260
[55] (1987) (sup) SCC 89
[56] (1983) 2 SCC 384

Bombay for comparison and opinion. The said laboratory confirmed that the voice in the disputed telephonic conversation matches with the '*admitted*' voice of the petitioner. It is not explained how he got such an '*admitted*' voice.

137. The sole basis for filing of the complaint is the alleged telephonic conversation of the petitioner with *de facto* complainant. There is no mention in the complaint or in the counter how the second respondent secured the telephonic conversation. It is not the case of the second respondent that he has obtained the same from the Special Court or from the Investigating Agency or from any other competent authority by following proper procedure. There is no authenticity for the alleged telephonic conversation. In the absence of any semblance of legal authenticity of the electronic document, it is not safe to place reliance on it even for taking cognizance of offence, when the same is the sole basis.

138. As observed earlier, the second respondent failed to establish that he obtained copies of FIR, statements of witnesses, Section 164 Cr.P.C., statements and other documents from the Special Court by strictly adhering the procedure as contemplated under Criminal Rules of Practice. The fact remains that the second respondent filed the complaint by obtaining documents by other means.

139. To appreciate the rival contentions, it is necessary to consider the scope of Section 79-A of the Information Technology Act.

> **79A. Central Government to notify Examiner of Electronic Evidence**: The Central Government may, for the purposes of providing expert opinion on electronic form evidence before any court or other authority specify, by notification in the official Gazette, any department, body or agency of the Central Government or a State Government as an Examiner of Electronic Evidence.
>
> *Explanation*:- For the purpose of this section, "Electronic Form Evidence" means any information of probative value that is either stored or transmitted in electronic form and includes computer evidence, digital audio, digital video, cell phones, digital fax machines".

140. A perusal of the above section clearly demonstrates that the Central Government has to issue notification identifying any department, body or agents of the Central Government or State Government as an examiner of the electronic evidence. The Parliament in its wisdom incorporated Section 79-A of the Information Technology Act in order to prevent malicious prosecution basing on the expert opinion given by unrecognized bodies/laboratories.

141. Section 45-A of the Indian Evidence Act enables the Court to send the electronic document to the expert for opinion, in order to place reliance on it. To place any reliance on the opinion of an Expert, the electronic document should have been sent to the recognized laboratory through the Court.

142. It is not the case of the second respondent that the Central Government has issued a Notification under Section 79-A of the I.T. Act recognising Helik Advisory, Bombay, leave apart how the second respondent got the alleged '*admitted*' voice of the petitioner. Generally, admitted electronic documents and admitted signatures will be taken in the open court by following the proper procedure. Any document placed before the court without following the

procedure as stated supra cannot be treated as an admitted electronic document. Recording voice of an individual on electronic record without his knowledge or consent cannot be treated as his admitted voice, in the eye of law. All these aspects cast a cloud on the alleged telephonic conversation.

143. Even as per the decision relied upon by the learned counsel for the second respondent in ***Umesh Kumar***, it was observed at para 32 that, "… … *However, as a matter of caution, the court in exercise of its discretion may disallow certain evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. More so, the court must conclude that it is genuine and free from tampering or mutilation.*".

144. The learned senior counsel for the petitioner has drawn the attention of this court in ***Dattaraj Nathuji Thaware***, wherein the Hon'ble apex Court, at para No.16, held as under:

> 16. … … … … the other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. **It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-seated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts**.
>
> (emphasis supplied)

145. All these aspects clearly go to prove that the second respondent got all the documents in an inappropriate manner. In view of this factual scenario, if Courts place reliance on this type of

electronic documents, certainly, it would amount to encouraging the litigant public to approach the unrecognized bodies of their choice for their personal gain and file frivolous complaints of this nature to take personal vendetta against their opponents, which should be deprecated. If the second respondent had followed the procedure contemplated under law, while collecting the documents including the electronic documents, then there may be some justification in his stand.

146. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is unsafe to take cognizance of offence on the complaint basing on the opinion alleged to have been given by an unrecognised Expert/Laboratory on the electronic record which authenticity is very much doubtful.

147. The complaint is filed under Section 12 of the PC Act and Section 120-B of IPC. Establishment of ingredients of Section 7 and 11 of the PC Act are *sine qua non* to press into service Section 12 of the PC Act.

148. Section 7 of the PC Act reads as under:

> **7. Public servant taking gratification other than legal remuneration in respect of an official act**: Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government

> company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

149. The gist of Section 7 of the PC Act is accepting or agreeing to accept gratification other than the legal remuneration by a public servant for doing or forbearing to do any official act in exercise of his official functions.

150. Section 11 of the PC Act reads as under:

> **11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.—**Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

151. It is not the case of the second respondent that the *de facto* complainant accepted valuable thing from the petitioner without consideration or inadequate consideration. Therefore, Section 11 of the PC Act has no application to the facts of the case.

152. Section 12 of the PC Act reads as under:

> **12. Punishment for abetment of offences defined in section 7 or 11**: Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

153. The abetment of an offence under Section 7 or 11 of the PC Act is punishable under Section 12 of the PC Act. Let me consider the facts of the case in the light of the above legal provisions. The alleged episode started on 28.5.2015 and continued up to 31.5.2015. There is no allegation in the complaint that at the instance of the petitioner the other accused approached the de-facto complainant. No role was attributed to the petitioner up to 29.5.2015 and on 31.5.2015. The specific allegation made against the petitioner in order to rope him in this criminal case is as follows:

> *"Hello! Good evening brother, how are you,*
> *Manavallu briefed me. I am with you, Don't bother*
> *For everything I am with you, what all they spoke will honour.*
> *Freely you can decide. No problem at all.*
> *That is our commitment. We will work together.*
> *Thank you."*

154. The test to be applied is whether an ordinary prudent man, by perusing the above allegations will come to a conclusion that the above conversation *prima facie* satisfies the ingredients of Section 12 of the PC Act or Section 120-B of IPC.

155. Establishment of following three ingredients, as contemplated under Section 107 of IPC, is condition precedent, to prove the offence under Section 12 of the PC Act.

(i) Instigation of any person to do a particular thing;

(ii) Engaging one or more persons to do a particular thing or illegal omission in pursuance of conspiracy;

(iii) Intentionally aiding a person by an act or an illegal omission to do particular thing.

156. It is the case of the second respondent that at the instigation of the petitioner, the other accused approached the de facto complainant, who is a public servant, and offered bribe either to cast his vote in favour of TDP candidate or to leave the country by abstaining from voting. There is no specific allegation in the complaint that the petitioner conspired with other accused prior to 28.5.2015 and in pursuance of which the other accused approached the de facto complainant. It is not the case of the second respondent that the role alleged to have been played by the petitioner reflects in the FIR. Even if the alleged conversation is taken into consideration, the petitioner did not offer bribe to the de-facto complainant. The petitioner did not ask the de-facto complainant either to vote in favour of TDP candidate or abstain from voting by leaving the country.

157. The learned counsel for the second respondent mainly placed reliance on the words "*what all they spoke will honour*" from the alleged telephonic conversion. The learned counsel for the second respondent submitted that these words are sufficient to prove the complicity of the petitioner. It is needless to say that a particular sentence cannot be read or interpreted in isolation of the other part. A duty is cast on the Court to consider the entire allegations made in the complaint in order to arrive at a just and reasonable conclusion. The Court shall not lose sight of the following words "*freely you can decide; no problem at all*" also. Even assuming but not conceding that the alleged conversation is a genuine one, this itself falsifies the case of the second respondent that the petitioner

is one of the conspirators of the alleged crime. The allegations made in the complaint are bereft of the ingredients of Section 12 of the PC Act and Section 120-B of IPC. In such circumstances, forcing the petitioner to face the rigour of criminal trial is nothing but abuse of process of law and amounting to miscarriage of justice.

158. The learned senior counsel for the petitioner submitted that exercising of franchise will not fall within the ambit of public duty; therefore, registration of case under the PC Act itself is not maintainable. In support of his contention, he relied on the ratio laid down in ***Kuldip Nayar and Others vs. Union of India***[57]. *Per contra*, learned counsel for the second respondent submitted that offering of bribe to influence a public servant to vote in favour of a particular party also attract the provisions of the PC Act. In support of his contention, learned counsel for the second respondent placed reliance on the decisions in ***Ajit Pramod Kumar Jogi vs. Union of India***[58], ***P.V.Narasimha Rao vs. Union of India***[59], ***Damodar Krishna Kamli vs. State***[60] of the Bombay High Court and ***Bhimsingh vs. State***[61] of Rajasthan High Court.

159. The learned senior counsel for the petitioner has also drawn the attention of this Court to paragraph No.48 of the order passed by the coordinate Bench of this Court in Crl.P.No.5520 of 2015, to convince this Court that basing on those observations it is a fit case

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[57] (2006) 7 SCC 1
[58] 2004 LawSuit (Chh)13
[59] AIR 1998 SC 2120
[60] 1955 CriLJ 181
[61] AIR 1955 CriLJ 108

to quash the proceedings against the petitioner. Para No.48 of the order passed in the above case reads as follows:

> 48) From the above, when the allegations in the report or in the charge sheet repeatedly says only offering of bribe by petitioner, which does not attract the ingredients of Section 12 of P.C.Act, against the petitioner, leave about A.1 to A.3 or A.5 or others, for even case made out against the defacto-complainant under Section 7 or 11 of the P.C.Act,1988.

160. At this juncture, the learned standing counsel for the first respondent submitted that the ACB, State of Telangana has preferred SLP No.5248 of 2016 before the Hon'ble apex Court challenging the order in Criminal Petition No.5520 of 2016, quashing the criminal proceedings against A.4, and in view of the pendency of the matter before the Hon'ble apex Court in SLP No.5248 of 2016, it is not just and proper to decide that issue in this case. The learned counsel for all the parties submitted that the Hon'ble apex Court has not granted stay in the S.L.P. No.5248 of 2016 or suspended the orders in Criminal Petition No.5520 of 2016. Unless and until the order passed in Criminal Petition No.5520 of 2016 is set aside or modified by the Hon'ble apex Court, the same holds good. Hence, it is not fair on the part of this Court to express any opinion on this issue.

161. In **State of Haryana v Bhajanlal**[62], the Hon'ble apex Court at para No.105 (of Manupatra), held as follows:

> 105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and

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[62] AIR 1992 SC 604

reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

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

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

162. The Apex Court in ***R.P.Kapur v. State of Punjab***[63], at para 6, held as hereunder:

> 6. Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under s. 561-A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the magistrate before whom the police report has been filed under s. 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against

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[63] AIR 1960 SC 866

> the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under s. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under s. 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re : Shripad G. Chandavarkar A.I.R. 1928 Bom. 184 Jagat Chandra Mozumdar v. Queen Empress I.L.R. (1899) Cal. 786 Dr. Shanker Singh v. The State of Punjab(1954) 56 Pun L.R. 54, Nripendra Bhusan Ray v. Gobind Bandhu Majumdar MANU/ WB/0215/1923 : AIR1924Cal1018 and Ramanathan Chettiyar v. K. Sivarama Subrahmanya Ayyar I.L.R. (1924) Mad. 722.

163. In **Guruduth Prabhu**, Mysore Bench of Karnataka High Court, at para No.11, held as follows.

> 11. ... ... We have also found in this case that the complaints filed by the complainants is manifestly tainted with mala fides and instituted maliciously with an ulterior motive for wreaking vengeance on the accused with a view to spike them due to private and personal grudge. When such is the circumstance which is disclosed from the materials on record, it is not only empowers this Court to interfere in the interest of justice, but it is the duty of this Court to nip such an investigation in the bud. ... ...

The principle enunciated in the cases cited supra is squarely applicable to the facts of the case on hand.

Epilogue

(i) The provisions of the PC Act do not exclude the invocation of jurisdiction under Section 482 Cr.P.C., either expressly or by necessary implication.

(ii) An interlocutory order passed under the provisions of the PC Act is amenable to Section 482 Cr.P.C., despite bar of revision under Section 19(3)(c) of the PC Act.

(iii) An order passed under Section 156 (3) Cr.P.C., is a judicial order, as it requires application of mind by the learned Magistrate or the learned Special Judge, as the case may be.

(iv) An order passed under Section 156 (3) Cr.P.C., by the learned Magistrate or the learned Special Judge without application of mind is liable to be quashed under Section 482 Cr.P.C.

(v) If the impugned order is allowed to stand, the ACB, State of Telangana has no option except to register the second FIR basing on the same set of facts, which is not permissible under law.

(vi) The impugned order under Section 156 (3) Cr.P.C., is passed for investigation and report and not to call for the preliminary report as contemplated under Section 202(1) Cr.P.C.

(vii) For one reason or the other, the second respondent has not challenged the impugned order and thereby allowed the same to become final so far as he is concerned.

(viii) Having done so, the second respondent is now estopped to put the clock back and claim relief under Section 210 Cr.P.C.

(ix) The main relief sought by the second respondent in the complaint is contrary to the underlying object of Section 210 Cr.P.C.

(x) The second respondent has no *locus standi* to intervene in Crime No.11/ACB-CR 1-HYD/2015 by way of filing complaint.

(xi) Even if the allegations made in the complaint are *ex facie* taken to be true and correct, they do not constitute any offence much less the offence alleged to have been committed by the petitioner under Section 12 of the PC Act and Section 120-B of IPC.

164. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases referred supra, the criminal petition is allowed quashing the impugned order dated 29.8.2016 and the proceedings in CCSR No.958 of 2016 in Crime No.11/ACB-CR-1-HYD/2015 on the file of the Court of the Principal Special Judge for SPE and ACB cases, Hyderabad. Miscellaneous petitions, if any pending in this criminal petition, shall stand closed.

Justice T.Sunil Chowdary

Date: 09.12.2016

NOTE:

L.R. copy to be marked : **Yes** / No
(By order)

Kvsn/YS