
(1992) 03 MAD CK 0038
In the Madras High Court
Case No : Criminal M.P. No. 4939 of 1990

State	Vs	APPELLANT
R. Palani		RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1992) 03 MAD CK 0038

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : B. Sriramulu, Public Prosecutor and Sri C. Shanmuga Velayudam, APP for State, for the Appellant; N. Ganapathy and K. Chakrapani, for the Respondent

Final Decision : Allowed

Judgement

Arunachalam, J.—The State through the learned Public Prosecutor has filed this petition u/s 482 Cr.P.C to call for the records in P.R.C. No.4 of 1989 on the file of the Judicial Magistrate, Polur, now pending before Assistant Sessions Judge, Thiruvannamalai in S.C.No.176 of 1989, quash the committal order dated 25.10.1989, and direct a fresh committal, after recording the evidence of approver Venkatesan. In support of the prayer made in the petition, E. Babu, Inspector of Police (Crime Branch), C.I.D., Vellore, North Arcot District, has sworn to an affidavit.

2. Facts in brief which led to the filing of this petition, will have to be narrated. On 14.10.1987, when K. Venkatesan (approver) then Sub-Inspector of Police, Chetpet Police Station, was in the Station house, at or about 1 p.m., Ponnurangam, Village Administrative Officer, Thachambadi informed him, that a female corpse was found inside the well of one Thulasi Mudaliar, and murder was suspected. On the direction of Venkatesan, Village Administrative Officer ascertained details of the corpse and forwarded a report through his thalayari to the Police Station at or about 3.30 p.m. The report stated that the corpse was

that of Ambika, wife of Arumugham of Narasingarayanpet. There was suspicion whether the death was due to homicide or suicide.

3. Meanwhile, when the Village Administrative Officer had gone out to ascertain facts, after meeting Venkatesan at or about 1 p.m., the respondent Palani, then Inspector of Police, Law and Order, Polur, was informed over the telephone, by Venkatesan, of the information furnished by the Village Administrative Officer. The respondent informed Venkatesan, that he knew about "this case" and that Venkatesan need not have to register any crime. The respondent further directed Venkatesan to proceed to the scene of occurrence and inform the relations of the deceased, that there was nothing to suspect in the death of Ambika, and that they could remove the dead body. Venkatesan disconnected the phone, since he felt, that the instructions issued by the respondent, were not tenable, under the circumstances. After lunch, Venkatesan returned to the police station. He registered Crime No. 213 of 1987 under the head "suspicious death" on the report of the Village Administrative Officer and made a consequential G.D. entry. The G.D. entry made at 4 p.m. was to the effect, that Venkatesan was proceeding to the scene of occurrence along with police constables 1098 and 1779. The G.D. entry was left under the custody of para-police constable. At 4.30 p.m. on enquiry made at the spot, Venkatesan was satisfied, that there was suspicion in the death of Ambika and that already the Village Administrative Officer had forwarded a report to the Tahsildar. Venkatesan was of the view, that action cannot be dropped as advised by the respondent and hence he prepared the express first information report at the spot and forwarded copies of the same to the Judicial II Class Magistrate, Tiruvannamalai and Deputy Superintendent of Police, Tiruvannamalai. He noted, identification marks of the corpse. He directed the relations of the victim to arrange for a car, to take the dead body to the Government hospital at Polur for the conduct of post mortem. At 6.15 p.m. a taxi was brought to the scene, to transport the dead body. At 6.30 p.m., the respondent arrived in a taxi bearing Registration No. MEQ6349, along with P.C.1779, who had already been despatched from the scene along with the express first information report by Venkatesan. The respondent questioned Venkatesan, as to why he had registered a crime, against his advice. Venkatesan replied, that on enquiry, he suspected something unnatural, in the death of Ambika, and that there was suspicion about the involvement of Sankar of Devikapuram, in the death of the victim. Venkatesan also informed about the village Administrative Officer having forwarded a report to the Tahsildar. The respondent directed Venkatesan to get into the car in which he was seated, the father and husband of the victim, stating that they were responsible for the murder. In the car, on being threatened by the respondent, both of them agreed, to abide by the directions of the respondent. The respondent directed both of them to take away the corpse and cremate it, by burning. On the advice of the respondent, both of them took the dead body to Narasingarayanpet in the same car, which had been brought to take the dead body, for the conduct of post-mortem. The respondent directed police constable 1098 and 1779 to return to

the police station. He also directed them to make entries in their note books, on the basis of directions, to be issued by the Sub-Inspector of Police. When Venkatesan told the respondent, that he had made entries upto 3.30 p.m. already, the respondent took him in his car to the Chetpet police Station. While seated in the car, the respondent directed Venkatesan to get from the police station, the G.D. and the first information Report book. While Venkatesan was entering inside the police station, para constable enquired him of details, but he did not choose to reply. Venkatesan returned to the car, with the, documents suggested by the respondent. The car moved away from the police station. At or about 8 p.m., in the office of the Inspector of Police, Polur, the respondent tore off the first information report on which crime No. 213 of 1987 was registered as well as the G.D. entry and burned both of them inside his bath room. When Venkatesan told the respondent, that copies of the express first information report had already been despatched to the Deputy Superintendent of Police and the Magistrate through P.C.1779, the latter told him, that he had already obtained those documents and fed them to fire. When the act of the respondent was questioned by Venkatesan, the former asked him, not to be afraid and that he would take care of everything. The respondent returned the first information report book and G.D. to Venkatesan and asked him to strictly abide by his advice in future, if he was interested in his job. The respondent further directed him to prepare apt G.D. entries. After return to the police station, Venkatesan, afraid of his superior Officer, re-wrote the entire G.D. entries for 14.10.1987. When Police Constable 2509 Questioned him, on rewriting the G.D., he apprised him of all the details.

4. Since no investigation was conducted by the respondent, Vellaya Gounder, the father of deceased Ambika, preferred a fresh complaint to the superior Police Officials. The fresh complaint was investigated by Palanivelu, Inspector of Police (Crimes) Polur. Crime No. 243 of 1987, under Sections 302 and 201 Indian Penal Code, was registered against Sankar. The case was transferred to the file of Inspector of Police, Crime Branch, C.I.D. for further investigation. Venkatesan was arrested during investigation along with the respondent. Venkatesan expressed his willingness to depose the truth, as to all that had happened, and hence his statement was recorded u/s 164 Cr.P.C. On 23.12.1988, Chief Judicial Magistrate, Vellore tendered pardon to Venkatesan. Subsequently a charge sheet was filed before Judicial Magistrate, Polur alleging that the respondent had committed offences punishable under Sections 201 and 218 Indian Penal Code, the charge sheet was filed on 10th July 1989. In the charge-sheet Venkatesan has been shown as witness No.16. The case was taken on file as PRC No.4 of 1989, by Judicial Magistrate, Polur, who committed it for trial, to the Court of Sessions, on 26.10.1989. Thus the prosecution of the respondent, was taken up by the Assistant Sessions Judge, Tiruvannamalai in S.C.No.176 of 1989.

5. The learned Committal Magistrate did not examine, approver Venkatesan, before committal. The trial before the Sessions Court was commenced on 26.2.1990, after framing of charge earlier. P.Ws.1 to 13 were examined on

26.2.1990 and 27.2.1990 and Exs.P.1 to P.10 were marked, the defence had marked Exs.D.1 to D.6.

6. At that stage on 27.2.1990, the respondent through his counsel filed a memo before the trial Judge, which reads as follows:

The accused submits that P.W.16 K. Venkatesan, formerly Sub-Inspector of Police, Chetpattu has been treated as the second accused in the court and the investigation and the pardon has been tendered to him by the Chief Judicial Magistrate, Vellore and the Learned Magistrate is also cited as witness No. 33 in the case. P.W.16 Venkatesan has been treated as an approver in the case and if he is to be examined as witness during trial he ought to have been examined in the Committal Court as a witness as laid down u/s 306 (4) (a) Cr.P.C. P.W.16 has not been examined in the Committal Court and hence the accused submits that the prosecution shall not be permitted to examine him as a witness during trial before this Honourable Court.

7. The contents, of the aforestated petition, show, that the respondent objected to the examination of Venkatesan in the Sessions court since he, who had been treated as an approver, ought to have been examined in the committal Court, u/s 306 (4)(a), Criminal Procedure Code before committal and that not having been done, the prosecution should not be permitted to examine him in the trial Court. The Additional Public Prosecutor, Tiruvannamalai chose to file a memo of objections, which reads as hereunder:

It is submitted that the above case against the accused is as per section 201 and 218 I.P.C. and hence after proper investigation the aforesaid case was filed as against the accused. Hence K. Venkatesan formerly Sub-Inspector is a witness in the above case as against the accused and the proceedings were taken as against the accused after proper investigation only. And hence the Section 306 (4)(a) Cr.P.C. will not apply in this case. Regarding the witness Mr. Venkatesan formerly Sub Inspector, a material and essential witness in the above case. And hence in the interest of justice the above said witness may be examined as witness in the above case as otherwise the entire case will be affected.

Further it is submitted that this Honourable Court may be pleased to allow the complainant to examine the aforesaid witness. Hence it is prayed that this Honourable Court may be pleased to allow the witness K. Venkatesan, formerly Sub Inspector in the above case as a witness as an essential witness by passing necessary orders and such other relief as deem fit.

In effect the objection was that the provisions of Section 306 (4)(a) Cr.P.C. were not applicable and Venkatesan had to be examined since he was a material and essential witness. His non-examination would affect the entire case. The learned trial Judge after hearing both parties, delivered his verdict, on the same day, holding that Venkatesan cannot be allowed to be examined as a prosecution witness, since he who had been taken as an approver by the prosecution and pardoned, ought to have been examined u/s 306 (4)(a) Cr.P.C. before committal,

and that not having been done, the prosecution cannot be permitted to examine him in the Court of Sessions. It was thereafter on 28.3.90, the present petition was filed, invoking the inherent powers of this court, to set aside the committal order dated 25.10.1989, since the whole committal was illegal, without examination of the approver before committal. u/s 306 (4)(a) Cr.P.C, examination of the approver, was mandatory.

8. Mr. B. Sriramulu, learned Public Prosecutor and Mr. S. Shanmughavelayutham, learned Additional Public Prosecutor contended, that the committal of the case without examination of the approver was a clear violation of the mandatory provision of Section 306 Cr.P.C. which vitiated the entire committal proceedings. Since there was no valid committal, entire proceedings before the trial Court had become ab-initio void, consequent upon the illegal committal. Hence the committal order and the subsequent proceedings in its entirety before the Assistant Sessions Judge, Tiruvannamalai in S.C. No. 176 of 1989, have to be quashed and the committal Court directed to comply with the provisions of Section 306 Cr.P.C. by examining the approver (Venkatesan) the then Sub Inspector of Police and then pass an order of Committal, if called for.

9. Mr. N. Ganapathy, learned Counsel appearing on behalf of the respondent made the following submissions:

1. Justice under the Criminal Procedure Code is justice according to statute law and not one based on equity. Equity has no place in Criminal Jurisprudence except to the extent mentioned u/s 482 Cr.P.C.

2. Under Article 21 of the Constitution of India, the liberty of a citizen can be deprived, only in accordance with the procedure established by law and the procedure established is the Criminal Procedure Code 1898 at the time of commencement of the Constitution on 26.1.1950, which is now replaced by the Criminal Procedure Code, 1974. Except inherent power saved u/s 482 Cr.P.C, there can be no other consideration.

3. Inherent power u/s 482 Cr.P.C. is an extraordinary power, which can be exercised only in the circumstances mentioned in the said Section and that power cannot be used contrary to any provision of law or if there is any other remedy available.

4. Order of committal dated 25.10.1989 in P.R.C. No. 4 of 1989 was revisable u/s 397 read with Section 401 Cr.P.C. The prosecution ought to have invoked revisional powers within the period of limitation and if it had not been diligent, it cannot challenge the committal u/s 482 Cr.P.C.

5. The order of Assistant Sessions Judge dated 27.2.1990 having become final was binding on the State, which had not chosen to challenge that order, indirect approach to have the committal set aside, is precluded, on principles of res judicata, applicable to criminal cases.

6. In any event, when invoking inherent power u/s 482 Cr.P.C, the State should

have approached this Court, with clean hands. Paragraph 4 of the affidavit of the Inspector of Police, was a deliberate mis-representation of the truth, on the basis of which a remedy has been sought. Since the State is guilty of misrepresentation, the remedy requested cannot be acceded to.

7. State was also precluded from questioning the committal, when it had asserted by its counter affidavit before the trial Judge, that Section 306 (4)(a) Cr.P.C. was not applicable to Venkatesan, who was only a material witness.

8. Merely because pardon had been tendered to Venkatesan, he does not become an approver since grant of pardon itself was misconceived and superfluous for the statement recorded u/s 164 Cr.P.C. from him is neither a confession nor an admission nor an inculpatory statement, within the meaning of Section 24 of the Evidence Act or Section 306 Cr.P.C. Hence non-examination of Sub Inspector Venkatesan in the Committal Court does not affect the committal.

9. The statement of Venkatesan was only the statement of an eye witness and not that of an accomplice in so far as the offence u/s 201 Indian Penal Code was concerned. Hence tendering of pardon has no effect on his non-examination in the committal Court.

10. When the respondent had been diligent at all stages, he cannot be blamed for any error in the proceedings. Interest of justice does not require that he should be penalised for the fault of the State, a party guilty of lapses and negligence. The State should not be permitted to take advantage of its own fault and seek to penalise the innocent respondent; and

11. If the petition filed by the State were to be allowed, it will not amount to securing the ends of justice, within the meaning of Section 482 Cr.P.C.

10. In reply Mr. Sriramulu, learned Public Prosecutor submitted that none of the contentions urged by Mr. Ganapathy, was tenable. The order of the Assistant Sessions Judge refusing to permit examination of Venkatesan during trial was totally justified in law and obviously the State could not have challenged the said order in revision. Since it is settled law, that committal without examining the approver would be ab initio void, seeking exercise of powers u/s 482 Cr.P.C. was justified since the illegality goes to the root of the matter. The Sessions Court could have itself set right the illegality and directed the committal Court to examine the approver and then pass an order of committal if called for. That not having been done, since illegality and miscarriage of justice cannot be allowed to be perpetuated, the State had rightly chosen to invoke the inherent powers of this Court. He submitted that there was no meaning in suggesting that the order of committal should have been sought to be quashed within the period of limitation since the error was discovered at a very late stage. Even in a case where police officials had sought to suppress evidence of a grave crime, on technical grounds if trial is allowed to be terminated, the ultimate sufferer will be the Society.

11. Mr. N. Ganapathy again controverting the arguments of the learned Public Prosecutor, submitted that if the offence u/s 201 Indian Penal Code, had to be excluded, Section 306 Cr.P.C. will not be applicable for u/s 306 (2) Cr.P.C. the application of the section is restricted to an offence triable exclusively by the Court of sessions or by the Court of a special Judge and when an offence is punishable with imprisonment which may extend to seven years or with a more severe sentence. After exclusion of Section 201 Indian Penal Code, the offence u/s 218 Indian Penal Code alone will survive, which is punishable with imprisonment which may extend to 3 years or with fine or with both, thus excluding application of Section 306 Cr.P.C.

12. I have carefully considered the rival contentions advanced with certain amount of anxiety, for what appeared to be a simple case of clear illegality in committal, which needed correction to secure the ends of justice, had assumed undue proportions almost leading to a battle in law each party pulling out arguments on legal niceties from their armoury on the scope and possibility of invoking revisional and inherent powers. A trite question, if justice should be confined to mere law and could not be extended to prevention of miscarriage of justice, was also advanced. Any law enacted, is for the benefit of the Society. The administration of criminal justice, must take into consideration not only the rights guaranteed to the offender, but also the effect of a perpetuated illegality, on the community at large. Equity and good conscience are bound to overlap, while justice is rendered and the concept of natural justice is not restricted to one of the contesting parties in a criminal case, but is bound to be applied to the opposite, as well. It is no doubt true, that while exercising inherent powers, a matter of fact approach cannot be adopted, and equally when the conscience of this Court is struck, that the power had to be exercised, to otherwise secure the ends of justice, it cannot be refused to be exercised, on attractive niceties, of too technical contentions. While seeking interference u/s 482 Cr.P.C, the injustice which comes to the notice of the court, should be of a grave and not of a trivial character. It should be clear and not doubtful. There must also exist no provision of law, by which the party aggrieved could seek relief. If these conditions are satisfied, the Court not only can, but also must exercise its inherent power u/s 482 Cr.P.C. while exercising inherent powers, care should be taken, that such an exercise would not be inconsistent with any other specific provisions of the Code. In other words, the power u/s 482 Cr.P.C, will have to be exercised to do the right and to undo a wrong, in the course of administration of justice.

13. Mr. Ganapathy placed for my consideration the following decisions to impress upon me the limited scope for exercise of powers, u/s 482 Cr.P.C. In Dr. Raghubir Sharan Vs. The State of Bihar, , the Apex Court observed as follows:

While we speak of the inherent powers of the High Court of a State we mean the powers which must, by reason of its being the highest court in the State having general jurisdiction over civil and criminal courts in the State, inhere in that court. The powers in a sense are an inalienable attribute of the position it holds

with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. When we speak of ends of justice we do not use the expression to compromise within it any vague or nebulous concept of justice, nor even justice in the philosophical sense but justice according to law, the statute law and the common law. Again, this power is not exercisable every time the High Court finds that there has been a miscarriage of justice. For, the procedural laws of the State provide for correction of most of the errors of subordinate courts, which may have resulted in miscarriage of justice. These errors can be corrected only by resorting to the procedure prescribed by law and not otherwise. Inherent powers are in the nature of extraordinary powers available only, where no express power is available to the High Court to do a particular thing and where its express powers do not negative the existence of such inherent power. The further condition for its exercise, in so far as cases arising out of the exercise by the subordinate courts of their criminal jurisdiction are concerned, is that it must be necessary to resort to it for giving effect to an order under the Code of Criminal procedure or for preventing an abuse of the process of the court or for otherwise securing the ends of justice.

In that case two accused persons moved a bail application on the ground of serious illness in jail. The Magistrate called upon the appellant therein, who was at that time a Civil Assistant Surgeon, and also Superintendent of the Sub-jail, to submit a medical report. On the report, the Magistrate released the accused persons on bail, but made certain observations against the appellant as a doctor, which were sought to be expunged. The medical officer filed a revision before the High Court, which was dismissed. In the Supreme Court, the main contention was that the High Court ought to have expunged the remarks which would affect the appellant's future official career. While upholding the inherent power of ordering expunction of irrelevant passages from a judgment or order of a Subordinate Court in appropriate cases, for securing the ends of Justice, the Supreme Court stated, that the power being extraordinary, it will not be pressed in aid, except for remedying a flagrant abuse by a subordinate court of its powers, such as by passing comment upon a matter not relevant to the controversy before it and which was unwarranted or was likely to harm or prejudice another. In that particular case the Supreme Court felt, that the remarks were not of such a character, so as to call for the exercise of the extraordinary power of the High Court u/s 561-A Cr.P.C.(now Section 482 Cr.P.C). It was in that context the above extracted observations were made.

14. In *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , the apex Court stated thus:

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 under 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.

It cannot be overlooked, that in the same decision the Supreme Court observed as hereunder:

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.

15. In *Aravindakshan v. State of Kerala* 1985 Cr.L.J.1389 the Kerala High Court, while considering the exercise of inherent jurisdiction u/s 482 Cr.P.C., held that a person invoking such jurisdiction must approach the Court with clean hands and with equitable backgrounds. A person should come to Court with an open mind for the purpose of making him eligible for such a relief. The High Court may not be justified in invoking the inherent power in favour of a person, who is known to have approached the Court with a *mala fide* and fraudulent background. On facts, in that case, the Kerala High Court found fraudulent attitude on the part of the petitioner, or his unclean hands which by themselves disentitled him to such reliefs, even though he might be supported by legal backgrounds. In that context, it was stated, that the Courts will have to act with due discretion which has to be exercised judicially and only sparingly in sure cases of gross injustice, when there was no other specific provision of law, to remedy the situation. The argument of Mr. Ganapathy was, that the Inspector of Police had sworn to an affidavit, he has stated as follows:

I state a memo was filed both by the accused as well as by the prosecution stating that the committal is illegal. The learned Sessions Judge, however, permitted the prosecution to continue the examination of Mr. K. Venkatesan as 16th witness for prosecution, declining the prayer of the prosecution to send the case for fresh committal after recording the evidence required u/s 306(4) Cr.P.C.

Mr. Ganapathy would invite my attention to the glaring fact, that when the accused (respondent) chose to file a memo not to permit examination of Venkatesan, since he had not been examined in the committal Court, the prosecution took the stand, that section 306(4) Cr.P.C. was not applicable and Venkatesan could be examined as material witness. Since the Inspector of Police had suppressed vital material, Mr. Ganapathy urged, that I should decline to invoke inherent powers in favour of the State. I am unable to agree. The order of the learned Assistant Judge details all the correct particulars. The said order is before me. Merely because an affidavit has been negligently drafted and sworn

to without even awareness of the erroneous contents, I am unable to hold against the prosecution, especially when correct particulars and facts were placed before me, by the prosecution, at the commencement of arguments, in this petition, referring to the inaptitude of the Inspector of Police, who had sworn to the affidavit.

16. In *Avadh Narain Lal v. State of Uttar Pradesh* 1986 Cr.L.J.1233 a single Judge of the Allahabad High Court stated, that where a particular order is expressly barred u/s 397(2) Cr.P.C. and cannot be subject of revision before the High Court, then to such a case the provision of S.482 Cr.P.C. would apply. The inherent power under S.482 being extraordinary and residuary power was not available in regard to matters which have been specifically provided for under other provisions of the Code. The High Court would not exercise its power under S.482, where any party could have but did not, avail of the remedy of revision under S.397 Cr.P.C. On the facts in that case, the Allahabad High Court found, that without filing an application in revision which was maintainable, invoking of inherent powers was not justified.

17. In *Kehar Singh and Others Vs. State (Delhi Administration)*, S.N. the Supreme Court stated, in the context of the provision regarding procedure u/s 327 Cr.P.C., that the procedure established by law under Article 21 of the Constitution meant procedure as was on the day on which Constitution was adopted. Even assuming that Section 327 was repealed it would be difficult to say that the effect of "procedure established by law" could be taken away. This decision was cited by the petitioner's Counsel to urge that if the liberty of the respondent has to be safeguarded, it was not a fit case, for invoking inherent powers. I have already stated, that while it is necessary to keep in mind the liberty of the accused, in consonance with the procedure established by law, one cannot overlook the broader concept of correcting an illegality for, even then the liberty of the accused is safeguarded for, the procedure established by law, will certainly be followed in the event of a fresh committal after examination of the approver. Invoking Article 21 of the Constitution at this stage, does not appear to be meaningful.

18. In *Mahesh v. State of U.P.* 1971 Cr.L.J. 1674 (F.B.) a Full Bench of the Allahabad High Court stated, that only when the matter was not covered by the provisions of the Code, inherent power u/s 561A(the present Section 482 Cr.P.C.) can be availed of for doing justice in the case, or for preventing the abuse of the process of the Court. ?The inherent power cannot be exercised to do what the Code prohibits expressly or by implication, the Court from doing. The inherent power cannot affect the substantive rights. It can be invoked only to lay down the procedure in cases not covered by the provisions of the Code. The inherent power is to be exercised in exceptional cases, and even then carefully and with caution, when there is no other remedy which can be effectively availed of. The High Court will also be justified to exercise its inherent power in those exceptional cases which could not be in the mind of the legislature at the time of

enacting the Code, even though for usual cases a provision was made therein."

19. The scope for exercise of inherent powers is so well settled, that only its application, to the instant facts, looms large.

20. The same High Court in *Muneshwar Bux Singh v. State* AIR 1986 All 199 observed:

In the exercise of inherent powers u/s 561 A (present S.482) the Court has to guard against passing an order which would conflict with the provisions of the Code. A relief howsoever equitable cannot be granted by exercising the inherent powers in contravention of law.

That was a case where a property to which a person was entitled to possession was sold to a third party by a person to whom possession was wrongly given u/s 523. The Allahabad High Court verdicted, that it cannot under the inherent powers direct the sale price to be paid to the person entitled to possession of the property.

21. The words "to secure the ends of justice" used in Section 482 Cr.P.C. have a very wide meaning. "Ends of Justice" cannot be restricted to cases where no innocent man is allowed to be punished, for equally it would take within its fold, not allowing an offender to escape punishment, after trial, by procedure established by law. There can be no doubt, that proceedings in any Court are to be conducted in accordance with legal procedure, but it will be neither proper nor justified, to become too technical for in that event, that approach itself may amount to abuse of process of Court. Section 306 (4) (a) Cr.P.C. clearly ordains, that every person accepting a tender of pardon made under sub section (1) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any. Venkatesan (witness No. 16 in the charge sheet) who was taken as an approver and tendered pardon as well, ought to have been examined by the committal Magistrate, before committal. The committal of the case without the examination of the approver is a clear violation of the mandatory provisions u/s 306 of the Code of Criminal Procedure. In similar circumstances, *Ratnavel Pandian J. as he then was in Pitchai In re* 1988 L.W. (Cri.) 91 observed as follows:

The omission to examine the approver in the committal proceedings by the committing Magistrate vitiates the Committal proceedings and there is no valid committal of the accused to take the trial in the Court of Sessions. Hence the entire proceedings before the trial Court has become ab initio void consequent upon the illegal committal. Hence, committal order and the subsequent entire proceedings before the Court have to be quashed and the Magistrate directed to comply with the provisions of S.306 of the Code of Criminal Procedure by examining the approver and then pass order of committal if called for.

The mistake of non-examination of the approver, was found out in that case, only at the conclusion of the trial and during the course of arguments. A reference

was made by the learned Sessions Judge, for directions regarding action to be taken. The learned Judge in his order, has referred to the earlier decision of this Court in Ramasami In re 1976 L W (crl.) P 36 : 1976 CrL. L.T. 770 , where a similar view was taken.

22. P.K. Sethuraman, J. in Pushpa In re 1988 Law Weekly (Crl) 164, on a reference made by the Sessions Judge, with regard to the committal made without examination of the approver concerned, held that there can be no doubt that the committal of the accused concerned to take the trial without examining the approver by the Magistrate was not proper and the committal was liable to be quashed. The learned Judge further observed, that the Sessions Judges could as well exercise such power, in similar situations, by sending back the cases to the committal Court for examination of the approver so as to avoid delay in the disposal of cases which happened to be committed without the examination of approvers. The learned Judge relied upon the decision of Ratnavel Pandian J. in State (Delhi Administration) Vs. Jagjit Singh, .

23. On the basis of law laid down by P.K. Sethuraman J. the learned Assistant Sessions Judge, could have sent back the case records to the committal Court for examination of the approver and appropriate action thereafter. The prosecution as well as the defence owed a duty, to have brought to the notice of the learned Assistant Sessions Judge, the law laid down by this Court. That the approver has to be examined in the committal as well as trial Court, is the dicta of the Supreme Court, as is clear, from its pronouncement in State (Delhi Administration) Vs. Jagjit Singh, . It was observed therein that sub s(4) of S.306, casts an obligation on the prosecution to examine the approver both in the committing Court as well as in the trial Court and that the accused who had been granted pardon, had to be examined by the prosecution in the trial court, no matter that he had resiled from his earlier statement in committal Court and tried to conceal what was within his knowledge, with regard to the offence in question. Section 132 Indian Evidence Act was referred to in the said context.

24. Similarly Sengottuvelan, J in Natarajan v. State represented by the Inspector of Police, C.B.I., Madras 19861 W. CrL. 116 held, following the principles enunciated in Iqbal Singh v. State AIR 1977 S.C. 2437 that the contention of the petitioner therein, that the procedure adopted by the Special Judge in taking cognizance without a committal prejudicially affected the accused, had to be negatived. That was a case where the charge sheet was filed straight before the Special Judge without filing it before the Magistrate to go through the committal procedure. The offence alleged against the petitioner therein, was under the Prevention of Corruption Act and the Indian Penal Code. The provisions of the Criminal Law Amendment Act were taken note of by the learned Judge. In the context of the decision of Sengottuvelan, J. a perusal of Section 307 Criminal Procedure Code, will be significant. This section confers power, to direct tender of pardon, at any time after commitment of a case, but before judgment is passed. The Court to which the commitment is made may, with a view to obtaining at the

trial, the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender pardon on the same condition to such person. The purpose under Sections 306 and 307 Cr.P.C., obviously intended was, to have before Court all such evidence, which would be essential to the just decision of the case. It will therefore be incongruous to contend, that once committal had taken place without examination of the approver, that would be the end and the error committed can in no case be rectified, even if it was necessary and expedient for the ends of justice.

25. At this stage it would be relevant to refer to the observations of the Supreme Court in *Municipal Corporation of Delhi Vs. Girdharilal Sapuru and Others*, . That was a case where various articles of food stored for sale by the manufacturers were sampled by the Food Inspector, which on analysis by Public Analyst were found to be adulterated. The prosecution was launched, under the Prevention of Food Adulteration Act. The Magistrate discharged all the accused observing, that there was a breach of mandatory provision of Rule 22 of the Prevention of Food Adulteration Rules, inasmuch as the minimum quantity necessary for analysis as prescribed under the relevant Rule, was not taken by way of sample by the Food Inspector. The Magistrate relied upon the decision of the Supreme Court in *Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra*, . The Delhi Municipality preferred a revision to the High Court of Delhi. By the time the High Court heard the matter, the decision in *Rajaldas's* case was overruled by the Supreme Court in *State of Kerala and Others Vs. Alasserry Mohammed and Others*, , wherein it was held, that Rule 22 was directory and so long as the quantity was sufficient for analysis by the Public Analyst, the prosecution could not fail, on the sole ground that the minimum quantity prescribed by the rule was not sent for analysis by the Public Analyst. The High Court was of the opinion, that the revision petition filed, was barred by limitation, in view of the fact that even though the petition was actually filed on November, 29, 1977, by the advocate on behalf of the Municipality, the requisite Power of Attorney was not filed and the same was returned for removing the objection and after removing the objection it was re-submitted on March 1, 1978, but in the meantime, the limitation expired on February 1, 1978. The High Court further was of the opinion, that as no application for condonation of delay was filed, the petition was liable to be dismissed, as being barred by limitation. Thereafter the Delhi Municipality took the case on appeal to the Apex Court, by Special Leave. The Supreme Court stated, that the High Court was clearly in error in dismissing the revision petition of the Municipality. The High Court itself was aware, that the decision relied upon by the Magistrate was clearly overruled by subsequent decision of the Apex Court. The High Court ought to have set aside the order of discharge and directed further trial. In that context, the Supreme Court made the observations herein below extracted:

Without going into the nicety of this too technical contention, we may notice that Section 397 of the Code of Criminal Procedure enables the High Court to exercise power of revision suo motu and when the attention of the High Court was drawn

to a clear illegality the High Court could not have rejected the petition as time-barred thereby perpetuating the illegality and miscarriage of justice. The question whether a discharge order is interlocutory or otherwise need not detain us because it is settled by a decision of this Court that the discharge order terminates the proceeding and, therefore, it is revisable u/s 397 (1) Cr.P.C. and Section 397 (1) in terms confers power of suo motu revision on the High Court, and if the High Court exercises sua motu revision power the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed. If in such a situation the suo motu power is not exercised what a glaring illegality goes unnoticed can be demonstrably established by this case itself.

26. The Supreme Court was of the clear view, that the High Court should not have perpetuated illegality and consequent miscarriage of justice. Suo motu exercise of revisional power, to set right a glaring illegality, so that it could not go unnoticed, was emphasised by the Supreme Court.

27. It cannot be gainsaid, that the prosecution, so also the committal Court, ought to have taken steps to examine the approver in the committal Court, before committal, as ordained u/s 306(4) (a) Cr. P.C. and the Sessions Court too ought to have sent back the case records to the committal Court, once it became aware of the illegality, as has been observed by P.K. Sethuraman, J. Merely because such procedure has not been adopted by the Courts concerned, this Court cannot allow the illegality to be perpetuated, which will certainly lead to miscarriage of justice. This glaring illegality must be set right by this Court and towards that end, exercise of inherent powers is a total necessity.

28. The learned Public Prosecutor was right when he submitted, that the order of the trial Judge, refusing to examine Venkatesan as a Witness in the sessions trial was justified, and hence the State did not deem it necessary to seek revision of the said order. The law is clear that committal without examination of the approver would make the proceedings ab initio void. Hence there will be no case substance in the contention of the respondent's counsel, that the State must have invoked the revisional powers and that if it had not done so, no case had been made out for exercise of inherent powers. It was of course submitted, that the committal order could have been challenged in revision, by the State. At that time, though it may be due to negligence of all the agencies, no one was aware of this illegality, which came to be known, only during the examination of prosecution witnesses, during trial before the Assistant Sessions Judge. Once the Court became alive to the illegality, which goes to the root of the matter, the Court is bound to set right the illegality. That it could do so is very clear from the principles enunciated by the highest Court of the land. Prior to ushering in of the new Criminal Procedure Code, the earlier Code permitted quashing of a committal u/s 215 of that Code. Such a provision is not available now. In that code, the procedure contemplated, examination of all witnesses before the committal Court. On the peculiar facts of this case, I am unable to agree with Mr.

Ganapathy, that the State should have invoked the revisional powers of this Court, to have the committal set aside, and having failed to do so it will be prohibited from approaching this Court u/s 482 Cr.P.C., since there was a limitation bar, for invoking the revisional powers. The aspect of wanton failure to seek exercise of revisional powers or the approach made to the Court u/s 482 Cr.P.C. being mala fide or with unclean hands, will always be a question of fact, which is bound to vary from case to case. Irrespective of fact, law in uniform cannot be applied and if it is sought to be so done, it may lead to abuse of process of Court.

29. I am unable to agree with Mr. N. Ganapathy, that the statement of the approver does not disclose an offence u/s 201, Indian Penal Code. It cannot be overlooked, that the respondent had a liberty, u/s 227 Cr.P.C. before the Assistant Sessions Judge, to show, that there was no sufficient ground to frame a charge, u/s 201, Indian Penal Code. Even then, if the Court of Sessions had framed a charge u/s 201 IPC, he had a right to challenge the same before this Court, which had also not been done. Section 201, IPC is not restricted to causing disappearance of evidence of offence, but also includes giving false information to screen offender. This is a pure question of fact, which may have to be gone into during the course of trial. Prima facie, I am unable to hold at this stage, that the statement of the approver is neither a confession nor an admission nor an inculpatory statement. The confession shows, that knowing fully well, that there was suspicion in the death of Ambika, the approver, on instructions of the respondent had not only been a privy for destruction of records, but also had prepared false records, totally with a view to screen the offender, who was subsequently tried for murder of Ambika.

30. It is not uncommon, that prosecutors before the trial Courts, sometimes take certain shocking stands, without being aware of the legal position or even if they were aware, tend to leave it aside. Ratnavel Pandian J. (as he then was) in Pitchai in re 1988 L.W. (Crl.) 91 observed as follows:

I am terribly shocked to note a portion of the statement made in the letter of reference with regard to the stand taken by the learned Public Prosecutor, who appeared in that case. That portion of the statement reads thus:

The public prosecutor in this case had argued that the defence counsel had not raised this objection in the course of his cross examination of the judicial second Class Magistrate, Perambalur, who recorded the statement of the approver Thiru Pichai under S.164 of the Code of Criminal Procedure. He had further argued that the non-examination of the approver by the committing Magistrate before committing the case has not caused any prejudice.

Evidently the learned Public Prosecutor has made this above submission to proceed with the trial of the case even without the examination of the approver which course would be violative of the provisions of S.306(4) CrI.P.C.

The Court is bound to take the facts as they stand in the record, and should not

allow itself to be estranged by untenable propositions advanced by either party, for ultimately the cause of justice is paramount. Merely because the learned Public Prosecutor in charge of the case before the Court below, had countered the application of the respondent, stating that Venkatesan was a mere material witness, it cannot be stated, that Section 306(4)(a) Cr.P.C. will not be applicable. This court is not expected to close its eyes.

31. The scope and applicability of Section 306(2) Cr.P.C. needs no serious examination, to the instant facts, since I have held, that at this stage, on the material available, prima facie, the offence u/s 201 Indian Penal Code, gets disclosed.

32. It is unfortunate, that the Registry of this Court, had not listed this petition for final disposal on 23.4.1990, inspite of the order of Padmini Jesudurai J. on 18.4.1990, directing listing of this petition for final disposal, on the said date, while passing orders in Crl.M.P. No. 5918 of 1990, preferred by the respondent, to vacate the stay ordered by this Court in Crl.M.P. No. 4940 of 1990 on 29.3.1990, while taking on file Crl.M.P. No. 4939 of 1990, at the instance of the State.

33. The Counsel for the respondent strenuously contended, that for no fault of the respondent he was being penalised. Looking at the facts, if the public should have confidence in justice delivery system, in which process, the police play a prime role, and if that fountain head of justice, is allegedly sought to be polluted, in an attempt to screen the offender or cause disappearance of evidence, of the capital crime, on the ground of some avoidable delay or a technical flaw, the respondent cannot claim, total exoneration, without trial. If he is not liable for the offences alleged, he is bound to be acquitted. If he is found guilty, the law has to take its course. Serious offences of this nature, which is bound to have an impact, on the whole community at large, cannot be attempted to be dealt with lightly, on peripheral grounds. The grave illegality noticed has to be set right, be it in the exercise of suo motu revisional power or power inherent, to secure the ends of justice. The order of committal in PRC No. 4 of 1989 on the file of the Judicial Magistrate, Polur, dated 25.10.1989 and the consequent trial in S.C. No. 176 of 1989, on the file of the Assistant Sessions Judge, Thiruvannamalai shall stand erased. The Assistant Sessions Judge, Thiruvannamalai shall return the case record to the committal Court, for examination of the approver u/s 306 of the Code of Criminal Procedure and then pass an order of committal, if called for. The whole proceeding has to be conducted expeditiously, without any unnecessary delay.

34. I do not propose to say a single word on the merits of the case, since there should not even be a whisper of prejudice to the accused, who will have to face further proceedings before the Courts below. The Courts below, shall dispose of the case against the respondent, in accordance with law, without being influenced, by any observations made in the course of disposal of this petition, which is strictly restricted, to the legal question involved. This petition shall stand

allowed.