

(1991) 01 KAR CK 0040

In the Karnataka High Court

Case No : W.P. Nos. 14905 to 14907 c/w Crl. P. Nos. 891/1989 and 153/1989

A. Lakshmanan and Others; Premjit Singh and Another; M. Mruthyanjaya APPELLANT

Vs

State of Karnataka and Another; State of Karnataka and Another; Premjit Singh and Others RESPONDENT

Date of Decision : 31-01-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202

Citation : (1991) 2 KarLJ 27

Hon'ble Judges : H. G. Balakrishna, J

Judgement

H.G. Balakrishna, J.-These Writ Petitions are directed against the Criminal Case registered by Jayanagar Police, Bangalore in Crime No. 470 of 1989 under Annexure "E" and also against the prosecution launched by Respondent-2 in Criminal Case PCR No. 74 of 1989 under Annexure "A" pending before the IV Additional Chief Metropolitan Magistrate, Bangalore City.

2. The essential facts of the case, material for determination of points in issue, are as follows:

The First Petitioner is the Chief Manager, Zonal Inspection Centre, Bank of Baroda, Mount Road, Madras. The Second Petitioner is working as Senior Manager, Bank of Baroda, Kempegowda Road, Bangalore-9 and the Third Petitioner is working as a Senior Manager, Bank of Baroda, Main Office, Madras. The First Petitioner became Chief Manager of Bank of Baroda, Kempegowda Road, Bangalore in 1986 on his transfer from Madras and the Second Petitioner became the Senior Manager (Operations) of Kempegowda Road Branch of the Bank of Baroda, Bangalore in 1986, whereas, the Third Petitioner was the officer-in-charge of the Foreign Exchange Department of KG. Road, Bank of Baroda, Bangalore.

3. Respondent-2 herein is the Director of M/s. Raja Silk House Private Limited. The Second Respondent has been carrying on the business of export of silk

materials out-side the country-and has availed itself of various credit facilities from the Bank of Baroda. 1985-86 saw the beginning of the series of litigations between Bank of Baroda and Raja Silk House.

4. A few facts are necessary in regard to the litigation which commenced in 1985-86 so as to comprehend the back-ground of these cases:

In 1985, the Second Respondent preferred a Writ Petition in the High Court of Judicature at Bombay seeking a declaration that Respondents-Company be declared as a sick unit and also seeking certain interim reliefs. Subsequently, the Writ Petition was withdrawn for the time being. The Second Respondent had taken various loans and credit facilities such as Bill purchasing facility, packing credit, mortgage of Company's properties and personal guarantees. On failure to pay the amounts due to the Bank, around 28th of May, 1986, the Bank instituted civil suit claiming about 3.83 crores from the Second Respondent in Suit No. O.S. 10435 of 1986 on the file of the Additional City Civil Court, C.C.H. 18, Bangalore. Thereafter followed a civil action by the Second Respondent in O.S. 200 of 1986 claiming damages upto 10 crores of rupees against the Bank before the Court of the Joint Civil Judge, Senior Division at Baroda. Both the suits are pending disposal. Respondent-2 proceeded to file a criminal complaint in the Court of the IV Additional Metropolitan Magistrate against the petitioner and other officers of the Bank imputing offences punishable under Sections 420, 408, 471, 477-A read with Section 34 of the Indian Penal Code. The substance of the allegations was that the officers of the Bank obtained documents from the Second Respondent by fraudulent means and secured the signature of the Second Respondent on blank documents and also Bank had issued false certificates with ulterior motive. However, the complaint was dismissed by the Magistrate after passing a considered order on 6-5-1988 holding that the dispute between the parties is purely of a civil nature and that the material ingredients of the occurrence are not substantiated.

5. The Second Respondent filed a Criminal Revision Application in the Court of the Sessions Judge, Bangalore aggrieved by the order passed in Criminal Application No. 74 of 1988 against the order of the Magistrate dated 6-5-1988. The Sessions Court, by its order dated 24-8-1988, dismissed the Revision and confirmed the order of the Magistrate. Aggrieved by the said order, the Second Respondent preferred a Criminal Petition under Section 482 of the Criminal Procedure Code in Petition No. 153 of 1989.

6. Another Director of the Second Respondent by name Mrs. Sarvamangala wife of Somasekhara, lodged a complaint for forgery and cheating against the Petitioners 1 and 2 herein and also against B.A. Prabhakar, Senior Manager of Bank of Baroda, with the Upparpet Police Station, Bangalore City in regard to the execution of a general form of guarantee by her. As on the date of filing the Writ Petition, the Police had not taken cognizance of the complaint. It is stated that Respondent-2 had lodged another complaint in the Court of the IV Additional Chief Metropolitan Magistrate, Bangalore in PCR No. 74 of 1988 accusing the

petitioners and one Premjith Singh and Mr. J.N. Daulatjada, who were the Managing Director and General Manager respectively of the Bank of Baroda imputing offences under Sections 420, 409 and 477-A of the Indian Penal Code. The allegation was that the petitioners had issued false bank certificates with regard to realisation of foreign exchange by Respondent-2.

7. The complaint was filed on 19-4-1988 and on the very same day, the Magistrate recorded verification statement of the complainant in accordance with the requirements of Section 200 of the Criminal Procedure Code. After a few adjournments, ultimately, by order dated 6-5-1988, the Magistrate dismissed the complaint on the ground that it was of a civil nature and that the complainant had already instituted a suit for recovery of damages against the Bank officials and that no prima facie case was made out for taking cognizance. The dismissal was in accordance with the provisions of Section 200 of the Criminal Procedure Code.

8. Against the said order of dismissal, Respondent-2 preferred a Revision Petition before the Sessions Judge in Criminal Revision Petition No. 73 of 1988. The Revision Petition was allowed and the case was remitted back to the Magistrate to consider the matter afresh. While remitting the case back to the Magistrate, the complainant was given an opportunity to adduce further evidence, if any, in the matter. Thereafter, the Additional Chief Metropolitan Magistrate, IV Court, Bangalore recorded further sworn statement of the complainant and by order dated 3-7-1989, held that the case was to be referred under Section 202 of the Criminal Procedure Code to the investigating officer for investigation of the matter in detail in order to decide whether or not there is sufficient cause to proceed with the case for taking cognizance of the offences under Sections 409, 420 and 477-A of the Indian Penal Code. The Magistrate referred the matter under Section 202 of the Criminal Procedure Code to the Assistant Commissioner of Police, Basavanagudi Police Station, Bangalore for investigation and report and postponed the issuance of the process against the accused.

9. An interesting development took place thereafter. The Jayanagar Police registered a F.I.R. being Crime No. 470 of 1989 for an offence punishable under Sections 477-A, 420 and 409 of the Indian Penal Code on the basis of the complaint P.C.R. No. 74 of 1988 which was filed by-respondent in the Court of Additional Chief Metropolitan Magistrate, IV Court, Bangalore. The Police appear to have registered the said case in pursuance of the order under Section 200 of the Criminal Procedure Code passed by the Magistrate. The Assistant Commissioner of Police, Basavanagudi Police, Bangalore called upon the accused persons to appear before him in response to the complaint registered against them and it appears the petitioners were also threatened that they would be arrested in respect of the said case registered by them. On 21-7-1989, the Third Petitioner was detained at the Police Station for the whole day and at that time, it appears that the Assistant Commissioner of Police, Basavanagudi Police Station threatened to arrest the Third Petitioner and the other petitioners also.

10. Since the petitioners apprehended arrest, as a sequel to the F.I.R. registered by the Police and also in view of the threats made by the Police, filed application in the Court of the Sessions Judge, Bangalore for anticipatory bail under Section 438 of the Criminal Procedure Code in Crl. Misc. Petition No. 608 of 1989. The bail application was contested. Thereafter, the Sessions Judge, by an order dated 10-8-1989, allowed the petition and ordered release of the petitioners and the aforesaid Chairman and General Manager of the Bank after furnishing sureties for Rs. 5,000/- each subject to certain conditions.

11. The original accused 1 and 2 being the Chairman and Managing Director and General Manager respectively, filed a petition under Section 482 of the Criminal Procedure Code before this Court in Criminal Petition No. 891 of 1989 and the same was admitted by order dated 17-8-1989 and stay order was granted as requested by the petitioners.

12. On 19-8-1989, the petitioners herein moved an application before the Additional Sessions Judge in Criminal Petition No. 608 of 1989 for modification of the order dated 10-8-1989 for extension of time for surrender of the petitioners till 31st of August, 1989 and the prayer was granted by the Court.

13. The case of the petitioners is that the proceedings adopted by Respondent-2 against them tantamounts to abuse of process of the Court, particularly in view of the fact that civil proceeding anterior to the criminal complaint was still pending adjudication before the concerned Courts and that the present prosecution is ill-motivated and actuated by the sole object of pressurising and coercing the petitioners to submission. It is also contended that the entire complaint against the petitioners is false and baseless and that Respondent-2 had furnished forged and fabricated certificates purported to have been issued by the Bank and Joint Chief Controller of Imports and Exports with the ulterior motive of claiming higher exports. It is stated that the petitioners are public servants within the meaning of Section 21 of the Indian Penal Code and no prosecution can be launched against them without the previous sanction under Section 197 of the Criminal Procedure Code and the action taken by the Police is an abuse of the process of law.

14. More importantly it is contended that it is a patent illegality on the part of the police registering the F.I.R. and registering the offence of cognizable complaint in violation of the order of the Magistrate dated 3-7-1989 inasmuch as, the direction to the Police to investigate and submit a report, was avoided and instead, F.I.R. was filed by the Police. According to the petitioners, the Police could register the offence for investigation only if the complaint is recorded under Section 154 of the Criminal Procedure Code or in the event of the Magistrate giving a direction to the Police to investigate the offence under Section 156(3) of the Criminal Procedure Code.

15. It is further contended that the jurisdiction for Police investigation under Section 202, Criminal Procedure Code is limited to the investigation of the

offence and submission of a report to the Magistrate and nothing beyond.

16. Another contention is that the registration of offence by the Police as if the same was under Sections 154 and 156(3) of the Criminal Procedure Code is bad and illegal and is in contravention of the provisions of the Criminal Procedure Code, besides being violative of the mandatory order of the Magistrate.

17. Petitioners have also found fault with the order of the Additional Sessions Judge in imposing conditions on the petitioners directing them to surrender before the Police for purpose of their arrest.

18. The petitioners have placed reliance on several decisions of the Supreme Court and other High Courts in India, to substantiate their contention that the prosecution ex facie is unsustainable in law and that its continuance is manifestly illegal and patently wrong.

19. On 5-2-1990, the petitioners have filed supplementary affidavit with reference to the transactions in question between the Second Respondent and the Bank of Baroda based on documents such as Bills of Exchange, Original Invoice, Certificate of Origin, Bill of Lading/Airway Bill/Post Parcel Receipt.

20. The procedure followed in foreign bills purchase account is as follows, according to the petitioners:

The Exporter who has already been allotted an Exporter's Code number by the Reserve Bank of India will submit the documents which are Bills of Exchange, Original Invoice, Certificates of Origin and Bill of Lading/Airway Bill/Post Parcel Receipt, and other relevant documents such as Insurance policy. These documents invariably are accompanied by duplicate copy of the relative G.R. Form or P.P. Form evidencing Export of goods, duly certified by the customs authorities. The Bank, on receipt of Export bills, affords credit for the proceeds of the Exporter's Accounts. In certain cases, a percentage of the amount credited is appropriated towards the over-due bills outstanding, if any, with the knowledge of the Exporter. Besides purchasing the Export Bills, the Bank also accepts from Exporters, bills on collection basis. In such cases, the Exporter's account will be credited only after realisation of the Foreign Bills so submitted. Then the Bank sends the bills purchased/tendered for collection to its foreign branches or foreign correspondent Banks for realisation of the proceeds and credits the realisation in the party's account, less Bank charges and interest, if any. In consonance with the Reserve Bank of India Rules, a record is also maintained by the Exchange Control Department of the Reserve Bank of India of the Exports made by an Exporter and similarly when the bills are realised, a G.R.I. Form in duplicate is submitted to the Reserve Bank of India within the specified period. The point is that the amount realised could be verified from the records of the Reserve Bank of India, Bangalore. It is stated that an Exporter is ordinarily put on Caution List when he has not realised Export proceeds and when many complaints are received from the purchasers or when the Exporter has in some way or the other violated the Foreign Exchange Regulation Act (FERA) and in

such cases, the Reserve Bank of India will maintain all the details very scrupulously. It is maintained that M/s. Raja Silk House was put on the Caution List by the Reserve Bank of India, Bangalore in or about June, 1984. According to Section 18 of the FERA, when an Exporter is put on Caution List, the authorised dealers like the Banks; are precluded from accepting the Bills except only when countersigned by the Reserve Bank of India. It is stated that the Bank received a letter from the Reserve Bank of India, Bangalore dated 6th June, 1984 under Annexure "J" with particular reference to M/s. Raja Silk House.

21. It is stated that during the period 1-4-1984 to 22-2-1986, Raja Silk House submitted to the Bank export bills valued at Rs. 32,82,202.02 and out of the said bills, the Bank realised Rs. 23,21,853.28 and including the realisation of the bills for the previous years, the total realisation for the said period amounted to Rs. 34,64,932.60. Rs. 11,33,079.38 were realised in relation to the bills lodged earlier to 1-4-1984. Annexure "K" is a statement showing the total amount of realisations of the Export Bills during the relevant period including realisation of the Bills lodged even prior to the relevant period and Annexure "L" is the statement of Export Bills tendered and realised. These statements are certified extracts prepared from the Bank's original records and books maintained by the Bank in the usual and ordinary course of the business of the Bank and the original books and records are in the custody of the Bank. The accuracy and correctness of the figures are verifiable from the records maintained by the Exchange Control Department of the Reserve Bank of India, Bangalore. The Second Respondent seems to have given a statement of the details of his Exporters and, amounts realised for the purpose of verification as required by the Bank and also for reconciliation of figures and the statement is signed by Respondent-2 as; Director of Raja Silk House under Annexure "M".

22. In conformity with the Reserve Bank of India Rules, the Bank is required to submit a statement mentioning the bills not realised within the prescribed period of 180 days and such statement is Annexure "N".

23. The Bank received a letter from the Assistant Chief Controller of Exports and Imports, Bangalore on or about 8th July, 1987 enclosing five photostat copies of the Certificates purported to have been issued by the Bank with regard to the Export and realisations during the period 1-4-1984 to 22-2-1986. It appears that Raja Silk House claimed higher Exports and consequently, claimed Import licences/entitlements. Since the claim was refused by the Ministry of Commerce, the Second Respondent filed a Writ Petition before this Court and thereafter, the Court desired the correct information of goods exported and amounts realised during the said period. By letter dated 28-7-1987, the Bank informed the J.C.C.I. after verifying all the records that during the period 1-4-1984 to 22-2-1986 the correct amount of realisation is Rs. 34,64,932.60 and not Rs. 1,26,46,275.00 as claimed by the Second Respondent and the Bank also annexed a detailed statement showing the goods exported by the firm during the relevant period and the realisations thereof under Annexure "Q". The Bank, thereafter, made

detailed enquiries about the said certificates and found that the five certificates produced by the Second Respondent before the JCCI were false and forged certificates showing foreign exchange realisation as Rs. 1,26,46,275/- and these certificates were not issued by the Bank and none of them were signed by the Executives or Officers of the Bank. It seems that the five aforesaid false and forged certificates, as alleged, were purportedly signed by E.A. Nair, Senior Manager, T.N. II, Coimbatore and the other certificates were purportedly signed by Mr. J. Srinivasa Rao, Senior Manager, Parliament Street, New Delhi. It is alleged that Respondent-2 prepared aforesaid forged certificates by using the signature of the Executives and Officers of the Bank on the usual correspondence of the Bank and that it is a case of superimposition of signatures on the letters fabricated and thus the photo copies of the fabricated letters were used for putting up false claim before the Government with the dishonest and fraudulent intention of claiming import licence/entitlements, and for purpose of committing the offences, Respondent-2 had committed theft of Bank's letters sent by the Bank in its usual and ordinary course of the Bank. It is further pointed out that reference numbers given on the said false and forged certificates, as alleged, relate to the correspondence entered into by the Bank with other customers and parties of the Bank. It is specifically stated that the five references given by respondent in the said certificates relate to the following letters addressed by the Bank in its usual course of business. (1) FEX:EXP:32:730, dated 4-6-1985 addressed to State Bank of India, Infantry Road, Bangalore; (2) FEX:EXP:32:1121, dated 20-9-1985 addressed to the General Manager, Bangalore Telephones, Bangalore; (3) FEX:EXP:32:1213, dated 26-10-1985 addressed to the Bank National De Paris, Paris; (4) FEX:EXP:33:89, dated 4-2-1986 addressed to Eltra Equipments, Bangalore and (5) FEX:EXP:33:319, dated 29-3-1986 addressed to the Regional Manager (Kar.), Bank of Baroda, Bangalore-52.

24. Para 19 of the supplementary affidavit seeks to bring out the fraudulent and dishonest intention of Respondent-2, as alleged in the letter dated 8-4-1986 bearing Reference No. FEX:EXP:33:328 being forged and fabricated by the Second Respondent. Similarly, in para 20, reference is made by petitioners to another false and fabricated letter dated 4-9-1987 as alleged bearing the forged signature of Mr. A.R. Lakshmanan, Chief Manager of the Bank. Similarly, in paragraph 21, the petitioners have referred to a letter fabricated by the Second Respondent as alleged dated 8-4-1988 bearing reference No. FEX:EXP:35:180.

25. The petitioners are particularly aggrieved because on the basis of the certificates produced by Respondent-2 before T.C.C.I. and on a complaint filed by T.C.C.I. to the C.B.I., the C.B.I. raided the premises of Respondent-2. But so far, Respondent-2 has not been arrested and charge sheet has not been filed against him. It is further stated that in respect of the aforesaid references alleged to have been committed by the Second Respondent, T.R. Ganapathi, Chief Manager of Kempegowda Road Branch filed a criminal complaint in the V Additional Chief Metropolitan Magistrate, Bangalore on behalf of the Bank which has been

numbered as PCR 268 of 1989 and the same has been referred to the Circle Inspector of Police, Chickpet Sub-Division by the Government for the purpose of investigation under Section 156(3) of the Criminal Procedure Code and the same is still under investigation.

26. The writ petitioners have sought for a writ of certiorari for quashing the criminal case registered by Jayanagar Police in Crime No. 470 of 1989 vide Annexure-E and for setting aside the prosecution filed by Respondent-2 in Criminal Case PCR No. 74 of 1989 vide Annexure-A pending before the Court of the IV Additional Chief Metropolitan Magistrate, Bangalore City.

27. By order dated 3-7-1989, the concerned Magistrate directed the jurisdictional police to investigate and submit a report under Section 202, Crl. P.C. Instead of submitting a report, the Basavanagudi Police recorded the F.I.R. and registered the offence. Such a procedure is contemplated only for the purpose of investigation of a cognizable offence either under Section 154 or under Section 156(3) of Crl. P.C. and that was not the purport of the direction issued by the concerned Magistrate. Under the provisions of Section 202 of Crl. P.C., the Magistrate is required to take cognizance of the offence and issue either to the police or to any other agency a direction to enquire into the complaint and no sooner the Magistrate takes cognizance, then it is impermissible for the police to take cognizance and register the offence. The legal principle laid down by the Supreme Court in this regard in *D. Lakshminarayana v V. Narayana*, AIR 1976 SC 1672, is as follows:

"It is clear, therefore, that Sections 190 and 156(3) are mutually exclusive and work in totally different spheres. In other words, the position is that even if a Magistrate receives a complaint under Section 190 he can act under Section 156(3) provided that he does not take cognizance. The position, therefore, is that while Chapter XIV deals with post cognizance stage, Chapter XII so far as the Magistrate is concerned deals with pre-cognizance stage, that is to say, once a Magistrate starts acting under Section 190 and the provisions following, he cannot resort to Section 156(3)."

28. It seems to me that the police have done what the Magistrate could not do in violation of statutory provision. Even the Magistrate cannot go back to the pre-cognizance stage and exercise the powers under Section 156(3) of Crl. P.C. It also appears to me that the police are under the impression that the registration of the offence by them is under Section 154 or Section 156(3) of Crl. P.C. and this is a misconception and a misdirection too. The conduct of the police in the circumstances virtually amounts to a negation of the directions issued by the Magistrate.

29. Section 202 of Crl.P.C. reads as follows:

"202. Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the

issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made- (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer-in-charge of a police station except the power to arrest without warrant."

30. Section 202(1) of Crl. P.C. empowers the Magistrate to postpone the issue of process against the accused if he thinks fit and to either enquire into the case himself and in the alternative direct an investigation to be made by a police officer (as in the instant case) or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding further. The Magistrate did exercise his discretion and thought it fit to postpone the issue of process against the accused and directed an investigation to be made by a police officer for the purpose of deciding whether or not there is sufficient ground for proceeding.

31. It logically follows that all that the police officer who was given such a direction was found to hold an investigation and submit his report to the Magistrate. In other words, the police officer is required to comply with the direction issued by the Magistrate under Section 202(1) of Crl. P.C. and he is invested with no other power. Instead of submitting a report of investigation, the police officer has proceeded to record an F.I.R. against the accused and register the offence. Such a power is not given to the police officer, in my opinion. I am inclined to think that the police officer has not only exceeded his power, but also has defied the direction issued by the Magistrate. He has not submitted the report to the Magistrate as required under Section 202(1) of Crl. P.C. He has arrogated to himself a power which is not vested in him by law. By not submitting the report of investigation to the Magistrate, the police officer has usurped the statutory power conferred on the Magistrate under Section 202(1) of Crl. P.C. to decide whether or not there is sufficient ground for proceeding against the accused. It may also be said that as a result of deviation from

statutory duty on the part of the police officer, the Magistrate has not been able to exercise the power and discretion which is conferred upon him by Section 202(1) of Crl. P.C. Thus, in short, it may be said that the intendment of the statute has been frustrated by improper conduct of the police officer. In these circumstances, the Magistrate is precluded from taking notice of the F.I.R. because the stage is incomplete. It is only after a decision is taken by the Magistrate on the basis of the report of investigation yet to be submitted to the Magistrate, that any further progress could be made. Hence, the proceedings in pursuance of the recording of the F.I.R. and the registration of offence are not only unwarranted, but ab initio illegal. The recording of the F.I.R. and the registration of the offence by the police are equally bad in law.

32. The Additional Sessions Judge has imposed conditions on the petitioners directing them to surrender before the police for the purpose of their arrest. From the report filed by the Public Prosecutor that the police wanted the petitioners in custody and that they were seeking to exercise the powers of an investigating officer in cognizable cases. But a careful perusal of the complaint, does not disclose any offence against the petitioners. It will not be an overstatement to observe that the entire prosecution is an abuse of the process of the Court. I am unable to find any culpable ground for prosecution and the proceedings launched against the petitioners particularly in the absence of any specific overt act imputed against the petitioners. In the impugned complaint No. 74/89 allegations analogous to the earlier complaint were dismissed by the Magistrate and the same was confirmed by the Sessions Judge and there is no valid reason as to why the impugned complaint No. 74/89 should not meet the same fate. There is no material to believe even prima facie that any of the petitioners has committed forgery or prepared any fabricated documents. The material on record is sufficient to show that Respondent-2 displayed understandable interest in showing higher exports to J.C.C. & I and that there is a reasonable probability of pre-varication of documents in the name of the Bank. It is equally significant to notice that the C.B.I. is investigating the offence against Respondent-2 on a complaint from J.C.C. & I. There is another reasonable probability of Respondent No. 2 having launched the prosecution in order to forestall any action likely to be taken by the J.C.C. & I or C.B.I. against him.

33. Taking an over-all view and appreciation of the facts and material on record, I am of the opinion that on account of wrong exercise of jurisdiction, injustice has resulted and there is likelihood of further injustice, if not checked in time. The proceedings in Criminal Case PCR No. 74 of 1989 and the case registered by the police in Crime No. 470 of 1989, therefore, deserve to be quashed.

34. Some of the circumstances and events deserve mention against the background of the prosecution proceedings.

In 1985 Raja Silk House (P) Limited preferred a writ petition in W.P. No. 850 of 1985 in the Bombay High Court against the Bank of Baroda and others for a

declaration that the Company is a sick unit. But the writ petition was subsequently withdrawn at the time of admission itself. On 11-3-1986 Raja Silk House submitted a 25 pages statement to the Bank giving calculations of total exports made from 25-2-1981 to 14-6-1985, vide Annexure-M of supplementary affidavit at page 39. The figures from this statement for the period 1-4-1984 to 14-6-1985 when added bring the total amount to less than Rs. 32 lakhs and it is noticeable that no export bill was submitted after 14-6-1985. The Bank of Baroda filed a civil suit in O.S. No. 10435 of 1986 before XIX Additional City Civil Judge, Mayo Hall, Bangalore, for recovery of a sum of Rs. 3.83 crores. Later on 15-4-1986, Raja Silk House filed a civil suit against the Bank of Baroda claiming damages of Rs. 10 crores in Special Civil Suit No. 200 of 1986. In 1987, Raja Silk House filed a writ petition against the J.C.C.I. in W.P. No. 7310 of 1987 before this Court claiming export entitlements on the basis of a claim of Rs. 1,26,46,275/-.

On 7-7-1987, J.C.C.I. addressed a letter to the Bank of Baroda enclosing 5 photo copies of 5 certificates in order to ascertain whether they were issued by the Bank and if so calling for a detailed statement of the same, vide Annexure-P at page 87 of supplementary affidavit.

On 28-7-1987, the Bank of Baroda replied to J.C.C.I. by letter dated 7-7-1987 giving the correct figures of foreign exchange realisations as Rs. 34,64,932-60 vide Annexure-O on page 88 of supplementary affidavit and Annexure-K at pages 16 to 28. In 1987, W.P. No. 7310 of 1987 filed by Raja Silk House against J.C.C.I. was dismissed. Thereafter, in 1987 J.C.C.I. lodged a complaint with C.B.I. against respondent Mruthyanjaya regarding foreign exchange entitlements claimed by him as Rs. 1,26,46,275/- and C.B.I. registered a case No. RC. 25/87/CBI/BLR and took up investigation and addressed letters to the Bank of Baroda seeking details and has also seized documents, books and other relevant papers from the Bank. On 18-4-1988 N. Mruthyunjaya filed a private complaint against (1) Premjit Singh, Chairman; (2) Daulat Jada, General Manager; (3) A.R. Lakshmanan, Chief Manager; (4) H. Krishna Murthy, Senior Manager; and (5) V. Narayana Iyer, Manager, Fex. Department, before the IV Additional Chief Metropolitan Magistrate in P.C.R. No. 74 of 1988. The copy of the complaint is on page 19 in Criminal Petition No. 891 of 1989. On 6-5-1988, IV Additional Chief Metropolitan Magistrate dismissed the complaint by an order passed on merits vide Annexure-C, page No. 40. On 24-11-1988, Revision Petition No. 73 of 1988 was filed by N. Mruthyunjaya before the I Addl. Sessions Judge, Bangalore, who allowed the revision and remitted the matter back to the Magistrate for fresh enquiry and disposal. On 3-7-1989, after the matter was remanded to the Magistrate, the IV Additional Chief Metropolitan Magistrate passed an order referring the matter to the Assistant Commissioner of Police, Basavanagudi, Bangalore, for investigation and report under Section 202 of Cr.P.C., vide Annexure-D at pages 58 to 74. On 7-7-1989, the police filed F.I.R. in Crime No. 470 of 1989 of Jayanagar Police Station (in a referred case under Section 202 of Crl. P.C.) vide page 30 in Criminal Petition No. 891 of 1989. Since H. Krishna

Murthy was threatened to be arrested by the Assistant Commissioner of Police on 20-7-1989 and also since the petitioners are stated to be not aware of the fact that this is a referred case under Section 202 of Crl. P.C. Criminal Miscellaneous Petition No. 608 of 1989 was filed before VI Additional Sessions Judge for anticipatory bail. On 10-8-1989 bail was granted vide Annexure-G. Criminal Petition No. 891 of 1989 was filed before this Court on 16-8-1989 and stay was obtained on 17-8-1989. The writ petitions were filed on 21-8-1989 and admitted on 31-8-1989.

35. The succession of events which make interesting reading do highlight the fact that it is not improbable to presume that Raja Silk House filed a civil suit against the Bank of Baroda claiming damages of Rs. 10 crores in Special Civil Suit No. 200 of 1986 almost as a retaliation against the Bank which earlier on 28-5-1986 had sued Raja Silk House in O.S. No. 10435 of 1986 before XIX Additional City Civil Judge, Mayo Hall, Bangalore, for recovery of Rs. 3.83 crores and that similar Court proceedings were started by the complainant even against J.C.C.I. in Writ Petition No. 7310 of 1987 which was subsequently dismissed on 28-7-1987. It is only subsequently that a complaint was lodged by J.C.C.I. with C.B.I. against respondent Mruthyunjaya regarding foreign exchange entitlements stated to have been falsely claimed by him in the order of Rs. 1,26,46,275/-. These developments are indicative of an element of vengeance and vindictiveness on the part of Raja Silk House against the top most officials of the Bank of Baroda. The motive is self-explanatory.

36. In Criminal Petition No. 891 of 1989, the power of the Court vested in it under Section 482 of Crl. P.C. is invoked for the purpose of quashing and setting aside the criminal complaint filed by Respondent-2 (original complainant) in case No. PCR 74 of 1988 and the order issued by the Magistrate under Section 156(3) of Crl. P.C. as well as the F.I.R. recorded by the police in pursuance of the said orders passed by the Magistrate.

37. In Writ Petition Nos. 14905 to 14907 of 1989, I have taken the view that the criminal case registered by Jayanagar Police, Bangalore, in Crime No. 470 of 1989 and also in respect of the prosecution launched by Respondent-2 in Criminal Case PCR No. 74 of 1989 pending before the IV Additional Chief Metropolitan Magistrate, Bangalore City, deserve to be quashed, for the reasons stated therein. Since the criminal complaint filed by Respondent-2 in Criminal Case PCR No. 74 of 1988 is liable to be quashed, the order issued by the Magistrate under Section 156(3) of Crl. P.C. does not survive. The F.I.R. recorded by the police in pursuance of the orders issued by the Magistrate under Section 156(3) of Crl. P.C. also do not survive.

38. Criminal Petition No. 153 of 1989 is filed by N. Mruthyunjaya son of M.R. Nanjundappa, Proprietor, M/s. Raja Silk House Private Limited. The petition has been filed under Section 482 of Crl. P.C. for setting aside the order of the Magistrate dated 6-5-1988 and also the order of the Sessions Judge dated 24-9-1988 with a direction to the Magistrate to proceed with the enquiry.

39. I do not see any legal infirmity or any procedural irregularity in the impugned orders in the light of the decision which I have taken in Writ Petition Nos. 14905 to 14907 of 1989 as well as Criminal Petition No. 891 of 1989. Hence Criminal Petition No. 153/1989 deserves to be dismissed.

40. In *State of Karnataka v L. Muniswamy*, (1977) 2 SCC 699, the Supreme Court enunciated the following principle at page 703:

"In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

In para-9 of the same Judgment (page 704), the Court observed:

"Learned counsel for the State Government relies upon a decision of this Court in *R.P. Kapur v The State of Punjab*, (1960)3 SCR 388, in which it was held that in the exercise of its inherent jurisdiction under Section 561-A of the Criminal Procedure Code of 1898, the High Court cannot embark upon an enquiry as to whether the evidence in the case is reliable or not. That may be so. But in the instant case the question is not whether any reliance can be placed on the veracity of this or that particular witness. The fact of the matter is that there is no material on the record on the basis of which any tribunal could reasonably come to the conclusion that the respondents are in any manner connected with the incident leading to the prosecution. Gajendragadkar, J., who spoke for the Court in Kapur's case observes in his Judgment that it was not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction. The three instances cited in the Judgment as to when the High Court would be justified in exercising its inherent jurisdiction are only illustrative and can in the very nature of things not be regarded as exhaustive. Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the strait-jacket of a rigid formula." (emphasis supplied)

41. In *Trilok Singh v Satya Deo*, AIR 1979 SC 850, significantly the Supreme Court observed as follows:

"We do not consider it necessary to state and discuss all the points involved in this case in any detail. Only a few of them may, however, be mentioned for the purpose of allowing this appeal and quashing the criminal proceeding initiated was clearly an abuse of the process of the Court."

There are enough indications evident from the material on record to hold that the prosecution of the petitioners would certainly result in abuse of the process of the Court. The allegations made against the petitioners seem to be allegations smacking of civil dispute.

42. In *State of West Bengal v Swapan Kumar*, AIR 1982 SC 949 at page 972, the view taken by the Supreme Court was:

"Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the Court has mainly to take into consideration the complaint or the F.I.R. and the Court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the Court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual." (emphasis supplied)

43. In *Madhavrao J. Scindia v Sambhajirao C. Angre*, 1988 SCC (Cri.) 234, at page 237, it was held:

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

44. In *D.L. Reddy v V. Narayana Reddy*, (1976)3 SCC 252, at page 257, the

position with regard to the powers of a Magistrate under the Criminal Procedure Code of 1898 in relation to Section 156(3) and Section 202 is discussed:

"The position under the Criminal Procedure Code of 1898 with regard to the powers of a Magistrate having jurisdiction, to send a complaint disclosing a cognizable offence-whether or not triable exclusively by the Court of Session-to the police for investigation under Section 156(3), remains unchanged under the Criminal Procedure Code of 1973. The distinction between a police investigation ordered under Section 156(3) and the one directed under Section 202, has also been maintained under the new Code; but a rider has been clamped by the first proviso to Section 202(1) that if it appears to the Magistrate that an offence triable exclusively by the Court of Session has been committed, he shall not make any direction for investigation.

Section 156(3) occurs in Chapter XII, under the Caption: "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading: "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by the section an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."

45. In the light of the above decision, it is clear that by non-submission of the report to the Magistrate by the Police, the assistance which is contemplated statutorily is denied contrary to law

46. In the result, for the foregoing reasons, I pass the following order:

(i) Writ Petition Nos. 14905 to 14907 of 1989 are allowed. The Criminal Case registered by the Jayanagar Police in Crime No. 470 of 1989 vide Annexure-E as well as the prosecution filed by Respondent-2 in Criminal Case PCR No. 74 of 1989 vide Annexure-A pending on the file of the IV Additional Chief Metropolitan Magistrate, Bangalore City, are hereby quashed;

(ii) Criminal Petition No. 891 of 1989 is allowed. The criminal complaint filed by Respondent No. 2 in case No. PCR 74 of 1988 and the order issued by the Magistrate under Section 156(3) of CrI. P.C. as well as the F.I.R. recorded by the police in pursuance of the said orders passed by the Magistrate, are hereby quashed;

(iii) Criminal Petition No. 153 of 1989 is dismissed.