Supreme Court of India
Popular Muthiah vs State Represented By Inspector Of ... on 4 July, 2006
Author: S Sinha
Bench: S.B. Sinha, P.P. Naolekar

CASE NO.:
Appeal (crl.) 107 of 2003

PETITIONER:
Popular Muthiah

RESPONDENT:
State represented by Inspector of Police

DATE OF JUDGMENT: 04/07/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:

J U D G M E N T WITH CRIMINAL APPEAL No. 108 OF 2003 S.B. SINHA, J.

Whether inherent jurisdiction of the High Court is available while dealing with a Criminal Appeal filed by an accused is the principal question involved in this appeal which arises out of a judgment and order dated 18.4.2002 passed by a Division Bench of the High Court of Judicature at Madras in Criminal Appeal No. 696 of 1997.

The appellants before us were not parties to the said Criminal Appeal.

The prosecution case relates to an incidence which took place on 13.3.1992 resulting in death of one Chandran. On 13.3.1992, the brother of Nallakannu @ Muthu was said to have fatally been attacked in Maruthur Village. A case was registered against PW3, the brother of PW1, Arasappan, father of PW1, Vanumamali, brother-in-law of PW3, Raja, son of PW3, Raj son of PW1's sister Ganambal and George (deceased) son of the PW1's sister Ganambal. They were arrested and released on bail subject to certain conditions. PW1 and her relatives after the said incident allegedly shifted to another village Palayamkottai. The father-in-law of PW1 was a homoeopathic doctor. He was having a medical shop. He was also having a hotel commonly known as 'Hare Krishna" hotel. The medical shop and the hotel were situate opposite to each other near Palaymkottai bus stand and were at a distance of 6 furlongs from the house of PW1.

On 11.7.1992 at about 3.00 P.M., PW3 brother of PW1, Arasappan father of PW1, Vanumamali brother-in-law of PW3, Raj son of PW1's sister Ganambal and George (deceased) son of PW1's sister Ganambal came to the house of PW1. As PW1 was not feeling well, she came to the medical shop of her father-in-law to purchase medicines. Nallakannu @ Muthu, Murugan and Popular Muthiah came behind him in a Rajdoot motorcycle. They stopped them near the Palayamkottai bus stand. The appellant Popular Muthiah allegedly shouted to kill George son of PW1's sister Ganambal and left the scene on the motorcycle leaving behind Nallakannu and Murugan.

Nallakannu took a sickle which is said to have been hidden in his shirt and assaulted George on the left side of his neck. The deceased who received bleeding injury left his chappals there and started to run from the said place. Nallakannu and Murugan allegedly chased him. The deceased ran inside 'Hare Krishna' hotel which, as noticed hereinbefore, owned by the father-in-law of PW1. At that time, PW3 brother of PW1 and PW4 Ashokan, brother-in-law of PW1 were inside the hotel. Upon noticing that the deceased was being chased, PW3 and Ashokan came out of the hotel. Inside the hotel, Murugan is said to have assaulted the deceased on his chest. Nallakannu @ Muthu also assaulted him on the left side of his chest. The deceased also received injuries at their hands on his shoulder and on the left ear. The deceased thereafter fell down whereupon Nallakannu again is said to have assaulted the deceased on the left side of his chest with the sickle. Thereafter, Nallakannu came out of the hotel and went towards west.

The deceased was taken to the Government Hospital, Palaymkottai in an auto-rickshaw by PW3 along with PW2, PW3 and PW4 where he was declared dead by the doctor. A First Information Report in respect of the said incident was lodged by PW-1.

Admittedly, no chargesheet was filed against the appellant herein. A copy of the said chargesheet, however, admittedly was not sent to the first informant. The learned Magistrate, before whose Court the said chargesheet was filed also did not inform the first informant which was mandatory. Nallakannu @ Muthu alone was committed to the Court of Sessions. Before the learned Sessions Judge, all the eye-witnesses allegedly took the names of the appellants as having played active roles in the entire episode. The learned Sessions Judge was neither called upon to exercise nor suo motu exercised his jurisdiction in terms of Section 319 of the Code of Criminal Procedure. Nallakannu @ Muthu alone in the aforementioned situation was tried and convicted for commission of the said offence under Section 302 of the IPC and was sentenced to undergo rigorous imprisonment for life.

He preferred an appeal against the said judgment of conviction and sentence in the High Court which was registered as Criminal Appeal No. 696 of 1997. The said appeal came up for hearing before a Division Bench of the High Court. The Division Bench examined the materials brought on records by the prosecution in great details. It was opined that no case has been made out to interfere with the judgment of conviction and sentence passed against the Nallakannu Muthu. He has not approached this Court questioning the correctness of the said judgment.

The High Court opined:

(i) the evidence of PWs 1 and 2 unimpeachably show the involvement of Popular Muthiah (abetting), Murugan and the accused in inflicting the fatal injuries to the deceased;

(ii) the evidence of PWs 3 and 4 show the role played by Murugan and the accused; and

(iii) in Ex. I, all the evidence were 'found fully reflective'.

According to the High Court, the action on the part of the investigating officers, viz., PW-17 and PW-18 leaving out the names of Popular Muthiah and Murugan from the array of accused was not a

bona fide error. It was observed:-

"As we feel that Murugan and Popular Muthiah had been left out willfully by the Investigating Agency, we direct the Director General of Police to seriously probe into it and take follow-up action in accordance with law. The fact that the occurrence took place in 1992 and we are in 2002 should not be taken as a reason for taking a lenient view by all those concerned including the Court. If the instances of this nature are allowed to happen, certainly the people will lose faith in Police force and in turn in the State Administration as well as in the administration of justice by Courts."

The High Court furthermore noticed that the mandatory provisions of Section 173 (2)(i) had not been complied with insofar as the first informant was not intimated by the Investigating Officer that Murugan and Popular Muthiah were not to be chargesheeted. Referring to sub-Section (8) of Section 173 of the Code of Criminal Procedure, the High Court lamented that the learned Magistrate failed to follow the decision of this Court in Bhagwan Singh v. Commissioner of Police [1985 SCC (Crl.) 267] and other judgments of this Court. The High Court also felt that the District Judge ought to have conducted himself fairly in the matter of exercising his jurisdiction under Section 319 of the Code of Criminal Procedure.

The High Court, therefore, made certain adverse comments against the Investigating Officers, the public prosecutors as also the learned trial Judge for conducting themselves in the manner in which they had discharged their duties.

It was directed:

"We are of the view that this is a fit case where we have to direct the prosecution of Murugan as well as Popular Muthiah; and the learned State Public Prosecutor shall advise the State as to under what section they have to be charged and tried. We may be able to relax a bit only after directing the CB, CID to take up the matter. We direct the CB, CID to take over the matter and re-investigate and prosecute the said Murugan and Popular Muthiah."

It was furthermore directed:-

"(b) In view of our conclusion that since there is evidence at every stage implicating Murugan and Popular Muthiah in the crime relating to the murder of George, justice requires that the Investigating Agency must have a fresh look on the materials already available on record and the materials to be collected pursuant to this order in the re-investigation connecting Popular Muthiah and Murugan also with the crime. Therefore, we order fresh investigation by the Investigating Agency so far as Popular Muthiah and Murugan are concerned. Consequently, the Director General of Police is directed to entrust the investigation in this case relating to the involvement of Popular Muthiah and Murugan to CB, CID. The Director General of Police is also directed to nominate an officer, not below the rank of Superintendent of Police, to monitor the investigation to be done by CB, CID.

(c ) The Director General of Police is also directed to deeply probe into the lapses on the part of PW17 Rajaram and PW18 Thondiraj in the Investigation conducted with reference to the murder of George, so also in the prosecution and take follow-up action in accordance with law."

The appellants are, thus, before us.

Mr. M.N. Rao, the learned senior counsel appearing on behalf of the appellants raised the following contentions in support of this appeal:-

(i) The High Court while hearing the appeal preferred by Nallakannan @ Muthu wrongly exercised its power in terms of Section 482 of the Code of Criminal Procedure.

(ii) While exercising the said jurisdiction, the High Court, thus, could neither exercise any revisional jurisdiction under Section 397 nor its inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

(iii) Suo motu exercise of power by the High Court under Section 482 is unknown in law.

(iv) In any event, as the High Court in its impugned judgment did not state that it was exercising its jurisdiction under Section 482 or 209 of the Code of Criminal Procedure, it is unsustainable in law.

(v) In any event, the High Court could not have issued the impugned directions without giving an opportunity of hearing to the appellants herein whose fundamental rights have been affected by reason thereof.

(vi) The direction of the High Court to prosecute the appellants is illegal and without jurisdiction as such directions could not have been issued in exercise of its inherent power.

(vii) The High Court even could not direct the appellants to stand trial, inasmuch as the provisions of Section 319 of the Code of Criminal Procedure were not attracted in the instant case.

(viii) In any view of the matter, the Investigating Officers having found lacunae in the prosecution case, particularly in view of the fact that one of the appellants was found to have suffered fracture in an accident four days prior to the date of occurrence, it was wholly improper on the part of the High Court to direct reopening of the investigation.

Dr. Rajiv Dhawan, the learned senior counsel on behalf of the respondent-State of Madras, on the other hand, submitted:-

(i) The provisions of the Code of Criminal Procedure contained a series of interlocked provisions so as to correct the errors in regard to improper investigation on the part of the investigating officer.

(ii) Investigation which is bad in law or insufficient investigation is subject to corrective orders by the High Court;

(iii) Having regard to the changes made in the Code of Criminal procedure, 1973, what is brought before the Court is a case and not the accused.

(iv) The High Court has been conferred a special power, namely, the inherent power which can be exercised at any stage of the proceeding including the appellate proceeding.

(v) In view of the fact that the High Court had directed fresh investigation, the principles of natural justice have no application.

(vi) In view of the finding of the High Court in regard to non- compliance of the mandatory provisions of Section 173 of the Code of Criminal Procedure as also the gross errors committed by both the learned Magistrate as also the learned Trial Judge, the High Court had justifiably exercised its inherent jurisdiction in order to secure justice in terms of Section 482 of the Code of Criminal Procedure.

(vii) As the High Court exercises its inherent power to secure the ends of justice, the same by necessary intendment could bring within its purview justice required to be done to the victim also.

(viii) The appellants were not prejudiced in any manner whatsoever by reason of the impugned order as at different stages they would be entitled to raise their contentions.

(ix) Section 173(8) of the Code of Criminal Procedure does not postulate any power on the part of the Courts to direct re- investigation as the statutory power to make investigation always remain with the Investigating agency.

In view of the rival contentions noticed hereinbefore, the questions involved in this case are:

(i) Whether the High Court while exercising its appellate jurisdiction under Section 374(2) read with Section 386 of the Code of Criminal Procedure could direct further investigation of the case against the persons whom the High Court felt should have been included in the challan on the basis of the materials on record available before the appellate court?

(ii) Whether only because of the fact that the appellate power of the High Court in terms of Sections 374(2), 386 and 391 does not contain any specific power to direct further investigation, the High Court lacked jurisdiction from seeking recourse to its inherent and supervisory powers under Sections 482 and 483 of the Code of Criminal Procedure in a case of this nature?

(iii) Whether the impugned judgment is wholly unsustainable as prior to issuing the impugned direction, the principles of natural justice had not been complied with.

Before, however, we advert to the said questions, it may be appropriate to notice that the High Court in passing the impugned judgment proceeded on the basis that PW-1 to PW-5 namely, Muthulakshmi, Shanthy, Murugaiah Pndian, Ashokan and Ganeshan were independent witnesses who had categorically testified about the involvement of the Appellants herein as also Murugan and

Muthu in hacking George to death firstly in the street and then in the hotel and the prosecution case was proved on the basis thereof.

The High Court indisputably could have arrived at such a finding.

The High Court thereafter directed entrustment of the investigation to CB-CID having regard to the fact that there were two other eye-witnesses to the occurrence.

The High Court furthermore:

(i) directed prosecution of Murugan and Popular Muthiah;

(ii) ordered a fresh investigation under the CB-CID under an officer nominated by the Director General of Police;

(iii) directed the Director General of Police to probe into the lapses of the investigating officers and take up follow up action in accordance with law.

The High Court in its impugned judgment:

(i) affirmed conviction of Muthu;

(ii) opined that successive investigating officers PWs-17 and 18 had not discharged their functions as investigating officer properly;

(iii) held that the Magistrate had failed to exercise his powers as also to make the details of the charge sheet available to the complainant as was mandatorily required in law;

(iv) found that the District Judge had not exercised his power under Section 319 of the Code of Criminal Procedure; and

(v) exercised its power in issuing the directions in the interest of justice.

The Code of Criminal Procedure provides is an exhaustive Code providing a complete machinery to investigate and try cases, appeals against the judgments. It has provisions at each stage to correct errors, failures of justice and abuse of process under the supervision and superintendence of the High Court as would be evident from the following:

(i) The Court has the power to direct investigation in cognizable cases under Section 156(3) read with Section 190 of the Code of Criminal Procedure.

(ii) A Magistrate can postpone the issue of process and inquire into the case himself under Section 202 (1) of the Code of Criminal Procedure.

(iii) When a charge sheet is failed, the court can refuse to accept the same and proceed to take cognizance of the offence on the basis of the materials on record. The Court can direct further investigation into the matter

(iv) The Magistrate may treat a protest petition as a complaint and proceed to deal therewith in terms of Chapter XV of the Code of Criminal Procedure.

(v) Once the case is committed, the Sessions Judge may refer the matter to the High Court.

(vi) In the event, without taking any further evidence, it is found that while passing the order of commitment, the Magistrate has committed an error in not referring the case of an accused or left out an accused after evidences are adduced, the court may proceed against a person who was not an accused provided it appears from the evidences that he should be tried with the accused.

(vii) The revisional court during pendency of the trial may exercise its revisional jurisdiction under Section 397 in which case, it may direct further inquiry in terms of Section 398 of the Code of Criminal Procedure.

(viii) The revisional powers of the High Court and the Sessions Court are pointed out in the Code separately; from a perusal whereof it would appear that the High Court exercises larger power.

(ix) In the event of any conviction by a court of Sessions, an appeal thereagainst would lie to the High Court. The appellate court exercises the power laid down under Section 386 of the Code of Criminal Procedure in which event it may also take further direct evidences in terms of Section 391 thereof.

(x) The High Court has inherent power under Section 482 of the Code of Criminal Procedure to correct errors of the courts below and pass such orders as may be necessary to do justice to the parties and/ or to prevent the abuse of process of court.

The Code of Criminal Procedure, thus, provides for a corrective mechanism at each stage, viz., (i) investigation; (ii) trial; (iii) appeal and (iv) revision.

The Code of Criminal Procedure, 1973 in contrast to the old Code provides for cognizance of an offence and committal of a case as contradistinguished from cognizance of an offender or committal of an accused to the court of Sessions.

It is also significant to note that whereas inherent power of a court or a tribunal is generally reocgnised, such power has been recognized under the Code of Criminal Procedure only in the High Court and not in any other court. The High Court apart from exercising its revisional or inherent power indisputably may also exercise its supervisory jurisdiction in terms of Article 227 of the Constitution of India and in some matters in terms of Section 483 thereof. The High Court, therefore, has a prominent place in the Code of Criminal Procedure vis-`-vis the court of Sessions which is also possessed of a revisional power.

The Law Commission of India in its 41st Report on the Code of Criminal Procedure, 1898 stated as under:

"24.80. It happens sometimes, though not very often, that a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in a connected offence. It is only proper that the Magistrate should have the power to call and join him in the proceedings. Section 351 provides for such a situation, but only if that persons happens to be attending the Court. He can then be detained and proceeded against. There is no express provision in Section 351 for summoning such a person if he is not present in Court. Such a provision would make section 351 fairly comprehensive, and we think it proper to expressly provide for that situation."

24.83. Section 351 should, therefore, be amended to read as follows:-

"351. (1) Where, in the course of an inquiry into or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is attending the Court, although not under arrest or upon a summons, he may be detained by such Court for the purpose of the inquiry into or trial of the offence which he appears to have committed.

(3) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(4) Where the Court proceeds against any person under sub-section (1), then -

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause

(a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

Section 386 of the Code of Criminal Procedure provides for the power of the appellate court. Indisputably, stricto sensu in terms thereof the appellate court cannot direct a person to stand trial. Its jurisdiction is specified thereunder.

While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/ or inherent jurisdiction not only when an application therefor is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while

exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of the Parliament, while making the new law the emphasis of the Parliament being 'a case before the court' in contradistinction from 'a person who is arrayed as an accused before it' when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it.

In certain situations, the court exercises a wider jurisdiction, e.g., it may pass adverse remarks against an investigator or a prosecutor or a judicial officer, although they are not before it. Expunction of such remarks may also be directed by the High Court at a later stage even suo motu or at the instance of the person aggrieved.

The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammeled by procedural restrictions in that

(i) power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.

This Court in Dinesh Dutt Joshi v. State of Rajasthan and Another, [(2001) 8 SCC 570] while dealing with the inherent powers of the High Court held:

" The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be

reserved, as far as possible, for extraordinary cases."

The decisions of this Court emphasised the fact that there exists a distinction between two classes of cases, viz., (i) where application of Section 482 is specifically excluded and (ii) where there is no specific provision but limitation of the power which is sought to be exercised has specifically been stated.

In R.P. Kapur v. State of Punjab [AIR 1960 SC 866], this Court summarized some of the categories of cases where inherent power should be exercised to quash a criminal proceeding against the accused stating:

" (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

The said decision has been noticed subsequently by this Court in State of Karnataka v. M. Devendrappa and Another [(2002) 3 SCC 89].

This Court furthermore laid down that the inherent power of the High Court can be invoked in respect of the matters covered by the provisions of the Code unless there is specific provision to redress the grievance of the aggrieved party. [See Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 and Raj Kapoor v. State, (1980) 1 SCC 43] It is also not in dispute that the said power overrides other provisions of the Code but evidently cannot be exercised in violation / contravention of a statutory power created under any other enactment.

In State Through Special Cell, New Delhi v. Navjot Sandhu Alias Afshan Guru and Others [(2003) 6 SCC 641], it was stated:

"Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 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 hereinabove 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."

In State of W.B. and Others v. Sujit Kumar Rana [(2004) 4 SCC 129], to which our attention has been drawn by Mr. Rao, this Court was dealing with a matter arising out of an order of confiscation passed under the provisions of the Forest Act, 1927.

In that case, the law was stated in the following terms:

"The said authority before passing a final order in terms of Section 59-A(3) of the Act is required to issue notice and give opportunity of hearing to the parties concerned. Unless such a notice is issued, the confiscation proceeding cannot be said to have started. Once, however, a confiscation proceeding is initiated; in terms of Section 59-G of the Act, the jurisdiction of the criminal court in this behalf stands excluded. The criminal court although indisputably has the jurisdiction to deal with the property which is the subject-matter of offence in terms of the provisions of the Code of Criminal Procedure but once a confiscation proceeding is initiated, the said power cannot be exercised by the Magistrate."

To what extent, if any, Section 386 limits the exercise of jurisdiction of the High Court under Section 482 may now be considered.

In The State of Andhra Pradesh v. Thadi Narayan [(1962) 2 SCR 904], this Court opined that while exercising the appellate power, the High Court should not assume itself that the whole case is before it. Evidently, it was dealing with a case before coming into force of the 1973 Act.

The power to direct enquiry may not, thus, be held to be confined only to the original but also of appellate jurisdiction. Such a power can be exercised also as against the persons who were not the accused at the stage of trial.

In Ranjit Singh v. State of Punjab [(1998) 7 SCC 149], this Court held:

"Though such situations may arise only in extremely rare cases, the Sessions Court is not altogether powerless to deal with such situations to prevent a miscarriage of justice. It is then open to the Sessions Court to send a report to the High Court detailing the situation so that the High Court can in its inherent powers or revisional powers direct the committing Magistrate to rectify the committal order by issuing process to such left-out accused. But we hasten to add that the said procedure need be resorted to only for rectifying or correcting such grave mistakes."

[See also Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Others, (1983) 1 SCC 1] Such a power evidently can be exercised even after the trial is over.

In Kishori Singh v. State of Bihar [(2004) 13 SCC 11], referring to Raj Kishore Prasad v. State of Bihar, [(1996) 4 SCC 495] and Ranjit Singh (supra), this Court held:

"After going through the provisions of the Code of Criminal Procedure and the aforesaid two judgments and on examining the order dated 10-6- 1997 passed by the Magistrate, we have no hesitation to come to the conclusion that the Magistrate could not have issued process against those persons who may have been named in the FIR as accused persons, but not charge-sheeted in the charge-sheet that was filed by the police under Section 173 CrPC.

So far as those persons against whom charge-sheet has not been filed, they can be arrayed as "accused persons' in exercise of powers under Section 319 Cr PC when some evidence or materials are brought on record in course of trial or they could also be arrayed as "accused persons" only when a reference is made either by the Magistrate while passing an order of commitment or by the learned Sessions Judge to the High Court and the High Court, on examining the materials, comes to the conclusion that sufficient materials exist against them even though the police might not have filed charge-sheet, as has been explained in the latter three-Judge Bench decision. Neither of the contingencies has arisen in the case in hand."

The correctness or otherwise of the decision of this Court in Ranjit Singh (supra) was doubted and the matter was referred to a larger Bench in Dharam Pal and Others v. State of Haryana and Another [(2004) 13 SCC 9], wherein one of us (Naolekar, J.) was a member, stating: " According to the decision in Kishun Singh Case the Sessions Court has such a power under Section 193 of the Code. As per Ranjit Singh case, from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 of the Code, that court can deal with only the accused referred to in Section 209 of the Code and there is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused. The effect of this conclusion is that the accused named in column 2 and not put up for trial cannot be tried while exercising power under Section 193 read with Section 228 of the Code. This means that even when the Sessions Court applies its mind at the time of framing of charge and comes to the conclusion from the material available on record that, in fact, offence is made out against even those who are shown in column 2, it has no power to proceed against them and has to wait till the stage under Section 319 of the Code reaches, namely, commencement of the prosecution evidence. The effect is that in less serious offences triable by a Magistrate, he would have the power to proceed against those who are mentioned in column 2, if on the basis of material on record he disagrees with the police conclusion, but, as far as serious offences triable by the Court of Session are concerned, that court will have to wait till the stage of Section 319 of the Code is reached. It, however, appears that in a case triable by the Court of Session, in law, a Magistrate would have no power to summon for trial an accused mentioned in column 2 to be tried with other accused and, to that extent, the impugned order of the High Court may have to be set aside but immediately the question involved herein would arise when the matter would be placed before the Sessions Court."

The High Court, however, was not correct in issuing a direction to the State to take advice of the State Public Prosecutor as to under what section the Appellant has to be charged and tried or directing the CB, CID to take up the matter and re-investigate and prosecute the Appellant herein.

Such a power does not come within the purview of Section 482 of the Code of Criminal Procedure. Investigation of an offence is a statutory power of the police. The State in its discretion may get the investigation done by any agency unless there exists an extraordinary situation.

Yet again, it is for the public prosecutor to discharge his duties in terms of the provisions of the Code of Criminal Procedure. The High Court, thus, has no role to play in such matters. Ordinarily, it is for the public prosecutor himself to see to whom and how to render his advice or as to whether the State would like to proceed against an accused or not.

The High Court while passing the impugned judgment did not bear the said principles in mind. It went beyond its jurisdiction in directing the prosecution of the Appellant before us. In a case of this nature, where a superior court exercises its inherent jurisdiction, it indisputably should remind itself about the inherent danger in taking away right of an accused. The High Court should have been circumspect in exercising the said jurisdiction. When a power under sub-section (8) of Section 173 of the Code of Criminal Procedure is exercised, the court ordinarily should not interfere with the statutory power of the investigating agency. It cannot issue directions to investigate the case from a particular angle or by a particular agency. In the instant case, not only the High Court had asked reinvestigation into the matter, but also directed examination of the witnesses who had not been cited as prosecution witnesses. It furthermore directed prosecution of the Appellant which was unwarranted in law.

Strong reliance has been placed on Zahira Habibulla H. Sheikh v. State of Gujarat [(2004) 4 SCC 158] by Dr. Dhawan for the proposition that the High Court can exercise its inherent jurisdiction in certain situation. Mr. Rao, on the other hand, has relied upon a decision of this Court in Satyajit Banerjee and Others v. State of W.B. and Others [(2005) 1 SCC 115] wherein Dharmadhikari, J. speaking for the Bench opined that the case of Best Bakery was of exceptional nature.

We may not go into the said respective contentions as we are of the opinion that, having regard to the order proposed to be passed by us, it is not necessary so to do.

In a case of this nature, therefore, in our opinion, it would have been in the fitness of things, the Appellant should have been heard by the High Court.

We may, however, hasten to add that our direction is not intended to lay down the law that while the Magistrate directs a further investigation or a Sessions Judge while exercises its jurisdiction under Section 319 of the Code of Criminal Procedure, an accused is entitled to be heard; he is not as he has no right therefor and, thus, the question of hearing him at that stage would not arise.

But herein, the High Court was dealing with an extraordinary situation because :

(i) rightly or wrongly the Magistrate had accepted the final form and did not direct any further enquiry;

(ii) although the investigating officer or the court did not intimate the first informant about filing of the final form in respect of the Appellant, it cannot be said that the first informant was not aware thereof.

(iii) The first informant neither filed any protest petition nor filed any complaint petition.

(iv) Even during the trial, no application was filed before the learned Sessions Judge for summoning the Appellant on behalf of the State or the complainant.

(v) The learned Sessions Judge did not exercise his power suo motu.

(vi) The High Court was hearing an appeal preferred by a convicted person and exercised its extraordinary jurisdiction after 10 years.

(vii) Even it could direct further investigation, it was required to apply its mind as regard existence of a very strong prima facie case therefor and particularly in view of the fact that a period of 10 years had lapsed in the meanwhile.

(viii) Had an opportunity of hearing been given, the State also could have shown that for valid reasons the investigating officer did not think it fit to proceed against the Appellant and that there was otherwise justifiable reasons to file the final form.

We have noticed hereinbefore that the jurisdiction of the learned Magistrate in the matter of issuance of process or taking of cognizance depends upon existence of conditions precedent therefor. The Magistrate has jurisdiction in the event a final form is filed (i) to accept the final form; (ii) in the event a protest petition is filed to treat the same as a complaint petition and if a prima facie case is made out, to issue processes; (iii) to take cognizance of the offences against a person, although a final form has been filed by the police, in the event he comes to the opinion that sufficient materials exist in the case diary itself therefor; and (iv) to direct re- investigation into the matter. [See Abhinandan Jha and Others v. Dinesh Mishra , AIR 1968 SC 117, see also Minu Kumari and Anr. v. The State of Bihar and Ors., 2006 (4) SCALE 329] Similarly, the power of the Sessions Judge to summon a person to stand trial with the other accused in exercise of its jurisdiction under Section 319 of the Code of Criminal Procedure is also limited inasmuch as from the evidences of the witnesses, it must clearly be found that the proceedee had a role to play in the commission of an offence.

So far as inherent power of the High Court is concerned, indisputably the same is required to be exercised sparingly. The High Court may or may not in a given situation, particularly having regard to lapse of time, exercise its discretionary jurisdiction. For the said purpose, it was not only required to apply its mind to the materials on records but was also required to consider as to whether any purpose would be served thereby.

Having regard to the peculiar facts and circumstances of this case, we are of the opinion that before issuing the impugned directions, the High Court should have given an opportunity of hearing to the

Appellants herein.

For the reasons aforementioned, the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the matter afresh. The High Court shall issue notice to the Appellants herein as also the State and pass appropriate orders as it may deem fit and proper and in accordance with law. The appeals are allowed with the aforementioned observations and directions.