11
CRIMINAL PROCEDURE

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I INTRODUCTION

AS IN the earlier years, in the year 2011 there have been large number of decisions handed down by various high courts and Supreme Court touching upon different aspects of citizens' freedom. Many decisions have constitutional dimensions with international overtones. Only those cases which the author considers important have been surveyed with a view to capture the trends of development.

II INTERFERENCE BY THIRD PARTIES

The facts in *State of Maharashtra* v. *S.S. Chavan,*[1] are in fact disturbing. The Chief Minister of Maharashtra in this case issued instructions to the collector and police officials not to entertain complaints against the members of the family of a MLA engaged in money lending under the Bombay Money Lenders Act, 1946. The Supreme Court vehemently disapproved it and observed thus:[2]

> This court is extremely anguished to see that such an instruction should come from the Chief Minister of a State which is governed under the Constitution which resolves to constitute India into a socialist secular democratic republic. The CM's instructions are so incongruous and anachronistic being in defiance of all logic and reason that our conscience is deeply disturbed. We condemn the same in no uncertain terms.

The common man's role in the criminal justice system became an issue in *Jakia Nazim Ahesan* v. *State of Gujarat.*[3] The question was whether a person who has knowledge about the commission of an offence if not examined by the police, has any remedy. Because of the importance of the question the court issued a notice to the Union of India for further proceedings.

Theoretically speaking, it is felt that under our system the person who has knowledge about the commission of a crime can seek the help of senior police officers or the *illaqa* magistrates. He could also seek the help of the high court.

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1 (2011) 1 SCC (Cri) 477.

2 *Id*. at 488.

3 (2011) 1 SCC (Cri) 1095.

Generally, our criminal justice system does not encourage third parties to intervene in the system because of the perils involved in using it as a means of harassment and oppression. The position that third parties do not have a *locus standi* in criminal litigation has been reiterated by the Supreme Court in *Ashok Kumar Pandey* v. *State of West Bengal.*[4] In this case, the petition by a third party under article 32 of the constitution seeking computation of capital punishment imposed on two persons was rejected by the court. The response of the Supreme Court to the attempt of a third party to contest the conclusion of a court as to the commission of crime could be seen in *Noorul Huda Maqbool Ahmed* v. *Ram Deo Tyagi.*[5] In this case, the petitioner challenged the conclusion of the court that the police officials did not share common intention in as much as there was not even a single shot fired by anyone in the conflict. The court, therefore, agreed with the trial court and the revisional court that there was no unlawful assembly.

III POLICE

The image of the police as the investigation wing of the criminal justice system has been very low. The observations made by the court in various decisions signify this fact. For example, the observations made by the Supreme Court in *State of U.P.* v. *Chhotey Lal*[6] are pertinent. The court observed thus:[7]

> The investigators hardly have professional orientation; they do not have modern tools. On many occasions impartial investigation suffers because of non appearance of official witness on time and the non-availability of the facilities for recording evidence by video conferencing. The P.P. have their limitations; the defence lawyers do not make themselves available and court would be routinely informed about their participation with other matters; the courts remain overburdened with the briefs listed on the day and they do not have adequate infrastructure. The adjournments thus become routine; the casualty is justice. It is imperative that the criminal cases relating to offences against state, corruption, dowry death, domestic violence, sexual assault, financial fraud and cyber crimes are fast-trailed and decided in a fixed timeframe, preferably of three years / including the appeal provisions. It is high time that immediate and urgent steps are taken in amending the procedural and other laws to achieve the above objectives. We must remember that a strong and efficient criminal justice system is a guarantee to the rule of law and vibrant civil society.

The Supreme Court have had occasion to deal with false encounter cases also in 2011. In *Prakash Kadam* v. *Ramprasad Vishwanath Gupta,*[8] the police arranged a false encounter and killed a person for money. The Supreme Court tersely

4 (2004) 3 SCC 349.
5 (2011) 3 SCC (Cri) 31.
6 (2011) 2 SCC (Cri) 674: (2011) 2 SCC 55.
7 *Id*. at 688.
8 (2011) 2 SCC (Cri) 848.

demanded that harsh punishment should be imposed upon the guilty police men because they have done the act totally contrary to their duties.

The facts in *Mehboob Batcha* v. *State,*[9] read like a sad commentary on the cruelties of our police officer bringing bad name to the criminal justice system. The policemen gang raped the wife of a person in custody in his presence and ultimately tortured him to death. The court called for heavy punishment on the guilty policemen though it failed to impose life imprisonment on them by issuing notice for enhancement of sentence.

IV INVESTIGATION

There were a number of Supreme Court decisions in the year 2011 which set the contours of judiciary's power in regulating police investigation – an area universally accepted as one belonging to police prerogative.

It is interesting to note that the Supreme Court added strength to its conclusion that the concepts of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under article 21 of the Indian Constitution spelt out in *Nirmal Singh Kahlon*,[10] *Babubhai* v. *Gujarat.*[11] A vitiated investigation cannot give rise to a valid charge sheet. The court in *Babubhai* observed categorically thus: [12]

> Not only fair trial but fair investigation is also part of constitutional rights guaranteed under article 20 and 21 of the constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that an independent agency chosen by the high court makes a fresh investigation.

The tardy investigation of crimes by the village police in the distant hilly areas of Uttaranchal came to be reviewed by the Supreme Court in *Sundar Singh* v. *Uttaranchal.*[13] The accused's plea of delay in registering a conviction as a result of delayed investigation was rightly rejected and the court noted that the delay was caused by the abscondance of the accused. The court also rejected his prayer of not imposing death penalty for the brutal murders committed by him.

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9 (2011) 3 SCC (Cri) 70. The court has lamented that the accused were not charged under section 302 IPC, so that it could impose life imprisonment / death. But it remains a fact that they were charged under ss 304 and 376 IPC under which they could have been given life imprisonment.

10 (2009) 1 SCC 441.

11 (2011) 1 SCC (Cri) 336. See in this context observations of the High Court of Bombay in *Vimal Ashok Thakre* v. *Incharge, Police Officer, Nagpur*, 2011 Cri LJ 139 (BOM) on the disclosure of progress of investigation by the investigating officer. The court did not approve of it.

12 *Id. at* 351.

13 (2011) 1 SCC (Cri) 114.

Further investigation

The Supreme Court reviewed a number of its decisions and pointed out that there could be no reinvestigation in a case of unsatisfactory investigation. The court asserted its position in *Sivan Moorthy*,[14] that there could be further investigation and not a fresh reinvestigation. The question whether there is a reinvestigation or further investigation depends on the nature of investigation done in a case.

Predominance of the court over investigation

In *Alagarsamy* v. *State,*[15] the Supreme Court declared the predominant role of the court over investigation thus: [16]

> The court must have predominance and preeminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true, then the court is free to act on it, albeit the Investigating Officer's suspicious role in the case.

The relevance of FIR in criminal trials has been elaborately dealt with in this decision. As discussed above in *State of Maharashtra* v. *Sarangdhar Singh*.[17] The chief minister's instructions to the effect that the police should not entertain complaints against the members of the family of a particular MLA under the provisions of the Bombay Money Lenders' Act, 1946 came to be deprecated as it was against the rule of law. The court also rightly found that its instructions were indeed an encroachment on the powers of the police for investigation and observed thus: [18]

> The legal position is well settled that on information being lodged with the police and if the said information disclosed the commission of a cognizable offence, the police shall record the same in accordance with the provisions contained under S.154 of the Cr PC. The police officer's power to investigate in case of a cognizable offence without order of the magistrate is statutorily recognized under S.156 of the code. Thus the police officer in charge of a police station on the basis of information received or otherwise can start investigation if he has reasons to suspect the commission of any cognizable offence.
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> This is subject to provisos (a) and (b) to S.157 of the code which leave discretion with the police officer in charge of police station to consider if the information is not of a serious nature, he may depute a subordinate

14 (2011) 1 SCC (Cri) 295.

15 (2011) 1 SCC (Cri) 560 - It may be pertinent to note that according to the Bombay High Court in *Vinos Kumar Ramachandran Valluvar* v. *State of Maharashtra*, 2011 CriLJ 2522 (BOM) while ordering attaching bank account of any person, no notice need be given.

16 *Id.* at 571.

17 *Supra* note 1.

18 *Id.* at 486.

> officer to investigate and if it appears to the officer in charge that there does not exist sufficient ground, he shall not investigate. This legal framework is a very vital component of the rule of law in order to ensure prompt investigation in cognizable cases and to maintain law and order.

The position of law with regard to power for ordering investigation by the high court came to be reiterated in *Ashok Kumar Todi* v. *Kishan Jahan.*[19] Once an FIR had been registered lawfully and investigation had been conducted, leading to filing of charge sheet before competent court of law for trial of accused persons, there is absolutely no justifiable reason for ordering CBI to start investigation afresh after three years. It was a case wherein the division bench ordered a new inquiry by the CBI afresh after three years of investigation.

The court does not tolerate torture by police in extracting information from suspects. However, the police quite often, if decided cases are any guide resorts to torture in investigation. The Supreme Court has never tolerated it.

In *Haricharan* v. *State of M.P.*[20] for example, the appellant police officer who was convicted under section 304 part-II IPC for torturing to death the deceased in custody appealed to the Supreme Court. Appeal was dismissed and the court observed: [21]

> Using any form of torture for extracting any kind of information from a suspect was declared to be neither right nor just nor fair.

The role of the superior courts with reference to investigation by CBI came to be spelt out in *Narmadabai* v. *State of Gujarat.*[22] Declaring that the high court has power to order CBI to investigate, the court explained its subsequent role thus:[23]

> The above decisions make it clear that though this court is competent to entrust the investigation to any independent agency once the investigating agency complete their function of investigating into the offences, it is the court in which the charge sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of S.173 (8) of the code. Thus, generally, this court may not require further monitoring of the case / investigation.

This position received further clarification in *State of Punjab* v. *CBI*,[24] in which the action of the High Court of Punjab and Haryana in ordering an investigation by CBI after charge sheets were filed, came to be questioned in the Supreme Court. After a review of its decisions on the point, the Supreme Court clarified thus: [25]

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19 (2011) 2 SCC (Cri) 75.
20 (2011) 2 SCC (Cri) 96.
21 *Id.* at 103.
22 (2011) 2 SCC (Cri) 526.
23 *Id.* at 546.
24 (2011) 3 SCC (Cri) 666.
25 *Id.* para 63.

> The high court in this case was not monitoring any investigation. It only desired that the investigation should be carried by an independent agency. Its anxiety as is evident from the order dated 03-04-2002, was to see that the officers of the state do not get away.

The Supreme Court has also issued several instructions to the police with regard to registration of complaint / F.I.R. The complainants are to be given copies of the complaints within twenty four hours as held in *Lalitha Kumari* v. *Govt. of U.P.*[26]

V INITIATION OF PROCEEDINGS

Section 195 Cr PC restricts initiation of criminal proceedings. In some cases the question whether the restrictions would apply in the fact situations presented was examined. In *Institute of Chartered Accountants of India* v. *Vimal Kumar Surana*,[27] the issue for decision was whether a person who impersonated as a chartered accountant registered with the Institute of chartered accountant could be charge sheeted for offences under the provisions of IPC such as those under sections 419, 468, 471, 472 etc. in view of the bar under section 195 restricting the complaints to be made by courts in which the documents have been filed by the accused. Pointing out that the offices of income tax department or offices under the state government where the accused misrepresented are not courts, the Supreme Court remitted the matter to trial court to frame charges if it concluded that the accused had committed offences under the IPC.

Application of section 195 Cr PC was again the subject for discussion in *Abdul Rahman* v. *K.M. Anees-ul-Haq*.[28] Reversing the decision of the Delhi High Court, the Supreme Court ruled that since in this case anticipatory bail was already granted and charge sheet under section 173 IPC was already filed the bar under section 195 was attracted. The court accordingly quashed the initiation of proceedings.

The decision in *A. Subash Babu* v. *State of A.P.,*[29] is of far-reaching importance. In this case, the appellant a police officer married respondent 2 concealing the fact of his first marriage. Where the demands for dowry could not be met by the second wife dispute arose and she started proceedings under section 498A IPC. However, the appellant could get it quashed under section 482 Cr PC. But, the case under sections 494, 495, 417 and 420 IPC continued and report was filed. The appellant took the plea that the second wife could not be the aggrieved person under section 495 IPC and as such section 198 (1) (c) Cr PC would bar prosecution. The respondent wife took the plea that the offense under sections 494 and 495 have been made cognizable under state legislation in Andhra Pradesh State and hence the bar would not apply. The Supreme Court accepted her argument and held that the prosecution could be initiated observing thus: [30]

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26 (2011) 3 SCC (Cri) 179. See also observations of the Bombay High Court in *USA Cable Networks* v. *State of Maharashtra* (2011) Cri LJ 2222 (BOM) regarding enquiry in exceptional cases.

27 (2011) 1 SCC (Cri) 442.

28 (2012) 1 SCC (Cri) 93.

29 (2011) 3 SCC (Cri) 267.

30 *Id.* at 282.

> Therefore, the provision made in S.198 (1) (c) that no court shall take cognizance of an offence punishable under chapter xx of the penal code except upon a complaint made by some person aggrieved will have to be read subject to the amendment made by the Legislative Assembly of the State of A.P. in 1992. Once it is held that the offences under Ss. 494 and 495 IPC are cognizable offences, the bar imposed by the operative part of sub section (1) of S.198 of the Cr PC beginning with the words, 'no court shall take cognizance of an offence punishable under chapter xx of the penal code except upon a complaint made by some person aggrieved by the offence" gets lifted so far as offences punishable under Ss. 494 and 495 are concerned.

The bar under section 198 (i) (b) (ii) Cr PC for taking cognizance of the offence of forgery of documents filed in a court without a complaint from the court is applicable when the forgery takes place subsequent to its filing. In *Goverdhan* v. *Uttaranchal*,[31] the Uttaranchal High Court, however, extended it to a case where the forgery took place prior to the filing in the court.

VI TRIAL AND TRIAL PROCEDURES

Several aspects of criminal trials including procedures have come to be discussed by the courts. The extent of protection against self incrimination given under the Cr PC came to the fore in *Balasaheb @ Ramesh Luxman Deshmukh* v. *State of Maharashtra*.[32] In this case, the plea of the accused to remain silent in criminal trial ordered against him on the police report on the ground that he had been made accused in the complaint case initiated on the same incident, was rejected by the Supreme Court saying that no such blanket protection could be given. He could, of course, refuse to answer a question if it had the tendency to incriminate him.

It has also been reiterated by the Supreme Court in *Paramjeet Singh @ Pamma* v. *State of Uttarakhand*[33] that an inadvertent omission on the part of the court to question the accused on any incriminating circumstance cannot *ipso facto* vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court.

Regarding the evidence of a child witness the Supreme Court expressed strong views in *State of U.P.* v. *Krishna Master*.[34] The court reminded that a child of tender age who has seen the brutal elimination of his family would never forget the incident. He would, according to the court recapitulate facts in his memory when asked about the act notwithstanding the gap of about ten years.

Section 319 Cr PC empowers the court to summon a person as an accused in a case before it. Once he is made an accused the trial qua the new accused has to be from the very start of the proceedings. The discussions in *Harinarayan Bajaj* v.

31 (2011) Cri LJ (NOC) 3 (UTR).
32 (2011) 1 SCC (Cri) 1.
33 (2011) 1 SCC (Cri) 98.
34 (2011) 1 SCC (Cri) 381.

State of Maharashtra[35] are revealing. The court was of opinion that under section 244 Cr PC also an accused should get opportunity to cross examine. The court reasoned thus: [36]

> We would also give a meaningful interpretation to the word "proceedings" which has been deliberately used by the legislature. The legislature does not use the word 'trial' which essentially begins after framing of the charge. If the legislature has intended that the newly joined accused should not get the right of cross examining the witnesses examined before the framing of the charge, it might have used the word 'trial.' The deliberate use of the word "proceedings" would then include not only the trial but also the inquiry which commences with S.244 Cr.PC and ends with the framing of the charge under S.246 Cr.PC. The terminology "commences afresh" has also its own force. It indicates that the whole inquiry which commences from S.244 must begin afresh. The interpretation that we give to the word "proceedings" is buttressed by the language of S.319 (b) Cr.PC. The plain language takes back the whole proceedings to the stage of taking cognizance. If we accept the contention of the appellant herein, then sub-section (b) would be rendered otiose. We have, therefore, no doubt that the language of S.319 Cr.PC itself pushes the proceedings back to the stage of inquiry, once the order under S.319(1) Cr.PC is passed by the court and a new accused is joined therein.

Later the court summed up the position thus:

> Therefore, the situation is clear that under S. 244 Cr.PC the accused has a right to cross examine the witnesses and in the matter of S.319 Cr.PC when a new accused is summoned, he would have similar right to cross examine the witness examined during the inquiry afresh. Again, the witnesses would have to be reheard and then there would be such a right.[37]

The evidence of relatives of the deceased is not to be rejected on the ground of their relation. Other evidence along with the evidence of such witnesses becomes quite relevant in deciding the case. In *Sangappa Sangava Vasappa* v. *State of Karnataka,*[38] the court also pointed out that non examination of independent witnesses is not fatal to the prosecution in every case.

The Supreme Court had occasion to speak about the relevance of facts in determining jurisdiction of courts. In *Krishna Kumar Varyar* v. *Share Shoppe*,[39] it was held that if a party takes the plea that a trial court has no jurisdiction in a case it is for him to file an application making this averment and giving the relevant facts. Whether the court has jurisdiction to try the case will depend upon the facts.

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35 2011) 1 SCC (Cri) 207.
36 *Id.* at 211.
37 *Id.* at 212.
38 (2011) 1 SCC (Cri) 256.
39 (2011) 1 SCC 513.

Therefore, instead of rushing to the higher courts it should be possible for the parties to file an application in the trial court.

The view of the Supreme Court with reference to the relevance of evidence of hostile witnesses is reflected in *Prithi* v. *State of Haryana.*[40] The evidence of hostile witnesses is useful to the extent to which it supports the prosecution. It has also been held by the Supreme Court in *Bhagwan Singh*,[41] that when a witness is declared hostile and cross examined with the permission of the court, his evidence becomes admissible and there is no bar to base a conviction on it if corroborated. The same view was taken in *Himanshu @ Chintu* v. *State*[42] too.

Holding that the framing of charges and examination of the accused under section 313 Cr PC in *Sajjan Kumar Sharma* v. *State of Bihar,*[43] the Supreme Court acquitted the defendant giving him the benefit of doubt. It cautioned Bihar High Court to be mindful about the unsatisfactory trial practices resorted to by some courts in the state.

The importance of giving reasons in the orders of discharge that the courts make at the stage of charging has come to be reiterated by the Supreme Court in *R.S. Misra* v. *State of Orissa.*[44] The court's observations are self-explanatory: [45]

> It is also to be noted that a discharge order is passed on an application by the accused on which the accused and the prosecution are heard. At the stage of discharging an accused or framing of the charge, the victim does not participate in the proceedings. While framing the charge, the rights of the victim are also to be taken care of as also that of the accused. That responsibility lies on the shoulders of the judge. Therefore, on the analogy of a discharge order, the judge must give his reasons at least in a nutshell, if he is dropping or diluting any charge, particularly a serious one as in the present case. It is also necessary for the reason that the order should inform the prosecution as to what went wrong with the investigation. Besides, if the matter is carried to the higher court, it will be able to know as to why a charge was dropped or diluted.

Holding that the discretion of the trial judge under section 205 enabling him to avoid the presence of the accused in the court and under section 313 with regard to the acceptance of accused's statement, the Supreme Court in *T.G.N. Kumar* v. *State of Kerala*[46]disapproved the Kerala High Court instructions to the lower courts with regard to the procedure in trying offences under the Negotiable Instruments Act. The high court had issued instructions to help the district courts to simplify the

40 (2011) 3 SCC (Cri) 960.
41 (1976) SCC (Cri) 7.
42 (2011) 1 SCC (Cri) 593.
43 (2011) 1 SCC (Cri) 660. See also *State of U.P.* v. *Mohd. Iqram* (2011) 3. See (Cri) 354.
44 (2011) 1 SCC (Cri) 785
45 *Id.* at 794.
46 (2011) 1 SCC (Cri) 895. See KNC Pillai, "Making Trial Litigants Friendly,"4 KHC (Jair).

procedure in *Jain Babu* v. *K.J. Joseph*,[47] which came to be questioned in *T.G.N. Kumar*. So at present it is the procedure laid down in Cr PC which is to be followed by the lower courts. Indeed, exercising its discretion in applying sections 205 and 313 Cr PC the lower courts can make the trial litigants friendly.

The need for putting all incriminating material to the accused is always stressed. But if the accused fails to bring to the notice of the court that all material were not put to him and that prejudiced him, the trial will not be held to be vitiated. Explaining its observations in earlier decision the court in *Satyavir Singh Rathi* v. *State through CBI,*[48] explained: [49]

> These observations (in Shobit Chamar, (1998) 3 SCC 455), proceed on the principle that if an objection as to the S.313 statement is taken at the earliest stage, the court can make good the defect and record an additional statement as that would be in the interest of all but if the matter is allowed to linger on and the objections are taken belatedly it could be a difficult situation for the prosecution as well as the accused.

The relevance of dying declaration also came for decision in 2011. The Supreme Court in *Abrar* v. *State of U.P.,*[50] upheld the conviction and sentence imposed on the appellant as the three dying declarations recorded by the prosecution, were held admissible and trustworthy. There was also no time gap in registering FIR.

The need for having a counsel for the accused has been emphasized by the Supreme Court in *Mohd. Zakeer Ali* v. *State of Assam*,[51] wherein the Gauhati High Court had decided the appeal in the absence of the counsel of appellant. After surveying the position the court declared: [52]

> We reiterate that in the absence of a counsel, for whatever reasons, the case should not be decided forthwith against the accused but in such a situation the court should appoint a counsel who is practicing on the criminal side as amicus curiae and decide the case after fixing another date and hearing him.

It is possible for the courts to convict and sentence a person under a charge, though it has not been specifically spelt out if he had sufficient notice of the charge otherwise. In *Satyavir Singh Rathi* v. *State,*[53] the high court's altering conviction from the charge under section 302/307 read with section 120B to charge under section 302/307 read with section 34 IPC was held valid by the Supreme Court. Similarly, the omission of section 302 IPC from the charge against the appellant in

47 Cr. MC No. 1977 of 2007.
48 (2011) 6 SCC 1.
49 *Id.* at 37.
50 (2011) 2 SCC (Cri) 702. See also the observations in *Kamble* v. *State of Maharashtra*, 2011 Cri LJ 4964 (BOM) holding that dying declaration need not always use the same words spoken by the deceased.
51 (2011) 2 SCC (Cri) 481.
52 *Id.* at 485.
53 (2011) 2 SCC (Cri) 782.

Mohan Singh v. *State of Bihar*,[54] was held to be no bar in convicting him for murder as he had sufficient notice of it from the prosecution evidence.

In *Mehboob Batcha* v. *State*,[55] the Supreme Court had lamented that it could not enhance the sentence because of lack of appropriate charge in the charge sheet against the accused police officers. The court had observed:[56]

> We are surprised that the accused were not charged under S.302 IPC instead the courts below treated the death of Nandugopal as suicide. In fact they should have been charged under that provision and awarded death sentence, as murder by policemen in police custody is in our opinion falls in the category of the rarest of rare cases deserving death sentence, but surprisingly no charge under S.302 IPC was framed against any of the accused. We are constrained to say that both the trial court and the high court have failed in their duty in this connection. The entire incident took place within the premises of Annamalai Nagar Police Station and the accused deserve no mercy.

However, this view of the court is not correct. In fact there were charges under sections 304 and 376 (2) (g) IPC. Both these charges permitted the court to go for life imprisonment. The court could also have gone for prescription of a minimum period of incarceration.

The question whether an offender who has been extradited from a foreign country could be tried for "lesser offences" as mentioned in section 21 (b) of the Extradition Act, 1962 has been answered in the affirmative by the Supreme Court in *Abu Salem Abdul Qayoom Ansari* v. *State of Maharashtra*.[57] The court also pointed out the need for maintaining a balance between human rights concerns and the need for preventing transnational crimes. The petitioner's objection against splitting of the trial was turned down by the court inasmuch as he had been permitted to submit a list of witnesses whom he wanted to cross examine.

Section 311 Cr PC gives power to the trial court to take evidence from witnesses other than those mentioned in the police report. Section 165, Evidence Act also gives tremendous power to the trial court to be an active participant in the trial process. In *Vijay Kumar* v. *State of U.P*,[58] the Supreme Court examined section 311 and observed about the limitations thus:[59]

> Though S.311confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the code and the principles of criminal law. The discretionary power conferred under S.311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously.

54 (2011) 3 SCC (Cri) 689.
55 *Supra* note 9.
56 *Id.* at 77.
57 (2011) 11 SCC 214.
58 (2011) 3 SCC (Cri) 371.
59 *Id.* at 375.

VII INHERENT POWER

The high courts and the Supreme Court have inherent powers to prevent abuse of process, to give effect to any order or to secure the ends of justice / to do complete justice. The Supreme Court has occasions to deal with exercise of this power by the high courts in 2011. The reasons for its interference in various cases give the views of the court on the exercise of this power in different fact situations. In *Manoj Mahavir Prasad Khaitan* v. *Ram Gopal Poddar*,[60] the respondent's complaint under section 379 IPC was not taken cognizance of by the police. Therefore, he got summons issued against the petitioner. He moved the sessions judge in revision. Later it was withdrawn. The appellant then approached the high court under section 482 Cr PC for quashing. But the high court ordered him to seek revision from the sessions judge. The petitioner then sought relief from the Supreme Court and got it quashed relying on *Bhajanlal*.[61]

In *Neelaveni* v. *State,*[62] the Supreme Court disapproved the quashing of the petition under section 498 A and 406 IPC on the ground that there was no element of such offences in the complaint. The high court should not have, however, quashed the complaint before the magistrate could take a decision on it under section 239 Cr PC. The magistrate who was seized of the complaint should have been allowed to decide whether there was any element of offence in the complaint.

The facts in *Subrata Das* v. *State of Jharkhand*[63] indicate how the courts prevented a complaint under sections 341, 323, 506 IPC and sections 3 (i) and 2 (vii) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 from being quashed. Though the magistrate dismissed it, on revision the sessions judge remitted it back to the chief judicial magistrate (CJM) for reviewing it afresh. On revision to the high court, it was described as a direction for further inquiry under section 398 Cr PC. The CJM on review found a prima facie case and a revision to the sessions court was rejected. The petition under section 482 before the high court was also rejected. The Supreme Court upheld this decision though it felt that the CJM has gone beyond what was legally necessary.

A case under section 498A IPC filed against the foster sister of the husband of the complainant came to be quashed in *Vijeta Gajra* v. *State of NCT, Delhi*,[64] as she was not a 'relative' of the husband as required under section 498A IPC. The court examines the complaints and tries to find whether an offence is made out. If there is no element of offence the complaint is quashed.

In *Maharashtra State Electricity Distribution Company* v. *Datar Switchgear Ltd*.,[65] the court found that there was no allegation of commission of any offence by appellant-2, a senior official of appellant-1, the company. The case against him was therefore quashed. The Supreme Court found no ingredient of offence under section

60 (2011) 1 SCC (Cri) 94.
61 1992 Supp. SCC 335.
62 (2011) 1 SCC (Cri) 219.
63 (2012) 1 SCC (Cri) 134.
64 (2011) 1 SCC (Cri) 223.
65 (2011) 1 SCC (Cri) 68. See also *State of NCT, Delhi* v. *Rajiv Khanna* (2011) 1 SCC (Cri) 195 and *Asoke Basak* v. *State of Maharashtra* (2011) 1 SCC (Cri) 85.

306 IPC in *M. Mohan* v. *State*,[66] and therefore approved the quashing of the case under section 482 Cr PC.

As has been discussed in *Neelaveni*[67] dealt with above, in *Dharmatma Singh* v. *Harminder Singh*,[68] it has been pointed out by the Supreme Court that inherent power should not be exercised at interlocutory stage. In that case before the magistrate, to whom the police report in the dispute was referred to, could apply his mind the high court under section 482 quashed the case. The Supreme Court disapproved the quashment and remitted the case to the magistrate for an appropriate decision. The court's observations are illustrative: [69]

> As we have found in the present case that the learned magistrate had not applied his mind to the merits of the reports filed under S.173 Cr.PC, we are of the considered opinion that the exercise of power by the high court under S.482 Cr PC, was at an interlocutory stage and was not warranted in the facts of this case.

The Supreme Court has had enough opportunity to react to the situation wherein the high courts in exercise of their powers under section 482 Cr PC have been quashing cases involving non compoundable offences. It did react differently depending upon the facts of the cases. The issue has now been referred to a larger bench in *Gian Singh* v. *State of Punjab*.[70] Still different benches of the court have been handing down judgments following *B.S. Joshi* v. *State of Haryana*[71] holding that quashment is possible and section 326 Cr PC would not stand in the way.

The observations in *Shiji @ Pappu* v. *Radhika*,[72] may signify the liberal view of the Supreme Court. However, the views expressed in the latest case, viz., *Ashok Sadarangani* v. *Union of India,*[73] distinguishing it from *Nikhil Merchant*[74] indicate that the court's attitude towards quashment in cases may differ on the basis of facts. The court in this case observes: [75]

> In Nikhil Merchant's case, this court had in the facts of the case observed that the dispute involved had overtures of a civil dispute with criminal facts. This is not so in the instant case, where the emphasis is more on the criminal intent of the petitioners than on the civil aspect involving the dues of the Bank in respect of which a compromise was worked out.

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66 (2011) 2 SCC (Cri) 1.
67 (2011) 1 SCC (Cri) 219.
68 (2011) 2 SCC (Cri) 834.
69 *Id.* at 111.
70 (2010) 12 SCALE 461.
71 (2003) 4 SCC 675-The high courts have also been following this decision. See *Sumil Prasad* v. *State of Sikkim*, 2011 Cri LJ 4113, *Sayyed Taneque Ali* v. *State of Maharashtra*, 2011 Cri LJ 4912 (Bom).
72 (2012) 1 SCC (Cri) 101.
73 Decided on 04-03-2012.
74 *Infra* note 114.
75 *Ibid*.

The Supreme Court's inherent power under article 141 needs no recapitulation. It has been reiterated that in exercising this power for chasing injustice sky is the limit.[76]

VIII REVISION

The implications of revisional jurisdiction of the high court have been addressed by the Supreme Court in *Pyla Mutyalamma @ Satyavati* v. *Pyla Suri Demuda*.[77] In this case, the husband denied his marriage with the petitioner after 25 years of the marriage. The petitioner's prayer for maintenance was granted by the magistrate but set aside by the high court on revision.

The Supreme Court examined the nature of revisional jurisdiction and pointed out that the high court cannot interfere with positive finding in favour of marriage and parentage of children but where finding is negative the high court could entertain revision, reevaluate evidence. Revisional court, it was further pointed out, can interfere only if there is any illegality in order or there is any material irregularity in procedure or on error of jurisdiction. The Supreme Court restored the magistrate's order. It also distinguished its earlier decision in *Savitaben Somabhai Bhatiya* v. *State of Gujarat*[78] on the ground that in the present case the respondent did not prove his alleged first marriage.

There cannot be revision at the stage of framing charge. In *Tejbir* v. *State of Haryana*,[79] the accused against whom charges were framed by the court approached the high court got the charge sheet quashed under section 401 Cr PC on the plea that there was no evidence against him. The Supreme Court ruled that there was no question of quashing under revisional jurisdiction at the stage of framing charges.

IX APPEALS

Several issues concerning the disposal of criminal appeals were presented to the court in 2011. Appreciation of evidence, jurisdiction to deal with appeals, altering conviction and sentences etc. are some of the issues. There have been a number of decisions which were appealed on the ground of inadequacy of sentence, lack of reasons in the orders, or avoiding long sentence due to lapse of time etc.[80]

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76 *Subash Babu* v. *State of A.P*. (2011) 3 SCC (Cri) 267).

77 (2012) 1 SCC (Cri) 371.

78 (2005) 6 SCC 636.

79 (2011) 3 SCC (Cri) 404. Also see *Fr. Thomas* v. *State of UP* 2011 Cri LJ 2278 (ALL) denying revision of an order under section 156(3) for investigation.

80 See *M.P.* v. *Bhura Kunjda* (2011) 1 SCC (Cri) 1075; *M.P.* v. *Anil* (2011) 1 SCC (Cri) 1027; *M.P.* v. *Ramdan* (2011) 1 SCC (Cri) 1029; *M.P.* v. *Badri* (2011) 1 SCC (Cri) 1032, *M.P.* v. *Sangram* (2011) 1 SCC (Cri) 1034, *M.P.* v. *Ramkumar* (2011) 1 SCC (Cri) 1086.

The appreciation of evidence in *State of U.P*. v. *Krishna Master*[81] by the high court came for serious criticism by the Supreme Court. It was a case of murder of six persons who came to be convicted and sentenced to death by the trial court. The high court, whose approach in appreciating the evidence was not only contrary to the well settled principles of appreciation of evidence but quite contrary to ground realities of life, wrongly acquitted the accused. The Supreme Court noted that the high court was not justified in upsetting well reasoned conviction of the respondents recorded by the trial court which after observing demeanor of the eye-witnesses had placed reliance on their testimony.

The Supreme Court has, however, commuted the death penalty to life imprisonment as there was a long time gap between occurrence and conviction and there was no adverse report against the conduct of the appellants after sentencing.

The Supreme Court's decision in *Mukeshbhai Gopalbhai Barot* v. *State of Gujarat*[82] assumes importance. The trial court acquitted the accused. There were three dying declarations and the third one was rejected because of the language in which it was written did not inspire confidence. The high court suspected the appellant and convicted him for murder. However, on appeal, the Supreme Court examined the whole evidence and concluded that the appellant was in fact innocent. The court expressed its anguish on the way the high court examined the evidence thus: [83]

> Before parting with the judgment, we must readminister an off repeated caution. It has repeatedly been held that interference by the high court in an appeal against acquittal should be minimal. The judgment of the Additional S.J. based on a correct appreciation of the evidence was completely in accordance with law. This did not warrant interference by the high court.

The decision in *National Commission for Women* v. *State of Delhi*,[84] is of seminal importance. In this case, the accused was already convicted and sentenced for the offence of rape. The victim had committed suicide for which he was held not responsible. The National Commission on Women filed an appeal against this order in the Supreme Court which dismissed it explaining the provisions governing filing of appeals in the Cr PC. The court observed: [85]

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81 (2011) 1 SCC (Cri) 381. See also *Maruti* v. *State of Karnataka* wherein acquittal by the trial court was wrongly reversed by the high court. The case was remitted to the high court. See also *Syed Akbar Irfan* v. *State of Karnataka* (2011) 1 SCC (Cri) 400; *Shivana Goud Chana Goud* v. *State of Karnataka* (2011) 2 SCC (Cri) 537; *Ram Ratan* v. *State of Rajasthan* (2011) 2 SCC (Cri) 146; *Amarjit Singh* v. *State of Punjab* (2011) 2 SCC (Cri) 168 and *State of M.P*. v. *Chandu* (2011) 2 SCC (Cri) 409.

82 (2011) 1 SCC (Cri) 318.

83 *Id.* at 325. It has been stated in *Inspector of Police* v. *John David* (2011) 2 SCC (Cri) 647 that appellate courts have no restrictions to review and relook the entire evidence.

84 (2011) 1 SCC (Cri) 774.

85 *Id.* at 777.

> Chapter xxix of the code of criminal procedure deals with appeals. S.372 specifically provides that no appeal shall lie from a judgment or order of a criminal court except as provided by the code or by any other law which authorize an appeal. The proviso inserted by S.372 (Act 5 of 2009) with effect from 31-12-2009 gives a limited right to the victim to file an appeal in the high court against any order of a criminal court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. The proviso may not thus be applicable as it came in the year 2009 (long after the present incident) and, in any case would confer a right only on a victim and also does not envisage an appeal against an inadequate sentence. An appeal would thus be maintainable only under S.377 to the high court as it is effectively challenging the quantum of sentence.

The uncertainties and inanities involved in dealing with appeal become evident in many cases. Sometimes, the non-cooperative attitude of the victim results in injustice. In *Krishna Kumar Malik* v. *State of Haryana*,[86] there were serious contradictions in the victim's statement. On account of the irregularities and lacunae in the prosecution case the court could not record conviction of any accused. As regards the appreciation of evidence by the high court, the Supreme Court said:[87]

> The learned single Judge of the high court on the same set of evidence has acquitted two of the accuseds, without assigning any cogent, valid or specific reasons for it whereas on the same set of evidence, the appellant has been found guilty. Why the same benefit could not have been bestowed to the appellant has not been dealt with specifically in the impugned judgment.

In the light of this situation, the Supreme Court allowed the appeal.

The perils in getting swayed by extralegal considerations can be learnt from the decision in *Rathinam* v. *State of T.N.*[88] In this case, the allegation was that the deceased girl was raped and murdered by the appellant. The whole prosecution case was built upon the belated evidence given by a witness who did not care to participate for a period of four years.

Because of the conflicting evidence the trial court acquitted all the accused. The high court, however, convicted and sentenced the appellant. The high court essayed on the money power that plays havoc in the justice administration system. The Supreme Court was constrained to remind the high court to be independent in dealing with such matters thus:[89]

> We must however, understand that a particularly foul crime imposes a greater caution on the court which must resist the tendency to look beyond the file, and the insinuation that the rich are always the aggressors and the

86 (2011) 3 SCC (Cri) 61.
87 *Id.* at 69.
88 (2011) 3 SCC (Cr.) 111.
89 *Id.* at 116.

> poor always the victims is too broad and conjectural a supposition. It has been repeatedly emphasized by this court that a dispassionate assessment of the evidence must be made and that the court must not be swayed by the horror of the crime or the character of the accused that the judgment must not be clouded by the facts of the case.

Proviso to section 394 (2) Cr PC was added to enable the court to permit certain appeals. It is similar to jurisdiction under article 136 of the Constitution. In *Jugal Kishore Khetawat* v. *State of West Bengal*,[90] the Supreme Court permitted the appeal filed by the deceased, to be continued by her husband after her death. The court has formulated the position thus: [91]

> For the aforesaid reasons, we are of the opinion that:
>
> (a) When the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal any of his near relatives may, within thirty days of the death of the appellant, apply to the appellate court for leave to continue the appeal; and if leave is granted, the appeal shall not abate;
>
> (b) The power to grant leave to continue the appeal is conferred on the court and not on the Registrar under order 6 of the Supreme Court Rules, 1966.

X BAIL AND ANTICIPATORY BAIL

Our criminal justice system revolves round the judiciary. The judges are necessarily to be given discretion and discretion of a judge is the law of tyrants. This impression is reinforced when one deals with law of bail in our country. Despite several attempts by the apex court to capture its jurisprudential position in several cases its disparate statements in different cases give the impression that our Supreme Court works not on theory but on practical rules. The decision in *Sanjay Chandra* v. *CBI*[92] is an exception to this impression. The court explores the contours of bail law thus: [93]

> In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and duly found guilty.

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90 (2011) 3 SCC (Cri) 387.
91 *Id.* at 390.
92 (2012) 1 SCC (Cri) 26.
93 *Id.* at 37.

The court then examined the scheme under the Cr PC and found that the basic philosophy is to respect individual freedom.

Default bail

The right under section 167 (2) Cr PC to be released on bail on default if charge sheet is not filed within 90 days from the date of first remand is not an absolute and indefeasible right to bail. This right would be lost if charge sheet is filed and would not survive after the filing of the charge sheet.

In *Pragya Singh Thakur* v. *State of Maharashtra*,[94] the argument based on the violation of this rule and therefore article 22(2) was not sustained as the petitioner failed to challenge the series of remand orders.

In *Sanjay Kumar Kedva @ Sanjay Kedva* v. *Intelligence Officer, Narcotics Control Bureau*,[95] the position of law in the context of narcotics law has been succinctly summed up by the Supreme Court thus: [96]

> The maximum period of 90 days fixed u/s 167 (2) of the code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year provided the stringent conditions provided therein are satisfied and are complied.
>
> The conditions provided are:
>
> (1) a report of public prosecutor,
> (2) which indicates the progress of the investigation,
> (3) specifies the competing reasons for seeking the detention of the accused beyond the period of 180 days, and
> (4) after notice to the accused.

In this case these conditions were not satisfied and, therefore, the petitioner was ordered to be released.

Cancellation of bail

Dealing with the question of canceling the bail granted to the accused police officers the Supreme Court in *Prakash Kadam* v. *Ramprasad Viswanath Gupta*,[97] said: [98]

> In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.

94 (2012) 1 SCC (Cri) 311.
95 (2011) 1 SCC (Cri) 1099.
96 *Id.* at 1102.
97 (2011) 2 SCC 848.
98 *Id.* at 853 – 854. Also see, *CBI Hyderabad* v. *S. Gopalakrishnan* (2011) 2 SCC (Cri) 618 and *CBI, Hyderabad* v. *Rama Raju* (2011) 2 SCC (Cri) 645.

Extra legal considerations in granting bail

An MLA who was convicted and sentenced for rioting was granted bail even without suspending the execution of sentence imposed by the trial court. The wife of the person who died in the riot approached the Supreme Court against this order. The Supreme Court remanded the case to the high court for fresh consideration of the matter saying that under rule of law, such orders distinguishing people should not be permitted.[99]

XI TRANSFER

The parameters governing permission to transfer of cases have been analyzed in *Nahar Singh Yadav* v. *Union of India*.[100] Upholding the *locus standi* of the CBI to maintain a transfer petition the court spelt out the broad factors which could be kept in mind while considering an application for transfer of the trial:

(i) When it appears that the state machinery or prosecution is acting hand in glove with the accused and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution.
(ii) When there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant.
(iii) Comparative inconvenience and hardships likely to be caused to the accused, the complainant / prosecution and the witnesses, besides the burden to be borne by the state exchequer in making payment of travelling and other expenses of the official and non official witnesses.
(iv) A commonly surcharged atmosphere indicating some proof of inability of holding fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and
(v) Existence of some material from which it can be inferred that some persons are so hostile that they are likely to interfere either directly or indirectly with the course of justice.

The court in this case did not approve of the prayer for transfer of the case to Delhi.

In *Vikas Kumar Roorkewal*,[101] the prayer for transfer was acceded by the Supreme Court inasmuch as the petitioner was finding it difficult to facilitate the trial of killers of his father in Uttarakhand. Even the driver of the deceased turned to be hostile. Having regard to the importance of impartial and fair trial the Supreme Court allowed the case to be transferred from Uttarakhand.

In *Jahid Shaikh* v. *State of Gujarat*,[102] the Supreme Court, however, did not allow transfer as the situation in Gujarat has since improved. The difficulty for the petitioners to bring large number of their witnesses outside Gujarat was also kept in view by the Supreme Court while denying transfer.

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99 *Kanaka Rekha Naik* v. *Manoj Kumar Pradhan* (2011) 2 SCC (Cri) 475).
100 (2011) 1 SCC (Cri) 39.
101 (2011) 1 SCC (Cri) 630.
102 (2011) 3 SCC (Cri) 287.

XII SANCTION FOR PROSECUTION

The need for sanction for prosecution is part of our jurisprudence. In *Abhay Singh Chautala* v. *CBI*,[103] it was argued by the petitioners that they could not be prosecuted as there was no sanction under section 19 of the Prevention of Corruption Act, 1988. The high court ruled that as there was no charge that as MLAs they abused position, there was no need for sanction. They raised the issue in appeal in the Supreme Court which upheld the high court's decision on the ground that they were no more public servants.

The Supreme Court did not approve of a prosecution in *Chittaranjan Das* v. *State of Orissa*,[104] when the petitioner was in service the sanction to prosecute him was denied. Immediately after his retirement, though sanction was not necessary he was tried to be prosecuted by giving sanction. The court felt that the prosecution would be illusory.[105]

XIII SENTENCING

There have been a number of cases where the court opted for life imprisonment in the place of death penalty.[106] The reasons adduced for this lenient sentence, as usual, include chances for rehabilitation, delay, avarice, nagging etc. Some of the reasons given are indeed not convincing. In another set of cases the court has imposed death penalty[107] and reasons adduced include cruelty, scant respect for law, absconding for a long period from the arm of law, beheading of one of the victims, raping robbing and murdering a hapless widow, kidnapping raping and murdering a seven year old girl etc. A clear-cut policy with reference to sentencing in this vital area is still not decipherable from the case law.

In *Sukhdev Singh* v. *State of Punjab,*[108] the court issued notice to a person who was convicted and sentenced to life imprisonment for enhancement of sentence to capital punishment as the offence involved brutality.

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103 (2011) 3 SCC (Cri) 1.

104 (2011) 3 SCC (Cri) 78.

105 In *State of Punjab* v. *Iqbal Bhatti* (2011) 1 SCC (Cri) 949 a fresh sanction after the charge of Govt., though there was no additional material, was held to be improper.

106 See *State of U.P.* v. *Krishna Master* (2011) 1 SCC (Cri) 381; *Rameshbhai Chandubhai Rathod* v. *State of Gujarat* (2011) 1 SCC (Cri) 883; *Sheoshankar Singh* v. *State of Jharkhand* (2011) 2 SCC (Cri) 25; *Ramesh* v. *State of Rajasthan* (2011) 2 SCC (Cri) 54; *Sham @ Kishore Bhaskar Rao Matkari* v. *State of Maharashtra* (2012) 1 SCC (Cri) 298 and *State of Maharashtra* v. *Goraksha Ambaj Adsul* (2011) 3 SCC (Cri) 255.

107 See *Sunder Singh* v. *Uttaranchal* (2011) 1 SCC (Cri) 114; *B.A. Umesh* v. *Registrar General, Karnataka High Court* (2011) 1 SCC (Cri) 801 and *Mohd. Mannan @ Abdul Mannan* v. *State of Bihar* (2011) 2 SCC (Cri) 626.

108 (2012) 1 SCC (Cri) 374 decided on 21 February, 2011.

Leniency in awarding punishment

In a bride burning case in *Ashok Kumar* v. *State of Haryana*,[109] the husband of the deceased was awarded the minimum sentence under section 304 B observing thus:[110]

> The accused is a young person of 48 years. Keeping in view the facts and circumstances of the case and in exercise of powers under article 142 of the Constitution of India for doing complete justice, we are of the considered view that ends of justice would be met by availing him the minimum sentence provided in law i.e. seven years of R.I. Resultantly the appeal is partially accepted and the appellant accused is awarded a sentence of seven years' R.I. for an offence under S.304 B IPC.

Again in *Kaushalya Devi Massand* v. *Roop Kishore*,[111] a prosecution under Negotiable Instruments Act, the court avoided a jail sentence and awarded compensation distinguishing offences under Negotiable Instruments Act and IPC thus:[112]

> Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the N.I. Act cannot be equated with an offence under the provisions of the Penal Code, 1860 or other criminal offences. An offence under section 138 of the N.I. Act is almost in the nature of a civil wrong which has been given criminal overtones.

XIV COMPOUNDING OF OFFENCES

As early as in 2003, the Supreme Court in *B.S. Joshi* v. *State of Haryana*[113] ruled that a proceeding under an offence which is not compoundable under section 320 Cr PC could be quashed under section 482 Cr PC by the high court if the parties have arrived at a compromise. Taking the cue from this decision, the Supreme Court has been quashing prosecution under some non compoundable offence as in *Nikhil Merchant*.[114] But this was not followed in some cases as the offences involved were of serious economic overtones.

In *Sushil Suri* v. *CBI*,[115] the Supreme Court did not follow *Nikhil Merchant* as the *modus operandi* adopted by the accused was intended to dupe public sector Bank. They have also availed of the depreciation on the machinery which was never purchased. It was thus a serious economic offence against the society.

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109 *Ashok Kumar* v. *State of Haryana* (2011) 1 SCC (Cri) 266.
110 *Id.* at 281.
111 (2011) 2 SCC (Cri) 472.
112 *Id.* at 474.
113 (2003) 4 SCC 675.
114 (2008) 3 SCC (Cri) 858.
115 (2011) 2 SCC (Cri) 764.

However, the Supreme Court in *Shiji @ Pappu* v. *Radhika*,[116] quashed the proceedings under sections 354 and 394 IPC as the parties had arrived at a compromise.

Though the issue has been referred to a larger bench in *Gian Singh*[117] case, different benches of Supreme Court hand down judgments on quashment proceedings as discussed above under the heading *'inherent powers'*.

XV EXECUTIVE CLEMENCY

The implications of executive clemency power came to be explored and explained by the Supreme Court in *Narayan Dutt* v. *State of Punjab*,[118] wherein the court after surveying the material including from other jurisdictions declared:[119]

> It is well settled that to decide on the innocence or otherwise of an accused person in a criminal trial is within the exclusive domain of a court of competent jurisdiction as this is essentially a judicial function. A Governor's power of granting pardon under article 161 being an exercise of executive function, is independent of the court's power to pronounce on the innocence or quilt of the accused. The powers of a court of law in a criminal trial and subsequent appeal right upto this court and that of the President / Governor under Art. 72/161 operate in totally different arenas and the nature of these two powers are also totally different from each other.

This power has become the subject of much discussion now in the context of pleas for commutation of death penalty.

XVI CONCLUSION

The decisions under survey have indeed contributed to the development of law. They also help to interpret the provisions of law in the context of new social developments. It was found that there have been long discussions on topics not related to the subject matter in issue. Except perhaps the decisions in *Sanjay Chandra* and *Subash Babu* there have not been cases in which issues of theoretical importance have been analyzed and discussed. Indeed, the court's observations on fair investigation and fair trial in *Babubhai* and those in *Mohd. Zakir Ali* on right to counsel, in the context of constitutionalization of criminal procedure may help the system to consolidate itself and emerge as a theoretically coherent institution.

116 (2012) 1 SCC (Cri) 101.
117 (2010) 12 SCALE 461.
118 (2011) 2 SCC (Cri) 243.
119 *Id.* at 251.