

(2012) 03 BOM CK 0203

In the Bombay High Court

Case No : Criminal Application No. 584 of 2010 with Criminal Application No's. 576-578, 1160, 1295 and 296 of 2011 with Criminal Application No's. 182, 183 and 422 of 2012

Pricewaterhouse Co-ops Pvt. Ltd. and Others

APPELLANT

Vs

C. Anthony Louis and Others

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Companies Act, 1956 — Section 226, 406, 427
Constitution of India, 1950 — Article 14, 19(1)(g), 21, 226, 227
Copyright Act, 1957 — Section 63
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3), 173, 192
Foreign Exchange Regulation Act, 1973 — Section 56(1), 73(3)
Negotiable Instruments Act, 1881 (NI) — Section 138, 141
Penal Code, 1860 (IPC) — Section 114, 120B, 202, 295, 295A

Citation : (2012) BomCR(Cri) 660

Hon'ble Judges : Chavan R.C., J

Bench : Single Bench

Advocate : Amit Desai C. Zerick Dastur and Ms. Sneha Sheth instructed by J. Sagar Associates in Cri. appln. No. 584/2010, Amit Desai C. Gopala Shenoy, Bhaskar Mehta, Mohan Salian and Ms. Vijayanta Shete in Cri. appln. No. 578/2011, Shirish Gupte C. instructed by S.R. Mithare in Cri. appln. No. 1160/2011, A.P. Mundargi C. Girish Kulkarni in Cri. appln. Nos. 1295 and 1296/2011, Mahesh Jethmalani C. Tushad Kapoor, Ms. Gunjan Mangla, Hiren Mehta, Ashish Hawelkar, Parikshit Desai instructed by S.N. Gupta in Cri. appln. Nos. 182 and 183/2012 and A.P. Mundargi C. S.V. Kotwal in W.P. No. 422/ 2012, for the Appellant; C. Anthony Louis in Cri. Appln. No. 584/2010, Respondent No. 1, in-Person, Present. S. Garud instructed by . Khaitan and Jayakaran in Cri. Appln. No. 584/2010, for Respondent Nos. 3 and 4, Mrs. R.V. Newton, Assistant Public Prosecutor in Cri. Appln. No. 578/2011 for Respondent No. 1-State, S.R. Chitnis Sr. C. instructed by . K.S. Paul in Cri. Appln. No. 578/ 2011, for Respondent No. 2, Shirish Gupte Sr. C. instructed by . S.R. Mithare in Cri. Appln. No. 1160/2011, I.A. Bagaria in Cri. Appln. No. 1160/201 Correspondent No. 1, Y.M. Nakhawa, Assistant Public Prosecutor in Cri-Appln. No. 1160/2011, for Respondent No. 2, D.R. More, Assistant Public Prosecutor in Cri. Appln. No. 1296/2011, for Respondent No. 1-State and in Cri. Appln. Nos. 182, 183 and 422/2012, for Respondent No. 2-State, for the Respondent

Judgement

Chavan R.C., J.—These ten applications u/s 482 of the Code Of Criminal Procedure (for short, "the Code") are being dealt with by this common Order, though they have nothing in common as to the substantive law involved except that they all seek to knock the worn out doors of this Court without first exhausting the remedy of seeking revision before the Court of Sessions. These applications represent a spectrum of fact situations in which the applicants have approached this Court. Since there are several such applications invoking jurisdiction of this Court directly without first exhausting the remedy of seeking revision before the Court of Sessions, such applications were directed to be listed together to examine whether such a course is desirable. In V.K. Jain and Others Vs. Pratap V. Padode and Another, , (Chetan R. Nagda & others Vs. N.D. Pawar & another)², reported in 2006(1) Bom. C.R.(Cri.) 267, and in (Floyd D. Aguiar Vs. Bronwyn D. Aguiar & anr.)³, reported in 2007(1) Bom. C.R.(Cri.) 912 : 2007 All.M.R.(Cri.) 1633, three learned Single Judges of this Court had held that, when remedy by way of revision was available, application u/s 482 may not be entertained. However, since the judgment in V.K. Jain (supra) was specifically overruled by the Apex Court in (Dhariwal Tobacco Products Limited and others Vs. State of Maharashtra and another)⁴, reported in 2009(1) Bom.C.R.(Cri.) 802(S.C.) : 2009(2) S.C.C. 370, this exercise has become necessary. Before proceeding to examine the question whether the applicants should be first seeking the remedy of revision before the Sessions Court rather than approaching this Court directly, it may be useful to note briefly the facts in the context of which the applicants in each of these cases have filed the respective applications.

2. Criminal Application No. 584 of 2010 is filed by a private limited company -M/s. Price Waterhouse Coopers Pvt. Ltd., seeking quashing of proceedings in Criminal Case No. 01000261/SW of 2009 before the Court of learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai initiated on the complaint of a shareholder of M/s. Satyam Computer Services Ltd., who claims to have been cheated into believing about financial health of the company on the basis of audit reports allegedly issued by the applicant-company in collusion with Rajus, who are shown as accused Nos. 1 and 2. The trial Court had not issued process against accused Nos. 3 to 30, which included the auditors who had actually signed the audit reports as partners of a firm sharing M/s. Price Waterhouse Coopers" name. According to learned senior Counsel for the applicant, the applicant-company was not the statutory auditor but it was a firm sharing the same name. He submitted that u/s 226 of the Companies Act a body corporate cannot at all be auditor and so the applicant, which is a corporate body, was not the auditor and has been, without any reason, on the basis of press reports, which have no evidentiary value, roped in as accused. He submitted that it would not be open to a criminal Court to go into the arrangements between the firm of statutory auditors using their name & the applicant-company. According to him, a

police case is already filed against the principal accused persons and therefore this complaint against the applicant-company amounts to abuse of process of Court. The complainant in person submitted that there is also an allegation of criminal conspiracy and therefore applicant's complicity cannot be excluded at this stage. He submitted that for a shareholder the distinction between a firm sharing applicant's name obviously under some arrangement because our law does not permit a body corporate to be statutory auditor & the company itself may not be obvious. And in any case a shareholder would rely on a report coming from a company like the applicant rather than an obscure firm. Further, he submitted that there is no warrant to exercise extraordinary power to quash these proceedings as there are factual issues involved. He also raised a number of issues about inefficient handling of trials in trial courts and made some suggestions to speed up trial procedures.

3. Criminal Application Nos. 576,577 and 578 of 2011 are filed by Jet Airways (India) Limited, its Chairman Shri Naresh Goyal & its Chief Executive Officer Shri Nikos Kardassis respectively questioning the order, dated 3-3-2011, passed by the learned Metropolitan Magistrate 49th Court, Vikhroli on a private complaint bearing Case No. 105/ SW/2010 directing issuance of process for offences punishable under sections 406 and 427 read with section 114 of the Indian Penal Code (for short, "the IPC"). The complainant is the owner of a godown which had been leased out to Jet Airways and which the company vacated on 16-7-2009. The complainant alleged that the accused persons did not maintain the building properly, caused damage to it while using and when vacating the premises failed to pay the dues towards taxes, etc., amounting to "2,40,00,000/-". The challenge is on the ground that the facts enumerated do not disclose any offence, that there is no concept of vicarious liability in Criminal law and the dispute, if any, is purely of a civil nature.

4. Criminal Application No. 1160 of 2011 is filed by a film director questioning the process issued by the learned Metropolitan Magistrate, Andheri, Mumbai for offences punishable under sections 376 & 506 Part-II of the IPC on the final report filed by the police on a report to the police by an aspiring actress about her sexual exploitation by allegedly promising to give her a lead role in a film and/or marry her. The Investigating Officer had in fact filed a final report on 16-1-2006, branding the first informant's report as false and the learned Magistrate had on 15-9-2006 ordered issuance of notice to the complainant to show cause as to why action should not be taken against her. The first informant appeared and after hearing her the learned Metropolitan Magistrate, by his order dated 19-12-2008, ordered further investigation. Accordingly, the Investigating Officer submitted a further report on 18-7-2009 along with papers of investigation, without any recommendation as to who should be prosecuted -the applicant for committing rape, or the first informant for giving a false report. By an elaborate order dated 11-11-2009 running into 18 pages, the learned Magistrate decided to hold an inquiry u/s 202 of the Code. Accordingly, the learned Magistrate seems to have held an inquiry by examining the first

informant and by the order dated 19-9-2011 (the impugned order) directed issuance of process. The said order is challenged on the ground that the learned Magistrate had really no valid grounds for rejecting "B" Summary proposed by the first Investigating Officer, after having agreed with the Investigating Officer and deciding to issue notice to the first informant. This amounted to an impermissible review of his own order. The learned Magistrate then proceeded with the matter as if it was initiated on a private complaint, after observing so erroneously, and there was no warrant to hold any inquiry u/s 202 of the Code. As the offences were triable by the Court of Sessions, if the learned Magistrate treated the case as a private complaint, the Magistrate ought to have examined all witnesses before issuing process which he had not done. In any case, the Magistrate failed to note the material on record which showed that the first informant wanted a lead role in the applicant's film and the complaint was a clear attempt to blackmail the applicant and, therefore, an abuse of process of Court. It was also sought to be pointed out from a notice addressed by the first informant to another actor around the same time wherein she had alleged that the actor was the father of the child which she was carrying.

5. Criminal Application Nos. 1295 & 1296 of 2011 have been filed by the co-producers and the director of a Hindi film "Desi Boyz" respectively questioning the order directing issuance of process, passed by the learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai for offence punishable u/s 63 of the Copyright Act and sections 406 and 420 of the IPC. The learned Magistrate had issued process on the complaint of respondent No. 2 Shyam Devkutte who claimed to have e-mailed the story, on which the film was subsequently made, to one Ramesh Bhatnagar on 14-10-2009 and who, in turn, forwarded the mail on 15-10-2009 to one Ahsan Sagar who was in contact with the producer's father David Dhavan. According to the applicants, the script/ screenplay was written by one Milap Zaveri who had been paid for the job in terms of agreement dated 2-9-2009 on the same day. The applicants allege that the complaint fails to disclose even basic facts which are absolutely necessary for making out the alleged offences and that the complaint is a clear abuse of process of Court and a mala fide attempt to wreck vengeance on the applicants who refused to yield to the demands of the complainant

6. The applicant-Standard Chartered Bank in Criminal Application Nos, 182 and 183 of 2012 seeks setting aside and quashing of two complaints bearing Criminal Case Nos. 1504/S and 1503/S of 2002 for offences punishable under sections 56(1) and 73(3) of the Foreign Exchange Regulation Act in which the learned Chief Metropolitan Magistrate took cognizance and ordered issuance of process on 30-5-2002, i.e., almost ten years ago in respect of transactions of the year 1992 on, amongst others, grounds of non application of mind and violation of right to speedy trial.

7. Criminal Writ Petition No. 422 of 2012, invoking powers under Article 227 of the Constitution as well as section 482 of the Code, has been filed by the makers

of the Marathi film "Deool" (temple), who have to face prosecution in the Court of Judicial Magistrate, First Class at Solapur on the complaint of a social worker who complains that a song in the film hurts religious sentiments of the Marathi speaking Hindus and thus amounts to an offence punishable u/s 295 of the IPC. The learned Magistrate seems to have issued process for the offence punishable u/s 295A read with section 34 of the IPC against the applicants and others on 5-1-2012. This order is challenged on the ground that the learned Magistrate could not have taken cognizance of the offence without previous sanction of the Central Government in view of the provisions of section 196 of the Code.

8. Dealing with the flood of applications u/s 482 of the Code, more than six years ago, in Chetan R. Nagda (supra) this Court (Coram: A.M. Khanwilkar, J.) had diagnosed the problem in these words:

5. Viewed in this perspective, in my opinion, following the observations made in the decision of this Court in the case of V.K. Jain (supra), I decline to entertain the present petition. Instead, the petitioners will have to be relegated to remedy of revision. I am persuaded to adopt this course as judicial notice can be taken of the enormity of the problem which is experienced by this Court in the subject assignment of applications/ petitions for quashing. In that, large number of writ petitions of applications u/s 482 of the Code are directly filed before this Court without taking recourse to the remedy of revision before the concerned Sessions Court. As presently advised there are over more than one lakh pending cases before the trial courts in Mumbai alone in relation to offence such as under sections 138 and 141 of the Negotiable Instruments Act. Besides, the large number of cases pending in Mumbai Courts, equally large number of similar cases are pending in other courts throughout Maharashtra. The tendency of the litigants in most of these cases is to directly rush to this Court on the issuance of process. Invariably, the paramount consideration to directly rush to this Court is to take benefit of the laws delay. The cascading effect is on the efficacious docket management of this Court.

Understood thus, as a matter of prudence, it has become necessary to exercise rule of discretion to decline to entertain writ petition directly challenging the order of Magistrate issuing process especially in cases where the challenge is founded on the grounds that can be effectively answered by the Revisional Court on the application of the settled legal position. The advantage will not only be one of lessening the burden of avoidable docket management of this Court; but also facilitate this Court with a reasoned judgment of the Sessions Court on the points in issue, in the event the matter is required to be brought before this Court by the aggrieved party.

(emphasis supplied)

9. Indiscriminate filing of applications u/s 482 of the Code many a times leads to matters being stalled in the trial courts, simply because this Court cannot swiftly dispose of those cases. In Krishnan and another Vs. Krishnaveni and another, ,

even the Apex Court, while upholding interference by the High Court, on facts of that case, specifically observed in para 10 that the object of criminal law was to see that trials are conducted expeditiously & then found that:

The recent trend is to delay the trial & threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed & public justice can be ensured only when the trial is conducted expeditiously.

10. Very recently in *Imtiyaz Ahmad Vs. State of Uttar Pradesh and Others*, , the Supreme Court again noted the gravity of the problem and suggested some measures to meet the situation in the following words:

2. In these appeals, this Court is concerned with a case where orders were passed by the High Court on several dates after the registration of FIR and on stay order being granted, investigation, and framing of charges or trial thereafter in the matter remained pending in the High Court for a long period of time. The stay order dated 9.4.03 and several orders dated 29.4.03, 30.4.03, 10.10.03, 7.5.04, 26.5.05, 19.9.06, 27.9.06, 6.10.06 & 18.12.08 of the High Court passed thereafter have been impugned in these appeals.

6. The SLP came up for hearing before this Court on 8.1.2010. This Court was very greatly concerned about the manner in which criminal investigation and trial have been staved by the High Court and also being aware of the fact that similar cases are happening in several High Courts in India wanted a serious consideration of the issues and appointed Mr. Gopal Subramaniam, Senior General of India) to assist the Court as *Amicus Curiae*.

19. On the basis of the aforesaid data it is clear that problems which the administration of justice faces today is of serious dimensions. Pendency is merely a localized problem, in the sense that it affects some High Courts far more than others....

33. It is submitted that the issues being considered in this case have far reaching implication for maintaining of rule of law. Where investigation/trial is stayed for along time-even if the stay is ultimately vacated, the subsequent investigation / trial may not be very fruitful for the simple reason, that evidence may no Page 26 of 187 longer be available. Witnesses may not be able to recall the events properly, and some may have moved away or even died. Even the parties to the litigation may not survive. Unduly long delay has the effect of bringing about blatant violation of the rule of law and adverse impact on the common man's access to justice. A person's access to justice is a uaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short-cuts and other for a where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to Rule of Law.

35. The present case disclose the need to reiterate that "Access to Justice "is

vital for the Rule of Law, which by implication includes the right of access to an Independent Judiciary. It is submitted that the stay of investigation or trial for significant periods of time runs counter to the principle of Rule of Law, wherein the rights and aspirations of citizens are intertwined with expeditious conclusion of matters. It is further submitted that delay in conclusion of criminal matters signifies a restriction on the right of access to justice itself, thus amounting to a violation of the citizens "rights under the Constitution, in particular under Article 21

38. Merely widening the access to justice is not enough to secure redress to the weaker sections of the community. Post Independence. it was evident, that litigation in India was getting costlier and there was agonizing delay in the process. After the adoption of the Constitution and creation of a Welfare State, the urgency of some structural changes in the justice delivery system was obviously a major requirement, In the 14th Report of the Law Commission under the Chairmanship of the first Attorney General for India Shri M.C. Setalvad. it was observed as, under-

In so far as a person is unable to obtain access to a Court of law for having his wrongs redressed.... Justice becomes unequal and laws which are meant for his protection fail in their purpose.

60. The Court, upon a detailed and very anxious consideration of the aforesaid issues and specially huge pendency of arrears in different High Courts and considering the stand of the Central Government in its affidavit dated 18.1.2012 is giving the following directions:

I. Certain directions are given to the High Courts for better maintenance of the Rule of Law and better administration of justice; While analyzing the data in aggregated form, this Court cannot overlook the most important factor in the administration of justice. The authority of the High Court to order stay of investigation pursuant to lodging of FIR, or trial in deserving cases is unquestionable. But this Court is of the view that the exercise of this authority carries with it the responsibility to expeditiously dispose of the case. The power to grant stay of investigation and trial is a very extraordinary power given to High Courts and the same power is to be exercised sparingly only to prevent an abuse of the process and to promote the ends of justice. It is therefore clear that:

(i) such an extraordinary power has to be exercised with due caution and circumspection,

(ii) Once such a power is exercised, High Court should not lose sight of the case where it has exercised its extraordinary power of staying investigation and trial,

(iii) High Court should make it a point of finally disposing of such proceedings as early as possible but preferably within six months from the date the stay order is issued.

(emphasis supplied)

11. Wave after wave of applications for quashing investigations in which in a summary three minute hearing investigations & trials get stayed inundate the system. Recently a shocking instance of a trial under the Prevention of Corruption Act in respect of an incident in eighties having been stayed in a Revision in 1992, i.e., 20 years ago was noticed in which one of revision petitioners had been reported to have died and that revision was disposed of in 2012 paving way for trial -which, I am afraid, may be an empty formality. As the discussion to follow would show, taking up such cases for final hearing at the admission stage would be only at the cost of litigants waiting for final hearing of matters admitted years ago - a case of robbing Peter to pay Paul. Today, the problem has grown into a calamity and there is a real fear of the system, at least in Mumbai, being washed away by tsunami waves of applications u/s 482 of the Code. Every day the cause list, which is computer generated, has over 100 cases listed for admissions & orders. Speaking for myself, actual experience shows that maximum 70 cases can be heard. The remaining cases get offloaded every day. It is not that the Chief Justice is burdening a Court with unbearable burden. In the given strength and available infrastructure he would assign more Judges to a category when the accumulation of cases in that category rises to alarming levels by withdrawing Judges from some other category resulting in accumulation in that category. Whenever a Judge can be spared on account of unexpected break up of a Bench or the like, the Chief Justice does invariably assign the offloaded cases by transferring the board to such Judge. The statistics of cases listed & cases offloaded every day during the last month is as under:

Date

No. of cases of loaded from the cause list

30.1.2012

125

31.1.2012

59

1.2.2012

--

2.2.2012

39

3.2.2012

52

6.2.2012

93

7.2.2012
09 (Board transferred)
8.2.2012
45
9.2.2012
57
10.2.2012
Court is not available
13.2.2012
107
14.2.2012
85
15.2.2012
Board transferred
16.2.2012
17.2:2012
Holiday for election
37
21.2.2012
116
22.2.2012
75
23.2.2012
31
24.2.2012
31
27.2.2012
108
28.2.2012
63

29.2.2012

77

1.3.2012

(Board transferred)

2.3.2012

(Board transferred)

5.3.2012

26

6.3.2012

228

This creates a backlog of admission matters. Number of cases awaiting admission hearing pertaining to assignment of this Court is as under:

Statement showing Year-wise Pendency of Pre-admitted Criminal writ petitions. Revision and Criminal Applications pertaining to Single Bench - For Quashing

Year

criminal Writ Petitions

Criminal Revision Applications

Criminal Applications

2003

01

0

0

2004

13

0

01

2005

01

0

01

2006

0

0

01

2007

05

0

0

2008

01

0

02

2009

06

0

09

2010

102

08

100

201

477

19

434

2012

107

02

275

Total

713

29

823

Statement showing Year-wise Pendency of Preadmitted Criminal Applications -
For Transfer

Year

Cri. Apples.

-For Transfer

2006

01

2009

02

2010

04

2011

10

2012

07

Total

24

12. As the above charts will show many of these cases are awaiting admission hearing for more than two years.

13. The 70 odd cases that remain on board get about three hours in the first sitting -roughly on an average about three minutes per case. Even if the Judge has read the brief, it is doubtful if in those three minutes Advocates would be successful in communicating a point which the Judge may not have noted. Is the efficacy of the system to be measured by rushing through the cause list without even affording a reasonable time to make a point, to evolve arguments, to check correctness of premises? I have my own doubts if this at all serves the cause of justice as well as evolution of healthy practices at bar. In the cases listed for admission it is imperative that cases where externment orders are challenged would have to be given a priority since the life of such orders is limited and in many cases matters come up for hearing when the period is coming to an end. If stay has been granted in such cases, the administration suffers because the externment is not executed and if stay has not been granted though the externnee may have a good case, he has already suffered the order. Second

sitting of two hours has to be devoted to final hearing matters which are stagnating for years simply because there was never enough time left after dealing with this onslaught of applications u/s 482, writ petitions and the like. In this roster, cases of many convicts who are in jail and who have suffered nine out of ten years of their imprisonment, many of whom have suffered more than half of their sentences, and some who have already suffered the whole sentence are being heard. As if this is not enough, cases of convicts, who are on bail right from the year 1994 are pending. A person, who ought to have been in jail is roaming freely for all these years and when the turn to dismiss his appeal comes, the argument of his having lived in the shadow of conviction for all these years comes up. Appeals against acquittals are pending since nineties & God alone knows when they could be heard. Many matters are rendered infructuous due to death of parties. Revisions or criminal applications in which proceedings in trial Courts have been stayed cannot at all receive attention of the Judge. The figures of pendency of cases awaiting final hearing assigned to me are as under:

Statement Showing Pending Criminal Appeals for Final Hearing As on 17/3/2012

Year

Jail

Conviction Bail

Prevention Corruption Act

Total

1992

0

0

01

01

1993

0

0

0

0

1994

0

0

08
08
1995
0
48
07
55
1996
0
0
06
06
1997
0
0
27
27
1998
0
127
29
156
1999
0
0
13
13
2000
0
0

53
53
2001
0
171
52
223
2002
0
0
57
57
2003
0
0
41
41
2004
0
0
51
51
2005
0
0
19
19
2006
0
0

17
17
2007
0
0
14
14
2008
16
0
07
23
2009
0
0
05
05
2010
0
0
07
07
2011
08
0
01
09
Total
24
346

415

785

14. Let there be no misunderstanding Page 38 of 187 because the chart shows that appeals of convicts who, are in jail are pending only since 2008. Most of these convicts have been in jail throughout the trials & therefore their detention in custody is for periods far longer than from 2008. Statistics of other categories of cases awaiting final disposal is as under:

Statement Showing Pending Final Hearing Matters As on 17/03/2012. [CRIMINAL]

Year

Revn.

Appln.

Writ Petition

Total

1997

61

0

0

01

1998

02

0

0

02

1999

04

0

0

04

2000

02

02

03
07
2001
35
11
14
60
2002
112
17
72
201
2003
50
36
113
199
2004
91
58
148
297
2005
108
63
156
327
2006
189
54

174
417
2007
101
48
117
266
2008
106
56
113
275
2009
87
136
-
223
2010
12
25
-
37
2011
04
03
-
07
Total
904
509

15. Can the High Court claim under these circumstances that approaching High Court is an efficacious remedy for redressing any real grievance? Or, is it only a dilatory tactic to ensure that an offender is never served with just dessert? Is physical ability of the system to cope up with the influx thoroughly irrelevant?

16. In *Jamshed N. Guzdar Vs. State of Maharashtra and Others*, , decided seven years ago, the Supreme Court upheld the constitutional validity of a two decade old legislation which could have seen transfer of jurisdiction to try civil suits to the City Civil Court, but had put a rider to issuance of notification to implement the act by requiring that the provisions should not be implemented unless there was adequate infrastructure available in the City Civil Court. This may be the solitary but salutary instance of a Constitutional Court insisting on creation of infrastructure first. The Court held thus:

75. Two other subsidiary contentions urged on behalf of the appellant in Civil Appeal No. 2452/92 are required to be examined - (i) in the absence of necessary infrastructure and the requisite number of Judges in the city civil Court, the action of the State Government in issuing notification dated 20.8.1991 was arbitrary and unreasonable and (ii) the said notification was issued unfairly due to pressure on account of agitation by a section of lawyers and for other extraneous consideration.

76. Before the High Court, it was contended that the impugned Act was brought into force by the notification exercising statutory power unreasonably and arbitrarily in violation of Articles 14 and 19(1)(g) of the Constitution; there was no infrastructure in the city civil Court to cope with the additional burden of new civil suits and other proceedings of civil nature which would be filed on or after 1.5.1992. In that regard, deficiencies were pointed out as to the Court rooms, required number of Judges and other infrastructure by giving details.

77. In opposition, it was contended that in implementing the Act, there were bound to be some inevitable problems having regard to the magnitude of required infrastructure. Court rooms and required number of Judges etc.; such problems were inevitable; they can be worked out in due course of time; but on that ground itself, the impugned notification need not be struck down.

82. Looking to what is found by the High Court on facts in relation to infrastructure, and keeping in view the position of law as stated in the judgments of this Court aforementioned, we have no good reason to take a different view. In other words, in this regard we concur with the view expressed by the High Court in deferring the implementation of the impugned Notification to a future date and giving liberty to the State Government to apply. The High Court deferred the implementation of the impugned Notification till 2.10.1992.

83. This Court on 23.9.1992 passed the following order:-

An affidavit has been filed on behalf of the State Government to show the infrastructural facilities for the new courts intended to deal with fresh cases. In certain essential aspects, facilities are in the form of proposals far action. The appointment of the requisite minimum number of judicial officers is also said to be under process. Admittedly, there are no extant facilities for the functional operation of even the sixteen new courts proposed by the State Government. The question of implementation of the amendments would arise only after these infra-structural facilities are completed. After bringing into existence the requisite infrastructure, the State Government is at liberty to file an affidavit indicating that all the requirements have been made available and that at least sixteen courts have become functional with the appointment and posting of Presiding Officers, arrangements of Court halls; posting of the Court staff, etc. The affidavit may be filed within six weeks from today. Liberty to mention.

2. The 2nd October, 1992 fixed by the High Court for commencement of the operation of the amended provisions is in the circumstances extended till 30th November, 1992.

Printing of the records is dispensed with. Additional documents, if any, may be filed by both sides within four weeks from today. Written submissions from both sides to be filed before 30th November, 1992. Subject to appellants filing their written submissions before 30th November 1992, the matter shall be listed for final hearing on the 9th, 10th and 11th December, 1992 to be heard on day-today basis. It is expected that the appellants would complete the submissions on their side in one and half days and the respondents in one day and reply in the remaining half a day. The schedule of hearing shall be within this time frame and the arguments to be completed within three days so limited.

84. Again on 27.11.1992, this Court passed the order which reads:-

From the report of the High Court and the omission on the part of the State to place on affidavit the requisite infrastructure to be provided we gather that things are not very different from where we left matters on the last occasion. The matters will now be listed for final hearing on 27th, 28th and 29th January, 1993.

Stay to continue till further orders.

The State shall in the mean while expedite arrangements for providing requisite infrastructure and report to the Court on affidavit.

85. The said order is operating till now i.e. for more than 12 years. During this period, what steps have been taken by the State Government, what is the existing situation, and whether all the requirements are satisfied before liberty can be given to the State Government to implement the impugned notification, are the matters to be ascertained. In this view, the implementation of the impugned Notification is to be deferred. It is open to the State Government to apply to this Court seeking permission for implementation of the said Notification placing on record necessary material to show that there is adequacy of

infrastructure and the requirements as to number of Judges and Court rooms, etc. are satisfied. In this regard a report from the High Court is also required to be called as and when the State Government applies to this Court seeking permission for implementation of the said notification dated 20th August. 1991. As indicated in paragraph 18 of this judgment, it is open to the State of Maharashtra to take necessary steps to amend section 3 of the 1986 Act for providing an appeal.(emphasis supplied)

17. This underlines the fact that availability of infrastructure cannot be an altogether irrelevant consideration for a Court to effectively exercise jurisdiction vesting in it. Establishment of two new centers of City Civil Court does not seem to have met the approval of what the authorities have in mind. The Supreme Court itself noticed that though the order about providing adequate infrastructure was issued 12 years ago, it was not clear as to what steps were taken to satisfy the requirements. Even seven long years after the judgment possibly a weary executive and a legislature, not enthusiastic about implementing a law passed by it, are not able to meet infrastructural needs, which may have been spelt out. Or, may be passage of time itself is resulting in the executive chasing a shifting finish line or a mirage. The result however is that what was conceived in the legislation passed over two decades ago threatens to be a still birth. When in spite of political protests & agitations even an atomic power plant could be built, it is enigmatic the authorities could not seek directions from the Courts as to what sort of infrastructure was expected & create it in these seven years. In fact, a new brand building belonging to Government but not put to any use for years was available & could have met all needs. The result, however, is that the relief which this Court could have expected by transfer of civil cases to the City Civil Court is still elusive.

18. As far as this Court is concerned, there are not even any dreams, leave aside any concrete plans to add to this 125 years old building to meet even the current requirements. Thinking about future needs and planning to meet them is a distant dream. This being a heritage site, alterations are next to impossible. There are no plans for any new building, which cannot in any case come up in the vicinity of a heritage building and shifting the Court to any other location with adequate space & infrastructure or establishing Benches in other cities is simply unthinkable. Judgment of the Supreme Court in Jamshed N. Guzdar (supra) would underline that availability of infrastructure would be a relevant consideration while considering jurisdiction to be exercised. Priorities would have to be set by the Court rather than allowing the judicial process to be hijacked by those who have another remedy at the cost of those languishing in jails without any remedy.

19. A major reason advanced for invoking jurisdiction of the High Court u/s 482 of the Code is that process issued by a Magisterial Court or investigation ordered exposes the person accused to a lot of stress. He has to face adverse media coverage. His daily pursuits get affected by being repeatedly required to appear

before the authorities, without any end point in view. His liberty is curtailed by either denial of bail or imposition of onerous conditions of bail. The learned Counsel also submitted that at the stage of receiving process of the Court or even at the time of framing of charge, a person accused cannot ask the Court to even look into material which he may have to show that the whole exercise of putting him to trial is meaningless & since such material can be looked into only in a proceeding u/s 482 of the Code, the parties are left with no alternative but to approach the High Court. Presuming that such are the difficulties of a person against whom an investigation is ordered or process is issued, the question is whether an application to the High Court, in the present congestion - may virtual choking - of the system in Bombay High Court could be an efficacious remedy securing to him the relief claimed. The answer has to be a clear "no" because of the circumstances already enumerated. The inflow is so huge that only those cases which actually reach an admission hearing receive a fleeting glance from the Court. Persons who may have more meritorious claims have to wait interminably while the Judge spends time in frequently weeding out undeserving claimants. If the time taken for a case to be effectively heard only for admission is more than an year, and for final adjudication many more years, it cannot be said that by making an application u/s 482 of the Code, ends of justice could be secured or abuse of process of Court stopped. It only stops further progress of the case before the trial Court slows down trials.

20. It is this malady which ought to be remedied rather than attempting to do justice on a case to case basis. The present approach is like allowing a disease to spread to epidemic proportions & even then treat individual patients who complain of affliction rather than treat the causes of epidemic. In my humble opinion, rather than finding out what High Courts can or cannot do to remedy the situation, it would be necessary to find out what trial Judges & Magistrates & the prosecutors & Bar should be doing under the existing procedures. Today the problems have aggravated, not necessarily because of an increased inflow of cases, but due to failure of stake holders in trial courts to follow the procedures prescribed and wasting time on non-adjudicatory work.

21. Fortunately, analysis of data of institution and disposal of criminal cases before courts in Maharashtra shows a reassuring trend that trial courts are doing really well, and, disposal of cases being greater than institution, pendency is coming down. Therefore, there is a distinct possibility of about 100 Judges of the courts of Sessions under the Principal seat of the High Court being able to deal with revision applications against orders issuing processes more swiftly than this Court, though they too have other cases before them. Even if the cases were to land up in this Court eventually, the matters would certainly be more crystallized, and at least in some cases parties may not at all approach this Court.

PERFORMANCE OF THE MAHARASHTRA JUDICIARY

(July, 2010 to December, 2011)

(Figures in Lacs)

Pendency as on

institution

Disposal

Pendency as on

30.6.2010

(30.6.2010

to

31.12.2011)

(30.6.2010

to

31.12.2011

31.12.2011

41.35

31.07

39.66

32.76

Year-wise Institution and Disposal of cases Pendency of Old cases (Figures in Lacs)

Year

no. of cases instituted

no. of cases disposed of

2009

18, 52, 967

20,06,314

Jan to June

2010

9,34,036

20,44, 319

9,64,398

23,05,

471

11,10,283

13,41,0473

July to Dec.

2011

19,96,277

26,24,928

Pendency of old cases (Figure in Lacs)

Particulars

Pendency as on 30.6.2010

Disposal

30.6.2010

to

31.12.2011

Pendency as on

31.12.2011

Cases pending for 10 years or more

4.43

2.41

2.61

Cases pending for 5 years or

8.73

4.66

4.08

more but less than 10 years

Total cases pending for 5 years or longer

1316

7.07

6.09

Cases u/s 138 of N.I. Act 1881

(figures in Lacs)

Courts

Pendency as on

30.6.2010

Institution

30.6.2010 to 31.12.2011

Disposal

30.6.2010 to 31.12.2011

Pendency as on

31.12.2011

Courts of Metropolitan Magistrate Bombay

3.27

2.01

3.57

1.71

Other Courts in Maharashtra

3.77

1.78

2.69

2.86

Total

7.04

3.79

6.26

4.57

22. Most of the cases before trial courts get over within an year of institution in a light Court or two years in a Heavy Court. Only a small proportion of criminal cases drag on for more than two years & in many such cases, the cause is dilatory tactics of litigants.

23. Therefore, once steps to ensure that a criminal trial is held with minimum

invasion on his pursuits, a litigant, who is served with a process of Criminal Court may prefer to go through a quick trial, rather insist on a quick trial, and come clean, if indeed the process issued is an abuse or legally untenable.

24. Speedy trial has been recognized as a fundamental right of our people. In fact, Shri Jethmalani, Senior Counsel relied on a judgment in [Pankaj Kumar Vs. State of Maharashtra and others]⁸, reported at 2008(2) Bom.C.R.(Cri.) 590(S.C.) : (2008)16 S.C.C. 117, where it has been held as under:

18. The exposition of Article 21 in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, was exhaustively considered afresh by the Constitution Bench in Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) in every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is -- who is responsible for the delay?; (iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions and so on-- what is called, the systemic delays; (v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case; (vi) ultimately, the Court has to balance and weigh several relevant factors--"balancing test" or "balancing process"--and determine in each case whether the right to speedy trial has been denied; (vii) Ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the Court feels that quashing of proceedings cannot be in the interest of justice, it is open to the Court to make appropriate orders, including fixing the period for completion of trial; (viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to

weigh all the circumstances of a given case before pronouncing upon the complaint (ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

In every case, where the right to speedy trial is alleged to have been infringed, the Court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the Court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the Court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the Court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial." (emphasis supplied)

25. If that be so, the first and foremost duty of the trial courts would be to ensure that this valuable right is respected. And, it would be the duty of the High Courts, in exercise of power of superintendence u/s 483 of the Code, to which a reference was made by Shri Jethmalani, the learned Senior Counsel for one of the applicants, to ensure that trial courts stick to this mandate. Therefore, when trial Courts are not doing badly as the figures quoted earlier would show, rather than interfering with trials or investigations at the drop of a hat, directions to quickly complete the trials would secure the ends of justice. This is apart from the fact that given the inflow of applications, pendency, available time, need to give sufficient time to each case & to prioritise, would mandate that if the grievance has a chance being redressed in the Sessions Courts, there should be no harm in suggesting such a course.

26. It is in this context that the learned Senior Counsel for the applicants have painstakingly sought to persuade me to hold that a litigant has a right to approach this Court directly invoking jurisdiction u/s 482 of the Code, without exhausting other remedies, which could not be denied on the ground of non-availability of time. They submit that there can be no doubt in this matter after the judgment of the Supreme Court in Dhariwal's case (supra) specifically reversing order of this Court taking a contrary view. They point out that this judgment has been followed by the Supreme Court in a recent judgment in (Punjab State Warehousing Corporation Vs. M/s. Sh. Durgaji Traders)¹¹, reported in 2012 All.M.R.(Cri) 723(S.C).

27. It was also pointed out that other Honorable Judges of this Court have not harboured such doubts about tenability of such applications directly before this Court & it would be incongruous, if in the very same Court a Judge would be asking the parties to first exhaust alternative remedies. It was submitted that

should such a view be taken the matter would have to be referred to a Division Bench. It was also pointed out that such cases could be taken up for final hearing at admission stage itself which could save time spent in first, hearing a matter for admission, and then again hearing it on merits. It was also canvassed that revision before the Sessions Court cannot be an alternative to an application u/s 482 of the Code, and in any case, since a Division Bench of this Court has already ruled that this Court exercises revisional jurisdiction concurrently with Court of Session, and it is open to the litigant concerned to decide whether to approach this Court or the Court of Session & therefore it matters not whether the challenge is by way of an application u/s 482 or by way of a revision. The arguments advanced also threw light on the appalling situation in the trial courts where trials drag on principally because provisions of the Code meant to ensure speedy justice have simply been ignored, as if they do not exist on the statute book.

28. Some of the respondents in person, however, sought to suggest that the applicants ought to first approach the Sessions Courts. They too highlight the plight of litigants in trial courts.

29. One of the suggestions by the learned Counsel to take up matters for final hearings at admission stage, may not be -or at least does not appear to me - to be workable as indicated earlier after quoting directions of the Apex Court in *Imtiyaz Ahmed Vs. State of Uttar Pradesh* (supra). Given the limited time available for even considering matters for admission - namely on an average three minutes per case - the hazards of hastily finally disposing of proceedings for quashing of complaints and FIRs, which have been held to be serious matters by the Supreme Court, would create more work for the Supreme Court. I may repeat that giving enough time to hear these cases finally at the admission stage would only be at the cost of litigants whose causes have been admitted and who are patiently waiting for their cases being taken up for, not years, but decades. It would be robbing Peter to pay Paul.

30. It is rather unfortunate that what appeared to the learned Senior Counsel for applicants to be clear and obvious, namely, that availability of alternate remedy would not justify asking the party to exhaust such remedy first, was not clear to me even after going through the judgments on which they sought to place reliance. In *Dhariwal's* case the Supreme Court had specifically the re-, versed order of this Court refusing to entertain application u/s 482 of the Code only on the ground that the party had alternate remedy of filing a revision before the Court of Sessions and had also overruled the judgment in *V.K. Jain's* case. The observations of the Supreme Court which are sought to be relied on are as under:

6. Indisputably issuance of summonss not an interlocutory order within the meaning of section 397 of the Code. This Court in a large number of decisions beginning from *R.P. Kapur Vs. The State of Punjab*, to *(Som Mittal Vs. Govt. of Karnataka)*¹³, 2008(2) Bom.C.R.(Cri.) 301(S.C.) has laid down the criterion for entertaining an application u/s 482. Only because a revision petition is

maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application u/s 482 of the Code. Even where a revision application is barred, as for example the remedy by way of section 115 of the Code of Civil Procedure, 1908, this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. See (Surya Dev Rai Vs. Ram Chander Rai)¹⁴, 2005(Supp.) Bom.C.R. 897(S.C). Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Session is barred u/s 397(2) of the Code, the inherent power of the Court has been held to be available.

8. In fact in Adalat Prasad Vs. Rooplal Jindal and Others, to which reference has been made by the learned Single Judge of the Bombay High Court in V.K. Jain, this Court has clearly opined that when a process is issued, the provisions of section 482 of the Code can be resorted to. It may be true, as has been noticed by the High Court that thereunder availability of appellate or revisional jurisdiction of the High Court did not fall for its consideration but in our considered opinion it is wholly preposterous to hold that Adalat Prasad (supra), so far as it related to invoking the inherent jurisdiction of the High Court is concerned, did not lay down good law. The High Court in saying so did not only read the said judgment in its proper perspective; it misdirected itself in saying so as it did not pose unto itself a correct question.

10. We may notice that in (G. Sagar Suri Vs. State of U.P.) ¹⁶, 2000 Bom.C.R. (Cri.) 694(S.C.) : AIR 2000 S.C.C. 754 this Court has held: (Bom.C.R. pp. 699, paras 7-8)

7. R was submitted by Mr. Lalit, learned Counsel for the second respondent that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, the High Court cannot exercise its jurisdiction u/s 482 of the Code. In this connection, reference may be made to two decisions of this Court in (Pepsi Foods Ltd. Vs. Special Judicial Magistrate)¹⁷, 1998(5) Bom.C.R. (S.C.) 426 and Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court u/s 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

8. Jurisdiction u/s 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to

exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction u/s 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

11. We may furthermore notice that in Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another, this Court while opining that the High Court in exercise of its jurisdiction u/s 482 of the Code does not function either as a Court of appeal or revision, held: (S.C.C. pp. 193-94, para 7)

"7. Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down: any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of the process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

31. This was followed in Punjab State Warehousing Corporation Faridkot Vs. M/s. Sh. Durgaji Traders & ors., in Criminal Appeal No. 2226 of 2011 (Arising out of SLP (Criminal) Page 72 of 187 No. 5305 of 2008) 2012 All.M.R.(Cri.) 723(S.C.) where the Court held as under:

4. Aggrieved thereby the appellant moved the High Court with a petition u/s 482 of the Code for setting aside of the said orders and restoration of the complaint. As aforesaid, by the impugned judgment, the High Court has dismissed the petition, holding that the dismissal in default of a private complaint amounts to acquittal of the accused, and since against such an order a specific statutory remedy exists in the Code, a petition u/s 482 of the Code cannot be entertained. Hence, the present appeal by the complainant.

6.... In support of the proposition that availability of an alternative remedy per se is no ground for dismissal of an application u/s 482 of the Code, learned Counsel commends us to the decision of this Court in Dhariwal Tobacco Products Ltd. & ors. Vs. State of Maharashtra & anr.

9.... Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition u/s 482 of the Code. As aforesaid, one of the circumstances Page 73 of 187 envisaged in the said section, for exercise of jurisdiction by the High Court is to secure the ends of justice. Undoubtedly, the trial Court had dismissed the complaint on a technical ground and therefore, interests of justice required the High Court to exercise its jurisdiction to set aside such an order so that the trial Court could proceed with the trial on merits.

32. It was submitted that since in Dhariwal, the Court had considered the earlier judgments, this latest pronouncement of the Apex Court should be followed. The learned Senior Counsel submitted that even before Dhariwal, Supreme Court had not held that existence of alternate remedy was a bar to invocation of jurisdiction u/s 482 of the Code and relied on the following judgments.

33. In Raj Kapoor and Others Vs. State and Others, , the legendary Krishna Iyer, J. had observed in para 10 as under:

10. The first question is as to whether the inherent power of the High Court u/s 482 stand repelled when the revisional power u/s 397 overlaps. The opening words of section 482 contradict this contention because nothing in the Code, not even section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of section 482. Even so. a general principle pervades this branch of law when a specific provision is made easy resort to, inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In Madhu Limaye Vs. The State of Maharashtra, this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in section 397(2). Apparent conflict may

arise in some situations between the two provisions and a happy solution:

"would be to say that the bar provided in subsection (2) of section 397 operates only in exercise of the revisional power of the High Court meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principle enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then if the assailed is purely on an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction.

In short, there is no total ban on the exercise of inherent power where abuse of the process of the Court or other extra-ordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the Court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the courts process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.:

"The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."(emphasis supplied)

34. Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , it has been held that:

6. It may be noticed that section 482 of the present Code is the ad verbatim copy of section 561-A of Page 78 of 187 the old Code. This provision confers a separate and independent power on the High Court alone to pass orders ex

debito justitiae in cases where grave and substantial injustice has been done or where the process of the Court has been seriously abused. It is not merely a revisional power meant to be exercised against the orders passed by subordinate courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate courts. Thus, the scope, ambit and range of section 561-A (which is now section 482) is quite different from the powers conferred by the present Code under the provisions of section 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent powers u/s 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between sections 482 and 397(2) of the present Code." (emphasis supplied)

35. In *R.S. Raghunath Vs. State of Karnataka and another*, the Court held in paras 102 & 103 as under:

102. 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 FIR 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 FIR 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 FIR 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 barengrafted 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. 103. 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 inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR 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.

36. In my view, the above observations would rather show that even Bhajan Lal is an authority for the proposition that existence of alternate remedy is a bar for invocation of inherent powers. It may be seen that the Court gave "the following categories of cases... wherein such power could be exercised...". The sixth category reads as under:

(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 (no?) a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party." (added by me)

It may be seen that Clause 6 is not about a restriction on exercise of inherent powers. It lays down a circumstance in which the power could be exercised. It is obvious that the Court wanted such power to be exercised when there is an express legal bar to the institution of the proceedings. But could the Court have said that it ought to be exercised when there is a specific provision in the Code providing efficacious redress for the grievance of the aggrieved party? If such a requirement were to be read, first, it would not be permissible to invoke inherent powers at all unless there is a specific provision to redress the grievance, in which case availability of inherent powers would be a redundancy since the provision to redress the grievance would take care of the problem. What the Court intended to convey was obviously that inherent power could be exercised when there is an express bar to the institution or continuance of the proceeding and there was no specific provision to redress the grievance.

37. In Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, the Supreme Court had held as under:

4. It appears that when the summons reached the appellants they immediately approached the High Court seeking the aforesaid reliefs. The High Court, however, refused to entertain the writ petition on the ground that the appellants should approach the first respondent for discharge u/s 245 of the Code of Criminal Procedure (for short "the Code") if the complaint did not disclose commission of any offence by the appellants and the Court considered the charge to be groundless. The High Court did not approve of the appellants approaching it under writ jurisdiction when sufficient remedy was available under the Code.

"12. In the present case though it was a warrant case the first respondent issued summon but he did not dispense with personal attendance of the accused. Chapter XIX-B of the Code provides for trial of warrant cases instituted on a complaint. We may note sections 244 and 245 falling under this Chapter.

38. The Court then quoted provisions of sections 244, 245 and 482 of the Code and farther held:

22. It is settled that High Court can exercise its power of judicial review in criminal matters. In *State of Haryana and ors. Vs. Bhajan Lal and ors.*, this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers u/s 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. While laying down certain guidelines where the Court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of such guidelines is 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. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and u/s 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or section 482 of the Code it may not always be necessary to invoke the provisions of Article 226.

26. Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory....

28. Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the

complainant has to bring only two witnesses to support his allegations in the complaint to set the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

29. No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court u/s 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants. If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused." We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the magistrate as well, as the magistrate will not give any different conclusion on an application filed u/s 245 of the Code. The High Court says that the appellants could very well appear before the Court and move an application u/s 245(2) of the Code and that the magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. If we now refer to the facts of the case before us it is clear to us that not only that allegations against the appellants do not make out any case for an offence u/s 7 of the Act and also that there is no basis for the complainant to make such allegations....

30. It is no uncomfortable thought for the appellants to be told that they could appear before the Court which is at a far off place in Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application u/s 245(2) of the Code or to face trial when the complaint 8b the preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the courts & the High Court should not have shied away in exercising their jurisdiction,..

39. It may be seen that one of the concerns expressed was about the accused being required to appear in a Court in a far off place to seek discharge u/s 245(2) of the Code. This problem is duly taken care of by requiring a magistrate to first conduct an inquiry u/s 202 of the Code before entertaining a complaint against an accused residing outside his jurisdiction.

40. In *G. Sagar Suri and another Vs. State of U.P. and others*, reported in 2000 Bom.C.R.(Cri.) 694(S.C.): AIR 2000 S.C.C. 754, apart from what is already quoted from this judgment in *Dhariwal*, the Court held as under:

11. In *Chandrapal Singh and Others Vs. Maharaj Singh and Another*, , the judgment started as under (Para 1): "A frustrated landlord after having met his Waterloo in the hierarchy of Civil Courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous.""

This Court said (Para 14):

We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal Court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal Court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal Court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power u/s 482, Cri.P.C.

41. In *Som Mittal Vs. Government of Karnataka*, , after quoting from earlier judgments right from *R.P. Kapur Vs. The State of Punjab*, to *Bhajan Lal*, the Court held that the words requiring restraint in exercising inherent powers - rarest of rare cases -is not used in the sense in which it is used in relation to punishment for murder.

42. After *Dhariwal*, in *Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others*, , the Court held as under:

38. We have considered the submissions made by the learned senior Counsel. A bare perusal of the submissions would be sufficient to amply demonstrate that this cannot be said to be an "open and shut" case for either of the parties. There is much to be said on both sides. The entire scenario painted by both the sides is circumscribed by "ifs" and "buts".....In such circumstances, we have to examine whether it was appropriate for the High Court to exercise its jurisdiction u/s 482 Cri.P.C. to quash the proceedings at the stage when the Magistrate had merely issued process against the respondents. 39. The contours within which the High Court would exercise its jurisdiction to quash the criminal proceeding has been dilated upon, and well defined by this Court in a catena of judgments. We may

make a reference here only to a few representative cases. In the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, considering the limits within which the Magistrate is required to conduct an inquiry u/s 202 of the Cri.P.C, this Court observed that the scope of such inquiry is (S.C.C. pp. 740-41, Para 4): "extremely limited - limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint- (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings u/s 202, the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not".

40. It has been further held (Nagawwa's case Para 5) as follows:

"....Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry u/s 202 of the Code of Criminal Procedure which culminates into an order u/s 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

- (1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
- (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally Competent Authority and the like.

41. The aforesaid examples are of course purely illustrative and provide sufficient guidelines to indicate the contingencies where the High Court can quash proceedings.

42. This Court in the case of Kurukshetra University and Another Vs. State of Haryana and Another, again stated the principle regarding the exercise of the inherent powers conferred by section 482 Cri.P.C. Chandrachud, J. speaking for

the Bench observed as follows:

2...It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.

43. The Court then quoted off the quoted paras 102 & 103 from State of Haryana and others Vs. Ch. Bhajan Lal and others, & noted that those principles were further reiterated in the case of Janata Dal Vs. H.S. Chowdhary and Others, .

44. In para 48 the Court quoted from the judgment in the case of State of Orissa Vs. Debendra Nath Padhi, where the question involved was not about the exercise of jurisdiction u/s 482 of the Code, but of a case "where, along with the petition, the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but, is about the right claimed by the accused to produce material at the stage of framing of charge."

In para 49 the Court noted that:

... this Court in the case of (Inder Mohan Goswami and anr. Vs. State of Uttaranchal and ors.)³⁰, (2007)12 S.C.C. 1 very clearly observed that the aforesaid powers are very wide and the very plenitude of the power requires great caution in its exercise.... Reiterating the observations made by this Court in the case of Indian Oil Corporation Vs. NEPC India Ltd. and Others, , the Court again cautioned about a growing tendency in business circles to convert purely Civil disputes into Criminal cases. The Court reiterated that any effort to settle Civil disputes and claims, which do not involve any Criminal offence, by applying pressure through Criminal prosecution should be deprecated and discouraged."

45. The question as to whether an application u/s 482 of the Code could be filed without first exhausting other remedies has been dealt with by the Apex Court on many earlier occasions. The first and in my view, the most important judgment on the point is that by a Three Judge Bench headed by the great Justice Gajendragadkar in R.P. Kapur Vs. The State of Punjab, which is referred to even in Dhariwal's case. The Court had held as under:

6. Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court u/s 561A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case, the magistrate before whom the police report has been filed u/s 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the

Code. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Rule 561-A the High Court would not embark upon an inquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court u/s 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point."(emphasis supplied)

46. The learned Senior Counsel for the applicants submitted that the judgment

would rather leave no discretion to the Court to refuse to entertain such application in the first category of the cases, since the Court has used the word "should" in the sentence quoted above. I am afraid that it would amount to misreading the sentence, forgetting that sentences in judgments cannot be subjected to same interpretational process as words in a statute. If the nature of power u/s 482 is borne in mind there should be no doubt that there can be no fixed formula in this behalf. Also it may not be ignored that the Court specifically holds that there was no doubt that the inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code and then went on to hold that request for quashing of proceedings at that stage was not covered by any specific provision of the Code. The implication is thus clear that had there been a specific provision to quash proceedings the Court would not have permitted recourse to inherent powers. Any other interpretation of the sentences:

There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code". In the present case, the magistrate before whom the police report has been filed u/s 173 of the Code has yet not applied his mind to the merits of the said report and "it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code." (emphasis supplied)

may, in my humble view, reduce the words used to a meaningless babble.

47. Subsequently this position is reaffirmed in clear terms in *Madhu Limaye Vs. The State of Maharashtra*, which follows *R.P. Kapoor*. The Court held as under:

8. We may read the language of section 482 (corresponding to section 561-A of the old Code) of the, 1973 Code. It says

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions:-

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

10. More often than not, the revisional power of the High Court was resorted to

in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2), in section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out ? In our opinion, a happy solution of this problem would be to say that the bar provided in subsection (2) of section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction." (emphasis supplied)

48. Thus, the Court specifically recognized the bar of existence of alternate remedy for exercise of inherent powers, & overcame the bar by reasoning that since revisional jurisdiction could not be exercised in respect of an interlocutory order, there was no alternate remedy. It may be recalled that Krishna Iyer, J. in Raj Kapoor (quoted above) observed that in Madhu Limaye the law on the point was correctly & exhaustively discussed and delineated.

49. In State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, , the Supreme Court considered the scope and ambit of inherent powers of the High Court recognised u/s 482 of the Code and held in para 29 as under:

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus, the inherent jurisdiction of the High Court u/s 482 of the Criminal Procedure Code can be exercised even when there is a bar u/s 397 or some other provisions of the Criminal Procedure Code. However, as is set out in Satya

Narayan Sharma case this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."(emphasis supplied)

50. The sentences highlighted in the para-graph quoted above clearly show that the Supreme Court regarded existence of an alternate remedy to redress grievance of the party to be a limitation on exercise of inherent powers. It is another thing that now an interlocutory order cannot be corrected in exercise of revisional powers, though in appeal all grievances could be looked into.

51. In (Arun Shankar Shukla Vs. State of U.P. and others)³³, reported in 2000 Bom.C.R.(Cri.) 232(S.C.) : AIR 1999 S.C. 2554, it has been held that:

2. It is true that u/s 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. But the expressions abuse of the process of law or to secure the ends of justice do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. High Court has intervened at an uncalled for stage and soft-pedaled the course of justice at a very crucial stage of the trial." (emphasis supplied)

52. In that case, the question of exercise of powers u/s 482 of the Code in the face of availability of alternate remedy was directly in issue. This judgment is a

clear authority for the proposition that High Court ought not to have entertained a petition u/s 482 of the Code when alternate efficacious remedy was available.

53. In the face of these consistent observations stating the "settled" position, it would be necessary for the proponents of the contrary view to show as to how & when this settled position became unsettled. The learned Senior Counsel for applicants submit that it is not necessary to examine that aspect in view of what is held in Dhariwal's case. It is difficult to accept this position because it has to be shown that at some point of time a Bench of higher strength of the Supreme Court had held to the contrary. The judgments in which contrary view appears to have been taken can be reconciled with the settled law that inherent jurisdiction to prevent abuse of process of law or to secure the ends of justice can be invoked only if no other remedy is available, by first acknowledging that judgments of courts cannot be subjected to a process of interpretation similar to that of a statute, that while writing a judgment, Judges, who are required to decide hundreds of cases at a high speed may not be expected to be strictly accurate in choice of words, and some latitude must be shown. And secondly, in the three cases up to and including Dhariwal, where there seems to have been a departure from the settled law, the courts have recounted facts &, in the context of those facts, had found that there was abuse of process of Court which was required to be corrected & therefore, had gone on to set the things right. Therefore, first, the settled view that, if the grievance of the party can be redressed by having recourse to another provision in the Code, jurisdiction u/s 482 cannot be normally invoked, is not shown to have been unsettled by any Bench of higher strength & secondly, the observations in Dhariwal are reconcilable with facts in that case warranting the view taken by the Supreme Court, since availability of alternate remedy is a self imposed restriction, which the Supreme Court (or even the High Court) in a good case can always overcome. May be the correct position is what is expressed by Krishna Iyer, J. in *Raj Kapoor Vs. Delhi Administration* (quoted above), namely that:

In short, there is no total ban on the exercise of inherent power where abuse of the process of the Court or other extra-ordinary situation excites the Courts jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the Court in the face.

54. Incidentally, very recently the Supreme Court has re-affirmed that existence of an alternate remedy was a limitation on exercise of inherent powers. In *Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayana Reddy and Others*, , the Supreme Court observed as under:

13. It is well settled that the inherent powers u/s 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent

with specific provisions provided under the Code.- vide (Kavita Vs. State)³⁵, Kavita Vs. State and Others, and B.S. Joshi and Others Vs. State of Haryana and Another, . If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

55. The learned Counsel for applicants submitted that this judgment does not take a note of, or deal with, what was held in Dhariwal and Punjab State Warehousing Corporation (just as in Dhariwal there is no reference to Madhu Limaye or Arun Shankar Shukla or Navjot Sandhu. In any case when there are two judgments of Supreme Court taking contrary views (if at all it has to be so found), the lower courts would be justified in following the one that solves the issues more effectively.

56. In B.S. Joshi and Others Vs. State of Haryana and Another, , the Supreme Court observed as under in respect of interpretation of observations in Madhu Limaye:

The decision in Madhu Limaye's case has been misread and misapplied by the High Court. The question considered in that case was when there was a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceedings, what would be its effect on exercise of power u/s 482 of the Code. Sub-section (2) of section 397 of Cri.P.C providing that the power 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 proceedings was noticed and it was held that on a plain reading of section 482, it would follow that nothing in the Code, which would include sub-section (2) of section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". The Court said that if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers but adopting a harmonious approach held that the bar provided in sub-section (2) of section 397 operates only in exercise of the revisional power of the High Court meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. It was further held that, then, in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redressal of the grievance of the aggrieved party. In Madhu Limaye's case, it was, inter alia, said that if for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. By way of illustration, an example was given where without jurisdiction the Court takes cognizance or issues process and assumes it to be an interlocutory order, would it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceedings as early as possible, since being an interlocutory order, it was not revisable and resultantly the accused had to be

harassed up to the end, though the order taking cognizance or issuing process was without jurisdiction.

57. If for invoking jurisdiction u/s 482 of the Code, and for overcoming the bar of non-compoundability the Court could have recourse to the argument of absence of alternate remedy, or, if for finding a "happy solution" as is done in Madhu Limaye, the Court refers to absence of alternate remedy, it would be impermissible in principle to say that absence of alternate remedy justifies invocation of jurisdiction u/s 482 of the Code, but existence of alternate remedy does not bar such invocation.

58. In Madhu Limaye the Court had also held that if something is expressly barred under the Code it could not be done by resorting to inherent powers, and obviously, so because it would nullify a legislative edict. Possibly therefore a two Judge Bench of the Supreme Court in petition(s) For Special Leave To Appeal (Cri.) No. 8989 of 2010 (Gion Singh Vs. State Of Punjab & another)³⁷, AIR 2011 S.C.W. 305 held as under:

Heard learned Counsel for the petitioner. The petitioner has been convicted u/s 420 and section 120B, IPC by the learned Magistrate. He filed an appeal challenging his conviction before the learned Sessions Judge. While his appeal was pending, he filed an application before the learned Sessions Judge for compounding the offence, which, according to the learned Counsel, was directed to be taken up along with the main appeal. Thereafter, the petitioner filed a petition u/s 482, Cri.P.C. for quashing of the FIR on the ground of compounding the offence. That petition u/s 482 Cri.P.C. has been dismissed by the High Court by its impugned order. Hence, this petition has been filed in this Court. Learned Counsel for the petitioner has relied on three decisions of this Court, all by two Judge Benches. They are B.S. Joshi and Others Vs. State of Haryana and Another, ; Nikhil Merchant Vs. Central Bureau of Investigation and Another, ; and (Manoj Sharma Vs. State and others)³⁹, (2008)16 S.C.C. 1. In these decisions, this Court has indirectly permitted compounding of non-compoundable offences. One of us, Honorable Mr. Justice Markandey Katju, was a member to the last two decisions.

Section 320, Cri.P.C. mentions certain offences as compoundable, certain other offences as compoundable with the permission of the Court, and the other offences as non-compoundable vide section 320(7).

Section 420, IPC, one of the counts on which the petitioner has been convicted, no doubt, is a compoundable offence with permission of the Court in view of section 320, Cri.P.C. but section 120B IPC, the other count on which the petitioner has been convicted, is a non-compoundable offence. Section 120B (criminal conspiracy) is a separate offence and since it is a non-compoundable offence, we cannot permit it to be compounded.

The Court cannot amend the statute and must maintain judicial restraint in this connection. The courts should not try to take over the function of the Parliament

or executive. It is the legislature alone which can amend section 320 Cri.P.C.

We are of the opinion that the above three decisions require to be reconsidered as, in our opinion, something which cannot be done directly cannot be done indirectly. In our, *prima facie*, opinion, non-compoundable offences cannot be permitted to be compounded by the Court, whether directly or indirectly. Hence, the above three decisions do not appear to us to be correctly decided.

It is true that in the last two decisions, one of us, Honorable Mr. Justice Markandey Katju, was a member but a Judge should always be open to correct his mistakes. We feel that these decisions require reconsideration and hence we direct that this matter be placed before a larger Bench to reconsider the correctness of the aforesaid three decisions.

Let the papers of this case be placed before Honorable Chief Justice of India for constituting a larger Bench.

59. To sum up, inherent powers of the Court are not ousted as a rule when an alternate remedy exists and existence of alternate remedy is more a matter of self restraint. But they can be invoked only when there is a glaring abuse of process of Court or instance of failure of justice staring in the face of the Court which cannot be effectively dealt with by having recourse to the available remedy. It is doubtful, if they could be invoked simply because the accused is not ready to wait for the stage to put forth his defence, or when, abuse of process does not stare in the face of the Court, or an illegality is not apparent on the face of record. These case would require a careful scrutiny of rival positions which must, in my humble view, await exhaustion of remedies available, particularly, in the present flooding of the Court with applications u/s 482 of the Code.

60. The learned Senior Counsel for the parties also submitted that since the Code permits a litigant to invoke revisional jurisdiction of either this Court or Court of Sessions, it would be open to the litigant to approach this Court directly. They submit that if the litigant is forced to seek revision of the order impugned before the Sessions Court & if he fails in the Sessions Court he would not be able to approach this Court since a Second Revision is barred. They relied on a judgment of this Court in (*Madhavlal Narayanlal Pittie Vs. Chandrashekhar Chaturvedi & ore.*)⁴⁰, reported in 1975 U.C.R. (Bom.)⁴⁰² : 1976 Cri.L.J. 1604(Bom.), where it has been held that:

18. On the reading of these provisions, it would appear that both the High Court and the Sessions Judge have got the power to go into the record and have jurisdiction to pass the necessary orders after examining the record of any proceeding. It is not, therefore, that either the High Court or the Sessions Judge, has no jurisdiction to go through the record or to entertain an application if made by any person and to pass the necessary orders thereon. It does appear and particularly on the reading of sub-section (3) of section 397, that any person interested can move the Court, either the High Court or the Sessions Judge, by making an application for revising the order of the inferior Court. It is for that

Court before whom an application has been made to entertain it or not. That, however, is a different question. But the jurisdiction of the Court is not barred if the Court is inclined to exercise the powers vested in it or him. If, as is contended, the High Court has no jurisdiction to entertain a revision application then that is likely to cause prejudice to one of the parties and that party will be put to a disadvantage. If the contention raised on behalf of the State is accepted then in that case every revision application against an order of a Magistrate must be made to the Sessions Judge and can never be made to the High Court. If that is so, then the High Court will not be in a position to entertain a further application at the instance of that party and the order which is passed by the Sessions Judge would be a final order, as provided in sub-section (3) of section 399 of the new Code. Under the old Code, both the High Court as well as the Sessions Judge excluding the matters in Greater Bombay, had concurrent jurisdiction and powers to entertain revision applications. The revision application could be filed either before the Sessions Judge in the mofussil or before the High Court direct and there was nothing to prevent the High Court in entertaining such a revision application and disposing it of but as a matter of practice, the High Court had laid down for itself certain guidelines and had also made a rule to the effect that ordinarily where the Sessions Judge as well as the High Court have got concurrent jurisdiction, the revision application should be filed first before a Court of lower jurisdiction namely the Sessions Judge and then the order of the Sessions Judge, if necessary could be revised by the High Court in further revision application. Rule, 14 of Chapter XXVI of the Bombay High Court, Appellate side, Rules provided that in the absence of special circumstances, the High Court will not entertain an application for revision where an application for revision might have, but had not, been made to a lower revisional Court. There are also decisions of this High Court where it has been laid down that except in exceptional circumstances the High Court will not directly entertain a revision application from the order of a Magistrate. It would thus appear that under the old Code if the revision application filed by a party before the Sessions Judge was rejected, then that party had a further opportunity of revision before the High Court and the High Court could give, if it was found necessary, a relief to the party concerned. That opportunity is now taken away by the new Code if a revision application were to be filed before the Sessions Judge. Once the revision application filed by a party before the Sessions Judge is rejected then under the new Code by virtue of provisions of sub-section (3) of section 399, that order becomes final and that party whose revision has been rejected by the Sessions Judge cannot further move the High Court for the revision of the said order though the opponent can file a revision application if the revision, were allowed. Thus the party who approaches the Sessions Judge in revision against an order of the Magistrate under the new Code is deprived of the advantage of the order of the High Court in a revision under the new Code and has to be satisfied with the order of the Sessions Judge unless his application under Article 227 of the Constitution were entertained by the High Court. That is, however, an exceptional and purely discretionary remedy and there may or may not be any interference.

If the High Court's jurisdiction to entertain a revision application directly from the order of the Magistrate was to be barred a specific provision to that effect could have been made in the Code itself. On the contrary, we find in section 397 that the power has been given to both the courts simultaneously and on the wording of section 397, a party is not precluded from invoking the powers of any of them. It is left to the party concerned to avail of any of the two remedies but he cannot however avail of both the remedies once he has chosen his course."

61. The problem posed, namely that the judgment of Division Bench of this Court gives a right to choose the forum *fi*e there fore, there is no way to ask aggrieved parties to approach the Sessions Court, may not survive, if a reference is made to decisions of a Three Judge Bench of the Supreme Court in *Krishnan and another Vs. Krishnaveni and another*, . In that case a Judicial Magistrate had discharged the accused. The respondents filed a revision before the Sessions Court which dismissed the revision Application. On a further revision the High Court set aside the order of the Magistrate. This was challenged before the Supreme Court contending that the High Court was devoid of the power to entertain a second revision due to prohibition by section 397(3) of the Code. The Court held in para 14 that though the revision before the High Court under sub-section (1) of section 397 of the Code was barred by sub-section (3) thereof, inherent power of the High Court is still available u/s 482 of the Code, and therefore, upheld the order of the High Court. In face of this judgment, the judgment of Division Bench of this Court, based on non availability of a remedy before the High Court after approaching the Sessions Court, may not prevent this Court from asking litigants to approach Sessions Court first, since they could always approach this Court again u/s 482 of the Code.

62. The learned Senior Counsel for the applicants submitted that such a course, rather than reducing the burden on the system, may add to the revision petitions pending before the Sessions Court, which would again land in this Court by the section 482 route. This contention overlooks the possibility that revisional judgments at least in some cases may be accepted by the parties and in any case, would result in crystallising the issue, requiring lesser effort in this Court to resolve the controversy. Therefore, considering totality of circumstances, it would be appropriate for the applicants to first approach the Sessions Court before rushing to this Court, particularly, since the remedy before this Court is unlikely to be efficacious in the sense of providing quick relief to the parties. If the justice delivery mechanism is strengthened at the level of trial courts by injecting speed and removing factors leading to avoidable harassment of litigants, need to have recourse to inherent powers may really be necessary only in rare cases and extraordinary situations. In these circumstances, it has to be held that though existence of an alternate remedy may not be an absolute bar to invocation of inherent powers, existence of such a remedy ought to dissuade this Court from exercising inherent powers, unless the case presents some extraordinary features which may make recourse to alternate remedies meaningless. Only in glaring cases of abuse of process of Court or failure of justice apparent on the

face of record, this Court may have recourse to inherent powers.

63. Before this Court could restrict easy recourse to inherent powers, it may be necessary to address the causes which propel litigants to rush to this Court, and treat the deviations from prescribed procedures in order to speed up trial processes & make them less painful. Once steps to ensure that a criminal trial is held with minimum invasion on his pursuits, a litigant, who is served with a process of Criminal Court may prefer to go through a quick trial, and come clean, rather than spend time on questioning if indeed the process issued is an abuse or is legally untenable.

64. The causes of delay in criminal trials have been examined by various committees and academicians and have also been discussed in various judgments. A few which hurt the system are:

1. Trial magistrates list a large number of cases every day when they cannot physically pay attention to all those cases personally. This requires them to waste time on calling work or roll calls only to adjourn the cases to next dates.
2. Cases being required to be adjourned because prisoners are not produced from prisons.
3. Witnesses not being present though served or not being served well in advance.
4. Dilatory tactics of prosecution or defence.
5. Inept handling of Court administration by inefficient or inexperienced judicial officers.

65. Trial courts allow trials to merrily proceed at such pace as parties or lawyers would desire, leading, at times, to dozens of adjournments even in cases triable summarily. This clutters their cause lists and increases the time required for reaching a decision, since not just Judicial Officers, but lawyers would have to read the entire evidence again months after recording began. Same holds good for warrant trials and sessions trials which drag on merrily for years together. This is against express provisions of the Code as also administrative instructions issued from time to time. This adversely affects the legal profession too as it allows concentration of work in a few hands.

66. All these ills could be checked by taking small but firm steps to reinforce discipline in matters of trials. It could be easily seen that none of these causes need any legislative treatment, or amendment to rules of business. If all the stake holders simply comply with the requirements of procedural law and instructions already issued, the causes will vanish. The problem is not one of not having a law but of black coats deviating from the law. Since this involves taking a responsibility to undertake unpleasant steps at the ground level, everybody is content at doing nothing, expecting committees to be appointed for reform & suggesting legislation, forgetting as to what happened to the legislative mandate

that lawyer being busy cannot be a ground for adjournment. While there can be no doubt that a ruthless implementation of strict schedules may result in injustice in an exceptional case, the zeal of superior courts in giving full latitude & opportunity to parties discourages enforcement of discipline and the larger cause of justice is the casualty.

67. It may be useful to recount provisions of the Code meant to secure speedy justice, which trial courts seldom follow or follow only in breach.

COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATE

200. Examination of complainant :-

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192:

Provided further if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the latter Magistrate need not reexamine them.

202. Postponement of issue of process:- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him u/s 192, may, if he thinks fit, (and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdictional) postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a Police Officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath u/s 200.

68. If the requirements as regards issuance of process or conducting an inquiry u/s 202, or directing investigation are scrupulously followed, invariably the magistrate would have sufficient material before him while issuing process,

eliminating scope for challenge on the ground that process was issued without applying mind.

69. Sections 205 and 242 of the Code provide as under:

205. Magistrate may dispense with personal attendance of accused.-

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner herein before provided. If applied properly and also a bit liberally, this provision would reduce the suffering of those required to attend the Court needlessly on a number of occasions.

"242. Evidence for prosecution:-

(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused u/s 241, the Magistrate shall fix a date for the examination of witnesses: (Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by police)

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution: Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

70. Sections 292 to 296 of the Code which have a potential for cutting down trial time provide:

292. Evidence of officers of the Mint.- (1)

Any document purporting to be a report under the hand of any such Gazetted Officer of the Mint or of the India Security Press (including the office of the Controller of Stamps and Stationery) as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code, although such officer is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine any such officer as to the subject-matter of this report:

Provided that no such officer shall be summoned to produce any records on which report is based.

(3) Without prejudice to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) no such officer shall, except with the permission of the master of the Mint or the India Security Press or the Controller of Stamps and Stationery, as the case may be, be permitted-

(a) To give any evidence derived from any unpublished official records on which the report is based; or

(b) To disclose the nature or particulars of any test applied by him in the course of the examination of the matter or thing.

293. Reports of certain Government scientific experts. (1) Any document purporting to be a report under the band of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf

(4) This section applies to the following Government scientific experts, namely.

(a) Any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) The Chief Inspector of Explosives;

(c) The Director of the Finger Print Bureau;

(d) The Director, Haffkine Institute, Bombay;

(e) The Director [Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State forensic Science Laboratory];

(f) The Serologist to the Government.

(g) any other Government scientific expert specified, by notification, by the Central Government for this purpose."

"294. No formal proof of certain documents. (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be

called upon to admit in deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding Under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved."

"295. Affidavit in proof of conduct of public servants.- When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given."

"296. Evidence of formal character on affidavit.- (1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

Sections 292 to 296 of the Code have a potential of reducing the trial time substantially. It is not necessary to wait for the prosecutor or the defence Counsel to prepare a list referred to in section 294 of the Code. First the courts may cultivate the habit to ask prosecution & defence to serve upon each other such lists when charge is framed or if they do not do so, the courts may themselves call upon the prosecution & the defence to state as to which documents they admit, so that the witnesses on those documents need not be examined at trial. At that stage itself the Court could ask the parties as to which witnesses would be give evidence of a formal nature & whether their evidence could be taken on affidavits. The possibility of defence not going for this option may be high but in that case the accused person would have no face to complain that trial was protracted.

71. Most important provisions which are rarely remembered are as under:

309. Power to postpone or adjourn proceedings.- (1) In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. [Provided that when the inquiry or trial

relates to an offence under sections 376 to 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.]

(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody: Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for, special reasons to be recorded in writing:

[Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.] 2 [Provided also that-

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment:

(c) where a witness is present in Court but a party or his pleader is not present or the party or cross-examine the witness, the Court may if it thinks fit, record the statement of the witness and pass such orders as it thinks fit, dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.]

Explanation-1. If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand. Explanation-2. The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused." (emphasis supplied)

72. Most of the criminal courts seem to have forgotten that there is any such provision requiring the courts to conduct trials day to day and not to grant adjournments because the Advocate is professionally busy. It is the mandate of law that trials once begun must be held day to day and therefore it is imperative that trial courts fix a program for trial the moment charge is framed after consulting all stake holders so that there cannot be any deviation thereafter.

73. Difficulties of litigants could be reduced by having recourse to section 317 of the Code which reads as under:

317. Provision for Inquiries and trial being held in the absence of accused in

certain cases.- (1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct and the personal attendance of such accused.

(2) If the accused in any Such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn Such inquiry or trial, or order that the case of such accused be taken up or tried separately."

76. Traunt witnesses could be disciplined by invoking section 350 of the Code which reads as under:

"350. Summary procedure for punishment for non-attendance by a witness in obedience to summons.- (1) If any witness being summoned to appear before a Criminal Court legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

75. If these provisions are scrupulously followed, in cases triable summarily, a magistrate would be required to explain particulars of accusation and if the accused pleads not guilty summon all witnesses on the next date of hearing, excluding witnesses whose presence may be unnecessary due to adherence to provisions u/s 292 to 296 of the Code. The Magistrate may have an estimate of time that may be required to complete the recording of evidence and accordingly, decide "case load" on a particular day while fixing cases on that day, leaving sufficient margin for sudden failures. These cases ought to be disposed of on the same day or maximum on the next date, for a very compelling & genuine reason. Requirement of doing justice does not imply that Magistrate must interminably wait for Advocates or witnesses to appear. This requirement would be satisfied, if he gives adequate chance, which in a summary case would be issuance of such process as may be permissibly sought on the first date when case is fixed for hearing and granting one more chance in exceptional cases. Thus, in a summary case an accused person may be required to appear before the Court first while

filing appearance and furnishing bail, (on which day even his plea could be recorded), second time for recording his plea, if not already recorded, and one or two more occasions for recording evidence, statement of accused, if any, and a brief judgment, ie., on four occasions in all.

76. In warrant trials, after first appearance and furnishing bail, a Magistrate may fix a date for considering framing of charge/discharge applications, if any, and on the same day fix a program for trial on a day to day basis as required by section 242 of the Code. The first day of trial could be earmarked for examination of eye witnesses and on the second day, witnesses about steps in investigation as may be required to be examined after exhausting provisions of sections 292-296 of the Code. If for any unforeseen contingency a case has to be adjourned, he may adjourn it not beyond two weeks and on that day record statement of accused, if any, hear arguments and pronounce judgment. In a difficult case, a week or two for pronouncing judgment should be enough. Thus, in warrant trials an accused person may be required to attend the Court maximum six times. In warrant trials on private complaints one day would be spent on recording pre-charge evidence, but one day could be deducted from two days for post charge evidence. Similar could be the program for hearing session cases. If a program for trials is fixed in consultation with parties and Advocates, normally they would be expected to adhere to it or suffer consequences.

77. These programs could be derailed because of non-production of under trial prisoners. This could be taken care of by ensuring that the prisoner is kept present via video conferencing facilities connecting jails and courts. At most of the places such facilities are being provided and if they are not available or inadequate at any place the State Government and administration may be required to provide such facilities as they would eventually save for the State not only cost involved in production of prisoners but also upkeep of prisoners as the time spent as under trials would be reduced.

78. Instances of derailment of trial programs due to non-appearance of witnesses served, or non-service itself, would be reduced once schedules are fixed in advance. Non-appearance or reluctance to appear would be reduced, if a witness does not have to come again and again. Since with fixed programs, number of witnesses to be summoned on a given day would be less than the mindless summonses that are now issued, process serving agencies would be expected to be more diligent. Also trial programs could be displayed on the web site of Court the moment it is fixed so that persons interested could ensure that they are free on the day their presence would be expected. Such programs could be mailed or sent via SMS to at least the victims or first informants, so that, if interested, they would contact witnesses and inform them of dates of hearing should process serving agency fail to serve the processes.

79. Non-appearance of medical officers and Police Officers is cited as a major hurdle in speedy trials. Many times these officers, who should be otherwise looking after patients or investigating crime have to spend time in repeated trips

to courts, Public Health Department or Government Hospitals could consider establishing Video Conferencing facilities so that in case a doctor cannot leave the hospital, he could depose by Video Conferencing. Same would hold good about at least high ranking Police Officers, who may be spared wastage of time in travelling to courts. This is not a costly solution. Police Department possibly already has Video Conferencing facilities which they have to put to this use as well.

80. Dilatory tactics by stake holders could be sternly dealt with imposing heavy costs. Apart from costs to be paid to person, who suffers on account of an adjournment, every adjournment in a Magistrate's Court ought to attract costs of Rs. 500/- which is less than the amount actually spent in listing a case before a magistrate and cost of time of the Court in deciding to adjourn it.

81. Inept handling of cases by some judicial officers could be dealt with by adequately training them. In any case, since process of appointing professional managers in trial courts is already undertaken, problems on account of mismanagement will be reduced in course of time.

82. The key to disposal of cases with mini-mum number of adjournments lies in drawing up programs for trials. Courts would have to commit themselves to some schedule for hearing each case so that stock-holders know as to when they may expect which stage to be over. The difficulties expressed in formulating such schedules are illusory. The administration could ask the authors of computerized Court information system to auto generate a likely schedule of the case, the moment a case is filed, which could be refined after consulting all stake holders and adjusted from time to time according to the developments/events that may take place. Computers could analyze: -

(a) Average as also modal time taken for disposal of the particular type of case in the State as a whole, the district in which the Court is situated and in the very Court itself on the basis of analysis of past data.

(b) Average or modal time taken in the past by the same officer at the same place or same officer at his previous place of posting or by officer having similar standing in service,

(c) Case load of cases which are already fixed by the Court in order to identify vacant slots available,

(d) Availability of Advocates, who may be representing parties on the basis of cases in all courts at the station in which Advocates concerned are shown to be appearing.

(e) Data about percentage of such cases getting settled in Lok Adalats or by compromises.

83. Till such program is ready the officers concerned may, based on their own experience, draw up tentative schedules in consultation with stake holders. Such

schedules would be starting point for commitment of the system to a time frame to deal with individual cases, rather than talking in generic terms of disposal of all cases within an year etc. Fixing target of disposal of all cases within a fixed time - one year or two years -would be meaningless, unless the target is broken into smaller specific targets Schedules for individual cases are such broken down targets which would enable the courts to achieve the overall result. This neither involves legislation nor issuance of any administrative instructions by the High Court. This is simply what every trial magistrate or Judge could on his own do.

84. This takes me to the contention that issuance of process or registration of offence itself exposes the person concerned to untold miseries. He is viewed by people around as a guilty person. Media too project him as a potential convict. This contention, I am afraid, is just an excuse for rushing to the High Court by invoking extraordinary remedy. With not hundreds but thousands of celebrities facing trials all over, and hundreds of those facing trials for serious offences being preferred at elections by people for holding high offices, in spite of their sojourns to prisons, we would be fooling ourselves by believing that an offence registered or process issued results in people around looking at the person concerned with suspicion. In any case, if this really happens, the remedy of filing a suit for malicious prosecution is there. In any case, does filing of an application u/s 482 of the Code, which remains pending for an year or two, result in instantly whitewashing the image of person against whom process is already issued or offence registered? If till the application is decided by High Court the person is ready to remain under haze, why not insist on a speedy trial and come clean?

85. As for restrictions which a person may suffer during the pendency of trial - like prospect of arrest, restrictions on movements due to conditions of bail and the like, there is a provision for seeking anticipatory bail which would obviate arrest and also enough judicial precedents in respect of grant of bails enjoining trial courts to avoid imposing onerous conditions. Further, in (Siddharam Satlingappa Mhetre Vs. State of Maharashtra & ore.)⁴¹, reported in 2011(1) Bom.C.R.(Cri.) 293(S.C.): AIR 2011 S.C. 312, in para 123 the Supreme Court observed as under:

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

26. If ordinary remedies about grant of bails and relaxation of conditions imposed can sufficiently address these concerns there should be no reason for invoking extraordinary jurisdiction u/s 482 of the Code of Criminal Procedure. The Supreme Court has time and again emphasized that the inherent powers should be used sparingly, exceptionally and rarely. It must be realized that interference in investigation or trials at early stages by a Superior Court would have disastrous consequences, given the type of time that the High Court can practically give for examining the question. Supreme Court has held that

quashing of process is a serious matter. In view of the unprecedented swarming of this Court by petitions u/s 482 of the Code by persons, who are advised to approach this Court even at the drop of a hat, it would be necessary to remedy the malady -of trials dragging on in trial courts, & persons accused being subjected to avoidable restraints -rather than treating the symptom by invoking powers u/s 482 of the Code of Criminal Procedure.

86. It was also urged that recourse to inherent powers becomes necessary as the trial courts have no power to look into unimpeachable material which could show that trial is unwarranted & that such material can be noticed only by the High Court in exercise of inherent powers. This argument does not seem to be jurisprudentially sound. The right of the accused to silence need not be equated to obligation to remain silent. It is not clear as to how a person who is to face a trial could be forced to remain silent. Historical basis for the right of silence recognised in a person accused is the torture which he was subjected to in making confessions. Therefore he cannot be forced to speak. He was also not to be forced to disclose his defence in advance of trial to prevent his being prejudiced by the prosecution bringing up fresh evidence to book him, rather than put him to trial on the basis of evidence collected before a charge-sheet is filed. But when he has the protection of the Court, should he so desire, why could he not state his defence? There is a good chance that trial may be obviated and in any case curtailed if he is, not forced, but permitted to speak out. As an illustration one may take case of voluntarily causing hurt. The accused may admit that he did cause hurt but set up right of private defence, in which case need to record much of evidence could be curtailed. In any case it defies logic that an accused who cannot be heard till a charge is framed by courts below has the same right when before the High Court on the specious plea that if there is no provision in the code to do something, it can be done by invoking inherent powers.

87. The learned senior Counsel for the applicants submitted that this issue is no longer res integra and a Three Judge Bench of the Supreme Court has already ruled to the contrary in *State of Orissa Vs. Debendra Nath Padhi*, reported in (2005)1 S.C.C. 568.

88. Even so it may not be necessary to gag persons accused in a bulk of matters which are landing up in this Court from processes issued for offence punishable u/s 138 of the Negotiable Instruments Act. In these cases the complainant files an affidavit in lieu of his evidence & since a full bench of this Court has already ruled that such affidavit is a substitute for verification to be recorded when a complaint is filed, even at the stage of recording plea, there is evidence -or circumstances appearing in evidence-against the accused. Evidence does not mean only a completed deposition after cross-examination, since there could be many cases where there may not be any cross-examination. In warrant trials instituted on complaints at the stage of framing of charge there is already precharge evidence of the complainant available -which has to be of such quality that if un-rebutted, it would warrant conviction of the accused. In all types of trial by using the

provisions of sections 292 to 296 of the Code, there could be evidence against the accused even before oral examination of witnesses begins. Section 313 of the Code enables a trial Court to examine the accused on the circumstances appearing against him in evidence at any stage, apart from the duty to undertake such examination at the end of the trial. If the courts make proper use of this power, the accused could have an opportunity to say something in his defence, should he so wish, which may curtail trial. Since first part of section 313 of the Code is as yet not rendered a dead letter, there is no reason why this tool may not be used. If intelligently used a large number of litigants may not be required to rush to this Court. 91. The following directions to trial courts and Session Courts, which merely reiterate the legislative diktat and what has been already stated in several judgments and instructions, and only additionally emphasize the use of technology available to ameliorate the sufferings of persons who have to come courts, should be sufficient to set at rest the bogey that unless power u/s 482 of the Code is used, the miseries of litigants would not come to an end. These directions, in so far as they are not inconsistent with any law, rule, judgment of the Supreme Court or a division bench of this Court, may be followed by the courts scrupulously in discharging their functions, without being understood to have encroached on their judicial discretion wherever recognized. They are not entirely inflexible. In a given case the courts may record why deviation became necessary.

(A) At the threshold while directing investigation or issuing process:

(i) In private complaints or even police investigations into offences arising out of breach of contractual obligations of parties, the basic ingredient of allegation of existence of dishonest intention at the time of entering into contract, or development of such dishonest intent must be first looked into before exposing such persons to process of Criminal Court.

(ii) Cases of persons who vanish with money of several investors after promising them with high returns of schemes of providing freebies must be distinguished from those of established businessmen against whom there is allegation of breach of a single contract or even series of contracts between same parties which may be the result of business compulsions. The former need a tough treatment and the latter need to be initially looked at as mere breaches of contract, unless element of cheating is apparent.

(iii) Magistrates must realize that directing an investigation u/s 156(3) is a more serious matter than issuing process, since after an investigation is ordered, it would be the Police Officer, who would control further actions, while when a process is issued the magistrate would have control. Unless, it is absolutely necessary to involve police in cracking the alleged crime, resort to section 156(3) may be avoided.

(B) Grant of bail and preventing harassment:

While Magistrates and Sessions Courts must exercise their discretion having due

regard to facts & circumstances of each case, the following principles may be borne in mind while dealing with prayers for bail.

(i) Ordinarily, police are expected to carry out investigation without curtailing the liberty of a suspect. A charge-sheet could be filed after gathering sufficient evidence even without arresting the accused, ensuring that he remains present in the Court. Necessity of arrest must be justified by good reasons and arrest cannot be a matter of course only because an offence is registered. Police have power of arrest u/s 41 of the Code & not the duty to arrest in every case.

(ii) Persons against whom a crime is registered but not yet arrested could surrender before the Court concerned and the magistrate could after hearing the Investigating Officer decide as to how to deal with such person.

(iii) While admitting a person to bail (or refusing bail) apart from requirements of relevant provision, what a Court may see is whether the person concerned would be available for trial and whether he has a potential for tampering with evidence. It may not be appropriate to look at every person, who comes before the Court as a prospective absconder.

(iv) Orders directing that passport should be deposited may be avoided and instead condition requiring the person not to leave India without the leave of the Court may be enough.

(v) Verification of sureties could be done on line by accessing data about properties maintained by the revenue department/Survey Department of State, rather than making references to revenue authorities.

(vi) If bail is granted the attempt should be to set that the person can avail of the order quickly, rather than being made to languish in jail.

(C) Trials and proceedings after process is issued:

(i) On the first day of appearance a tentative time table for disposal of case should be drawn up, preferably in consultation with parties and lawyers and recorded in the order sheet/ roznama, with copies being given to parties. This would be entered in Court Information System and would be displayed on the website. The time table should be adhered to unless deviations are unavoidable in which case revised schedules would be drawn up.

(ii) Deviations from the schedule at the request of whether prosecution or the accused may come at a cost, not only to be paid to adversary but to the State also for the expenditure incurred in listing and adjourning the case.

(iii) In summons cases on police reports, whenever necessary recourse may be had to powers u/s 258 of the Code of Criminal Procedure for stopping proceedings.

(iv) In warrant trials, unless standards fixed for framing charge are complied charge need not be framed.

(v) In summary/summons cases occasions for matters to appear before the Court may not ordinarily exceed four and in warrant/Session cases may not exceed six & seven respectively.

(vi) Feasibility of examining medical and Police Officers via Video Conferencing should be thought of and delays on account of their absence should be avoided. If program of trials could be drawn up at the inception these officers could be told well in advance about the date on which they would be expected to appear before the Court, so that they could keep those days free.

(vii) All Court process should be posted on website so that persons concerned can know of the process, where ever they may be.

(viii) Enough publicity should be given through the Legal Services Authority to the availability of information about trial programs & witnesses summoned on the website of the Court, so that should a witness so desire, whether he actually receives summons or not, on finding from the website that his presence is required he may appear before the Court. Mischievous attempts to prevent victims/material witnesses from appearing before the Court could be thus avoided. Help of local NGOs could be taken to educate common man in this behalf.

(ix) Insistence upon presence of accused as a matter of form may be avoided and unless there is a question of identification, persons accused could be exempted from personal appearance.

(x) Amended provisions of section 313 of the Code of Criminal Procedure could be fully utilized.

(xi) Non appearance of witnesses duly served may be sternly dealt with by invoking powers u/s 350 of the Code or even by making an example of a recalcitrant Police Officer by seeking bonds from him for appearance on all dates on which his evidence is required in other cases (which would be known to the Court, as time tables of all cases would have been already drawn up).

89. The Registry of this Court may consider if the guidelines mentioned above could be issued in form of administrative instructions and may, subject to requisite administrative approvals from the Honorable the Chief Justice, take steps, among others, to:

(i) provide in the Court information system the facility for drawing up programs for every case the moment it is instituted,

(ii) provide for display & search of all trial programs & all Court processes on the web site of courts concerned,

(iii) Ensure that trial courts have access to property data bases of the State for verifying sure-tics on line,

(iv) ask Police & Medical/Health authorities to create adequate facilities at

bothends - courts & hospitals/ police offices -for examining doctors & high ranking Police Officers via video conferencing.

90. All these steps if earnestly taken would reduce the rigors for litigants who approach criminal courts & may obviate the need to have recourse to extraordinary remedy of invoking inherent powers. In any case should there be an occasion, a litigant could seek revision of orders passed, or seek discharge at appropriate stage.

91. This takes me to decide the cases at hand. In Criminal Application No. 584 of 2010, the question is not simply whether a corporate body could be auditing the accounts of a company in view of provisions of section 226 of the Companies Act. The question is whom does the investor believe? An unknown auditor in a firm of chartered accountants, or a company which lends its name to such a firm, possibly because in view of provisions preventing it from acting as statutory auditors, it operates through firms? Thus at the threshold, on the face of record, there is nothing to show that attempted prosecution of applicant company amounts to abuse of process of Court, or could lead to failure of justice. The company could show that the complainant is running after a wrong entity and in fact the activities of the firm earning the same name (and therefore fame) have no nexus to the company itself. Therefore this application would have to be rejected leaving applicant to avail of such other remedies as may be available in law,

92. This takes me to three applications filed by the Jet Airways, its Chairman and Chief Executive in respect of fall out of their vacating complainant's premises. Though the learned Counsel for applicants sought to draw my attention to exchange of correspondence between the company & the landlord, possibly in order to show that such correspondence could not have been looked into by a revisional Court, justifying rushing to this Court, it is unnecessary to go into that correspondence. The averments in the complaint themselves disclose neither ingredients of offence punishable u/s 406 nor those of offence punishable u/s 427, even when read with section 114 of the Penal Code. The basic ingredients of entrustment & breach of trust are missing in the allegations made. Non payment of civic or other dues, or the damage allegedly caused to the premises while being used or at the time of vacating them, cannot be shown to have any element of dishonestly intending to cause any wrongful loss to complainant. It is not that after a prolonged battle the land lord was securing possession of premises from an unwilling tenant, who would, while reluctantly vacating follow a scorched earth policy. Hence in these three applications it has to be held that processes issued would have to be quashed. However this too is some-thing which even the Sessions Court sitting in revision could have remedied. Just as rich eat up & encroach upon all natural & other resources available at the cost of poor & needy, the applicants in these three cases have encroached upon the scarce judicial time to which those languishing in jails for years, or those bearing a hanging sword of conviction over their heads for decades were entitled.

Therefore as I allow these three application Nos. 576, 577, & 578 of 2011, I would direct the applicants in these three applications to deposit costs quantified at Rs. 10,000/- each within two weeks with the High Court Legal Service Authority.

93. Criminal Application 1160 of 2011 does not, on the face of the proceedings, disclose that the proceedings show a vindictive abuse of process of Court by a frustrated actress or model, in the face of presumption of absence of consent in rape cases when the victim states that she had not consented even for one act, though she may have consented to other such acts, The material sought to be pressed in aid to show that either there were no relations at all or that the relationship was consensual would appropriately be considered only in defence & is entirely in the realm of appreciation of evidence, which cannot be prejudged at this stage. The objections about the manner in which the learned magistrate handled the matter, namely treating the case as one filed on private complaint & not on police report too may not be tenable in the face of the fact that the victim did appear before the magistrate and was examined by the magistrate, where the victim made the allegations making out ingredients of offences of rape & criminal intimidation. The procedure adopted may be irregular but not illegal. Hence this application has to be rejected leaving all defences open to the applicant.

94. Criminal Application Nos. 1295 & 1296 of 2011, where process is sought to be quashed showing that another author had already submitted the story, that an agreement had been entered into with such author and that he had been also paid even before the e-mail was allegedly sent by the complainant, ruling out any plagiarism would again need evidence to be taken. These applications do not qualify for invocation of inherent powers, since on the face of record there is neither any abuse of process of Court, nor is failure of justice likely to occur, since facts which applicants rely on would require proof which can only be tendered at trial. These applications would therefore have to be dismissed.

95. Criminal Application Nos. 182 & 183 of 2012 seek quashing of ten year old complaints as they violate right to speedy justice. There can be no doubt that this delay is indeed deplorable. But on that ground alone the complaints need not be quashed & directions to the learned magistrate to complete the hearing without any further delay on the next date of hearing and in any case within a month of receipt of writ of this Court would serve the purpose as is suggested in *Pankaj Kumar Vs. State of Maharashtra and others*, reported in 2008(2) Bom.C.R. (Cri.) 590(S.C.) : (2008)16 S.C.C. 117.

96. Criminal Writ Petition No. 422 of 2012 would however have to be admitted since it questions cognizance taken by the learned magistrate of offence punishable u/s 295A of the Penal Code disregarding provisions of section 196 of the Code of Criminal Procedure, which was legally impermissible. However there is no reason why the petitioner could not have invoked revisional jurisdiction of the Sessions Court for this relief. Since I have already spent time on hearing the

learned Counsel for petitioner on the question raised, as I admit the petition and issue notice for early final disposal and stay further proceedings, I would direct petitioners therein to deposit with the High Court Legal Service Authority costs quantified at Rs. 2,000/- before a writ staying fur there proceedings in the trial Court is actually issued. In the result Criminal Writ Petition No. 422 of 2012 is admitted and the other applications/petitions are disposed of in terms indicated in the preceding paragraphs.