

(2005) 05 DEL CK 0217

In the Delhi High Court

Case No : Writ Petition (Criminal) 458 of 1996

Harsh Khurana

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156, 156(1), 169, 173

Essential Commodities Act, 1955 — Section 10, 10C, 12A, 14, 3

Citation : (2005) 121 DLT 301

Hon'ble Judges : B.C. Patel, C.J.; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : R.K. Anand and Lovkesh Sawhney, for the Appellant; Ritesh Kumar, Rahul Kaushik and Tanuj Khurana for Sidarth Mridul, for R1/UOI and Mukta Gupta, for R2/State, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—The present case is a classic example of how the petitioner has managed to ensure that the criminal proceedings initiated against him do not even take off much less achieve any final adjudicatory stage.

2. The petitioner claims to be a whole-sale dealer of mild steel tubes carrying on business under the name and style of M/s. Banarsi Dass and Co. In terms of a notification issued by respondent No. 1 / Union of India bearing No. GSR 374(E) dated 08.07.1978 called the Mild Steel Tubes (Excluding Seamless Tubes and Tubes According to A.P.I. Specifications) (Quality Control) Order, 1978 (hereinafter to be referred to as, "the said Order") in exercise of power u/s 3 of the Essential Commodities Act 1955 (hereinafter to be referred to as, "the Act"), the following provision was made :

"3. No person shall by himself or by any person on his behalf manufacture or store for sale, sell or distribute any mild steel tubes having wall thickness less than the wall thickness stipulated for light class in the specified standards

covered by this Order and that it would be with ISI certification mark and proved that the thickness of zinc coating on the galvanised tubes shall be in accordance with IS : 4736-1968."

3. That in terms of the power conferred under the said Order, an F.I.R. was registered against the petitioner resulting in investigation and thereafter a charge-sheet was filed of which cognizance was taken. It is at that stage that the petitioner filed the present writ petition and in terms of the Order dated 17.09.1996, further proceedings before the trial court were stayed. The order-sheet thereafter is only a saga of adjournments and undisputedly the petitioner is a major contributory towards the same. There have been about 16 adjournments taken by the petitioner for one reason or the other. No doubt, apart from this, there have been some adjournments at the request of the respondents and on a couple of occasions, the Court could not take up the matter.

4. The present writ petition had been filed seeking to challenge the validity of the said Order and for quashing the same as also for quashing the F.I.R. The prayers are as under :

"a) Issue a writ of certiorari or any other appropriate writ, order or directions declaring the Mild Steel Tubes According to the API Specifications (Quality Control) Order, 1978 unconstitutional or declaring that the wall thickness defined in the IS numbers given in para 2 of the Mild Steel Tubes (Excluding Seamless Tubes and Tubes According to the API Specifications (Quality Control) Order, 1978 shall apply to the users in para 2 and to no other user of Mild Steel Tubes.

b) Issue a writ of mandamus or any other appropriate order or directions directing the respondents not to act on the impugned notification in so far as it is being applied on users other than those specified in para 2 of the impugned notification.

c) Issue a writ of certiorari or any other appropriate writ, order or directions quashing the F.I.R. No. 327/95 dated 18.5.95 registered at Police Station Nangloi, New Delhi under Sections 7, 10 and 55 of the Essential Commodities Act and also quash all subsequent proceedings arising from the above FIR including the challan;

... .."

5. It is not disputed that earlier a writ petition bearing No.3711/1993 was filed by the Delhi Steel, Tools and Hardware Traders Association, Steel Tube Dealers' Association and Ors. The petitioner is admittedly a member of the Association. In the said writ petition, the following reliefs were claimed :

"a) Issue appropriate writ, order or direction declaring the Mild Steel Tubes (Excluding Seamless Tubes and Tubes according to the API Specifications (Quality Control) Order, 1978 unconstitutional or declaring that the wall thickness defined in the IS numbers given in para 2 of the Mild Steel Tubes (Excluding Seamless Tubes and Tubes according to API Specifications) (Quality Control) Order, 1978

shall apply to the users in para 2 and to no other user of Mild Steel Tubes.

b) Issue appropriate writ, order or direction in the nature of mandamus directing respondent No. 2 for not acting through his subordinates in violation of the petitioners' right under Article 19(1)(g) of the Constitution of India, 1950.

c) Issue appropriate writ, order or direction in the nature of mandamus directing the respondents not to act on the impugned Notification bearing No. GSR 374(E).

... .."

6. A comparative reading of the prayers made in the two writ petitions would show that the challenge to virus of the said Order was the same as in the earlier writ petition. This earlier writ petition filed by the Associations being C.W. 3711/1993 was disposed of on 07.03.1994. The said Order is more or less in the nature of a consent order and reads as under :

"7.3.1994

Present: Mr. Arun Jaitley with Mr. Ashish Kumar for the petitioner.

Ms. Barkha Babbar for respondent No. 1

Mr. Sanjay Yadav for Mr. S.K. Mahajan, Counsel for respondent No. 2.

C.W. 3711/1993 and C.M. 5936/1993

The alternative prayer made in prayer (a) has been conceded by the Union of India in para 5 of its counter affidavit, which is in the following effect :-

"In reply to the contents of para 9 of the writ petition, it is submitted that the Quality Control Order is applicable only for three categories of tubes as follows :

(a) For use with water, gas, airlines and steam (IS 1239: Part 1973).

(b) For structural purposes (IS 1161 : 1968).

(c) For water wells application (IS 4270 : 1967)."

According to the Quality Control Order, only those tubes which are covered by the standards specified in the Order are to be compulsorily ISI marked. While interpreting the Quality Control Order and applicability thereof, and users as specified against respective ISI Marks covered in the Order are to be taken into consideration."

Accordingly, whenever a dealer uses the said three categories of tubes specified in the notification for the purposes indicated therein will have to bear ISI mark and satisfy the requisite standards but not the tubes to be used for purposes other than that indicated in the notification. With these observations, the writ petition stands disposed of.

sd/- sd/- G.C. Mittal, K.S. Bhat, Chief Justice Judge."

7. It is, thus, apparent that the challenge to validity of the said Order was never pressed by the Association in the said writ petition being C.W. 3711/1993 and the petitioner is a member of the said Association.

8. In view of the aforesaid position, we are of the considered view that it is not even open to the petitioner to impugn validity of the said Order. Merely because subsequently there have been proceedings against the petitioner under the said Order cannot give a right to the petitioner to challenge validity of the said Order, though it is always open to challenge the action initiated against him. The challenge needless to say has to be in accordance with law.

9. Be that as it may, we consider it all so appropriate to notice that the principle challenge as urged by learned senior counsel for the petitioner to the said Order is the claim that no such notification could have been issued u/s 3 of the Act since the said provision and the Act is not meant for controlling the quality standards and for that purpose, a notification could only be issued under the Bureau of Indian Standards Act, 1986. In this behalf, learned counsel for respondent No. 2 / State has pointed out that this issue is no more rest integra in view of the observations of the Apex Court in Hamdard Dawakhana (Wakf), Delhi and Another Vs. Union of India (UOI) and Others, . The relevant portion of para 17 is as under :

"17.... But quite apart from this consideration, if S. 3(1) of the Act authorises the Central Government to regulate the qualitative and quantitative production of essential commodities, it is idle to contend that the regulations imposed by the Fruit Order in respect of fruit products are outside the purview of S. 3(1). The pith and substance of the relevant provisions of the Fruit Order clearly is to regulate the qualitative production of the Fruit products covered by it. This object is illustrated by the specification with which we are concerned. Part II of the Schedule to the Fruit Order which has imposed the obligation on the manufacturers of fruit syrups to include at least 25 per cent of fruit juice in the final product of the fruit syrup produced by them, shows that by virtue of its powers under S. 3(1) of the Act, the Central Government thought it necessary to require that a particular quality of fruit syrup should be put on the market as fruit syrup and no other. This object plainly falls within the purview of S. 3(1), and so, the contention that the Fruit Order is invalid inasmuch as it purports to tackle the problem of adulteration of fruit product, cannot be accepted."

Thus, the plea of learned senior counsel for the petitioner that the said Order issued in respect of the quality of the product cannot be so issued u/s 3(1) of the Act cannot be sustained.

10. The result of the aforesaid is that prayers (a) and (b) made in the present petition do not survive for consideration.

11. The next question, however, to be looked into is in respect of prayer (c) seeking quashing of the F.I.R. on the ground that it discloses no offence.

12. It may be noted that earlier an application being Criminal Main (M) No. 1835/95 was presented before his Court with a prayer to quash the FIR. However, on August 9, 1995 the learned single Judge hearing the matter rejected the application. Charge sheet is also filed against the accused persons. A copy of the same is placed on record as Annexure P-10A at page 74.

13. The Special Court has taken cognizance of the offences in the instant case. In view of Section 12A(c) of the Act, the Special Court shall be deemed to be a Court of Sessions. Section 7 of the Act provides for punishment and in view of Section 7(1)(a)(ii) of the Act the offence is punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

14. Section 14 of the Act shifts the burden on the person prosecuted for contravention of any order made u/s 3 of the Act which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, license or other document.

15. Section 10C of the Act refers to presumption of culpable mental state. The Court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

16. There is no dispute that the offence being cognizable investigation has been carried out in accordance with law. The Apex court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, has pointed out in paras 108 and 109 as under:-

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F. I. R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any

offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

17. In view of the information disclosing a cognizable offence alleged to have been committed, by subjectively satisfying as to the existence of sufficient ground for entering on investigation, the officer commenced the investigation. The police officer has to draw his satisfaction only on the materials which were placed before him at the stage of lodging the FIR, together with documents, if any. The investigation of a cognizable offence is a field exclusively reserved for the police officers, whose powers in that field are unfettered so long as the power to investigate is legitimately exercised in strict compliance falling in Chapter XII of the Criminal procedure Code (for short "the Code") and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds. It is not the duty of the Magistrate to remain in the picture at all stages and he is not authorised to interfere with the actual investigation, or to direct the police the manner in which the investigation should be conducted. However, if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also liberty of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance, consider the nature and extent of the breach, may pass appropriate orders. The Apex Court pointed out in the aforesaid case of

Bhajan Lal (supra) that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Keeping in mind the caution administered by the Apex Court in the aforesaid case the Court has to proceed with the matter.

18. In case a subordinate police officer has made any investigation, then he has to report to the in charge of the police station. Thus, in charge of the police station, being an officer of a higher rank, has to examine the matter in view of Section 169 of the Code and if there is no sufficient evidence or reasonable ground or suspicion to justify the forwarding of the accused to a Magistrate, the police officer is even empowered to exercise the powers and is authorised to release the person, if he is in custody, on execution of a bond with or without sureties, directing him to appear as and when required before a Magistrate empowered to take cognizance of the offence on a police report. Thus, the legislature has even empowered the police officer to release a person when it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground of suspicion to justify forwarding of accused to a Magistrate, to release the accused on bail. Thus, when a police officer in charge of a police station is satisfied on collection of evidence that there is enough evidence or there is reasonable ground of suspicion to justify forwarding of the accused to a Magistrate for trial, then on such a report the Magistrate or the Court will have to proceed u/s 190 of the Code, and the Court may take cognizance of any offence upon a police report of such facts.

19. Learned counsel appearing for the petitioner submitted that the Court will have to proceed with the case as if it is a complaint case. He relied on sub-clause (d) of Section 2 of the Code which reads as under:-

"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

In view of this, it was submitted that though it is a report made by the police officer, but in view of the fact that it is a non cognizable offence, the report shall be deemed to be a complaint. Learned counsel for the respondent submitted that the investigation was with regard to a cognizable offence. The offence being punishable by imprisonment for a period of up to 7 years, the offence would be cognizable and, Therefore, according to the learned counsel for the respondent it is not right to suggest that the case will be a complaint case.

20. As per sub-clause (x) of Section 2 of the Code "warrant case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. In the instant case the offence being punishable with imprisonment for a term exceeding two years, the case is to be treated as a warrant case.

21. Learned counsel for the respondent submitted that when a case is instituted on a police report, the Magistrate will have to first satisfy himself that there is

compliance with the provisions of Section 207 of the Code i.e. to see whether the police report, as indicated in Section 207 of the Code, is furnished to the accused or not. An important and valuable right is given to the accused in Chapter XIX of the Code. Section 239 of the Code contemplates that if upon considering the police report and the documents sent with it u/s 173 of the Code, and making such examination, if any, of the accused, as the Magistrate thinks necessary, and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. Thus, an obligation is cast on the Magistrate, before framing the charge, to hear the accused as well as the prosecution to satisfy himself whether the charge against the accused is groundless or not. Only after being satisfied, the charge is to be framed. In the instant case, the accused is supplied with all police papers, which is clear from the record placed before us and, Therefore, there is ample opportunity to the accused to approach the Magistrate to contend that no case is made out against the accused and he is required to be discharged. When the legislature has provided a remedy under the Code, then ordinarily it is not for the High Court to exercise the jurisdiction u/s 482 of the Code or under Article 226 of the Constitution. The Apex Court in the case of Bhajan Lal (supra) has given a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

22. It is also required to be noted that it is well settled by a series of decisions that for the purpose of exercising powers u/s 482 of the Code, the Court will have to proceed entirely on the basis of allegations made in the complaint or the documents accompanying the same per se. The Court has no jurisdiction to examine the correctness or otherwise of the allegations. It is 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.

23. The Apex Court in the case of State of Bihar Vs. Murad Ali Khan and Others, has pointed out that jurisdiction u/s 482 of the Code has to be exercised sparingly and with circumspection and has held that in exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.

24. It is required to be noted that the petitioner approached the High Court earlier for quashing the FIR. The Court did not entertain the application and rejected the same. If the allegations made in the FIR, taken on the face value, and accepted in their entirety, did not constitute an offence, then the High Court would have quashed the FIR. As the High Court did not quash the FIR, it is not open to this Court to sit in judgment over the decision and say that the FIR does not disclose the offence committed by the accused, and on investigation, if a charge sheet is filed, surely this Court would not like to exercise the jurisdiction

in view of the provisions contained in Section 239 of the Code which gives an opportunity to the accused to say that the charge is groundless.

25. In the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, the Apex Court has pointed in para 23 that "When the police report u/s 173 of the Code of Criminal Procedure Code has to go through the judicial scrutiny, it is not open to the High Court to find fault with the same on the ground that certain documents were not taken into consideration by the investigating officer." At the stage of investigation accused has no right to participate. However, in warrant trials on police report, the accused has a right to be heard before the charge is framed. Therefore, the legislature has taken care of the situation.

26. The Apex Court in the case of State of Himachal Pradesh Vs. Shri Pirthi Chand and another, pointed out as under:-

"13. When the remedy u/s 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy u/s 482 of the Code is available. When the Court exercises its inherent power u/s 482 the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigating officer spends considerable time to collect the evidence and places the charge sheet before the Court, further action should not be short-circuited by resorting to exercise of inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destabilises the economy and causes grave incursion on the economic planning of the State. When the legislature entrusts the power to the police officer to prevent organized commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk. The accused will have field day in destabilising the economy of the State regulated under the relevant provisions."

27. In the aforesaid case, it was contended that the evidence collected in search was in violation of law. However, the Court pointed out that it does not become inadmissible under the Evidence Act.

28. The learned counsel for the petitioner relied on the Apex Court decision in the case of Adalat Prasad Vs. Rooplal Jindal and Others, wherein it was held that the Court did not have the power to review its own order. In the aforesaid case a complaint was filed against the accused persons on the allegations that the complainant was cheated and defrauded. Taking cognizance of the said complaint, the learned Metropolitan Magistrate summoned the appellants and

other accused by issuing process u/s 204 of the Code. Being aggrieved by the issuance of process, the accused moved the High Court and the High Court directed the accused persons to move the trial court against the order of summoning. Pursuant to the order made by the High Court, on an application, by an order dated 28.1.1995, after hearing the parties, the learned Magistrate recalled the summons, which was challenged before the High Court on the ground that the Magistrate had no jurisdiction to recall summons issued u/s 204 of the Code. The High Court held that the trial court committed an error in recalling the summons issued because the said court did not have the power to review its own order. It is against the said order an appeal was preferred before the Apex Court.

29. There is a separate procedure prescribed for a case instituted on a police report and the case instituted otherwise than on a police report, which is commonly known as complaint case. When a complaint is presented before the Magistrate the procedure laid down in Section 200 onwards of the Code is required to be followed. At that stage, there is no question of participating in the proceedings by the accused, till the summons is issued. The Magistrate has to examine the complainant and his witnesses on oath and the substance of such examination is required to be reduced into writing, which has to be signed by the complainant and the witnesses as also by the Magistrate. Before taking cognizance, if the Magistrate thinks fit, he may postpone the issue of process against the accused and direct investigation to be made by a police officer or by such other person as he thinks fit.

30. Section 190 of the Code refers to cognizance of offences by magistrates. A Magistrate can take cognizance upon receiving a complaint of facts which constitute such offence. If he is not taking cognizance of the offence, then at that stage, it is also open to the Magistrate to direct the police to investigate the offence in cognizable cases as indicated in Section 156 of the Code. Such investigation is different from the investigation referred to in Section 202 of the Code. In case of such an investigation, the police officer in charge of a police station is not authorised to arrest an accused. However, if he has a warrant to arrest, he may arrest the accused. If after taking cognizance and examining the complainant and the witnesses, if any, if the Magistrate thinks it fit to postpone the issue of the process and has directed an investigation to be made by the police officer, then in such a case, the investigating officer is required to make a report to the court. However, in view of proviso in certain situations the Magistrate is not authorised to issue direction for investigation. Not only that, but in view of sub-section (2) and its proviso the law mandates that if 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. The Magistrate may dismiss the complaint if after considering the statement on oath of the complainant and the witnesses and the result of the enquiry or investigation (if any), u/s 202 that there is no sufficient ground for proceeding, by recording reasons in brief. If he is of the opinion that cognizance is required to

be taken as an offence is committed, then he may issue the process. We have to bear in mind the different procedure to be followed in the case of a warrant case instituted on a police report and a case instituted otherwise than on a police report. In case of *Adalat Prasad* (supra) in paragraph 15 the Apex Court pointed out that the relief an aggrieved accused can obtain at this stage is not by invoking Section 203 of the Code. The said paragraph 15 reads as under:-

"15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code."

It is in view of these aspects the Court pointed out that the trial court has no power to recall its own order. While in the instant case, the case being instituted on a police report, the legislature has given powers to the Magistrate u/s 23 of the Code even to discharge the accused after hearing the prosecution as well as the accused and even making such examination, if any, of the accused. This is to be done before the framing of the charge.

31. Learned counsel for the petitioner drew our attention to the decision of the Apex Court in the case of *Subramaniam Sethuraman v. State of Maharashtra and Anr.* 2005 SCC (Cri) 242 and submitted that only recourse available to the petitioner is approaching the High Court by invoking Section 482 of the Code. Criminal Procedure Code refers to (1) sessions trials, (2) warrant trials on police report and otherwise than on a police report, (3) summons trials and (4) summary trials vide Chapters xviii, IX, XX and XXI. A sessions trial will proceed as indicated in Chapter xviii of the Code wherein there is a provision for discharge of the accused u/s 227 similar to Section 239 of the Code in cases instituted on a police report for trial of warrant cases by Magistrates. There is no provision similar to or akin to Sections 227 and 239 of the Code in Chapter XX for trial of summons cases or summary trials.

32. Looking to the fact that the offence in the instant case is punishable for more than two years or the case is to be tried by a court of sessions, the procedure indicated in the relevant chapter is required to be followed. Keeping these aspects in mind, it is worth pointing out here as to what the Apex Court has held in the case of *Subramaniam Sethuraman* (supra) that "The case involving a summons case is covered by Chapter XX of the Code which does not contemplate a stage of discharge like Section 239 which provides for a discharge in a warrant case". It is in view of this the Apex Court opined that the High Court was correct in coming to the conclusion that once the plea of the accused is recorded u/s 252 of the Code the procedure contemplated under Chapter XX has to be followed. It is in view of this decision of the Apex Court which has considered the earlier

decision in the case of Adalat Prasad (supra), we are of the opinion that when there is a specific remedy provided under the Code, ordinarily it is not open to this Court to entertain a petition either u/s 482 of the Code or under Article 226 of the Constitution of India, more particularly, in view of the principles laid down by the Apex Court in the case of Bhajanlal (supra).

33. Thus, in view of the decisions referred to hereinabove, it is clear that it is not for the High Court to interfere after the charge sheet is filed and it is for the trial court to pass an appropriate order u/s 239 of the Code. The writ petition is dismissed.