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CRIMINAL PROCEDURE

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I INTRODUCTION

DURING THE recent past a series of criminal proceedings relating to the *Best Bakery* case have unfortunately revealed that our criminal law system can be manipulated by unscrupulous investigatory and prosecuting agencies to their advantage. An effective and vigilant judicial monitoring mechanism is essential for ensuring fair trial. Such a task, as outlined under the Code and further supplemented by the Constitution of India, is assigned to criminal courts, in general, and the higher judiciary, in particular.

Believing that it has an overriding duty to maintain public confidence in the administration of justice and rightly so, judiciary has been striving hard to attain the goal.

The current survey endeavours to take stock of leading judicial pronouncements of the high courts and of the Supreme Court made during 2006 on different aspects of criminal proceeding and procedure and thereby to highlight their pertinent reflections on, and significant contributions to, different segments and aspects of the administration of criminal justice.

II FIRST INFORMATION REPORT

During the year under survey, the Supreme court, on occasions more than one, was called upon to reflect upon the true nature of section 154 of the Code.

In *Ramesh Kumari* v. *State (NCT of Delhi) & Ors*,[1] the appellant ventilated her grievance that the information filed by her about commission of a cognizable offence has not been taken cognizance of by the station house officer (SHO) and her approach to the police commissioner concerned also did not bring any results. The Delhi High Court found it difficult to direct the authority concerned to register a case based on her information on the ground that the appellant had an alternative remedy. However, the high court, interestingly, did not indicate the 'alternative remedy' available to her.

The Supreme Court, placing reliance on its earlier dictum in *State of Haryana and Ors* v. *Bhajan Lal and Ors*,[2] stated that the officer-in-charge of

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1 (2006) 2 SCC 677.

2 1992 Cri LJ 527 (SC).

a police station, by virtue of section 154 of the Code, is statutorily obliged to register a case on the basis of 'information' disclosing commission of a cognizable offence. He has no other option except to register the case based on such 'information'. He is statutorily obliged to register a case and then to proceed with the investigation, if he has reason to suspect the commission of an offence. He cannot refuse to register a case on the ground that the information is not relevant or credible. His refusal to do so amounts to violation of the statutory duty. An information disclosing a cognizable offence is a *sine qua non* for recording a FIR under section 154 of the Code.[3]

In *Lallan Chaudhary and Ors* v. *State of Bihar and Anr*,[4] the SHO filtered a complaint (disclosing a couple of cognizable offences) endorsed to him by the sub-divisional magistrate for registering the FIR and deliberately omitted a few of the offences in his FIR, which was mechanically followed by the trial court. The apex court, reiterating the *Ramesh Kumari* dictum, held that such an omission and the consequential non investigation of the omitted offences not only violated section 154 of the Code but also amounted to grave miscarriage of justice.

Delay in lodging FIR

A delayed FIR, as hitherto apprehended, casts cloud on the credibility of the entire prosecution story as it leaves much scope for creeping in of a coloured version or an exaggerated story. The possibility of improvement in the prosecution story and introduction of a distorted version by deliberations and consultation in a delayed FIR cannot be ruled out.

However, the higher judiciary has repeatedly stressed that the question of delay has to be seen in the light of attending circumstances and background of a case in hand. A delayed FIR, however, cannot in itself be a ground either to doubt the prosecution story or to discard the entire case of the prosecution. It cannot, as a rule, be fatal to the case at hand. Nevertheless, delayed FIR may be a material factor taken into account while appreciating the evidence on record. The delay in lodging FIR merely puts a court on its guard to search for any plausible explanation for the delay and to decide as to whether it, if offered, is satisfactory or not. If the prosecution fails to offer a satisfactory explanation for the delay and there is a possibility of embellishment in the prosecution version because of such delay, the delay will be fatal to the prosecution. The Supreme Court has also echoed similar opinion in the year under survey.[5]

Further, section 157 of the Code, mandates an officer in charge of police station, if he has reasons to suspect the commission of an offence which he is empowered under section 156 to investigate, to send, promptly and without

3 This position was reiterated in *Prakash Singh Bandal* v. *State of Punjab*, JT 2007 (1) SC 89. Also see, *Ravinder Kaur* v. *State of Punjab*, (2006) 9 SCC 188.

4 AIR 2006 SC 3376.

5 *Rabindra Mahto and Anr* v. *State of Jharkhand*, (2006) 3 SCJ 324; *Sahebrao and Anr* v. *State of Maharashtra*, (2006) 9 SCC 794.

any delay, FIR to the magistrate empowered to take cognizance of such offence upon a police report. The section loaded with two objectives, *namely*, (i) to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation; and (ii) to enable the magistrate to have a close watch on the progress of the investigation.[6]

III INVESTIGATION AND INQUIRY

Investigation of a crime is in the domain of the investigation officer (IO), who is supposed to collect facts and information regarding commission of offence under investigation. A court of law expects that investigation be fair and legal one as illegal or defective investigation, invariably, results into miscarriage of justice.[7]

A reading of judicial pronouncements delivered by the apex court during the year under survey in *Ramesh Kumari* v. *State (NCT of Delhi) and Ors*[8] and *Sasi Thomas* v. *State and Ors*[9] and of the Delhi High Court in *M P Singh Rathore* v. *State of NCT of Delhi and Ors*,[10] signifies the authority of appellant courts to order further investigation.

In *Ramesh Kumari*, where the police declined to register a case based on the information disclosing a cognizable offence and thereby refused to carryout the investigation, the apex court, keeping in view the allegation of refusal against the police officer, directed the CBI to register the case and investigate the matter.

In *Sasi Thomas*, the Supreme Court, admitting that it is not beyond its jurisdiction as well as of the high courts to direct further investigation by an independent investigation agency, like CBI, ruled that it is not permissible either for it or a high court to order further investigation by CBI when the trial court has not only seized of the matter but also examined a substantial number of witnesses. The Supreme Court also stressed that no investigation of a cognizable offence be shut out at the threshold merely because a political opponent or a person with political difference has raised an allegation of commission of an offence. Merely a plea of *mala fide* of a complaintant, without further probe, is not enough to set aside the investigation. It also ruled that the credibility of the person who makes the allegations is immaterial. The existence of materials necessitating investigation is relevant.[11]

In *M P Singh Rathore*, the Delhi High Court, noting that the investigation hitherto carried out in the proceeding was not 'taken up in the real earnest and it was misdirected towards certain irrelevant aspects' and was 'taken in a

6 *Rabindra Mahto, ibid.*
7 *State Inspector of Police, Visakhapatnam* v. *Surya Sankaran Karri*, (2006) 7 SCC 172.
8 *Supra* note 1.
9 2006 (2) SCC 677.
10 127 (2006) DLT 317.
11 *Prakash Singh Badal, supra* note 3 and *K Karunakaran* v. *State of Kerala*, 2007 (1) SCC 59.

perfunctory manner losing the objectivity as is required from an independent investigating agency', not only felt that there was an imperative need to have further investigation by an independent investigation agency but also ordered that investigation be carried out by an independent agency under supervision of the deputy commissioner of police (crime).

However, generally, a court will not order investigation by an independent agency unless the material placed before it discloses a *prima facie* case that calls for such an investigation.[12]

With a view to avoiding police atrocities and ensuring effective investigation without harassing or torturing suspects, the Supreme Court, in *Sube Singh* v. *State of Haryana & Ors*,[13] recommended a few remedial and preventive measures. They are worth noting:[14]

> Custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive. Award of compensation is one of the remedial measures after the event. Effort should be made to remove the very causes, which lead to custodial violence, so as to prevent such occurrences. Following steps, if taken, may prove to be effective preventive measures:
>
> (a) Police training should be re-oriented, to bring in a change in the mindset and attitude of the Police personnel in regard to investigations, so that they will recognize and respect human rights, and adopt thorough and scientific investigation methods.
> (b) The functioning of lower level Police Officers should be continuously monitored and supervised by their superiors to prevent custodial violence and adherence to lawful standard methods of investigation.
> (c) Compliance with the eleven requirements enumerated in *D K Basu* should be ensured in all cases of arrest and detention.
> (d) Simple and foolproof procedures should be introduced for prompt registration of first information reports relating to all crimes.
> (e) Computerization, video-recording, and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions and ante-dating in regard to FIRs, *Mahazars*, inquest proceedings, post-mortem reports and statements of witnesses etc. and to bring in transparency in action.
> (f) An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate

12 *Government of TN* v. *V Muthulakshmi*, 2006 (2) CTC 285; *S Radha Mony* v. *Home Secretary, Government of TN*, 2006 Indlaw MAD 1547, decided on 19.12.2006.
13 (2006) 3 SCC 178.
14 *Id.* at para 24.

> power to investigate complaints of custodial violence against Police personnel and take stern and speedy action followed by prosecution, wherever necessary.
>
> The endeavour should be to achieve a balanced level of functioning, where police respect human rights, adhere to law, and take confidence-building measures (CBMs), and at the same time, firmly deal with organized crime, terrorism, white-collared crime, deteriorating law and order situation etc.

A defective investigation generally proves detrimental to the prosecution.[15] A criminal court, encountered with such a defective investigation, is expected to adopt an active and analytical role to unearth the truth by summoning and examining a material witness (under section 311 of the Code) or subsequently by an appellate court by taking (or directing a magistrate or a court of session to take) an 'additional evidence' (under section 391 of the Code).[16] However, a court, as cautioned by the Supreme Court, has to exercise its powers of summoning and examining a material witness judiciously.[17] It is expected of the court to resort to section 311 only with the object of finding out the truth or obtaining proper proof of such facts which enables it to arrive at a just and correct decision in the case. When a court calls a material witness or re-examines a witness already examined, the plea that the power was exercised to 'fill in a lacuna in the prosecution case' or to 'fill loopholes', therefore, cannot be entertained by it unless the facts and circumstances of the case at hand make it apparent that the exercise of the power under section 311 by the court causes serious prejudice to the accused and thereby results in miscarriage of justice.[18] Such a consequence is purely subsidiary one and therefore does not deserve judicial cognizance.[19] However, it is for the presiding judge to, in backdrop of the facts and circumstances of the case at hand, decide as to whether the new evidence is essential or not for fair and just decision of the case.[20]

IV CHARGE

In *Vijay Kumar and Naveen Kumar* v. *State and Ors*[21] and *Pradeep Kumar* v. *State of Delhi and Ors*,[22] the Delhi High Court ruled that a trial

15 See, *Jamuna* v. *State of Bihar*, 1974 Cri LJ 890 (SC); *Dhanraj Singh* v. *State of Punjab*, (2004) 3 SCC 654; *Zahira Habibullah H Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158.

16 *Zahira Habibullah H Sheikh, ibid*.

17 *Zahira Habibullah Sheikh and Anr* v. *State of Gujarat & Ors*, (2006) 3 SCC 374.

18 *U T of Dadra and Haveli & Anr* v. *Fatehsinh Mohansinh Chauhan*, (2006) 7 SCC 529.

19 *Zahira Habibullah Sheikh, supra* note 17.

20 *U T of Dadra and Haveli, supra* note 18.

21 2006 (8) Apex D (Delhi) 133.

22 2006 ILR (Del) (15) 1057.

court, while framing a charge, is required to consider only the material produced by the prosecution along with its charge-sheet and/or supplementary charge-sheet, if any. It is not expected to look at the documents that are not part of the record. The court is not even expected to look at the documents produced by the accused in his defence. It has to consider the material on record placed by the prosecution in totality. It cannot accept some part of the material on record and to ignore the other while framing a charge. A charge, therefore, framed on the basis of documents or materials that do not form part of record placed before it, according to the high court, is not only erroneous but also goes beyond jurisdiction and competence of the trial court. Such a charge is liable to be set aside. Similarly, a charge framed on the material that does not make out the alleged offence is bad in law.[23]

V EXAMINATION OF ACCUSED BY COURT

Section 313 of the Code, *inter alia*, makes it obligatory on the part of a court, after witnesses for the prosecution are examined and before an accused is called on for his defence, to enable the accused to explain any circumstances appearing in the evidence against him. If the court fails to give such an opportunity to him, it cannot rely upon incriminating evidence, if any, against the accused to record his conviction.

In *State of Karnataka* v. *Annegowda*,[24] the Supreme Court addressed itself to a very interesting question, *namely*, does section 313 of the Code allow an accused, facing similar multi-trials, to defer his statement to be made thereunder, on the ground that such a statement in a case would disclose his defence in other cases pending before the court, till all other trials reach to the stage of making the statement? Facts that led to such a question, in brief, were as follows.

The respondent, who was a bank official, was charged as a main accused for misappropriation of a large sum of money during the period between 1981 and 1991. Accordingly, between 1993 and 2001, eleven cases under sections 409, 467, 468 and 471 of the Penal Code were registered against him. When one of the eleven cases reached the stage of examination of the accused under section 313 of the Code, he filed an application under section 309 of the Code urging the court to defer the recording of his statement (under section 313 of the Code) till all other ten cases against him reach the stage of the statement. The trial court refused to concede his request and dismissed the application. Feeling aggrieved by the dismissal of his application, he filed a criminal revision petition before the revisional court. It was also dismissed. Thereafter, he filed a petition in the Karnataka High Court urging it to invoke its inherent powers under section 482 of the Code to direct the trial court to hold instant trial and to record his evidence in all the eleven cases simultaneously and to dispose of them simultaneously. He contended that he, by forcing him to make

23 *Vikas Jain* v. *State (Through CBI)*, 2006 ILR (Del) (15) 1574.
24 (2006) 5 SCC 716.

a statement under section 313 of the Code, should not be compelled to reveal his defence by making such a statement and thereby allowing the prosecution to cover up the lacunae in other ten cases pending in the trial court. It, thus, would prejudice his interests in other pending trials. The high court, accepting the plea and placing reliance on the provisions of section 242 of the Code, directed the trial court to defer the statement of the accused under section 313 of the Code and to record his evidence in the eleven cases simultaneously.

The State of Karnataka, the appellant in the instant case, questioned the high court's dictum in the Supreme Court.

The Supreme Court held that the high court has materially erred in coming to the conclusion that under the provisions of section 242 of the Code recording of statement of accused under section 313 of the Code could be deferred till the trial in other cases involving similar transactions against the accused is completed. Section 242, according to the apex court, does not deal with either the clubbing of cases registered against the accused or simultaneous trial of different cases registered against the accused. It ruled that there is no provision in the Code that enables a court to postpone the examination of the accused under section 313 of the Code till the completion of the trial in other cases. It held that merely certain other charge-sheets are filed against the same accused for similar offences cannot be a ground to postpone the examination of the accused under section 313 of the Code, as the charges in other cases against him, though similar, have to be appreciated and evaluated separately by the trial court in the light of different documentary or oral evidence adduced in each of the cases.

VI PROSECUTION OF A PUBLIC SERVANT

Section 197 of the Code, *inter alia*, deals with the prosecution of a public servant. It mandates a court not to take cognizance of an offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty. However, section 197 does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of his official duty. A public servant, obviously, is not entitled to the section 197 protection if the act committed by him is unconnected with his official duty.

The Supreme Court, during the year under survey, has not only highlighted the legislative intent of section 197 but also reiterated the thitherto settled rule of its interpretation and application.

In *Rakesh Kumar Mishra* v. *State of Bihar and Ors*,[25] the Supreme Court, restating the legislative intent of section 197 of the Code and indicating the prerequisites for application of the provision, observed:[26]

25 (2006) 1 SCC 557.
26 *Id*. at para 6.

> The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it chooses to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties.

C K Thakker J of the apex court echoed it in a different tone but with a different emphasis. The judge observed thus:[27]

> The primary object of the Legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter under Section 197 of the Code. In other words, protection afforded by the said section is qualified and conditional.

27 *Sankaran Moitra* v. *Sadhna Das and Anor*, (2006) 4 SCC 584. Also see, *Jayasingh* v. *K K Velayutham and Anor*, (2006) 9 SCC 414.

And he reminded the courts:[28]

> [I]t is not only the power but the duty of the Court to ... ensure that on the one hand, the public servant is protected if the case is covered by Section 197 of the Code and on the other hand, appropriate action would be allowed to be taken if the provision is not attracted and under the guise of his position as public servant, he is trying to take undue advantage.

The Allahabad High Court, in *Dadu Singh* v. *State of UP*,[29] denied the section 197 protection to a police officer, who, for no reasons, assaulted mercilessly a person, who was going to a police station to get release of his brother who was detained therein, and snatched away his wristwatch and cash, as the act was not reasonably connected with the discharge of his official duty.

In *Prakash Singh Badal & Anor* v. *State of Punjab and Ors*,[30] a very interesting argument resurfaced. Stressing that the ruling in *R S Nayak* v. *A R Antulay*,[31] holding that the subsequent position of a public servant does not warrant the requisite sanction, is erroneous, it was argued that section 19 of the Prevention of Corruption Act of 1988, dealing with the requisite prior sanction of the competent authority mentioned therein for prosecuting a public servant for acts allegedly committed by him contrary to sections 7 (taking gratification), 10, 11 (obtaining valuable things without consideration), 13 (committing acts of criminal misconduct) and 15 of the Act, needs to be summoned till the public servant continues to be a public servant even though an alleged act is committed by him in his former capacity. He deserves the protection of section 19 as long he continues to be a public servant. The apex court, however, replied that 'protection to public servants under section 19 (1) (a) has to be confined to the time related criminal acts performed under the colour or authority for public servant's own pleasure or benefit as categorized under sections 7, 10, 11, 13 and 15'. Relying upon a catena of its earlier rulings, the apex court ruled that the question of obtaining sanction arises in a case where the offence has been committed by a public servant when holding the office and by misusing or abusing the powers of the office.[32] And the word 'office', which is repeatedly used in section 19 of the Act, means the 'office',

28 *Id.* at para 30. See also *Sankaran Moitra*, wherein propriety of the refusal of the Calcutta High Court to quash the criminal proceedings initiated without prior sanction of the appropriate authority against the police officers, who have chased and beaten up an unarmed individual, without any provocation, to death was questioned, the apex court once again reiterated the thitherto settled rule that there needs to have some reasonable connection between the act and the discharge of official duty for warranting the s. 197 protection. The court refused to quash the proceedings saying that the killings in the case could not be related to official duty.

29 *Dadu Singh* v. *State of UP*, 2006 Indlaw ALL 184, decided on 17.02.2006.

30 *Supra* note 3.

31 AIR 1986 SC 2045.

32 Also see, *K Karunakaran*, *supra* note 11.

which he misused or abused by corrupt motive for which, he is to be prosecuted.

The apex court also held that the requisite sanction under section 197 of the Code is not required for prosecuting a public servant for his acts allegedly contrary to section 8 (taking gratification to influence a public servant) and section 9 (taking gratification for exercising personal influence with a public servant) of the Act of 1988, corresponding respectively to the repealed sections 162 and 163 of the Penal Code. It also ruled that the sanction under section 197 of the Code is not necessary for prosecuting a public servant for his acts contrary to section 420 (cheating) and the offences relatable with section 467 (forgery of valuable security), section 468 (forgery for purpose of cheating), and section 120-B (punishment for criminal conspiracy) of the Penal Code as these offences can hardly be regarded as having been committed by him while acting or purporting to act in the discharge of his official duty.[33]

VII WITHDRAWAL OF PROSECUTION

Section 321 of the Code allows a public prosecutor and an assistant public prosecutor, in charge of the case, to move the court for withdrawal of prosecution of the case. If the court permits, he can withdraw the pending prosecution from further prosecution. However, it is a well-settled principle that the court, while giving its consent for withdrawal, has to ensure that the prosecutor or the assistant public prosecutor, as the case may be, has applied his mind to the issue and has not taken into account any extraneous considerations for moving an application for withdrawal of the prosecution. The court has also to make it sure that public prosecutor or the assistant public prosecutor, as the case may be, has neither abused his discretionary power of withdrawal of prosecution nor inspired by ill-motives. It has also to convince itself that the public prosecutor has exercised his discretion in good faith, in the public interest, and in the interest of public policy and justice and not to thwart the process of law.[34]

In *Ghanshyam* v. *State of MP*,[35] the Supreme Court has asserted that the discretion to withdraw from the prosecution vests with the public prosecutor (or an assistant public prosecutor) and with none else, and so, he cannot surrender that discretion to any one. It also reiterated that the public prosecutor might withdraw from the prosecution not merely on the ground of paucity of evidence but also on other relevant factors as well in order to further the broad ends of justice, public order, peace and tranquility. It is apt for the court to grant its permission for withdrawal from prosecution of a pending case

33 Also see, *Rakesh Kumar Mishra*, *supra* note 25 and *Lalu Prasad @ Lalu Prasad Yadav* v. *State of Bihar*, 2007(1) SCC 49.

34 *State of Bihar* v. *Ram Naresh Pandey*, AIR 1957 SC 389; *State of Orissa* v. *Chandrika Mohapatra*, 1977 Cri LJ 773 (SC); *Sheonandan Paswan* v. *State of Bihar*, AIR 1983 SC 194; *Abdul Karim* v. *State of Karnataka*, AIR 2001 SC 116; *Rahul Agarwal* v. *Rakesh Jain & Anr*, (2005) 2 SCC 377.

35 2006 (10) SCC 473.

if, in its opinion, the public prosecutor has applied for withdrawal to accomplish a social purpose and he, while doing so, has not misused his wisdom while withdrawing the case from prosecution.

VIII CONTINUATION OF PROSECUTION AFTER DEATH OF COMPLAINANT

In *Balasaheb K Thackeray and Anr* v. *Venkat @ Babru* (*S/o Wamanrao Deshpande Charthankar*) *and Anr*,[36] an interesting question as to the effect of the death of the complainant on continuation of the prosecution was raised before the Supreme Court for its consideration. Facts that led to the question, in brief, were as follows: The respondent in 1994 filed a private complaint against the appellant and four others in the court of first class judicial magistrate, Sailu (Parbhani district of Maharashtra) for publishing in *Daily Samana* defamatory matter punishable under section 500 read with section 34 of the Penal Code. In 1994, the magistrate, after hearing arguments, issued process against the accused persons. Thereafter, the appellants filed a petition under section 482 of the Cr PC urging the Bombay High Court (Aurangabad bench) to quash the order of issuing process. However, the high court dismissed the petition. Then the appellants in 2003 filed a special leave petition (SLP), which was admitted in 2005 and came up for hearing in 2006. But before the matter came up for hearing the complainant (respondent no. 1 in the instant appeal) died. The appellants, placing their reliance on sction 256 of the Code, urged the apex court to dismiss the complaint on the ground of the death of the complainant. While legal heirs of the deceased complainant, in pursuance of their interest in continuing the prosecution, shown their willingness to file a requisite application for seeking permission to prosecute the appellants.

The Supreme Court, recalling provisions of sction 302 of the Code dealing with permission to conduct prosecution and relying upon its earlier dictum in *Jimmy Jahangir Madan* v. *Bolly Cariyappa Hindley (dead) by Lrs*,[37] ruled that legal heirs of the complainant can be allowed to file a petition under section 302 of the Cr PC to continue the prosecution. It accordingly directed the competent court to consider such an application, if filed by the legal heirs, 'in its perspective'.

IX APPEAL AGAINST ACQUITTAL AND CONVICTION

Appeal against acquittal

The Supreme Court, like in the past, has reiterated the hitherto judicially carved and well-settled rule that a high court, while dealing with an appeal against acquittal, is not expected to ordinarily, except for some cogent reasons, interfere with acquittal where two probable views are possible. If on the same

36 (2006) 5 SCC 530.
37 AIR 2005 SC 48.

evidence two views are reasonably possible, the view in favour of the accused is to be preferred. Nevertheless, while dealing with an appeal against acquittal, a high court is free to review the entire evidence on record to find out as to whether the trial court, while passing the judgment of acquittal, has failed to take into account admissible evidence and/or has taken into consideration the evidence brought on record contrary to law. It is also entitled to look into the entire evidence on record for finding out as to whether the view taken by the trial court is perverse or otherwise bad in law. A high court, on review of the evidence on record, can draw its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court. If it, in the light of evidence and facts on record, appears to the high court that the view taken by the trial court is perverse and unsustainable in law, it is legitimate for the high court to replace the judgment of acquittal by its order of conviction. A high court, however, has to desist from setting aside a judgment of acquittal and replacing it by an order of conviction merely because there is, in the light of evidence and other material on record, a possibility of having another probable view in the matter.[38] Normally, it has to be very slow in interfering with the order of acquittal unless there are compelling circumstances to do so.[39] In *Kallu @ Masih and Ors* v. *State of MP*,[40] the Supreme Court, reiterated its earlier stand explained above.

The court also reminded the high courts, while reversing a judgment of acquittal, to bear in mind that: (i) the presumption of innocence in favour of the accused is fortified by the findings of the trial court; (ii) the accused is entitled to benefit of doubt; and (iii) the trial court had the advantage of examining the demeanor of the witnesses.[41]

Obviously, a high court's order of conviction (reversing a well-reasoned judgment of acquittal of a trial court) not supported by sufficient and cogent reasons for doing so is liable to be set aside by the Supreme Court. Similarly, a high court's order of reversal premised on either its unconvincing re-appreciation of evidence on record or surmises or conjunctures becomes unsustainable in law.[42] Obviously, a well-reasoned judgment of a high court reversing a judgment of acquittal of a trial court premised on a fair reappraisal of the evidence on record does not warrant interference by the apex court.[43]

Leave to appeal against acquittal - judicial discretion

Section 378 of the Code leaves it to the discretion of a high court to grant leave to appeal in case of acquittal. However, hitherto judicial pronouncements

38 *Budh Singh* v. *State of UP*, (2006) 9 SCC 731. Also see, *M S Narayana Menon* v. *State of Kerala*, (2006) 6 SCC 39.
39 *Sadashio Mundaji Bhalerao* v. *State of Maharashtra*, 2006 (2006) 12 SCALE 470.
40 (2006) 3 SCJ 141.
41 *Pulicherla Nagaraju @ Nagaraja Reddy* v. *State of AP*, (2006) 11 SCC 444. Also see, *Kallu @ Masih*,*ibid*.
42 *Jagdish Murav* v. *State of UP and Ors*, (2006) 8 SCALE 433.
43 *Prabata* v. *State of Rajasthan*, (2006) 2 SCJ 277; *Kallu @ Masih*, *supra* note 40.

of the Supreme Court require a high court not to summarily reject an application praying for leave to appeal against acquittal and to give reasons for its refusal. A cryptic and unreasoned order of a high court, therefore, becomes untenable and indefensible.

In *Suga Ram @ Chhuga Ram* v. *State of Rajasthan*,[44] wherein the Supreme Court was called upon to decide the correctness of a decision of the Rajasthan High Court refusing, without assigning reasons, to grant leave to appeal against a judgment of acquittal delivered by one of the courts subordinate to it, the apex court, reiterating its earlier view, ruled:[45]

> The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal, and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable.

It also stressed the rationale and significance of 'reasons' in administration of justice, as it articulated in a series of its dicta, thus:[46]

> The giving of reasons is one of the fundamentals of good administration.... Failure to give reasons amounts to denial of justice. Reasons are live links between the minds of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance.

44 (2006) 8 SCC 641.
45 *Ibid.*
46 *Ibid.*

The apex court also expressed its anguish over the non-observance by the high court of the judicially recognized imperative for reasoned order denying leave to appeal. 'Judicial discipline to abide by declaration of law by this Court', it warned, 'cannot be forsaken, under any pretext by any authority or Court, be it even the Highest Court in a State, oblivious to art 141 of the Constitution'.

Leave to appeal against acquittal by a private party – locus standi?

A reading of section 378 of the Code discloses that only a state government, through its public prosecutor, is allowed to seek from the state high court leave to appeal against an order of acquittal. It does not allow a private party to either seek such a leave from, or challenge an acquittal of accused in, the high court. However, article 136 of the Constitution empowers the Supreme Court, in its discretion, to grant special leave to appeal from 'any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court in the territory of India'. It is equally significant to note here that the Supreme Court, in the past, ruled that article 136 of the Constitution can be invoked by private individuals to challenge an acquittal of accused persons.[47]

However, the question as to whether a private person, in the absence of appeal by the state government, is competent to challenge acquittal of accused reemerged in *Suga Ram @ Chhuga Ram* v. *State of Rajasthan*.[48] The appellant, a private individual, who was interested in the acquittal by the trial court of the persons accused of the offences punishable under sections 148 and 302 read with section 149 of the Penal Code and section 3 (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, filed in the Rajasthan High Court an application for revision of the acquittal. However, the high court dismissed his application on the ground that it has already rejected the state government's application seeking leave to appeal against the acquittal. Thereafter, the appellant, by invoking article 136 of the Constitution, approached the Supreme Court to seek its special leave to appeal against the order of acquittal of the trial court. The respondents doubted *locus standi* of the appellant for challenging their acquittal. The Supreme Court, dispelling the doubt, observed:[49]

> A doubt has been raised in many cases about the competence of a private party as distinguished from the State, to invoke the jurisdiction of this Court under Article 136 of the Constitution against a judgment of acquittal by the High Court. We do not see any substance in the doubt. Appellate power vested in this Court under

47 See, *Ramakant Rai* v. *Madan Rai*, AIR 2004 SC 77. For further details see, K I Vibhute, "Criminal Procedure," XL *ASIL* 173 (2004). Also see, *Mohan Lal* v. *Ajit Singh*, AIR 1978 SC 1183.

48 *Supra* note 44.

49 *Ibid*.

> Article 136 of the Constitution is not to be confused with ordinary appellate power exercised by appellate courts and appellate tribunals under specific statutes. It is a plenary power, 'exercisable outside the purview of ordinary law' to meet the pressing demands of justice.... Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of this Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in this Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of this Court is not circumscribed by any limitation as to who may invoke it. Where a judgment of acquittal by the High Court has led to a serious miscarriage of justice this Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction. We do not have slightest doubt that we can entertain appeals against judgments of acquittal by the High Court at the instance of interested private parties also. The circumstance that the Code does not provide for an appeal to the High Court against an order of acquittal by a subordinate Court, at the instance of a private party, has no relevance to the question of the power of this Court under Article 136.

Appeals against conviction

A high court, while deciding an appeal against conviction, like in an appeal against acquittal, is empowered to review and re-appreciate the entire evidence and to draw its own conclusions.[50] However, in an appeal against conviction, a high court's decision acquitting a convict, even though two views are possible, cannot be sustained if it is wholly improbable. Similarly, a high court's order setting aside conviction order of a trial court on erroneous and untenable grounds is unsustainable.[51]

The Supreme Court will be reluctant to uphold an order of acquittal, reversing an order of conviction passed by the trial court, if the material on record unequivocally leads to only one conclusion that the accused is guilty of the offence charged and tried for.[52] Similarly, it will hardly lend its judicial support to an order of a high court substituting an order of acquittal passed by a trial court by its order of conviction if it is perverse or amounts to a grave miscarriage of justice.

The State of Madhya Pradesh, through *State of MP* v. *Badri Yadav and Anr*,[53] has drawn attention of the Supreme Court to a unique judicial pronouncement of the Madhya Pradesh High Court, wherein and whereby the high court, relying upon testimony, through affidavit, of two prosecution

50 *Kallu @ Masih, supra* note 40.
51 *State of MP* v. *Shambhu Dayal Nagar,* (2006) 8 SCC 693.
52 *State of Maharashtra* v. *Rashid B Mulani,* (2006) 1 SCC 407; *State of AP* v. *K Narasimhachary,* (2005) 8 SCALE 266.
53 (2006) 9 SCC 549.

witnesses at the trial court who later on became the defence witnesses, reversed a well-merited judgment and order of one of the sessions judges subordinate to it convicting the accused under section 302 read with section 34 of the Penal Code.

The two witnesses, who, on oath, testified that they witnessed the incident and saw the persons accused of the offences punishable under sections 302 and 34 of the Penal Code inflicting injuries on the deceased, after a lapse about five years, completely resiled, through an affidavit, from their earlier statements. They stated that the statements made by them before the trial court were made under pressure, threat and coercion of the police. They asserted that the police not only tutored them but also gave them a threat of their implication if they failed to make statements as tutored. They further stated that they had no choice but to make the statements before the trial court as tutored by the police, as the police officers were present in the court when they were required to make their statement.

However, the sessions judge, disbelieving them, passed an order recording conviction of the accused under sections 302 read with section 34 of the Penal Code. The Madhya Pradesh High Court, on appeal against the order of conviction, believed the resiled testimony of the prosecution-turned-defence witnesses and passed an order of acquittal. The State of MP questioned legality of the order of acquittal in the Supreme Court.

The Supreme Court, referring to, and relying upon, its earlier dictum in *Yakub Ismail Bhai Patel* v. *State of Gujarat*,[54] wherein, in the facts similar to that of the instant case, ruled that 'once a witness is examined as a prosecution witness, he cannot be allowed to perjure himself by resiling from the testimony given in court on oath by filing affidavit stating that whatever he had deposed before court as prosecution witness was not true and was done so at the instance of the police', held that the high court was not justified in reversing the conviction recorded by the trial court. It ruled that the high court's order was perverse. It, therefore, set aside the high court's order and restored that of the trial court. The apex court justified its ruling on the ground that there is no provision in the Cr PC that allows a witness examined as a prosecution witness, by filing affidavit, to be a defence witness. It also sounded that the subsequent statements made by the witnesses as defence witnesses were concocted and that the witnesses were either won over or were under threat or intimidation from the accused.

X TRANSFER OF CRIMINAL CASES

Through *E Shahul Hameed* v. *State of TN*,[55] the Madras High Court was called upon by the petitioner, an undertrial charged with others, under sections 302 and 120-B of the Penal Code and the Terrorist and Disruptive Activities

54 AIR 2004 SC 42.
55 2006 Indlaw MAD 1531, decided on 06.12.2006.

Act (TADA), to direct the Government of Tamil Nadu to, in pursuance of his representation, review his cases registered and commenced under the TADA and to transfer them to a sessions court for trial. The high court, recalling the legislative scheme outlined in the chapters of the Cr PC dealing with transfer and withdrawal of cases, declined to issue any directive to the state. It ruled that power to transfer a criminal case from one court to another or to withdraw it from a court vests with the judiciary alone and not with the state. Once a trial has commenced or is pending or charge sheet is filed and cognizance is taken by a court, the criminal court, including higher judiciary dealing with criminal law alone has the power either to charge, discharge, acquit or convict and to pass necessary orders. The high court asserted that higher judiciary cannot, under any law, direct a state to transfer a criminal case from one court to another court.

A court, however, as revealed by the hitherto judicial pronouncements of higher judiciary, generally allows transfer of a criminal case from one court to another 'in the interests of justice', 'in the interests and for the convenience of the parties' or 'fair play among the parties involved'. However, none of the hitherto rulings, for obvious reasons, has laid down any set guiding principles or parameters for determining the so-called 'interests of justice or of parties' or 'fair play' that warrant transfer of a criminal case. It is, obviously, for the court concerned to take a decision as to whether the case at hand, in the backdrop of facts and circumstances thereof, warrants transfer or not.

In *Fajlor Rahman @ Mohamod Fajlor @ Raju and Ors* v. *State of Punjab and Anr*,[56] the Supreme Court, probably in the 'interest of justice' and for ensuring 'fair play' among the parties, transferred a criminal case pending before the magistrate of Phillour in the State of Punjab to the chief judicial magistrate of Barpeta in the State of Assam. The facts that the apex court weighed comparatively were, in brief, as follows: The petitioner, a truck driver domiciled in the State of Assam, used to frequently visit Phillour in the Jalandhar District of Punjab for his assignment of loading and/or unloading of goods. During his frequent visits to Phillour, he developed an intimate relation with a girl from Phillour, who subsequently, without intimating any one of her family, left the house and accompanied the petitioner to his village in Assam. She subsequently married him and started living with him in his native village. However, the mother of the girl lodged a complaint in the police station of her village (in Punjab) that ultimately culminated into the registration of offences under sections 363-A, 366 and 120-B of the Penal Code implicating the petitioner and his two brothers. She also got a warrant of arrest issued from the court concerned and got it executed, through the Barpeta police station (in Assam), against the petitioner and his two brothers. They were later on released on bail by the Gauhati High Court. Meantime, the petitioner and his wife, apprehending their arrest, obtained an anticipatory bail from the Gauhati High Court. The petitioner, by invoking section 406 of the Code, urged

56 (2006) 9 SCC 714.

the apex court to transfer the criminal case from the court in Punjab to a court of competent jurisdiction in Assam as he, his wife and his accused brothers, who have been receiving constant threats to their lives from relatives and family members of the respondent, feel danger to life if they go to Punjab. The State of Punjab, opposing the transfer petition, argued that it would be inconvenient for the complainant respondent and other witnesses, who belong to the State of Punjab, to travel a distance of about 2000 Kms to pursue and give evidence in the case. The apex court, allowing the petition for transfer, observed:[57]

> Having heard the ... counsel for the parties and considering the averments made by the petitioners in the Transfer Petition as well as the counter affidavits, we are of the opinion that in the interest of justice and fair play and more particularly in the interest and for the convenience of the parties, the prayer of the petitioners for transfer of the Criminal Case from the Court of the ... Magistrate, Phillour, Jalandar (Punjab) to the Court of ... Chief Judicial Magistrate, Barpeta (Assam) deserves to be allowed.

However, an equally convincing view opposite to that of the apex court, in the 'interest of justice' and/or 'fair play' among the parties, in the present submission, could also be possible.

Transfer of a criminal case outside the state concerned, as held by the Supreme Court, and rightly so, is justified when an accused not only faces danger to his life by his rival gang but he, in the past, was also attacked thrice by the rival gang and caused serious injuries to him.[58] Similarly, transfer of a case from one state to another, in the interest of justice, is justified when a petitioner is a co-accused in similar cases pending in two states.[59]

XI GRANT OF REMISSION

Like in any other civilized states, executive clemency and remission of sentence is recognized under the Constitution of India as well as under the Cr PC. The Constitution vests pardoning power in the President of India and the Governor of a state. An appropriate government is also allowed to suspend, remit or commute sentence of a convict. However, exercise of the power, as hitherto perceived in a series of judicial pronouncements, is not immune from judicial review.

In *Epuru Sudhakar and Anor* v. *Government of AP and Ors*,[60] the Supreme Court was called upon to adjudge propriety of the grant of remission of the unexpired sentence of a convict of murder by the Governor of Andhra

57 *Id.* at para 10.
58 *Ravir Godbole* v. *State of MP*, (2006) 9 SCC 786.
59 *A Naveen* v. *CBI*, (2006) 9 SCC 761.
60 (2006) 8 SCC 161.

Pradesh on some irrelevant, extraneous and political considerations. The petitioner, the son of the person killed by the convict, contended that the Governor placed his reliance on reports of some of the state officials at the district level with full of irrelevant and inaccurate facts and thereby he failed to apply his mind while granting remission to the murderer of his father. Tone of the petition seeking remission as well as of some of the reports recommending the grant of remission, *inter alia*, was that the convict was falsely implicated in the murder case due to political rivalry and was convicted by the trial court on the basis of false evidence adduced by the tutored witnesses. Other irrelevant and extraneous factors (indicated in the reports of the district level state officials recommending remission) that ostensibly entered into the decision making process were: the convict belonged to an upper caste; he is a good Congress party worker; he in the past contested and lost an assembly election with a small margin due to political conspiracy; his wife is a sitting MLA; he is not a naxalite, dacoit and habitual offender; he was carrying a peaceful agricultural activity and thereby was providing employment to a number of persons.

The Supreme Court noted that the plea of false implication of the convict was the basis of the grant of remission. It ruled that such a plea was fallacious and deserved no consideration by the Governor while granting the remission. Noting that the grant of remission order was based on extraneous and political considerations, the apex court set aside the remission order and the government's notification giving effect thereto. However, it desired the Governor, if he wished to reconsider the petition seeking remission, to take into account all the relevant factors and to make such enquiries as considered necessary.

The apex court ruled that remission of sentence obtained by fraud, granted by mistake, or granted for improper reasons invites judicial review. Such a remission order can be rescinded or cancelled. It also emphasized that the constitutional functionaries, while exercising their constitutional clemency power, have to keep in mind the rule of law requiring them to exercise their prerogative in a manner that is consistent with the basic principle of fairness. They have also to see the effect of their decision on the family of the victims, the society as a whole and the precedent it sets for the future. However, the apex court, like in the past, declined to lay down 'guidelines' to be followed by the Governors while exercising their clemency powers.

XII SUSPENSION OF SENTENCE

Section 389 of the Cr PC, *inter alia*, allows an appellate court to suspend the execution of the sentence of a convict appealed against and to release him on bail, if he is in confinement. Sub-section (3) of the provision empowers a trial court to release a convict on bail, who intends to present an appeal to the appellate court, for the period that affords him sufficient time to present an appeal to, and to seek orders of release on bail from, the appellate court. Further, order XXI, rule 13-A of the Supreme Court Rules, 1966, which requires

the accused to either surrender or seek exemption from surrendering before his appeal can be registered, reads: 'Where the appellant has been sentenced to a term of imprisonment, the petition of appeal shall state whether the appellant has surrendered. Where the appellant has not surrendered to the sentence, the appeal shall not be registered, unless the court, on a written application for the purpose, orders to the contrary. Where the petition of appeal is accompanied by such an application, the application shall first be posted for hearing before the Court for orders'.

In *Mayuram Subramanian Srinivasan and Ors* v. *CBI*,[61] the Supreme Court was encountered with the question as to whether it is always necessary for an appellant to surrender before (s)he, through an appeal, seeks suspension of the sentence and release on bail in terms of section 389 (3) of the Code and order XXI, rule 13-A of the Supreme Court Rules, 1966.

The apex court ruled that the provisions of section 389 (3) of the Code are applicable only when the convict has a right to appeal. It, therefore, cannot come into play when a convict prays a high court to grant him certificate to appeal under article 136 or 134-A of the Constitution of India as there exists no right of appeal to the Supreme Court. However, when a high court reverses an order of acquittal and convicts an accused, he has right to appeal to the apex court. A case covered by article 134 (1) (a) or (b) of the Constitution, read with section 2 of the Supreme Court (Enlargement of Criminal Appeal Jurisdiction) Act, 1970, therefore, is different from that article 136 or 134-A of the Constitution as appeal lies as of right to the Supreme Court. In this backdrop of the legislative framework, the Supreme Court ruled: [62]

> Order XXI relates to Special Leave Petitions in Criminal proceedings and Criminal Appeals. So far as Special Leave Petitions are concerned, Rule 6 application thereto is in almost identical language as that of Rule 13-A. In both cases, it is stipulated that unless the petitioner or the appellant as the case may be has surrendered to the sentence, the petition/ the appeal shall not be registered and cannot be posted for hearing unless the Court on written application for the purpose, orders to the contrary. In both cases, it is stated that where the petition/ appeal is accompanied by such an application that application alone shall be posted for hearing before the Court for orders. Therefore, the position is crystal clear that the Criminal Appeal cannot be posted unless proof of surrender has been furnished by the appellant who has been convicted. — The requirements of Order XXI Rule 13-A are mandatory in character and have to be complied with except when an order is passed for exemption from surrendering.

61 (2006) 5 SCC 752.
62 *Id*. at para 8.

XIII INHERENT POWERS OF HIGH COURTS

Nature and scope

Section 482 of the Code, as hitherto often reiterated by the apex court,[63] does not confer any new powers on the high courts but it only preserves their inherent powers, apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon them by law. These powers are necessary to do the right and to undo a wrong in course of administration of justice on the principle '*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*' (when the law gives a person anything it gives him that without which it cannot exist). There have been some decisions in this category.[64]

The apex court, like in the past, advised the high courts to exercise their wide inherent powers sparingly, carefully and with caution for only doing 'real and substantial justice'. They, as far as possible, are required to reserve these extraordinary powers for extraordinary cases. High courts, while exercising their inherent powers, have to ensure that section 482 of the Code does not turn to be an instrument in the hands either of a private complainant to unleash vendetta to harass any person needlessly or of an accused to short-circuit a prosecution and to bring about its sudden death.[65]

Quashing of FIR

Like in the past, the Supreme Court has advised high court to invoke its inherent powers under section 482 of the Code to quash a FIR or a complaint only in extreme exceptions.[66] A FIR needs to be quashed only when a complaint does not disclose any offence or is frivolous, vexatious or oppressive. However, a high court is not expected to undertake a meticulous analysis of the case before the trial court to find out as to whether the case would end in conviction or acquittal. The allegations of *mala fides* of the informant are of no consequence and become irrelevant for quashing a FIR, if the information lodged at the police station is relied upon and the offence is registered. The alleged *mala fides* of the informant, therefore, cannot by themselves be the basis for quashing a FIR.[67] The question of *mala fides* needs to be decided on the facts of each case.[68]

In consonance with the hitherto settled view that the quashing of a FIR by a high court in the exercise of its inherent powers is justified only in

63 For example see, *State of Andhra Pradesh* v. *Goloconda Linga Swamy,* AIR 2004 SC 3967; *State of Madhya Pradesh* v. *Awadh Kishore Gupta*, (2004) 1 SCC 691; *Messrs Zandu Pharmaceutical Works Ltd* v. *Md Sharaful Haque,* AIR 2005 SC 9.

64 See, *Minu Kumari and Anr* v. *State of Bihar and Ors,* (2006) 4 SCC 359; *Central Bureau of Investigation (CBI)* v. *Ravi Shankar Srivastava and Anr,* (2006) 7 SCC 188.

65 *State of Orissa and Anr* v. *Saroj Kumar Sahoo,* (2006) 2 SCJ 804; *Central Bureau of Investigation (CBI), ibid*.

66 *Ram Biraji Devi and Anr* v. *Umesh Kumar Singh and Anr,* (2006) 6 SCC 669.

67 *Central Bureau of Investigation (CBI), supra* note 64.

68 *Shiva Nath Prasad and Anr* v. *State of WB and Ors,* (2006) 2 SCC 757.

exceptional circumstances, the Delhi High Court held that a FIR based on available material cannot be quashed merely on the ground that subsequent investigation did not yield any evidence against the accused. The sufficiency of the evidence can be examined either at the time of summoning of the accused or at the time of framing of charge(s). The police have every right to proceed to arrest the accused when FIR is rightly registered.[69] However, a FIR and the consequential proceedings unsupported with any *prima facie* evidence deserve to be quashed, as their continuation would serve no purpose.[70] Therefore, a FIR disclosing an offence cannot be quashed.[71]

Quashing of a complaint

In *Ram Biraji Devi & Anr* v. *Umesh Kumar Singh & Anr*,[72] the Supreme Court was urged by the appellant to quash the order and judgment of the Patna High Court dismissing her petition for quashing the complaint lodged by the respondent. The apex court reiterated its oft-repeated advisory caution that high courts have to use their inherent powers sparingly and only in extreme exceptional cases. It ruled that cognizance of a complaint that does not disclose any offence amounts to an abuse of process of court deserving a high court's interference by exercising its inherent powers. Expressing its surprise over the Patna High Court's reluctance to set aside an order of the magistrate subordinate to it taking cognizance of a complaint lodged against the appellants that did not exhibit even a whisper of allegation or averment of the alleged offences, the apex court set aside the high court's order. It also stressed that the instant case was a case of extreme exception warranting the high court's intervention by setting aside the unwarranted and unjustified order of the magistrate as he took cognizance of a self-contradictory and unfounded complaint against the appellants. The allegations made by the complainant and statements on record of his witnesses, the apex court opined, even if accepted to be true and correct, did not indicate that the appellants have committed any offence. These averments of the complainant and statements of the witnesses, at the most, according to it, would amount to civil liability between the parties, deserving no cognizance by the magistrate.

Nevertheless, the court, in *Indian Oil Corporation* v. *NEPC India Ltd and Ors*,[73] observed that every complaint based on a contractual obligation of civil nature, as a rule, does not deserve quashing. Pendency of civil proceedings arising out of such a transaction also does not *ipso facto* justify quashing of the complaint and of the consequential proceedings. It ruled that the mere fact that a complaint relates to a commercial transaction or a breach of contract,

69 *Jag Mohan @ Mohar Singh & Anrs* v. *Commissioner of Police & Ors*, 2006 ILR (Del) (15) 1486. Also see, *Sushilkumar Deorah* v. *State*, 2006 Cri LJ 1474.

70 *Ramji Lal* v. *State of UP & Anr*, 2006 Indlaw ALL 185, decided on 17.02.2006.

71 *K M Anees-Ul-Haq & Ors* v. *State & Anr*, 128 (2006) DLT 773.

72 *(2006) 6 SCC 669*. A similar view is also expressed by the Allahabad High Court in, *Ramji Lal*, *supra* note 70.

73 (2006) 6 SCC 736. Also see, *Chhedi Lal Kedia and Ors* v. *State of UP & Anr*, 2006 Indlaw ALL 134, decided on 08.02.2006.

for which a civil remedy is available or has been availed, cannot by itself be a ground to quash the complaint. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. A high court, therefore, has to ascertain as to whether the allegations made in the complaint disclose a criminal offence or not.

The apex court, recalling its hitherto-delivered judicial pronouncements on the exercise of inherent powers of the high courts under section 482 Cr PC to quash complaints and criminal proceedings, has outlined the following principles relating to quashing of a complaint. They are: [74]

(i) A complaint can be quashed where the allegations made in it, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out the case alleged against the accused. A High Court, however, is expected to examine the complaint as a whole, but without examining the merits of the allegations. However, a High Court, while examining prayer for quashing of a complaint, is not required to undertake either a detailed inquiry and a meticulous analysis of the material or an assessment of the reliability or genuineness of the allegations made in the complaint.

(ii) A complaint can be quashed where it is a clear abuse of the process of the court or where the allegations are absurd and inherently improbable.

(iii) A High Court has to use its power sparingly and with abundant caution. It has to desist from exercising its power to quash a complaint when it is likely to stifle or scuttle a legitimate prosecution.

(iv) A complaint need not be quashed merely on the ground that a few ingredients of the alleged offences have not been stated therein in detail. A complaint need not reproduce *verbatim* of legal ingredients of the alleged offences. It suffices, if it furnishes factual foundation for the alleged offences. Quashing of a complaint is warranted only when the basic facts that are absolutely necessary for making out the alleged offence are not furnished.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. The mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, cannot, by itself, be a ground for quashing the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

74 *Id*. at para 9.

Quashing of criminal proceedings

With this almost judicially settled outlook of inherent powers of a high court under section 482 of the Code to quash criminal proceedings, the Supreme Court, in *Central Bureau of Investigation (CBI)* v. *Ravi Shankar Srivastava and Anr*,[75] held that the Rajasthan High Court was not justified in quashing criminal proceedings instituted against the respondent on the basis of FIR lodged by CBI for his alleged involvement in the commission of offences mentioned therein under the IPC and the Prevention of Corruption Act, 1988. It set aside the high court's order quashing the criminal proceedings by holding that the high court, in the absence of required material, erred in accepting contention of the respondent that CBI, in the absence of requisite consent of the state for operation of the Delhi Special Police Establishment Act in the state, had no jurisdiction to initiate the proceedings. Restating the hitherto established principle, the apex court ruled that a high court, being the highest court of a state, should normally refrain from giving a *prima facie* decision in a case where the facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, are of magnitude and cannot be seen in their true perspective without sufficient material.

In a similar tone, the Supreme Court, in *State of Orissa and Anr* v. *Saroj Kumar Sahoo*,[76] and *State of Karnataka and Anr* v. *Pastor P Raju*,[77] ruled that it is improper for a high Court to invoke its inherent powers to quash criminal proceedings that are at the stage of investigation. The apex court ruled that interference of a high court in the proceedings is uncalled for when the investigating agencies have not collected documentary as well as oral evidence to substantiate the allegations and the investigation is in progress.

However, it is interesting to note that the Supreme Court, in *Ch Ramoji Rao, Chairman Ramoji Group of Companies* v. *State of AP*,[78] set aside the order of the Andhra Pradesh High Court declining to interfere with the criminal proceedings initiated against the appellant for his allegedly defamatory acts against the state chief minister, his ministerial colleagues and several public servants. The high court refused to invoke its inherent powers to quash the criminal proceedings pending in the lower court on the ground that there was a *prima facie* case against the appellant. The apex court, holding that public interest would be best served by directing the appellant to telecast a message disclosing that he never intended in any manner to defame or harm the reputation of the chief minister and of others, however, allowed the parties not to pursue the matter.

Initiating fresh investigation and criminal proceedings

In *Popular Muthiah* v. *State Represented by Inspector of Police*,[79] the

75 *Supra* note 64.
76 *Supra* note 65.
77 (2006) 6 SCC 728.
78 (2006) 8 SCC 321.
79 (2006) 7 SCC 296.

Supreme Court was called upon to adjudge judicial propriety of the order of a division bench of the Madras High Court directing: (i) the state director general of police to undertake serious fresh investigation and to initiate prosecution of the two persons named therein who, according to it, were involved in the murder but were wilfully left out by the investigating agency and thereby kept them away from the trial; (ii) the state public prosecutor to advise the state as to under what section(s) those persons have to be charged and tried; and (iii) the CB-CID to take over the matter, to re-investigate, and to prosecute the persons named in the said order. The division bench of the high court also cautioned the state agencies, including the courts, not to allow the lapse of time (of about ten years) between the incident (of murder) and its order (of re-investigation and prosecution) to be a reason for taking a lenient view in the matter for keeping faith of the people in the police, the state administration, and in the administration of justice by courts intact. The high court also noticed a few lapses at the stages of investigation, framing of charges and at the trial.

It is, however, pertinent to note that the high court, on its own, passed the said order of investigation and prosecution [of the persons who were neither parties before it nor they were given any opportunity of being heard by it before passing the said order] in the exercise of its inherent powers under section 482 of the Code that too in an appeal preferred by the life convict against his conviction and sentence under section 302 of the Penal Code.

A division bench of the apex court, therefore, was invited to give its judicial reflections on three questions of far reaching consequences in the administration of criminal justice, *namely*, (i) can a high court, while exercising its appellate jurisdiction [under section 374 (2) read with section 386 of the Code] *suo motu* direct fresh investigation of the case [against the persons who, on the basis of materials on record available before the appellate court, were involved in the commission of a crime]?; (ii) can a high court, when it, in terms of its appellate jurisdiction [under sections 374 (2), 386 and 391 of the Code] lacks specific power to direct fresh investigation, *suo motu* take recourse to its inherent jurisdiction [under section 482 of the Code] to do so?; and (iii) can such a direction sustain under the law when the high court has not complied with the principles of natural justice prior to issuing such a direction?

The apex court, after drawing a sketch of different provisions of the Code enabling/empowering a high court to correct errors, failures of justice and abuse of process at the stages of investigation, trial, appeal and revision and analyzing a catena of judicial opinions, ruled that a high court can exercise its revisional jurisdiction and/ or inherent jurisdiction not only when an application therefor is filed but also *suo motu*. It also failed to see any legal embargo for a high court in exercising its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Section 386 of the Code does not limit its other powers, in general, and that of section 482 in particular in relation to the matter which is not before it. Its power to direct enquiry is not only confined to its original jurisdiction. It can exercise such power even while

exercising its appellate jurisdiction. And such a power can be exercised by it even against the persons who were not the accused at the stage of trial. However, the Supreme Court, responding to the third question, ruled that a high court, while exercising its inherent powers, cannot infringe fundamental rights of an individual. It cannot issue directions to investigate the case from a particular angle or by a particular agency. In the backdrop of the facts of the instant case, the apex court held that the high court, by not giving an opportunity of being heard to the appellants (against whom it ordered a fresh investigation and prosecution) before directing a fresh investigation against them, has not only failed to comply with the principles of natural justice but also infringed their fundamental rights.

The Supreme Court, therefore, set aside the order of the high court and remitted the matter to it for its fresh consideration. It reasoned its decision thus:

> The High Court, however, was not correct in issuing a direction to the State to take advice of the State Public Prosecutor as to under what section the Appellant has to be charged and tried or directing the CB-CID to take up the matter and re-investigate and prosecute the Appellant herein. Such a power does not come within the purview of Section 482 of the Code of Criminal Procedure. Investigation of an offence is a statutory power of the police. The State in its discretion may get the investigation done by any agency unless there exists an extraordinary situation.... It cannot issue directions to investigate the case from a particular angle or by a particular agency. In the instant case, not only the High Court had asked reinvestigation into the matter, but also directed examination of the witnesses who had not been cited as prosecution witnesses. It furthermore directed prosecution of the Appellant which was unwarranted in law.... In a case of this nature, therefore, in our opinion, it would have been in the fitness of things, the Appellant should have been heard by the High Court.... Having regard to the peculiar facts and circumstances of this case, we are of the opinion that before issuing the impugned directions, the High Court should have given an opportunity of hearing to the Appellants herein.

Quashing of an order

In *Minu Kumari and Anr* v. *State of Bihar and Ors*,[80] the Supreme Court was called upon to decide propriety of refusal of the Patna High Court to quash an order passed by one of its subordinate sessions courts setting aside an order of a CJM striking of names of the appellants, whose names were added by mistake, from the list of persons against whom issuance of processes and summons were ordered. An informant alleged that the persons named therein

79a *Id.* at 315.
80 *Supra* note 64.

(including the petitioners) assaulted him (and others) and thereby allegedly committed offences contrary to sections 341, 323 and 435 read with section 34 of the Penal Code. However, the charge sheet prepared, after investigation, by the police did not include names of the petitioners. Nevertheless, the CJM, before whom the charge sheet was placed, by his order, took cognizance of the offences mentioned hereinbefore and directed issuance of processes against the persons named in the charge sheet as well as the appellants on the ground that there was a *prima facie* case against them. He also ordered issuance of summons against them and handed over the case to the court of first class judicial magistrate for further disposal. However, the appellants subsequently filed a petition before the CJM praying deletion of their names from his order as their names had been mentioned in his order due to clerical error. The CJM called for the record from the court of the magistrate, where the trial was pending, and, after hearing the petitioners, ordered to strike of their names. However, the first additional district and sessions judge, before whom the CJM's order was assailed, set aside the order by holding that the CJM, by virtue of section 362 of the Cr PC, did not have any power, much less inherent power, to recall, review, or alter his order disposing of a case except to correct a clerical or arithmetical error. The sessions judge held that the order passed by the CJM amounted to review.

The appellants, doubting correctness of the order and invoking section 482 of the Code, petitioned the Patna High Court to set aside the order of the first additional district and sessions judge. However, the high court dismissed the petition on the ground that the CJM erred in law by recalling his own order under section 362 of the Code on the pretext that there was correction of clerical and arithmetical errors. It was a sort of review impermissible under law.

The apex court, however, perceiving that the high court, by refusing to quash the order, has completely lost sight of the scope and ambit of section 482 of the Code, set aside the high court's order and ordered that the names of the appellants be struck off from the array of accused persons. It held that the high court was not justified in rejecting the application of the appellants in terms of section 482 of the Code as the cognizance of the case against them was taken by mistake and the police did not find any material against them.

In *Anil Singh and Anr* v. *State of Bihar and Ors*,[81] the Supreme Court was confronted with a sort of facts contrary to that of the *Minu Kumari* case. An informant, through his FIR, informed that the appellants, along with others, committed a murder. However, after investigation, the superintendent of police came to the conclusion that the appellants were falsely implicated. He accordingly filed a final form of his investigation in favour of the appellants. The magistrate accepted it. He, however, filed a charge sheet against other accused persons and took cognizance of the offence punishable under section 302 of the Penal Code. However, the witnesses, including the first informant, examined before the sessions judge deposed that the appellants, along with

8 1 2006 Indlaw SC 704, decided on 19.10.2006.

the accused, were also involved in the murder of the deceased. Thereafter, the prosecution, relying upon the testimony, filed an application, purportedly under section 319 of the Cr PC, for summoning the appellants. The sessions judge dismissed the application on the ground that the appellants, due to doubt about their identity, were innocent. The informant, doubting legality of the order of the sessions judge, urged the Patna High Court to quash the order by invoking its inherent powers under section 482 of the Cr PC. The high court, not impressed by the reasoning of the sessions judge for holding the appellants innocent, quashed the order and directed the sessions judge to proceed in the matter in accordance with law. Thereafter, the sessions judge, believing that the high court has already come to the conclusion that processes need to be issued and it mandated him to do so, issued summons against the appellants.

The appellants rushed to the Supreme Court and assailed the issue of processes on the ground that the sessions judge erred in law as he proceeded on the belief that the high court directed him to issue processes against them. The Supreme Court, relying upon, and quoting with approval from, its earlier judicial dicta,[82] held that a trial court need exercise its powers under section 319 of the Code very sparingly and cautiously. It is not to be exercised in a mechanical manner. The trial court has to exercise the power only when it has reached a reasonable satisfaction that the prosecution would be able to prove the charges against such persons. It is not expected of a trial court to invoke its powers under section 319, Cr PC, to issue processes merely on the ground that some evidence is brought on record implicating the persons sought to be added as accused. Recalling facts of the case at hand, the Supreme Court held that the high court did not direct the trial court, contrary to its perception, to issue the processes. The apex court remitted the matter to the trial court with a direction to consider the question involved therein afresh in the light of the hitherto settled principles.

Permission for compounding a non-compoundable offence

It is worth to recall that the Supreme Court, through *B S Joshi and Ors* v. *State of Haryana and Anr*,[83] has categorically declared that section 320 of the Code (dealing with compounding of offences) in no way limits or affects the inherent powers of a high court. For securing the ends of justice, a high court, according to the apex court, is justified in quashing criminal proceedings, FIR, or complaint. The High Courts of Kerala,[84] and of Delhi,[85] respectively, during the year previous to the current year of survey and the year under survey,

8 2 *Krishnappa* v. *State of Karnataka*, (2004) 7 SCC 792: AIR 2004 SC 4298; *Kavuluri Vivekananda Reddy and Anr* v. *State of AP*, (2005) 12 SCC 432; *Palanisamy Gounder and Anr* v. *State Represented by Inspector of Police*, (2005) 12 SCC 327.

8 3 2003 Cri LJ 2028 (SC).

8 4 *K U Ettoop and Anr* v. *M K Kuhikannan and Anr*, 2005 Cri LJ 2249 (Ker). For further comments, see K. I. Vibhute, "Criminal Procedure," XLI *ASIL* 199 (2005).

8 5 *Vicky Malhotra and Ors* v. *State and Anr*, 134 (2006) DLT 432.

respectively, relying upon the *B S Joshi* dictum allowed the parties to a non-compoundable offence to settle the dispute among themselves. The High Court of Kerala invoked its inherent powers to permit the parties to compound an offence contrary to section 506 (ii), IPC, while the Delhi High Court, relying upon its earlier pronouncement in *Dault Zia* v. *State (NCT of Delhi)*[86] and *Mahesh Chand and Anr* v. *State of Rajasthan*,[87] along with the *B S Joshi* case, allowed the petitioners, who were parties to an offence punishable under section 307 of the Penal Code, to settle the matter.

However, subsequent to the *B S Joshi* dictum one, surprisingly, hears a different judicial tone. A two-judge bench of the Supreme Court, in *Bankat and Anr* v. *State of Maharashtra*,[88] relying upon the legislative mandate of sub-section (9) of section 320 of the Code providing that 'no offence' can be compounded 'except as provided' in section 320, not only justified the Bombay High Court's ruling denying its permission to the parties to settle among themselves a non-compoundable offence (punishable under section 326 of the IPC) but also ruled that only compoundable offences (i.e. the offences which are covered by Table 1 or Table 2 under section 320 of the Cr PC) can be compounded. It stressed:[89]

> For compounding of the offences punishable under the IPC, a complete scheme is provided under Section 320 of the Code. Sub-section (1) of Section 320 provides that the offences mentioned in the Table provided thereunder can be compounded by the persons mentioned in column 3 of the said Table. Further, sub-section (2) provides that the offences mentioned in the Table could be compounded by the victim with the permission of the court. As against this sub-section (9) specifically provides that 'no offence shall be compounded except as provided by this section'. In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under IPC could not be compounded.

Interestingly, during the year under survey, V Jagannathan J of the Karnataka High Court, in *Nazimunnisa* v. *State of Karnataka and Anr*,[90] placing his reliance on the *Bankat* ruling, has shown his reluctance to invoke the inherent powers under section 482 of the Code either to quash the criminal proceedings relating to a non-compoundable offence (punishable under section 498-A, IPC) or to allow the parties thereto to settle it among themselves. The judge, in no unclear terms, ruled:[91]

86 1998 DLT 259.
87 AIR 1988 SC 2111.
88 (2005) 1 SCC 343.
89 *Id*. at para 11.
90 2006 (1) Kar LJ 577.
91 *Id*. at para 8.

> Having thus heard the ... Counsels for the parties and after carefully going through the material on record, I am unable to agree with the ... Counsel for the petitioner for more than one reason in that insofar as quashing of the complaint involving offences under Section 498-A and other sections of the Dowry Prohibition Act i.e., Sections 3 and 4 is concerned, it has to be mentioned that offence under Section 498-A is a non-compoundable offence. The Apex Court in a very recent judgment in the case of *Bankat and Another* v. *State of Maharashtra* [AIR 2005 SC 368] has laid down the law that only the offences which are covered by Table 1 or Table 2 under Section 320 of the Cr PC can be compounded and rest of the offences punishable under IPC cannot be compounded. In view of the law laid down by the Apex Court with regard to compounding of offences, in the instant case the offence under Section 498-A is non-compoundable one. Hence, the question of the said offence being compounded will not arise.

Dismissing the petition under section 482 of the Code, he further reasserted:[92]

> [Q]uashing of the proceedings pending before the Trial Court will not arise and as has been observed by the Apex Court in the case of *Bankat*, even assuming that there is a compromise between the parties that may be a factor to be taken into account in determining the quantum of sentence.

But subsequent to the *Bankat* and the *Nazimunnisa* rulings, respectively, of the Supreme Court and of the Karnataka High Court, R Regupathi, J of the Madras High Court, in *Kumar @ Sampathkumar and Anr* v. *State of TN and Anr*,[93] invoking powers under section 482 of the Code allowed the parties to a criminal prosecution under section 498-A of the Penal Code pending in a lower court to compound. They judge, interestingly without either referring to or relying upon any judicial pronouncements of the apex court, held: [94]

> As the dispute between the *de facto* complainant and the accused has been settled, I find that there may not be any use in continuing the prosecution pending in C.C.No.136 of 2002 on the file of the ... Judicial Magistrate, Chengalpattu. The offence is under Section 498-A Indian Penal Code, 1860, which is non-compoundable. However, the Supreme Court has held that by invoking inherent powers of this Hon'ble Court and if the parties have compromised the dispute, the offence may be allowed to be compounded. In such circumstances, in view of the facts and circumstances of the case, the offence is allowed to be

92 *Id.* at para 10.
93 2006 Crimes (3) 690.
94 *Id.* at para 4.

compounded and the accused are acquitted. Accordingly, the proceedings pending in C.C.No.136 of 2002 is quashed.

Further, it is equally interesting to note that the Supreme Court in *Jetha Ram* v. *State of Rajasthan* [95] ruled that a compromise in a non-compoundable offence cannot be recorded by a court. Such a compromise, nevertheless, be taken into account by the court while quantifying criminal liability. It is time for the Supreme Court to clarify the law.

Ordering consecutive sentences of imprisonment to run concurrently

A reading of *M R Kudva* v. *State of AP*[96] discloses a set of very interesting facts and circumstances in which the Andhra Pradesh High Court entertained an application under section 482 of the Code praying for a direction that the sentences of imprisonment of different durations imposed by the trial court on the petitioner for perpetrating different offences punishable under the same provisions of the Penal Code and of the Prevention of Corruption Act of 1947 be run concurrently.

The petitioner, while working as a branch manager of one of the branches of the Syndicate Bank at Hyderabad, sanctioned loan to one of the customers for buying a black and white television. He also sanctioned loan to another customer for obtaining plots from a housing society. The sanction of the loans was allegedly contrary to the scheme floated by the bank. The CBI investigated the transactions and filed two separate charge sheets against the petitioner. Consequently, two criminal cases were registered (in 1992 and 1993) against him. In the first case (of 1992), the special judge, CBI, found him guilty of the offences punishable under sections 120-B, 420, 468 and 471 of the Penal Code read with section 5(1) of the Prevention of Corruption Act of 1947 and ordered him to undergo rigorous imprisonment for a term of 18 months. He also ordered him to pay a fine of different amounts. In the second case (of 1993), the special judge also convicted the appellant under sections 120-B, 420, 468 and 471 of the IPC read with section 5(1) of the Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment for a term of two years. He was also asked to pay fine of different amounts for the convicted offences.

The petitioner preferred appeals (in 1997) against both the conviction orders of the trial court in the High Court of Andhra Pradesh. The high court dismissed both the appeals in 2004 and 2005. Thereafter, the petitioner unsuccessfully filed a special leave petition in the Supreme Court. He then, purportedly under sections 482/427 of the Cr PC, filed an application before the Andhra Pradesh High Court urging, *inter alia*, it to issue a direction that the sentences imposed upon him in both the cases be run concurrently and not consecutively. The high court rejected the application. He, arguing that the high court erred in law by rejecting his application, questioned legality of the high court's order before the Supreme Court.

95 (2006) 9 SCC 255.
96 (2007) 2 SCC 772.

Dismissing the appeal and expressing its reservation about maintainability of the application itself by the high court under section 482 of the Code, the Supreme Court, observed:[97]

> A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application, in our opinion, was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the Trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court.

XIV CONCLUSION

The case law surveyed and analyzed, like in the previous years, divulges the higher judiciary's quest and zeal for 'fair trial' and 'just administration of criminal justice' with 'humane touch'.

Charged with the concern, the higher judicial institutions, particularly the Supreme Court, have not only echoed the hitherto evolved and articulated principles but have also refined them further. They have also added a few positive dimensions thereto. The Supreme Court, for example, has categorically ruled that political motives of an informant of a crime do not justify stalling of the criminal proceedings relating thereto or of the investigation thereof.[98] And if a court notices that the investigation so far carried out is perfunctory or deliberately misdirected with a design of shielding or sparing someone involved, it is legitimate for the court to order investigation to be carried out by any other independent agency or further investigation.[99] A high court, even on its own, it ruled, can order fresh investigation against those who have been deliberately left out by the investigation agency.[100] The death of a complainant does not automatically abet the criminal proceedings initiated by him. His legal heirs, if they wish, can pursue it further.[101]

During the year 2006, the Supreme Court has also emphatically put forward a few pertinent proposals of worth considering. Probably with a view to strengthening 'humane facet' of administration of criminal justice, the apex court has proposed a few 'preventive and remedial measures' to prevent or

97 *Ibid.*
98 *Sasi Thomas, supra* note 9.
99 *Ramesh Kumari, supra* note 1.
100 *Popular Muthiah, supra* note 79.
101 *Balasheb K Thackeray, supra* note 36.

desist the investigatory agencies from using the so-called 'third-degree methods' of investigation or resorting to 'custodial violence' during investigation.[102] Recalling the frequent instances of witnesses, due to threat, coercion, or inducement, resiling from their earlier statements and making statements that do not either reflect the reality or are far from truth, and realizing that a criminal court is an effective instrument of unravelling the truth and of dispensing justice, the Supreme Court has also stressed the need to protect the witnesses from such threat, coercion or inducement. It has emphatically asserted that it is high time to give our serious thoughts to the fact that witnesses need protection so that they, being eyes and ears of justice, can present truth before the trial court without any fear of being haunted by those against whom they have to depose or uninfluenced by any extraneous considerations emanating from caste, creed, religion, political belief or ideology. The tampering with witnesses, in the interest of justice and for keeping intact the confidence and faith of the community in the administration of criminal justice, needs to be curbed by an appropriate legislative measure.[103]

However, the survey signifies the existing judicial ambivalence regarding courts' power in allowing parties to a non-compoundable offence to compound it. There seems to be conflicting judicial perception not only among the high courts[104] but also in the Supreme Court.[105] A decisive judicial pronouncement by a larger bench of the apex court, therefore, is desirable at the earliest opportunity to do away with judicial ambivalence and thereby to bring certainty in the field.

102 *Sube Singh*, *supra* note 13.

103 *Zahira Habibullah Sheikh*, *supra* note 17. However, it is interesting to note that before the Supreme Court pronounced its judgment in the *Zahira Habibullah Sheikh* case on 08.03.2006, the Criminal Law (Amendment) Act, 2005 (2 of 2006), dated 11.01.2006, through s 2, proposed to insert in the Indian Penal Code s. 195-A providing for severe punishment for intimidating or inducing a person for giving false evidence.

104 See, *Vicky Malhotra*, *supra* note 85; *Nazimunnisa*, *supra* note 90; *Kumar @ Sampathkumar*, *supra* note 93.

105 *B S Joshi*, *supra* note 83; *Bankat*, *supra* note 88, and *Jetha Ram*, *supra* note 95.