
(2022) 07 TEL CK 0031

In the Telangana High Court

Case No : Criminal Revision Cases Nos. 955, 957, 965, 968, 994, 995 Of 2018

Ch.Raghunandan And Others

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 06-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 356(1)
Indian Penal Code, 1860 — Section 6, 21, 76, 79, 120, 147, 148, 149, 300(3), 302, 307
Arms Act, 1959 — Section 25(1)(b), 27
Code Of Criminal Procedure, 1973 — Section 173(2), 190, 193, 197, 197(1), 197(2), 200, 201, 202, 203, 204, 204(4), 397, 397(3), 398, 399, 400, 401, 401(2), 482
Evidence Act, 1872 — Section 105

Citation : (2022) 07 TEL CK 0031

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : T. Niranjan Reddy, E. Uma Maheshwar Rao, T.Nagarjun Reddy, T. Bala Mohan Reddy, Kondadi Ajay Kumar, D. Suresh Kumar, Nandigam Krishna Rao, Balla Ravindranath, Dasarath, Mahadevan, V.Raghunath

Final Decision : Allowed

Judgement

1-a The lis involved in the present batch of the Criminal Revision Cases is the same. Therefore, they are being heard and disposed off vide the following common order.

2-a. The CrI.R.C.No.955 of 2018 is filed challenging the order dated 15.02.2018 passed in CrI.R.P.No.24 of 2015 by the learned Judge, Family Court – cum – IV Addl. District and Sessions Judge, Adilabad reversing the order dated 24.03.2015 passed in CFR.No.1816 of 2013 by the Judicial Magistrate of First Class, Adilabad.

2-b. The CrI.R.C.No.957 of 2018 is filed challenging the order dated 15.02.2018 passed in CrI.R.P.No.19 of 2015 by the said Judge, reversing the order dated 24.03.2015 passed in CFR.No.1817 of 2013 by the said Magistrate.

2-c. The CrI.R.C.No.965 of 2018 is filed challenging the order dated 15.02.2018 passed in CrI.R.P.No.24 of 2015 by the said Judge, reversing the order dated 24.03.2015 passed in CFR.No.1817 of 2013 in R.C.No.14(S) 2011-CBI/HYD by the said Magistrate.

2-d. The CrI.R.C.No.968 of 2018 is filed challenging the order dated 15.02.2018 passed in CrI.R.P.No.19 of 2015 by the said Judge, reversing the order dated 24.03.2015 passed in CFR.No.1816 of 2013 in R.C.No.14(S) 2011-CBI/HYD by the said Magistrate.

2-e. The CrI.R.C.No.994 of 2018 is filed challenging the common order dated 15.02.2018 passed in CrI.R.P.Nos.19 and 24 of 2015 by the said Judge, reversing the common order dated 24.03.2015 passed in CFR.No.1816 of 2013 and 1817 of 2013 in R.C.No.14(S) 2011-CBI/HYD by the said Magistrate

2-f. The CrI.R.C.No.995 of 2018 is filed challenging the common order dated 15.02.2018 passed in CrI.R.P.No.24 of 2015 by the said Judge, reversing the order dated 24.03.2015 passed in CFR.No.1816 of 2013 in R.C.No.14(S) 2011-CBI/HYD by the said Magistrate.

3. Heard Mr. T. Niranjan Reddy learned Senior Counsel, representing Sri T.Nagarjun Reddy, Mr. E. Uma Maheshwar Rao, Mr. T. Bala Mohan Reddy, Sri Kondadi Ajay Kumar, learned counsels for the Petitioners; and Mr. D. Suresh Kumar, Mr. Nandigam Krishna Rao, learned counsel, representing Mr.Balla Ravindranath, Mr. Dasarath, Mr. Mahadevan, Sri V.Raghunath, learned counsels for the unofficial Respondents and Special Public Prosecutor for CBI. Perused the record.

Facts of the case:-

4. The entire dispute revolves around an alleged encounter which took place during the intervening night of 01.07.2010 and 02.07.2010 in the Sarkepalli - Velgi forest area, Wankidi Mandal, Adilabad District. During the said intervening night of 01.07.2010 and 02.07.2010 an alleged exchange of fire took place between the police party and an alleged Maoist group. The exchange of fire resulted in the deaths of one Mr. Cherukuri Raj Kumar @ Azad (who was the Central Committee and Polit Bureau Member of the banned organization CPI(M)) and one Mr. Hemchnadra Pandey (who was working as a journalist).

5. The Petitioners herein are the accused police officers who were part of a combing operation which resulted in the deaths of Mr. Azad and Mr. Pandey. According to them, on the afternoon of 01.07.2010 credible information was received that a group of 20 to 25 members of the banned Maoist organization were spotted in the hillock region of Sarkepalli - Velgi forest region. Based on such information, a special police party of 29 police personnel was constituted which included the Petitioners herein. At around 23:00 hrs, the said special party reached the spot where the Maoists were spotted based on the coordinates they had.

6. According to the Petitioners herein, the police party heard a commotion and found with night vision devices that there was a movement of a group of persons. The police party shouted that they were the police and asked the group to identify themselves. No response was received and the other group started firing on the police party. The police party also fired in retaliation. According to the Petitioners, the exchange of fire lasted for thirty minutes. To avoid ambush, the police party moved up to the hillock area.

7. On 02.07.2010, a complaint was lodged by one Ch. Raghunandan Rao (one of the Petitioner herein) regarding the firing incident which came to be registered as Cr.No. 40 of 2010 against unknown Maoists under Sections 148, 307, 149 and 147 of the Indian Penal Code, 1860 and Sections 25(1)(b) and 27 of the Arms Act, 1959.

8. Inquest was conducted on 02.07. 2010. On 03.07.2010 postmortem of Mr. Azad was conducted by Dr. Neelakanteshwar Rao and Dr. Chandriah. On the same day, the postmortem of Mr. Pandey was conducted by Dr. A. Bheeshma and Dr. A. Aravind. In both the postmortem reports observations were made that bullet wounds have darkening-burnt edges and blackening was found around the wounds. The unofficial Respondents (the wives of deceased) allege that the darkening/burning/blackening around the wounds is a result of close-range firing.

9. On 05.07.2010, the investigation of Cr. No. 40 of 2010 was transferred to SDPO, Jagtial. The said SDPO sought opinion of Department of Forensic Science, Osmania Medical College and Forensic Medicine Department, Gandhi Medical College. According to the Petitioners, both the departments opined that the wounds were a result of distant range firing.

10. However, according to the unofficial Respondents herein (who are the wives of the both the deceased), both the deceased were killed in an illegal encounter by the police (who are the Petitioners herein). According to Mrs. K. Padma (wife of Mr. Azad), Mr. Azad left the house to go to Nagpur on 30.06.2010 by taking the Gondwana Express. Similarly, according to Mrs. Bineeta Pandey (wife of Mr. Pandey) Mr. Pandey also left for Nizamuddin Station on 30.06.2010 to go to Nagpur. Later wives of both came to know that both Mr. Azad and Mr. Pandey were killed in an encounter. According to them, both the deceased were kidnapped from Nagpur and airlifted. They were taken to Adilabad where both of them were killed in a fake encounter. The wives of the deceased contended and raised various factual grounds to show that both of them were shot from a close range which, according to them, shows that the encounter was fake.

11. Based on the said allegations, Mrs. Bineeta Pandey and one Mr. Swamy Agnivesh filed W.P. (Crl.) No. of 1 of 2011 and W.P. (Crl.) No. of 3 of 2011 before the Supreme Court alleging that Mr. Azad and Mr. Pandey were killed in a fake encounter. The Supreme Court vide order dated 26.04.2011 ordered the Central Bureau of Investigation (hereinafter 'CBI') to investigate into the deaths of Mr. Azad and Mr. Pandey.

12. The CBI registered an FIR in RC.14(S)2011-CBI/HYD under Sections 120 r/w 302 of the Indian Penal Code, 1860 (for short, 'IPC'). The CBI submitted its final report to the Supreme Court which on 03.05.2012 directed to submit the same before the Magistrate having jurisdiction.

13. According to the Petitioners herein, the CBI conducted a detailed investigation covering and answering all the allegations of the unofficial Respondents raised before the Supreme Court. With regard to the allegations pertaining to close range firing, the CBI requested one Dr. TD Dogra, Head of Department of Forensic Science & Toxicology, AIIMS Delhi to examine the postmortem reports. The AIIMS board examined the postmortem reports and conducted an enquiry in which the Doctors who conducted the postmortem also participated. The report of the AIIMS opined and ruled out the possibility of a closed range firing.

14. The CBI filed the final report before the Judicial Magistrate of First Class, Adilabad (hereinafter 'the Magistrate'). The Magistrate issued notices to the unofficial Respondents herein to file their objections to the final report. Mrs. Bineeta Pandey filed a protest petition which was numbered as CFR No. 1816 of 2013 and Mrs. K. Padma's protest petition was numbered as CFR No. 1816 of 2013. The Magistrate recorded the sworn statements of both the protest petitioners along with their witnesses Mr. Swamy Agnivesh and Mr. Neelakanteshwar Rao (the doctor who conducted postmortem of Mr. Azad). After recording their statements and examining them, the Magistrate dismissed the protest petitions vide a common order dated 24.03.2015.

15. Being aggrieved by the order dated 24.03.2015, the protest petitioners (Mrs. Bineeta Pandey and Mrs. K. Padma) approached the Judge, Family Court – cum – IV Addl. District and Sessions Judge Adilabad (hereinafter 'Sessions Court') by filing revision petitions vide Criminal Revision Petition No. 19 of 2015 & Criminal Revision Petition No. 24 of 2015 challenging the order dated 24.03.2015 passed by the Magistrate.

16. The Sessions Court heard the protest petitioners and the CBI. However, no notice was issued to the accused/Petitioners herein. The Sessions Court set aside the order dated 24.03.2015 passed by the Magistrate and directed him to take cognizance of the offence vide a common order dated 15.12.2018.

17. Therefore, aggrieved by the order dated 15.12.2018 passed by the Sessions Court, the Petitioners herein/accused have filed the present criminal revision petitions.

18. Contentions of the Petitioners

i. The investigation conducted by the CBI was monitored by the Supreme Court. The Supreme Court after perusing the final report refused to order judicial inquiry or re-investigation of the case. This indicates that the Supreme Court was satisfied with the investigation conducted by the CBI.

- ii. The final report of the CBI is comprehensive and takes into account all the allegations made by the unofficial Respondents and media houses. Therefore, after a thorough investigation, the CBI did not find any evidence supporting the allegations of the unofficial Respondents.
- iii. The Magistrate rightly passed the order dated 24.03.2015 dismissing the protest petitions of the unofficial Respondents herein. The protest petitioners therein failed to produce any material to discredit the conclusion arrived by the CBI in its final report.
- iv. The Magistrate had followed the procedure laid down under Sections 200 to Section 204 of the Cr.P.C. while dismissing the protest petitions. Therefore, the discretion of the Magistrate cannot be faulted with. Reliance was placed on Vishnu Kumar Tiwari v. State of U.P. (2019) 8 SCC 27 and Bhagawant Singh v. Commissioner of Police (1985) 2 SCC 537.
- v. The Sessions Court could not have passed the impugned order as it is against the provisions of the Cr.P.C. The jurisdiction of revisional court is only to satisfy itself of the legality, propriety and correctness of any finding or irregularity of any proceedings of the lower courts. Reliance was placed on Chandra Babu @ Moses v. State (2015) 8 SCC 774, Amit Kumar v. Ramesh Chandra (2012) 9 SCC 460, Jagannath Chowdary v. Ramayan Singh (2002) 5 SCC 659 and K. Pandurangan v. S.S.R. Veluswamy (2003) 8 SCC 625.
- vi. The Sessions Court exercising its powers of revision cannot direct the Magistrate to take cognizance. At most the Sessions Court can direct the Magistrate to pass appropriate orders in accordance with law.
- vii. The protest petitioners did not file any fresh material except the statements of only Mr. Swamy Agnivesh and Dr. Neelakanteshwar Rao which were marked as Ex.C1 and Ex.C2. Relying only on the said statements, the order of Magistrate was illegally set aside.
- viii. The Sessions Court could not have passed the impugned order dated 15.02.2018 without issuing a notice under Section 401(2) of the Cr.P.C. to the Petitioners herein/accused. Reliance was placed on Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel (2012) 10 SCC 517 and Subash Sahebrao Deshmukh v. Satish Atmaram Talekar (2020) 6 SCC 625.
- ix. The Petitioners maintained that the deceased were killed in an encounter and they acted in discharge of their public duty. Reliance was placed on Sections 6, 21, 76, 79, and 300 (3) of the Indian Penal Code, 1860.
- x. The plea of self – defence can be considered during the pre-trial stage. Reliance was placed on Vadilal Panchal v. Dattatraya Dulaji Gha Digaonkar (1961) 1 SCR 1.
- xi. The cognizance is bad in law as no sanction as required under Section 197 of the Cr.P.C. was obtained. Reliance was placed on Ram Kumar v. State of Haryana

(1987) 1 SCC 476.

19. Contentions of the Respondents

i. The criminal revision petitions are not maintainable as no summons were served on the Petitioners. Cognizance is taken of the offence and not the offender. The role of the accused comes into picture only after serving of summons. Hence, no revision petition can be filed by the Petitioners unless process were issued to them. Reliance was placed on Manharibhai (Supra).

ii. The Magistrate ought to have taken cognizance even if the investigating authority submits a final report stating that no case is made out. Reliance was placed on Moti Lal Songara v. Prem Prakash (2013) 9 SCC 199, Balveer Singh v. State of Rajasthan (2016) 6 SCC 680 and Indian Carat Pvt. Ltd. v. State of Karnataka (1989) 2 SCC 132.

iii. The order of the Magistrate is devoid of reasons as the Magistrate failed to record any reasons as required under Section 203 of the Cr.P.C.

iv. The fact that two deaths occurred itself shows that a prima facie case is made out. The question whether the deaths happened in exercise of self – defence or not is to be decided at the stage of trial. The Magistrate failed to consider the said fact.

v. The wounds and postmortem reports indicate that Mr. Azad and Mr. Pandey were killed in close range firing. Darkening of wounds and burnt edges around the wounds indicates that shooting happened from a point-blank range. The same is also confirmed by the statement before the Magistrate by Dr. Neelakanteshwar Rao who conducted the postmortem of Mr. Azad.

vi. The CBI conducted investigation in a biased manner and has ignored several factual aspects. The Sessions Judge considering all the aspects which were ignored by the Magistrate had passed the impugned orders.

vii. The statement of Swamy Agnivesh makes it clear that the encounter was pre-planned and involved the erstwhile Home Minister of the country.

viii. There is no requirement of sanction to prosecute the Petitioners/Accused as the encounter was not done in discharge of their official duties. Commission of an offence cannot be part of discharge of official duty. Reliance was placed on Chandan Kumar Basu v. State of Bihar (2014) 13 SCC 70 and Om Kr. Dhankar v. State of Haryana (2012) 11 SCC 252.

ix. Mere taking of cognizance does not cause any prejudice to the accused and they have other remedies. The Petitioners have a remedy to challenge the proceedings at any stage under Section 482 of the Cr.P.C. or can file a discharge petition before the trial court.

x. There are several factual aspects which have to be necessarily decided during the course of trial.

Findings of the Court

20. From the facts of the case and the contentions raised, it is clear that the parties have put forth arguments supporting and disputing the findings of the final report filed by the CBI. During the course of hearing, the parties have raised several factual aspects and interpreted them in support of their contentions. However, this Court is conscious of its limited jurisdiction under Section 397 r/w Section 401 of the Cr.P.C. while dealing with revision petitions. Therefore, the following issues fall for consideration before this Court:

A. Whether the present revision petitions are maintainable?

B. Whether the order dated 15.02.2018 passed in Criminal Revision Petition No. 19 of 2015 & Criminal Revision Petition No. 24 of 2015 passed by the Sessions Judge is valid in light of the provisions of the Cr.P.C.?

C. Whether a sanction in terms of Section 197 of the Cr.P.C. is required and the same was obtained to prosecute the Petitioners herein?

21. Before deciding the issues at hand, this Court feels it apposite to discuss the scope of revisional powers conferred under Section 397 to Section 401 of the Cr.P.C. The provisions are extracted below:

397. Calling for records to exercise of powers of revision.—

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

398. Power to order inquiry.—On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate

Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

399. Sessions Judge's powers of revision.—(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

401. High Court's powers of revision.—(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a court of appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

The powers of revision under Section 397 of the Cr.P.C. are concurrently vested on both the Sessions Courts and the High Courts. Section 399 of the Cr.P.C. provides that the Sessions Court shall have the same powers of revision as are conferred on the High Court under Section 401 of the Cr.P.C. Therefore, the courts derive the power of revision from Section 397 of the Cr.P.C. r/w Section 401 of the Cr.P.C.

22. Under the revisional powers, the courts are empowered to call for records of any inferior or subordinate criminal court to test the correctness, legality or propriety of any proceeding of such inferior or subordinate criminal court. The powers of revision are limited and cannot be invoked lightly. The object behind exercising the revisional powers is to set right an error or illegality in the orders passed by the lower courts. The revisional powers under Section 397 r/w 401 of the Cr.P.C. are discretionary and the same shall be exercised to ensure that justice is done and the lower courts do not exceed and abuse the powers vested in them. Interference with the orders of lower courts is warranted only if findings in such orders are illegal, improper, perverse, contrary to the material on record or are grossly erroneous. Further, the revisional power may be exercised only to set right a patent defect to an error of law or jurisdiction.

23. The Supreme Court in *Janata Dal v. H.S. Chowdhary* (1992) 4 SCC 305 explained the scope of revisional powers under Section 397 and Section 401 of the Cr.P.C. The relevant paragraphs are extracted below:

127. Now let us briefly cogitate over the legal issue relating to the revisional and inherent jurisdiction of the High Court to call for the records and examine the records of any proceeding before any inferior criminal court within its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and to quash criminal proceeding, deliberate on the legality and correctness of the later part of the order of Justice M.K. Chawla in and by which he has assumed the jurisdiction to initiate suo - motu proceedings, particularly for quashing the first information report and all other connected and allied proceedings arising during the course of the investigation.

128. Sections 397, 401 and 482 of the new Code are analogous to Sections 435, 439 and 561-A of the old Code of 1898 except for certain substitutions, omissions and modifications. Under Section 397, the High Court possesses the general power of superintendence over the actions of courts subordinate to it which discretionary power when administered on administration side, is known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this section, the High Court can, at any stage, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in Section 435 are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the

correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate court.

129. By virtue of the power under Section 401, the High Court can examine the proceedings of inferior courts if the necessity for doing so is brought to its notice in any manner, namely, (1) when the records have been called for by itself, or (2) when the proceedings otherwise comes to its knowledge.

130. The object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal courts — a kind of paternal or supervisory jurisdiction — in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted, on the one hand, or on the other hand in some underserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.

Similarly, the Supreme Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke* (2015) 3 SCC 123 has held that the Magistrate's order can only be interfered by exercising revisional jurisdiction if such order is perverse and is marred by glaring illegalities. The Court therein held that revisional courts are not supposed to act as appellate courts. They only have to satisfy themselves regarding the correctness, legality and propriety of the findings of the lower court which are under challenge. The relevant paragraph is extracted below:

14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.

Issue-A:-

24. From the facts it is clear that the order dated 24.03.15 passed by the Magistrate was challenged by the unofficial Respondents herein vide revision

petitions Criminal Revision Petition No. 19 of 2015 & Criminal Revision Petition No. 24 of 2015 before the Sessions Court. The Sessions Judge exercising her powers of revision passed a common order dated 15.02.2018 allowing the said revision petitions. It is against the common order dated 15.02.2018 that the present revision petitions are filed by the Petitioners herein.

25. It was contended on behalf of the unofficial Respondents that a revision petition against an order passed in a revision petition is not maintainable. The said argument is misconceived and cannot be accepted by this Court. Section 397(3) makes it clear that a person choosing to file a revision either before the High Court or the Sessions Court cannot prefer another revision. The bar of non-maintainability of a second revision applies only to a person who has already availed the benefit of revision. In other words, if a person had already approached the Sessions Court under Section 397 of the Cr.P.C., he cannot again approach the High Court invoking Section 397 of the Cr.P.C. However, a respondent who is aggrieved by the revisional order passed by the Sessions Court can file a revision petition before High Court.

26. A Full Bench of this Court in In Re: Puritipatti Jega Reddy (1979) 1 ALT 56 held that the bar of filing another revision petition applies only to a person who had already filed a revision application. The relevant paragraph is extracted below:

9. The language of sub-sec. (3) of S. 397 contains no ambiguity. If any person has already chosen to file a revision before the High Court or to the Sessions Court under sub-sec. (1), the same person cannot prefer a further application to the other Court. To put it in other words. Sub-secs. (1) and (3) make it clear that person, aggrieved by any order or proceeding can seek remedy by way of a revision either before the High Court or the Sessions Court. Once he has availed himself of that remedy. he is precluded from approaching the other forum. It is equally manifest from the provisions that Sub- Sec (3) that this bar is limited to the same person who has already chosen to get either to the High Court or to the Sessions Court seeking a remedy and that it does not apply to the other parties or persons. Further the bar contained in sub-sec.(3) is only against that person who has ready chosen the remedy either before the High Court or before the Sessions Judge. It is not permissible to extent the bar contained under a statute to other Persons or to other fields. It is well established that the bar against seeking a remedy in a Court of Law or against a Court of law rendering justice should be strictly construed. It is noteworthy that Sub-sec. (1) of Sec, 397 empowers the High Court or the Sessions Court to call for and examine the record of any proceeding before any inferior Court. That is to say, it can exercise this power of calling for and examining the record suo motu also. The language of Sub-sec. (3). strictly limited as it is to a person who has chosen to seek the remedy from one of the two courts, cannot be extended to the High Court exercising its powers conferred on it under the provision of the Code. It is patent that the bar contained in sub-sec. (3) is only against the person who has already

chosen his remedy before one of the two forums.

To sum up, a revision against a revisional order is not maintainable if both such revision applications were filed by the same person. In the present case, the earlier revision petitions vide Criminal Revision Petition No.19 of 2015 & Criminal Revision Petition No. 24 of 2015 were filed by the unofficial Respondents herein. The present revisions petitions are filed by the Petitioners who are aggrieved by the orders passed in Criminal Revision Petition No.19 of 2015 & Criminal Revision Petition No. 24 of 2015. The revisional petitioners are different in the present case. Therefore, the present revision petitions are maintainable.

27. The unofficial Respondents also contended that the revision petitions are not maintainable by the accused when no process is served on them. According to them, the role of an accused in the trial only begins after the process are issued to them. This Court cannot accept the said contention. Although the accused can participate in the trial after the issue of summons, they can nevertheless file a revision petition under Section 397 if they are aggrieved by any order passed by any criminal court dealing with the said offence. Further, a bare reading of Section 401(2) of the Cr.P.C. clearly indicates that a person has a right to participate in the proceedings and be heard if any order may cause prejudice to him/her.

28. Section 397 r/w 401(2) of the Cr.P.C. does not create a bar that only an accused on whom process are served can file a revision petition. It states that any person or accused can file a revision petition against any order passed by the lower courts if he/she can show that he is aggrieved by such impugned order and such order will cause prejudice. Therefore, according to this Court, the present criminal revisions petitions are maintainable as accused can file a revision petition even if no process are issued to him.

29. This Court has further explained *infra* that accused is entitled to participate in the proceedings under Section 397 r/w 401(2) of the Cr.P.C in Issue B.

Issue-B:-

30. The Petitioners herein contended that the impugned order dated 15.02.2018 passed by the Sessions Court is patently illegal and suffers from legal infirmities as it acted beyond the scope of Sections 397, 398, 399 and 401 of the Cr.P.C. The Petitioners have challenged the legality, propriety and correctness of the impugned order on the grounds that the Sessions Court failed to serve notice on the Petitioners herein and failed to hear them before passing the impugned order; the Sessions Court cannot direct the Magistrate to take cognizance of the offence; the Sessions Court could not have interfered with the Magistrate's order dated 24.03.15 and; the plea of self-defence can be considered at the pre-trial stage.

31. Therefore, to decide whether the impugned revisional order dated 15.02.2018 suffers from patent illegality and is liable to be set aside, the

following issues are to be decided:

i. Whether the Petitioners herein were entitled to notice and hearing before the impugned order was passed?

32. The unofficial Respondents contended that the Petitioners herein were not entitled to notice and hearing as the accused have no role to play at pre-cognizance stage. Further, cognizance is taken of the offence and not the offender. Therefore, the accused cannot insist for participation in the proceedings in cases where no cognizance is taken and where no process were issued. It was also contended that accused are in no way aggrieved at pre-cognizance stage as they have other alternative remedies like invoking the inherent jurisdiction under Section 482 of the Cr.P.C. or filing a discharge petition. Further, the unofficial Respondents contended that the revision proceedings before the Sessions Court were a continuation of the proceedings which were pending before the Magistrate. Hence, as no notice is required at the pre-cognizance stage, the same also applies to proceedings under revisional jurisdiction before the Sessions Court.

33. On the other hand, the Petitioners herein relying on *Manharibhai* (Supra) contended that the requirement of issuing notice is mandatory under Section 401(2) of the Cr.P.C. and the proviso to Section 398 of the Cr.P.C.

34. This Court cannot accept the contention of the Respondents. A perusal of Section 401(2) of the Cr.P.C clearly indicates that no order resulting in any prejudice to the accused shall be passed without giving him/her an opportunity of hearing. The Supreme Court in *Manharibhai* (Supra) had discussed the requirement of issuing notice under Section 401(2) of the Cr.P.C. and held that the accused is not entitled to participate at the pre-cognizance stage where enquiry is conducted under Section 202 of the Cr.P.C. However, if the complaint is dismissed under Section 203 of the Cr.P.C. and a revision is preferred against such dismissal, the accused is entitled for a notice in such revisional proceedings. The relevant paragraphs are extracted below:

46. The legal position is fairly well-settled that in the proceedings under Section 202 of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, up to the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs 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. If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant

against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

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48. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203—although it is at preliminary stage—nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to “accused” or “the other person” under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

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53. We are in complete agreement with the view expressed by this Court in *P. Sundarrajan* [(2004) 13 SCC 472 : (2006) 1 SCC (Cri) 345] , *Raghu Raj Singh Rousha* [(2009) 2 SCC 363 : (2009) 1 SCC (Cri) 801] and *A.N. Santhanam* [(2012) 12 SCC 321 : (2011) 2 JCC 720] . We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following

the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled.

35. Similarly, in *Bal Manohar Jalan v. Sunil Paswan* (2014) 9 SCC 640 the Supreme Court considered a similar contention that notice is not required under Section 401(2) of the Cr.P.C. if no process was issued. The Court rejected the contention and held that the dismissal of complaint under Section 203 of the Cr.P.C. results in termination of proceedings. Therefore, if such dismissal is challenged by invoking the revisional jurisdiction, the accused will have a right of hearing and notice under Section 401(2) of the Cr.P.C. The relevant paragraph is extracted below.

48. In a case where the complaint has been dismissed by the Magistrate Under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate Under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings.

On a plain reading of Sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate Under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate Under Section 203 although it is at preliminary stage nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code the suspects get the right of hearing before the revisional court although such order was passed without their participation. The right given to "accused" or "the other person" Under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate Under Sections

200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

36. Coming to the present case, the accused/Petitioners herein were certainly prejudiced as the Magistrate dismissed the protest petitions of the unofficial Respondents. This virtually led to closure of criminal proceedings against the accused/Petitioners herein. However, the Sessions Court exercising its power under revisions set aside the order of the Magistrate and directed the Magistrate to take cognizance. Such an order passed by the Sessions Court resulted in reviving the criminal proceedings against the Petitioners herein. Therefore, the impugned order caused prejudice to the Petitioners herein as it revived the criminal proceedings against them. The argument of the unofficial Respondents that the Petitioners are not prejudiced and no notice is required cannot be accepted.

ii. Whether it is permissible for the Sessions Court to direct the Magistrate to take cognizance of offence?

37. The Petitioners herein contended that the Sessions Court has limited jurisdiction to only check the legality, propriety and correctness of the order impugned before it. The Sessions Court has no power to direct the Magistrate to take cognizance of the offence. On the other hand, the unofficial Respondents contended that the powers of revision are wide and the Sessions Court had the power to direct the Magistrate to take cognizance.

38. This Court agrees with the argument advanced by the Petitioners. The revisional court can only examine the legality, correctness and propriety of the orders impugned before it. It cannot exceed the power and go a step further and direct the Magistrate to take cognizance of the offence. It is relevant to note that the power to take cognizance is specifically conferred on the Magistrates under Sections 190 and 200, 201, 202, 203 & 204 of the Cr.P.C.

39. Taking of cognizance is a judicial function and the Magistrate exercising such function has to apply his/her mind over the material available and satisfy himself/herself independently as to whether cognizance can be taken. The power to take cognizance is not vested on a court exercising revisional powers under Section 397 r/w Section 401 of the Cr.P.C.

40. The revisional court can only discuss and highlight the illegality or perversity in the orders impugned before it. It shall remand the matter back to the Magistrate and direct him/her to decide the matter in accordance with the discussion regarding the illegality or perversity. Further, if it reaches the conclusion that a further enquiry is necessary in the matter, it can direct the

Magistrate to conduct such enquiry under Section 398 of the Cr.P.C. The revisional courts cannot usurp the power specifically conferred on Magistrates to take cognizance.

41. This Court in *Mikkilineni Venkateshwari v. Tummula Nirmala* 2001 SCC OnLine AP 1578 held that a Sessions Court cannot direct the Magistrate to take cognizance. The relevant paragraphs are extracted below:

7. The only contention raised by the learned senior Counsel appearing for the revision petitioners is that while remitting the matter back, the learned Sessions Judge committed error in directing the Court below to take cognizance. In this connection, the learned senior Counsel invited my attention to Section 398 of the Code, which may be excepted hereunder thus:

"398. Power to order inquiry: — On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further enquiry into any complaint which has been dismissed under Section 203 or subsection (4) of Section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

8. A perusal of the said Section shows that it is open to the Sessions Judge to direct a Magistrate to make further enquiry into any complaint, which has been dismissed under Section 203 of the Code. Directing the Magistrate under the impugned order by the learned Sessions Judge to take cognizance of the matter is certainly one step forward to the requisite enquiry to be conducted and leaves no discretion to the Magistrate to satisfy himself about the truth or otherwise of the allegations. It becomes almost an empty formality for the Magistrate who has been directed to take cognizance of the offence. While remitting back the matter to the Court of Magistrate, the direction should have been left to consider the case afresh in the light of the observations made, if any *inter alia*, in the remand order. The contention of the learned senior Counsel in that view of the matter gains significance on bare perusal of the relevant provisions. Therefore, the impugned order requires modification to that extent only. The other conclusions drawn by the learned Sessions Judge in the impugned order are impeccable.

9. In the result, the Criminal Revision case is allowed and the impugned order dated 20-11-2000 passed by the learned Sessions Judge, Krishna Division at Machilipatnam, in CrI. R.P. No. 7 of 2000 is modified by setting aside the direction that the Magistrate shall take cognizance of the complaint while upholding the order of remand for fresh consideration in the light of the observations made by the learned Sessions Judge.

42. A similar view was expressed by the Karnataka High Court in *Lalajibaishah v. Asalchand Hukmischand Porawal* 1978 SCC OnLine Kar 128. The relevant paragraph is extracted below:

8. The learned Sessions Judge has not stopped at pointing out the illegality committed by the Magistrate, but has gone on to assess the evidence of the complainant-respondent-1 and his witness Bhima Shankar, as if he was exercising his appellate powers, and conclude that material was sufficient to disclose an offence under Sec. 380 IPC, and to make a direction to issue process against the petitioners. The Sessions Judge had no power to do so while exercising his revisional jurisdiction under Sec. 397 and 398 of the Code. The power that he is empowered to exercise is only to direct further enquiry into the complaint. He cannot direct either the Chief Judl. Magistrate or any subordinate Magistrate, to take cognizance of an offence or offences or to examine any person, or persons or to issue process against any person or persons. But the learned Sessions Judge has done exactly what he is not empowered to do. The only order that the learned Sessions Judge could have passed in this case was to set aside the order of dismissal of the complaint on the ground that the learned Magistrate had taken into consideration material not envisaged by Sec. 203 of the Code, and direct further enquiry into the complaint of respondent-1, by the Magistrate, may be by the Chief Judicial Magistrate. The Chief Judicial Magistrate has all the liberty to decide whether he should take cognizance of the offence or offences or whether he should proceed on, the material already collected viz., the evidence of the complainant and his witness Bhima Shankar, and issue process against the petitioners, or not to do so. Therefore, the order of the Sessions Judge is bad in law to that extent. In the result, this revision petition is allowed and the order passed by the learned Sessions Judge is modified to the following effect:

Therefore, the Sessions Court in the present case could not have directed the Magistrate to take cognizance.

iii. Whether the Sessions Court was justified in interfering with the order dated 24.03.15 passed by the Magistrate dismissing the protest petitions filed by the unofficial Respondents herein?

43. The Petitioners herein contended that the Magistrate's order dated 24.03.2015 was legal and the Sessions Court could not have interfered with the same. At this stage, it is relevant to note that the CBI filed a final report requesting the Magistrate to close the case. The Magistrate issued a notice to the unofficial Respondents herein to file their objections to the final report of the CBI. Therefore, protest petitions were filed by the unofficial Respondents herein.

44. Treating the protest petitions as a private complaint under Section 200 of the Cr.P.C., the Magistrate postponed the issue of process under Section 202 of the Cr.P.C. and examined the unofficial Respondents herein and their witnesses under Section 200 of the Cr.P.C. The Magistrate examined the unofficial Respondents

(Mrs. K. Padma and Mrs. Beenitha Pandey) and their witnesses one Mr. Swamy Agnivesh and one Dr. Neelakanteshwar Rao (who conducted the postmortem of Mr. Azad). The statements of Mr. Swamy Agnivesh and Dr. Neelakanteshwar Rao were marked as Ex.C1 and Ex.C2.

45. In her statement Mrs. K. Padma deposed that her husband left their house on 30.06.2010 at around 1:00 pm to board the Gondwana Express to go to Nagpur to meet one Sahdev in relation to the peace talks between the Maoists and the government. But later she came to know through news reports that her husband was killed in an encounter. According to her, Mr. Azad was kidnapped and killed at a point-blank range. Her husband Mr. Azad could not have used fire arms as he has poor eye sight and he has a glass on his left eye.

46. Mrs. Bineeta Pandey also deposed that her husband Mr. Pandey left their home on 30.06.2010 to take a train to Nagpur. He informed her that he will be back on 02.07.2010. She waited but her husband did not return. On 03.07.2010 she recognized her husband's picture in a newspaper and came to know that he was killed in an encounter along with Mr. Azad. According to her, it was a cold-blooded murder and her husband was killed in a close-range firing. He was a journalist and did not know how to use firearms. She alleged that her husband was kidnapped and murdered in a fake encounter.

47. Mr. Swamy Agnivesh also deposed that the killing of Mr. Azad and Mr. Pandey was a fake encounter. He spoke about his involvement in the proposed peace talks between the Maoists and the government.

48. Dr. Neelakanteshwar Rao deposed about the nature of injuries and said that he differed in opinion with the AIIMS report prepared by one Prof. TD Dogra and others which said that the burnt edges on the wounds were not caused due to close-range firing. He stated that he could not have expressed his opinion before the AIIMS board constituted under Prof. TD Dogra. He stated that his opinion varies from the opinion of the experts of AIIMS.

49. At this stage, it is relevant to note that while dealing with a complaint under Section 200 or a protest petition, the Magistrate can only rely on the material present before him i.e., the statements of the complainant and the witnesses present. The Magistrate cannot consider any other material available. Further, the Magistrate cannot conduct a mini trial or go on a fact-finding mission to determine whether a prima facie case is made out.

50. This Court in *M. Ramesh Babu v. State of A.P.* (2005) 1 ALT (Cri) 339 has held as follows:

16. Now, in view of the authoritative pronouncement of the Apex Court in Chandra Deo Singh's case, which is a four Judge Bench Judgment, it is obvious that what is open to the Magistrate which acting under Section 203 is to satisfy himself as to whether or not there is sufficient ground for proceeding and in order to come to such conclusion, he is entitled to consider the evidence taken

by him or recorded in an enquiry under Section 202, or statements made in an investigation under that section, as the case may be, but he is not entitled to rely upon any materials besides this.

Therefore, the Magistrate could have relied upon only on the statements of the unofficial Respondents (Mrs. K. Padma and Mrs. Beenitha Pandey) and their witnesses one Mr. Swamy Agnivesh and one Dr. Neelakanteshwar Rao.

51. After examining the complainants and the two witnesses, the Magistrate dismissed the protest petitions on the ground that no sufficient material is available to make out a prima facie case.

52. The said order dated 24.03.2015 was challenged before the Sessions Court under Section 397 of the Cr.P.C. The Sessions Court set aside the order dated 24.03.2015 on the ground that the deaths of Mr. Azad and Mr. Pandey were alleged to be fake encounters by Mrs. K. Padma, Mrs. Bineeta Pandey, and Mr. Swamy Agnivesh. Further, the Sessions Court only reiterated the statement and Dr. Neelakanteshwar Rao. According to this Court, the Sessions Court with respect to the said statements has not given any reasons as to how the said statements lead to a conclusion that a prima facie case is made out. Further, as far as the said statements are concerned, the Sessions Court did not give any reasons as to how those statements led to arriving at a conclusion which is different than the one arrived at by the Magistrate who dismissed the protest petitions. The Sessions Court should have given reasons as to how the order dated 24.03.2015 passed by the Magistrate does not satisfy the requirement of legality, propriety and correctness in light of the statements of the protest petitioners and their witnesses.

53. Therefore, the Sessions Court was not justified in interfering with the order dated 24.03.2015 as it failed to provide any reasons as to how its conclusion differed from that of the Magistrate.

iv. Whether the plea of self - defence can be considered at the pre-trial stage by the Magistrate?

It is also relevant to note that the Sessions Court set aside the order dated 24.03.2015 passed by the Magistrate on the ground that the Petitioners herein were involved in the exchange of fire in exercise of self defence. The Sessions Court held that the plea of right of self defence can be decided only during the course of trial and not during the pre-trial stage. This Court cannot accept the view taken by the Sessions Court.

54. The plea of self – defence can also be considered during the pre-trial stage. The Supreme Court in *Vadilal Panchal* (Supra) held that the plea of self – defence can be considered at the pre-trial stage. The relevant paragraphs are extracted below.

10. Now, in the case before us it is not contended that the learned Presidency Magistrate failed to consider the materials which he had to consider, before

passing his order under Section 203 CrPC. As a matter of fact the learned Magistrate fully, fairly and impartially considered these materials. What is contended on behalf of the respondent-complainant is that as a matter of law it was not open to the learned Magistrate to accept the plea of right of self-defence at a stage when all that he had to determine was whether a process should issue or not against the appellant. We are unable to accept this contention as correct. It is manifestly clear from the provisions of Section 203 that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry. The section itself makes that clear, and it is not necessary to refer to authorities in support thereof. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment. In arriving at his judgment he is not fettered in any way except by judicial considerations; he is not bound to accept what the Inquiring Officer says, nor is he precluded from accepting a plea based on an exception, provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the Magistrate has not misdirected himself as to the scope of an enquiry under Section 202 and has applied his mind judicially to the materials before him, we think that it would be erroneous in law to hold that a plea based on an exception can never be accepted by him in arriving at his judgment. What bearing such a plea has on the case of the complainant and his witnesses, to what extent they are falsified by the evidence of other witnesses — all these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such questions.

11. In support of its view the High Court has relied on some of its earlier decisions: *Emperor v. Dhondu Bapu Gujar* [29 BLR 713] ; *Emperor v. J.A. Finan* [33 BLR 1182] ; and *Tulsidas Amanmal Karani v. S.F. Billimoria* [34 BLR 910] . We do not think that any of the aforesaid decisions lays down any such proposition in absolute terms as is contended for on behalf of the respondent. In *Emperor v. Dhondu Bapu Gujar* a complaint charging defamation was dismissed by the Magistrate under Section 203 without taking any evidence, on the ground that the accused was protected by Section 499, exception 8. It was held that the order of dismissal was bad. Patkar, J. significantly observed:

“If the Magistrate in this case had taken evidence on behalf of the prosecution and on behalf of the accused, and passed a proper order for discharge, the order of the District Magistrate ordering a further enquiry without giving reasons might have stood on a different footing. We do not think that, under the circumstances of this case, there are adequate grounds for interfering with the order of the District Magistrate.”

12. In *Emperor v. J.A. Finan* the accused did not dispute the correctness of the statements made by the complainant, but in justification pleaded the order passed by his superior officer and claimed protection under Sections 76 and 79 of the Indian Penal Code. It is worthy of note that the order of the superior officer was not produced, but that officer very improperly wrote a letter to the Magistrate saying that he had given such an order. In these circumstances, the same learned Judge who decided the earlier case observed:

"It was, therefore, incumbent on the Magistrate to investigate the complaint and to find out whether the allegation of the accused that he was protected by Sections 76 and 79 of the Indian Penal Code was made out by legal evidence before him." The facts in *Tulsidas Amanmal Karani v. S.F. Billimoria* were different, and the question there considered was whether a member of the Bar in India had absolute privilege. That decision has very little bearing on the question now before us.

13. Our attention has also been drawn to a decision of the Lahore High Court where the facts were somewhat similar: *Gulab Khan, deceased through Karam Khan v. Gulam Muhammad Khan* [AIR 1927 (Lahore) 30] . In that case also the person complained against took the plea of self-defence, which was accepted. In the High Court an objection was taken to the procedure adopted and it was argued that the order of discharge should be set aside. In dealing with that argument Broadway, J. said:

"Now a Magistrate is empowered to hold an enquiry into a complaint of an offence in order to ascertain whether there is sufficient foundation for it to issue process against the person or persons complained against. In the present case the Magistrate clearly acted in the exercise of these powers under Section 202 of the Criminal Procedure Code. He allowed the complainant to produce such evidence in support of his complaint as he wished to produce, and after a consideration of that evidence came to the conclusion that that evidence was so wholly worthy of credence as to warrant his taking no further action in the matter."

14. Therefore, none of the aforesaid decisions lay down as an absolute proposition that a plea of self-defence can in no event be considered by the Magistrate in dealing with a complaint under the provisions of Sections 200, 202 and 203 of the Criminal Procedure Code.

55. Similarly, the decision in *Vadilal Panchal* (Supra) was affirmed by a four judge bench of the Supreme Court in *Chandra Deo Singh v. Prokash Chandra Bose* (1964) 1 SCR 639. The relevant paragraphs are extracted below:

12. Reliance is, however, placed by Mr Sethi on the decision of this court in *Vadilal* case [(1961) 1 SCR 1, at p 9] at p. 10 of the report. What was considered there by this court was whether as a matter of law, it was not open to a Magistrate to accept the plea of the right of private defence at a stage when all that he had to determine was whether process is to issue or not. The learned

Judges held that it is competent to a Magistrate to consider such a plea and observed:

"If the Magistrate has not misdirected himself as to the scope of an enquiry under Section 202 and has applied his mind judicially to the materials before him, we think that it would be erroneous in law to hold that a plea based on an exception can never be accepted by him in arriving at his judgment, What bearing such a plea has on the case of the complainant and his witnesses, to what extent they are falsified by the evidence of other witnesses, — all these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such questions."

13. On the basis of these observations it was urged that this court has held that a Magistrate has the power to weigh the evidence adduced at the enquiry. As we read the decision, it does not lay down an inflexible rule but seems to hold that while considering the evidence tendered at the enquiry it is open to the Magistrate to consider whether the accused could have acted in self defence. Fortunately, no such question arises for consideration in this case but we may point out that since the object of an enquiry under Section 202 is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under Section 203 has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion, he is entitled to consider the evidence taken by him or recorded in an enquiry under Section 202, or statements made in an investigation under that section, as the case may be. He is not entitled to rely upon any material besides this. By "evidence of other witnesses" the learned judges had apparently in mind the statements of persons examined by the police during investigation under Section 202. It is permissible under Section 203 of the Code to consider such evidence along with the statements of the complainant recorded by the Magistrate and decide whether to issue process or dismiss the complaint.....

56. This Court in *Sun Pharmaceuticals Ltd. v. State of Telangana* 2016 (2) ALT (Cri.) 165 (A.P.). held that the pleas of general exceptions can be considered during the pre-trial stage. The relevant paragraph is extracted below:

60(ii)(ad). Therefore, general exceptions are part of the definition of every offence contained in IPC, but the burden to prove their existence lies on the accused. It is to say that every offence defined in I.P.C. whether punishable or not from an offence to make out a non-offence within the meaning of general exceptions, as stated in Section 6 IPC, every section has to be read as subject to general exceptions to understand the meaning to say once general exceptions are applicable though the burden for that is on accused, it makes the offence otherwise defined a non-offence is the sum and substance. Thus, the general exceptions and special exceptions have to be understood with reference to Section 6 I.P.C. and further from the above principles defence material can also be considered in finding out prima facie accusation is there or not, not only while taking cognizance and issuance of summons but also from impugning cognizance

order without need of putting to the ordeal of trial and to prove in defence with reference to Section 105 of Indian Evidence Act. It is thus clear from the expressions supra that defence under general expressions of I.P.C. can be considered at the pre-trial stage from the material on record in ultimately quashing the cognizance proceedings from the very offence makes by the general expressions a non offence if materially is suffice with no need of putting ordeal of trial for consideration.

57. According to this Court, the view of the Sessions Court that the plea of self – defence cannot be considered at the pre-trial stage cannot be accepted. Further, as the Petitioners herein were not heard, the Sessions Court could not have decided whether such a plea was taken or not and whether the Petitioners herein were justified in making such a plea. Therefore, the Sessions Court could not have passed the impugned orders on the ground that plea of self – defence cannot be taken at the pre-trial stage.

Issue- C:-

58. The Petitioners herein contended that the Sessions Court could not have directed the Magistrate to take cognizance in the absence of any sanction from the government as required under Section 197 of the Cr.P.C.

197. Prosecution of Judges and public servants.—(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

[Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, [Section 376-A, Section 376-AB, Section 376-C, Section 376-D,

Section 376-DA, Section 376-DB] or Section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Section 197 of the Cr.P.C provides that a sanction from the concerned government is required to prosecute public servants who are guilty of committing any offence in exercise of his/her public duty. According to the said provision, no cognizance can be taken against such public servants unless a sanction is obtained.

59. The object and scope of the said provision was discussed in detail by the Supreme Court in *State of H.P. v. M.P. Gupta* (2004) 2 SCC 349.

10. Prior to examining if the courts below committed any error of law in discharging the accused, it may not be out of place to examine the nature of

power exercised by the court under Section 197 of the Code and the extent of protection it affords to public servants, who, apart from various hazards in discharge of their duties, in absence of a provision like the one may be exposed to vexatious prosecution. Sections 197(1) and (2) of the Code read as under:

"197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

(2) No court shall take cognizance of any offence alleged to have been committed by any member of the armed forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance, no prosecution can be initiated in a Court of Session under Section 193, as it cannot take cognizance as a court of original jurisdiction, of any offence, unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word "cognizance" means

"jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

60. Further, in *N.K. Ganguly v. CBI* (2016) 2 SCC 143 the Supreme Court has held that it is for the Magistrate to decide whether a sanction under Section 197 of the Cr.P.C. The relevant paragraph is extracted below.

35. From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate Government under Section 197 CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate Government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.

61. Therefore, from the facts of the case it is clear that the ground of absence of sanction could not have been urged by the Petitioners herein before the Sessions Court as no notice was served upon them. If the lower court comes to the conclusion that a sanction is required in terms of Section 197 of the Cr.P.C., the Petitioners herein cannot be prosecuted, unless such sanction is obtained.

Conclusion

62. In light of the aforesaid discussion, the impugned order dated 15.02.2018 does not satisfy the test of legality, correctness and propriety as no notice was served upon the Petitioners herein; the Sessions Court could not have directed the Magistrate to take cognizance; the Sessions Court failed to provide any reasons as to how its conclusion differed from the Magistrate while setting aside the order dated 24.03.2015.

63. In result, all the Criminal Revision Cases are allowed as follows:-

i. The impugned common order dated 15.02.2018 passed in Crl.R.P.Nos.19 and 24 of 2015 is set aside. The matter is remanded back to the Judge, Family Court – cum – IV Addl. District and Sessions Judge, Adilabad with a direction to decide the said criminal revision petitions in accordance with law.

ii. It is relevant to note that the alleged incident took place on the intervening night of 01.07.2010 and 02.07.2021. CBI inquiry was ordered on 26.04.2011

and the final report under Section 173(2) of the Cr.P.C. after completion of the investigation was submitted on 6.07.2012. The protest petitions were filed on 06.08.2013 and were dismissed on 24.03.2015. Against the dismissal of the protest petitions revision applications vide Criminal Revision Petition Nos. 19 of 2015 and 24 of 2015 were filed and the same were decided vide order dated 15.02.2018.

iii. Considering the said facts, this Court is of the considered view that a time frame shall be fixed to dispose of the said Criminal Revision Petitions by the Sessions Court. Therefore, the Judge, Family Court – cum – IV Addl. District and Sessions Judge, Adilabad is directed to dispose off the Criminal Revision Petitions within 3 months from the date of receipt of the copy of this order.

As a sequel, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.