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CRIMINAL PROCEDURE

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I INTRODUCTION

PROTECTION OF human rights in a democratic republic like India with a dynamic constitution is ensured by its strong and vigilant Judiciary and the robust laws like Criminal Procedure, Evidence Act, 1872 Protection of Human Rights,1993 *etc.* A casual approach towards the dignity of citizens by the court can result in destruction of the whole system. The Supreme Court have had occasion to advert to this issue in *Dataram Singh* v. *State of Uttar Pradesh,*[1] wherein the court explained that a fundamental postulate of criminal jurisprudence is the presumption of innocence meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where reverse has been placed on an accused with reference to some specific offences but that is another matter and does not retract from the fundamental postulate in respect of other offences. Yet another important facet of the jurisprudence is that the grant of bail is the general rule and putting a person in jail or in prison or in a correctional institution is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society. Be that as it may the criminal justice system has been straining its every nerve to keep it intact by way of case law produced by the appellate judiciary on different aspects. These are analysed herewith a view to strengthening the law. For facility of reference and analysis, it is better to study the case law under relevant heads.

II INVESTIGATION

The Supreme Court dealt with different aspects of investigation including the functioning of police, search, etc. In *Teesta Atul Setalvad* v. *State of Gujarat,*[2] "Any property" in section102 (1) Cr PC came to be interpreted as "Bank account" as

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1 (2018) 3 SCC 22.

2 (2018) 2 SCC 372.

including account causing suspicion about commission of an offence. The investigating officer has power to seize accounts and prohibit operation of the accounts of any person who may be found creating suspicion of commission of crime. The Supreme Court held that after completion of investigation and submission of report to court, it would be open for anyone to file application for de-freezing the account.

The Supreme Court noted the unsatisfactory functioning of the police in *Monica Kumar* v. *State of Uttar Pradesh*[3] wherein the court observed: "Police needs to be sensitized about the rights of citizens and the civilized manner in which police is required to maintain law and order in this country. From time to time various suggestions have been given by National Crime Research Bureau, National Police Commission as well as certain NGOs like human rights watch, amnesty international, common wealth human rights, *etc*. to bring in reforms in terms of amendments in the Indian Police Act,1861 appointing commissions to deal with cases of police brutalities, *etc*. Now that efforts are not lacking in bringing police reform but we have yet to see the humane face of the police". The Supreme Court also stressed IGNOU program for police with a view to improve the police.[4]

In *Leena Vivek Masal* v. *State of Maharashtra,*[5] the prayer of the appellant seeking interference by the Supreme Court under article 136 seeking to stop proceedings under SC/ST (Prevention of Atrocities) Act, 1989 was rejected. The court said that process issued by the magistrate in exercise of discretionary powers was ok. There was *prima facie* case. Appellant also get full opportunity to deal with legal issues in accordance with law. The court advised the magistrate to decide on merit uninfluenced by the observation of high court.

First information reports

Case law under this head signifies less interference of courts with investigation. Several questions came to be decided by the Supreme Court under this head. The question for decision in *P Sreekumar* v. *State of Kerala,*[6] was that if two FIR's are filed in relation to same offence against the same accused, whether the second FIR was to be allowed. In this case high court allowed without adverting to the facts of the case. The Supreme Court remitted the case to the high court for reconsideration.

It is said that power to interdict court proceeding at the stage of investigation is more rare and that criminal investigation should not be stopped by the high court. FIR was therefore directed to be investigated fully within stipulated time in *Tilly Gifford* v. *Michael Floyd*.[7] The case, *Union of India* v. *Sahil Tripadi,*[8] raising various questions for *de novo* consideration was referred to the high court. Power of the CBI to determine preliminary enquiry or whether case was such that it warranted CBI investigation having national and international ramifications is one such question requiring

3 (2018) 2 SCC (Cri.) 172.

4 *Id.,* para 24.

5 (2018) 1 SCC 781.

6 (2018) 4 SCC 579.

7 (2018) 2 SCC (Cri.) 630.

8 (2018) 3 SCC (Cri.) 579.

examination. Having regard to all the contentious issues which were not considered by the high court but were raised for the first time before the Supreme Court would have to be decided afresh by the high court. Hence the Supreme Court returned the case to high court.

In *Nithya Dharmanand @ H Lenda* v. *Gopal Sherlum Reddy*[9] section 91 Cr PC came to be analysed. At the stage of framing charge accused cannot invoke section 91 Cr PC. However court being under obligation to impart justice is not debarred from exercising its powers to invoke section 91. Accused may not have this right.

In *Tehseen Poonavala* v. *Union of India,*[10] the importance of inquest report came to be examined. Information regarding cause of death whether suicide, homicide, *etc* is part of inquest. It is not substantive evidence.

In *Ishwar Prathap Singh* v. *State of Uttar Pradesh,*[11] the Supreme Court held that quashing of charge sheet in part is possible under the law. In this case the supplementary charge sheet filed by the police on the advice of the SC/ST Commission was quashed by the Supreme Court which categorically ruled that commission like SC/ST Commission has no jurisdiction in such a matter. The police can take call from the SC/ST Commission and make its independent report to the court. It is only at the investigation stage. So there cannot be interference of the high court.

Initiation of criminal proceedings

The Cr PC prescribes procedure for initiation of criminal proceedings. In *CBI* v. *Sivamani,*[12] it was ruled that the bar against taking cognizance of offence under section 182 IPC is to avoid harassment of persons. In this case high court reversed and quashed proceedings against respondent for noncompliance with section 195(1)(a)(i). There is bar against prosecution under section 195(1)(b)(ii) Cr PC except on complaint from a court. The Supreme Court cited the decision in *Iqbal Singh Marwah*[13] holding that there is no offence committed under section 195(1)(b)(ii) in the case. The decision in *Vishnu Chandra Gaunkar* v. *N M Desai*[14] was the same.

In cases instituted on police report unless there are facts requiring further inquiry there shall be no inquiry. In *State of Goa* v. *Jose Maria,*[15] no preliminary enquiry was done till facts were clear calling for further enquiry.

In *Prabu Dutt Tiwari* v. *State of Uttar Pradesh*[16], the case was started by complaint in satisfaction of the magistrate. There was *prima facie* case. The Magistrate issued summonse which was stopped by high court. The Supreme Court found that it was too early for the high court to have interfered in the case. It was therefore quashed by the Supreme Court.

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9 (2018) 1 SCC (Cri.) 458.
10 (2018) 6 SCC 72.
11 (2018) 3 SCC (Cri.) 808.
12 (2018) 1 SCC (Cri.) 740.
13 (2005) 4 SCC 370.
14 (2018) 5 SCC 422.
15 (2018) 3 SCC (Cri.) 187.
16 (2018) 3 SCC (Cri.) 837.

III BAIL

During 2018 there had been several Supreme Court decisions on granting, denying and cancellation of bail. The court also had an opportunity to emphasize the importance of bail in the criminal justice system. In *Data Ram* v. *State of Uttar Pradesh,*[17] examining the high court decision the court made some important observations: "to put it shortly a humane attitude is required to be adopted by a judge, while dealing with application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining dignity of accused, howsoever poor that person might be.

There have been instances where bail came to be rejected or cancelled depending upon the circumstances. In *Lachman Das* v. *Roshan Chand Kalor*[18] the trial court first rejected anticipatory bail of the accused taking into consideration gravity and seriousness of offence. Later the accused was granted interim anticipatory bail holding that this accused as per high court's order surrendered before trial court within one week and sought for bail. He was released by the trial court in view of the high court order. Later, his application to high court for bail was rejected. Supreme Court noted this and held that it was unfortunate that order of high court, in the first instance virtually directed course of action to be adopted by subordinate court. It is not expected from high court to pass such mandatory orders commanding subordinate court to compulsorily grant bail. The court reiterated that high court cannot issue mandatory direction which breach independence of subordinate court. The Supreme Court set aside the order.

The Supreme Court's response depended a lot on the response of high courts. In *Sumeet Saluja* v. *State of Uttar Pradesh,*[19] the court issued direction to grant bail to the appellant on appropriate conditions. In *Kailash Ram Krishna Gupta* v. *State of Gujarat,*[20] the court noted the progress of the investigation against the accused and the accused's tendency of not complying with orders to deposit money or equal amount embezzled by him. The court cancelled the interim bail granted earlier. The Supreme Court found that rejection of bail in this case was justified. In *Sandeep Raja Acharya* v. *State of Orissa,*[21] the Supreme Court found that the application of bail was not likely to be heard in the near future and advised the court to grant him bail by imposing conditions. The directions by the high court to trial court to "consider and allow" bail application given by the appellant on the same day which it was moved, was set aside.[22] In *Prem Giri* v. *State of Rajasthan,*[23] the high court order was set aside by the Supreme Court because it did not contain any reason. The case was remitted back to high court for deciding bail application filed by the appellant under section 438 afresh.

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17 (2018) 3 SCC 22.

18 (2018) 3 SCC 187.

19 (2018) 1 SCC (Cri.) 540.

20 (2018) 1 SCC (Cri.) 760.

21 (2018) 3 SCC (Cri.) 212.

22 See also *Madan Mohan* v. *State of Rajasthan* (2018) 3 SCC (Cri.) 232.

23 (2018) 3 SCC (Cri.) 226.

In *Rameswar Sharma* v. *Director of Revenue Intelligence,*[24] the appellant advised to be granted bail. Trial court imposed conditions because the high court's cancellation of bail after a year and 3 months was not appropriate. In *Gokara Konda Naga Saibaba* v. *State of Maharashtra*[25] also the Supreme Court advised the lower court to grant bail. The medical condition of the petitioner was also advised to be kept in view. But in *Gunya Swayam Sevi Sansthan* v. *Sathya Bhama*[26] the Supreme Court found that the grant of bail by the high court was in a mechanical manner without considering seriousness of the offence. The order granting bail was set aside.

Thus we find that the approach of the court was different in different cases depending upon the way in which the lower court including high court did deal with application of bail.

The unfair practice pursued by some of the accused also came to the notice of the Supreme Court in *Rukmini Mahato* v. *State of Jharkhand.*[27] In this case the practice of accused surrendering before trial court and seeking regular bail after grant of anticipatory bail by superior court came to be noted. While the matter was still pending before superior court the parties approached trial court for bail. The Supreme Court issued directions against this and directed that the copy of this order be forwarded to director, judicial academy in the country to bring the matter to the notice of all the judicial officers exercising criminal jurisdiction in their respective states.

Regarding default bail also there was the decision in *Ranbeer Shokeen* v. *State (NCI of Delhi)*.[28] In this case considering the effect of filing supplementary charge sheet coupled with the fact that accused's custody was extended until the consideration of application for extension of custody to file charge sheet it is not possible to say that right to bail arose on the ground of default.

IV TRIAL AND TRIAL PROCEDURE

There have been a number of decisions stressing the importance of trial and trial procedure. In some decisions there has been the tendency to have a relook at the traditional approach to certain practices. A call for reorientation was there in *Suresh Chandra Jana* v. *State of West Bengal,*[29] wherein the court said: [30]

> Administration of justice has to protect the society and it cannot ignore the victim altogether who has died and cannot cry before it. If benefit of all kinds of doubt raised by accused are accepted, it will result in deflecting the course of justice, cherished principles of golden thread of proof which runs through the web of Indian Law should not be stretched morbidly to embrace every hunch hesitancy and degree of doubt.

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24 (2018) 3 SCC (Cri.) 210.
25 (2018) 3 SCC (Cri.) 653.
26 (2018) 3 SCC (Cri.) 716.
27 (2018) 1 SCC (Cri.) 820.
28 (2018) 2 SCC (Cri.) 498.
29 (2018) 2 SCC (Cri.) 187.
30 *Id.* at 476.

The court reiterated the position of law in the statutory framework to point out that the law should follow the independent approach emphasizing that there is no absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated – the role regarding corroboration is only a rule of prudence. Moreover, if person making it survives, then such statements would be not admissible under section 32. Rather such statement would be admissible under section 157 of Evidence Act.

The court reiterated the need for a change of attitude in *Dinubhai Boghanbhai Solanki* v. *State of Gujarat*.[31] The court said: [32]

> Realisation is now dawning that the other side of the crime, namely victim is also an important stakeholder in the criminal Justice and welfare policy. The victim has till recently remained forgotten actor in the crime scenario. It is for the reason that "victim justice" has become equally important, mainly to convict the person responsible for a crime. This not only ensures justice to the victim but to the society at large.

The need for a balanced approach was again expressed by the court vehemently:[33]

> Most of PW's (ie., 105 witnesses out of 195 witnesses) turning hostile during trial as a result of threats extended by S – CBI affirming pleas of complainant with respect to threats. In this scenario, prima facie case for cancellation of bail with respect to accused S was made out. Hence bail cancelled accordingly. However, held, need was to adopt a balanced approach which takes care of right of liberty of S as an under trial and interests of society in general ie. conduct of a fair trial.

The role of the court in preparing for the trial has been discussed in *Nauvin Gadinho* v. *State of Goa*.[34] The Supreme Court dealt with the formation of opinion of the court. The court while framing charge should apply the *prima facie* standard. Although the application of standard depends on the facts and circumstances in each case, a *prima facie* case against the accused is said to be made out when the probative value of all evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts. This power is to be exercised only where strong and cogent evidence occurs against a person and not in casual and cavalier manner. In *S. Mohd. Ispatani* v. *Yogendra Chandak*[35] the Supreme Court said that it is not open for the high court to rely upon statements recorded under section 161 Cr PC as independent evidence. They may be used as corroborative material. It is only when strong and cogent evidence occurs against a person led in court the court can procure evidence following the procedure under section 319 Cr PC.

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31 (2018) 2 SCC (Cri.) 430.

32 *Id.* at 436.

33 *Ibid.*

34 (2018) 2 SCC (Cri.) 63.

35 (2018) 2 SCC (Cri.) 138.

The difficulties experienced by witnesses are appreciated by the court and called for setting up of special centres for vulnerable witnesses in *State of Maharashtra* v. *Bandu Daulat.*[36]

The law settled in *Iqbal Singh Marwah,*[37] that section 195 (1)(b)(ii) would be attracted only in respect of a document after it has been produced or given in evidence in a proceeding in a court has been reiterated in *Senior Manager (P & D) Rico Ltd.* v. *State of Rajasthan.*[38]

The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under sections199 and 200 IPC. It must be shown that the person has intentionally given a false statement at any stage of trial or fabricated false evidence for use at any stage of the judicial proceedings. The court should also form an opinion that in the interests of justice it should be necessary to initiate criminal proceedings.[39]

As regards the question as to the right of the legal representatives of complainant to pursue the proceedings even after the death of the complainant; the court said that it is possible for the legal representatives to do so. In *Chand Devi Daga* v. *Manju K,*[40] the court said that in view of provision under section 302 Cr PC and various decisions of the Supreme Court the above position that legal heirs of complainant can pursue the proceedings, is correct.

V CHARGING OF OFFENCES

Framing of charges is done by the court when it is convinced that there is prima facie case. A prima facie case is said to be made out when the probative value of all evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements in the charge.[41]

In *Shankar Sita Ram @ Anil Diver* v. *State of Maharashtra,*[42] the submission that since the high court has acquitted the accused under section 120B IPC, they ought not to have been convicted under section 302 read with 34 IPC, also cannot be accepted. The mere fact that evidence under section 120B has not been proved does not in any way affect the charge under section 302 read with 34 IPC.

In *State* v. *P Selvi,*[43] the Supreme Court spoke about charging. In this case it was held, on basis of material on record, if court *prima facie* forms an opinion that accused may have committed the offence it can frame charge though for conviction guilt beyond reasonable doubt is required to be proved.

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36 (2018) 2 SCC (Cri) 458.

37 (2005) 4 SCC 376.

38 (2018) 1 SCC (Cri) 271.

39 See *Chinthamany Malaviga* v. *High Court of Madhya Pradesh* (2018) 6 SCC 151.

40 (2018) 1 SCC (Cri) 264.

41 See *Nauvin Gadinho* v. *State of Goa* (2018), 2 SCC (Cri) 63.

42 (2018) 2 SCC (Cri) 94.

43 (2018) 3 SCC (Cri) 710.

In *Isaac @ Kishore* v. *Ronald Cheriyan*[44] one accused was acquitted though two accused were proceeded against. High court found that even though trial court has framed an issue on point of sharing of common intention of A1 and A2 in committing offence omission to frame charges under section 34 IPC materially affected trial as trial court has not examined evidence in proper perspective which called for trial.

Appeal/revision

Revision jurisdiction is not absolute. There is no right for accused for revision of revisable order. Barring of high court jurisdiction by the Supreme Court in public interest is permissible by the order of the Supreme Court. There is absolutely no right of revision in respect of interlocutory orders.

Criminal procedure code is a code in itself section 397 is discretionary. Jurisdiction under section 482 is to be exercised by the high court to ensure provisions of abuse of process of power. Power under article 227 of the constitution may be controlled by the Supreme Court *vide Manohar Lal Sharma.*[45]In *Uttarakhand* v. *Jarnail Singh*[46] and in *Mohd. Ispahane*[47] and *Girish Kumar Suneja* v. *CBI*[48] very important aspects of jurisdictions have been dealt with by the Supreme Court. In *Girish Kumar* case the Supreme Court said that the Supreme Court has power to transfer the jurisdiction of the high court.

Application for leave to appeal in the high court is provided for under section 397 (3) Cr PC. In one case the trial court acquitted the accused. Application for leave to appeal was rejected by high court without assigning any reason. This unfortunate decision was rejected by the Supreme Court and the whole case was remitted to the high court for reconsideration.[49]

Sentencing

The Supreme Court had an overview of the sentencing resorted to by the high court in several cases. While in *Mohanan Nair* v. *State of Kerala*[50] the Supreme Court revised sentencing in exercise of powers under section 427 (1) making the sentences concurrent in *State of Uttar Pradesh* v. *Thribhuvana*[51] has ruled that no court can avoid jail sentence of a person convicted of offence under section 325/149 IPC. In *Virsa Singh* v. *Department of Customs*[52] the Supreme Court advised enhancement of the sentence after rehearing as the sentence was inadequate. In *Pukhraj* v. *Parson*[53]

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44 (2018) 2 SCC (Cri) 278.
45 (2015) 13 SCC 950.
46 (2018) 1 SCC (Cri) 284.
47 (2018) 1 SCC (Cri) 138.
48 (2018) 1 SCC (Cri.) 202.
49 See State of *Uttar Pradesh* v. *Anil Kumar Badka* (2018) 3 SCC (Cri.) 760.
50 (2018) 1 SCC (Cri.) 194.
51 (2018) 1 SCC (Cri.) 277.
52 (2018) 1 SCC (Cri.) 756.
53 (2018) 1 SCC (Cri.) 752.

the Supreme Court enhanced the sentence while in *Bhola Ram* v. *Chattisghar*[54] it reduced the sentence.

Compounding

In *Sankar Yadav* v. *State of Chattisghar*[55] the Supreme Court permitted compounding of offences under section 323, 324 and 325 IPC. In this case the accused was sentenced to undergo rigorous imprisonment for one year on each count (offences under section 323, 324 and 325 IPC). Appellant filed a joint petition for grant of permission to compound the said offences in view of the lapse of 19 years in litigation as well as age and conduct of appellant and compromise entered into by them. Appellant sought permission for compounding offences punishable under section 323, 324 and 325. Section 323 is compoundable under section 320 Cr PC by person who is hurt. Section 324 is compoundable under section 320 with permission of court by person injured. Section 325 was originally compoundable with leave of court. It has become non-compoundable under Cr PC (Amendment Act 2005) with effect from June 23, 2006. Here offence was committed on January 12, 1998. So it was compoundable.

VI PROSECUTION UNDER NEGOTIABLE INSTRUMENTS ACT, 1888

In *Hariharan Krishnan* v. *J Thomas*[56] the court essayed thus: "The scheme of prosecution in punishing under section 138 of Negotiable Instruments Act, 1888 **(**NI Act) is different from the scheme of Cr PC. Section 138 creates an offence and prescribes punishment. No procedure for the investigation contemplated. Prosecution is not treated on the basis of written complaint made by the payee of cheque. Obviously such complaint must contain actual allegation making the offence under section 130. Those ingredients are (i) that a person drew a cheque on an account maintained by him with the banker; (ii) that such a cheque was presented to the bank in return by the bank unpaid; (iii) that such cheque was presented to the bank within a period of six months from the date which was drawn or within the period of its validity whichever is earlier; (iv) that the payee demanded in writing the drawer of the cheque the payment of amount due under cheque to payee; and (v) such a notice of payment is made within a period of 30 days from the date of receipt of the information by the payee from bank regarding return of the cheque unpaid. It is real from the scheme of section130 laid that each one of the ingredient flows from a document which evidences the existence of such an ingredient. The only other ingredient which is required to be proved to establish the commission of an offence section 138 is that in spite of the demand notice referred to above the drawer of the cheque failed to make payment within a period of 15 days after receipt of the demand. A fact which the complaint can only asserts but not proves. The burden to prove would essentially be on the drawer of the cheque to prove that he had in fact made the payment pursuant to the demand.

By the nature of the offence under section 138 of the Act the first ingredient constituting the offence is that the fact that a person drew a cheque. The identity of

54 (2018) 1 SCC (Cri.) 310.

55 (2018) 3 SCC (Cri.) 718.

56 (2018) 3 SCC (Cri.) 826, para 26-27.

the drawer of the cheque is necessarily required to be known to the complainant (payee) and needs investigation and would not be in dispute when the person who is alleged to have drawn a cheque unless the person disputes that fact. The other fact required to be proved for securing the punishment of the person who drew the cheque that eventually got dishonoured is that the payee of the cheque in fact comply with each one of the term contemplated under section 130 of the Act initiating prosecution. Because it is already held by this court that failure to comply with any one on the steps contemplated under section 138 would not provide "Course of action for prosecution". Therefore in the context of a prosecution under section 138 the concept of taking cognizance of the offence but not the offender is not appropriate. Unless the complaint contains all the necessary factual allegation constituting each of the ingredient of the offence under section 138 the court cannot take cognizance of the offence. Disclosure of the name of the person drawing cheque is one of the factual allegation which complaint is required to contain. Otherwise in the absence of any authority of law to investigate the offence under section 138 there would be no person against whom court can proceed. There cannot be a prosecution without an accused. The offence under section 138 is person specific. Therefore parliament declared under section 142 that the provision dealing with taking cognizance contained in Cr PC should give way to the procedure under section 142. Hence opening of non-obstante clause under section 142. It must also be remembered that section 142 does not either contemplate a report to the police or authorize the court to take cognisanze to direct the police to investigate the complaint.

VII TRANSFER

There had been some decisions on transfer of cases within and outside the states. In *Mohd. Akthar* v. *Jammu and Kashmir State*[57] the Supreme Court ordered transfer of the case from the state. It was a case wherein abduction, rape and murder of an eight years old girl was involved. It caused communal tension and unwarranted situations outside the state. When the case was transferred to the nearby state directions with regard to translation of records, engagement of interpreters, transport of witnesses, etc. had to be arranged. Arrangements for in camera trial and appointment of public prosecutors were also made. It was opined that the court should weigh the interests of both the accused and the victim to weigh on scale of fair trial.

In *Haritha Sunil Parab* v. *State of Delhi,*[58] the Supreme Court rejected the prayer for transfer as the court did not agree with the plea of the petitioner that he had apprehended that he might not get impartial and fair trial. The court pointed out that the apprehension should not be based on conjectures. It should be genuine. Transfer should be on consideration of convenience of prosecution, accused and witnesses. The burden of the state to meet the cost of travel of the witnesses had also to be considered.

57 (2018) 2 SCC (Cri.) 786.

58 (2018) 3 SCC (Cri.) 103.

In *Sarasamma @ Saraswathy Amma* v. *State,*[59] transfer was ordered because the court was convinced that impartial and fair trial of the case was not possible. The accused respondents were very influential in the locality. The witnesses were not straight forward in deposing in the court. The accused were not prejudiced by the transfer. The high court order rejecting request for transfer was set aside and transfer ordered by the Supreme Court.

VIII DIRECTIONS

There have been instances wherein after enacting legislation the government took no steps towards implementation in spite of lapse of several years. Protection of children was thus taken up by the Supreme Court and issued instructions for the implementation of several laws like Protection of Child Rights Act, 2005, Juvenile Justice Act *etc*. In order to activate the state authorities, the court issued instructions. The response of the high courts was positive whereas the response of the states was not encouraging.

In *Sampurna Behura* v. *Union of India,*[60] the Supreme Court examined situations and institutions like National Commissions for Protection of Child Rights and state commissions for child rights. Directions have been issued to give information. Segregation of children on the basis of age and on basis of offences committed so that several abuse could be avoided, has been suggested by the court. Visiting system by eminent persons has also been suggested by the Supreme Court. High court has also been directed to establish child friendly courts.

The Supreme Court have had occasion to examine the various provisions in the protection of children from sexual offences Act in *Erra Thro. Dr. Manjula Krippendore.*[61] The Court in this case held that definition of child in section 2(1)(2) which means any person below 18 years of age cannot embrace in its emotive expanse "mental age" of person stretching words "age" and "years".

The Supreme Court's creative role in evolving and enforcing legal norms in areas where at present no law exists is evident in its decision in Kodu*ngallur Film Society* v. *Union of India.*[62] Orders regarding destruction of public and private properties by antisocial elements in society, self appointed defenders of public morality causing mob violence and destruction of properties etc. have been issued.

The directions are not exhaustive. They set out broad contours of measures required to be taken and are in addition to the directions given *in Destruction of Private Properties In re* case.[63]

The Supreme Court issued comprehensive directions for the proper manning of prison in its decision in *Re-Inhuman* conditions in 1382 prisons. It has been suggested to follow NHRE monograph and Nelson Mandela Rules to probe unnatural deaths in prison.[64]

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59 (2018) 3 SCC (Cri.) 43.

60 (2018) 4 SCC 433.

61 (2018) 1 SCC (Cri.) 588.

62 (2018) 10 SCC 713.

63 *Shakthivahini case* (2018) 9 SCC 501; *Koshy Jacob case* (2018) 11 SCC 756.

64 (2018) 1 SCC (Cri.) 90.

IX EXERCISING INHERENT POWERS UNDER SECTION 482

Exercising of jurisdiction under section 482 Cr PC is done by high court. The exercise of inherent jurisdiction under section 482 by the high court has come for examination before the Supreme Court in several cases. In *Mohammed Abdulla Khan* v. *Prakash K N*[65] the Supreme Court analysed the power under section 482 and ruled that high court cannot exercise this power casually. In this case high court did not give reasons for quashing complaint except concluding that prosecution of accused will lead to miscarriage of justice. Such conclusion was made without any discussion and without mentioning any principles forming the basis of conclusion. Hence the high court's order was set aside. Trial court was advised to proceed with the case.

In *Munshi Ram* v. *State of Rajasthan,*[66] the high court interfered with investigation which needed to ascertain factual assertions made in FIR concerning existence or nonexistence of any prior mental conditions of deceased prior to commission of suicide. The Supreme Court set aside the order of quashing. Power under 482 is not available to go into the disputed questions of facts or to appreciate defence of accused. Interference with investigation should be very rare.[67]

Based on one set of facts six FIRs were registered against members of a family. After registration of first FIR, five more were registered on the same set of facts. In *Chirag N Pathak* v. *Dolly Ben Kantilal Patel*[68] the Supreme Court quashed all the five FIRs. In *Dineshbhai Chandubhai Patel* v. *State of Gujarat*[69] it was held that high court exceeded its powers while exercising jurisdiction under section 482. High court cannot stretch this power to any extent. This power cannot be equated with its appellate powers either. Once the court finds that FIR discloses *prima facie* case it should stay its hands and allow investigation to step in. Holding so, the Supreme Court advised that the high court should keep in mind parameters of powers laid down by Supreme Court.

The court in *Dineshbhai Chandubhai* v. *State of Gujarat*[70] observed thus, without any justifiable reason High Court concluded that some part of FIR was bad in law because it does not disclose any cognizable offence against any accused whereas only a part of FIR was good which disclosed a prima facie case and hence it needs further investigation to that effect in accordance with law. In doing so, High Court virtually decided all issues arising out of case like an investigating authority / or appellate authority decides little realizing that it was exercising its inherent jurisdiction under section 482 at such stage which it possesses while examining legality of FIR complaining of several offences by accused. The very fact that the High Court in the present case went into minutest details in relation to every aspect of case and devoted 89 pages judgment to quash FIR in part, clearly shows that High Court clearly exceeded

65 (2018) 1 SCC (Cri.) 255

66 (2018) 2 SCC (Cri.) 838.

67 See *Tilly Gifford* v. *Michael Floyd Eashwar* (2018) 2 SCC (Cri.) 630.

68 (2018) 1 SCC (Cri.) 368.

69 (2018) 1 SCC (Cri.) 693.

70 (2018) 3 SCC 114 at 684.

its powers while exercising its inherent jurisdiction under Section 482. Inherent powers of High Court which are obviously not defined, being inherent in its nature cannot be stretched to any extent and nor can such powers be equated with appellate powers of the High Court defined in Cr.PC parameters laid down by Supreme Court while exercising inherent powers must always be kept in mind, else it would lead to committing jurisdictional error in deciding the case.

There were decisions wherein the Supreme Court ordered quashing after reversing the high court order.[71] The Supreme Court in *RAH Siguran* v. *Shankare Gowda*[72] did not approve quashment ordered by the high court. The high court quashed the order because investigating officer was not competent in as much as he was not special police officer appointed under section 13 of Immoral Traffic (Prevention) Act, 1956. But unless prejudice was shown the investigation by the officer was OK. So the quashment ordered by the high court was set aside. In the interests of justice and to avoid abuse of process of courts charges framed against the accused can be quashed.[73]

In *Rakhi Misra* v. *State of Bihar,*[74] the high court's order of quashing was set aside by the Supreme Court as high court was wrong in not upholding chief judicial magistrate's finding of *prima facie* case.[75]

The question where jurisdiction under section 482 is barred when remedy by way of revision under section 397 is available, is referred to a larger bench vide decision in *Prabhu Chawla* v. *State of Rajasthan.*[76]

In *State of Tamil Nadu* v. *Martin*[77] also when investigation was in progress the high court interfered with it under section 482. The Supreme Court set aside the high court order. Case has been restored to its file. Appellants are free to conduct investigation and take the matter to its logical conclusion.

In *Lovely Salhotra* v. *State (NCT of Delhi*)[78] the Supreme Court opined that no cognizable offence had been made out against appellant. High court is wrong in holding that FIR cannot be quashed in part. The FIR against appellant which was not quashed by the high court was quashed by the Supreme Court.

There is no prohibition in quashing charge sheet in part in exercise of section 482. In *Ishavar Pratap Singh* v. *State of Uttar Pradesh,*[79] the Supreme Court also disapproved the direction issued by the National Commission for SC/ST for addition of charge.

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71 *Anita Maria Dais* v. *State of Maharashtra* (2018) 2 SCC (Cri) 50 and *D B Negandhi* v. *Registrar of Companies* (2018) 2 SCC (Cri.) 81.

72 (2018) 2 SCC (Cri) 110.

73 See *State (through CBI)* v. *Anoopkumar* (2018) 1 SCC (Cri.) 816.

74 (2018) 2 SCC (Cri.) 299. See also *State of Maharashtra* v. *Avinash* (2018) 2 SCC (Cri.) 291.

75 See In *Rakhi Misra*, (2018) 2 SCC (Cri.) 299 holding High Court not quashing was held wrong.

76 (2018) 2 SCC (Cri.) 372.

77 (2018) 2 SCC (Cri.) 845.

78 (2018) 3 SCC (Cri.) 644.

79 (2018) 3 SCC (Cri.) 818.

It has been emphasized that parameters laid down by the Supreme Court while exercising inherent powers must be kept in mind else it will lead to judicial error.[80]

X CONCLUSION

The numerous decisions on important aspects of the Criminal Justice Process in India irresistibly indicates the primordial position of the Indian Supreme Court which leaves no stone unturned in projecting the fundamental principles on which our Criminal Justice System functions. It rightly gives the impression that it is the final authority which oversees the system in action. Its rulings on the roles of police, and Subordinate Courts its advice to the High Courts not to interfere with subordinate Courts, its interference with High Courts' exercise of their powers under section 482 Cr PC, appellate/revisional powers, *etc.* signify that a student of Indian criminal justice administration should study the approach of the Supreme Court. Though this position helps the student to capture the image of the criminal justice system in course of time it may be difficult and burdensome for the Supreme Court to carry out its functions promptly. The high courts should maintain their position in the system as inter-me diary institutions and share responsibilities.

Another important aspect which needs to be looked into is the Supreme Courts urge for giving directions to several institutions like prisons for their proper administration. Moreover, the court reviews implementation of legislation and gives directions for implementation.

80 *Dinesh Bhai Chandu Bhai Patel* v. *State of Gujarat* (2018) 3 SCC 104.