

Moosa Vs. Sub Inspector of Police

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Court : Kerala

Decided On : Dec-23-2005

Reported in : 2006CriLJ1922; 2006(1)KLT552

Judge : P.R. Raman,; R. Basant and; M.N. Krishnan, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3, 10, 30, 35, 40 to 43 and 44; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107, 236, 237, 299, 364, 403, 403(2), 482 and 561A; ;[Code of Criminal Procedure \(CrPC\) , 1973](#); Prevention of Corruption Act - Sections 5(1); ;[Negotiable Instruments Act, 1881](#) - Sections 138; Arms Act - Sections 19; ;General Clauses Act - Sections 26; ;Indian Penal Code (IPC) - Sections 34, 149, 302, 307, 325, 420 and 477; ;[Constitution of India](#) - Articles 20(2), 226 and 227

Appeal No. : Crl. M.C. No. 8573 of 2002

Appellant : Moosa

Respondent : Sub Inspector of Police

Advocate for Def. : P.V. Madhavan Nambiar, Director General of Prosecution

Advocate for Pet/Ap. : Sanal Kumar,; P.K. Ashokan,; Sunny Mathew,;

Judgement :

ORDER

P.R. Raman and M.N. Krishnan, J.

1. The above Criminal Miscellaneous Cases are filed under Section 432 of the Code of Criminal Procedure seeking to quash the criminal proceedings initiated against the petitioners herein on the ground that the co-accused in the respective cases were acquitted on trial. The case of the petitioners who were absconders were separated and are now proceeded with in their respective cases. The co-accused against whom case was proceeded with earlier were finally acquitted on appreciation of the evidence in each of the cases above. It was contended that as the prosecution failed to prove the guilt of any of them, no useful purpose will be served by conducting trial against them and it will be an abuse of process of the court and to secure the ends of justice further proceedings against the petitioners is to be quashed. In support thereof reliance was placed on the decision of a Division Bench of this Court in Arun Kumar v. State of Kerala reported in : 2004(2)KLT1039 . CrI. M.C. Nos. 1053, 1067 & 1078/2005 came up for consideration before a Learned Judge of this Court who after referring to the decisions in Joy v. State of Kerala 2002 (3) KLT 425, Chellappan v. State of Kerala 1992(1) KLT 609, Balakrishna Pillai v. State of Kerala 1971 KLT SN.3, Felix v. State and Ors. 1980 KLT 612 and also Arun Kumar's case cited supra, was of the view that there is apparent conflict in the Division Bench and Single Bench rulings of this Court and the matter required to be referred to a Full Bench In the reference order, Ramkumar, J. also expressed his feeling that granting relief to an absconder accused may give a wrong message to a law abiding co-accused who stood trial that it was foolish on his part to attend the process of trial and its result will be that like-minded accused persons also will be tempted to adopt elucive tatics for the eventual resort to such short-cut method. Subsequently, CrI. M.C. Nos. 3102,3300, 3460 and other connected matters which came up for consideration before a Division Bench of this Court also were referred to the Full Bench.

2. The dictum laid down in Arun Kumar's case : 2004(2)KLT1039 is as follows:

It is up to the Judge who hears the petition under Section 482 Cr.P.C, to examine the facts situation of each case, with reference to the overt acts attributed and

such other relevant factors and to come to a conclusion whether the discretion vested in this Court under Section 482 Cr.P.C. has to be exercised or not, it is also possible to consider whether the accused, who had not faced trial, can seek the remedy available under Section 239 Cr.P.C. for an order of discharge. In cases taken cognizance otherwise than on the basis of police report, the Court can also examine the possibility of the accused approaching the trial Court itself under 8.245 Cr.P.C. as well.

3. In Chellappan Pillai v. State of Kerala 1992 (1) KLT 609 another Division Bench of this Court, however, held that acquittal of a co-accused in a prior trial does not mean that the absconding accused who is subsequently tried is also entitled to an acquittal. In the order of reference detailed reference is made to some of the decisions of the apex court and a few rendered by this Court and observed that it is desirable to lay down sufficient guidelines by a Full Bench so as to resolve the conflict in the Division Bench decision and Single Bench ruling of this Court. The above cases were thus placed for consideration by a Full Bench.

4. Heard the learned Counsel M/s. Sanal Kumar, P.K. Ashokan, Sunny Mathew, Section U. Nazar, M. Santhosh Kumar, M.R. Arun Kumar, V. Rajgopal, M. Ramesh Chander, C.M. Kammappu, Babu Section Nair, K.P. Mujeeb, S. Harikrishnan and S. Gopakumaran Nair, appearing on behalf of the petitioners and the learned Director General of Prosecution appearing on behalf of the State.

5. It was contended on behalf of the petitioners that Arun Kumar's case : 2004(2)KLT1039 has correctly decided the principles stated therein. It was their further contention that Section 482 Cr.P.C. is a wholesome provision, which is intended to prevent abuse of process of the court and to secure the ends of justice. Therefore the power is very wide and no fetter can be placed on the inherent powers of this Court by laying down a straight jacket formula for the exercise of such power. For what purpose the power could be exercised is expressly provided in Section 482 of the Code. Hence in a given case whether there is any abuse of process of the court or not is always a matter of appreciation of the particular matrix present in each of the case by the court. They contended that they are not canvassing for the position that merely because a few witnesses

turned hostile in a trial, the other accused who has not faced the trial is entitled to be acquitted on that ground. But according to the learned Counsel, if the substratum of the case is shown to be lost based on the earlier judgment though the petitioner may not be a party thereto, the offence alleged being same, he is entitled to rely on the earlier judgment to that extent. If the substratum of the allegation does not survive, necessarily it will only result in abuse of process to try again the same issue in the case of the petitioner. It was also contended that the principle of issue estoppel is synonymum with the term 'abuse of process', that the issue estoppel equally applies to criminal trial and can be extended to situation or facts already tried and decided earlier and the judgment though not interparties is still relevant and admissible.

6. The learned Director General of Prosecution Sri. Madhavan Nambiar, on the other hand contended that the judgment in the case of a co-accused is not judgment relevant within the meaning of Sections 41 to 43 of the Evidence Act and the fact that certain accused were acquitted by itself is no bar for a trial in the case of the petitioners. He also contended that any document, unless it could be translated into the form of legal unimpeachable evidence, cannot be looked into to quash further proceeding which will be in effect barring the very trial. He also canvassed for the position that merely because a few witnesses turned hostile or the trial judge while on appreciation of the evidence acquitted some of them is also not reason to stop the trial of the accused as it is for the court trying the present case to assess the evidence on record and then come to its own conclusion.

7. The Rule of estoppel is only a 'rule of evidence' and the contention if any based on rule of estoppel has to be at the stage of trial only. It is his further submission that unlike a case where the FIR or charges framed are liable to be quashed when it does not disclose any of the offences alleged, on the face of it but when the charges are framed, the case has reached the third stage and normally the court should be allowed to continue with trial and to reach its logical conclusions. He also submitted that an accused absconder cannot have a better right than those who faced the trial.

8. Both sides cited various authorities in support of their contentions. It may not be necessary to refer to all of them but we shall refer to some of them which are relevant, while considering the relevant issues.

9. Before we proceed to consider the rival contentions, we may state briefly the history of the legislation behind the incorporation of a provision like Section 482 Cr.P.C. and its object, and the extent of the powers and circumstances under which it is generally exercised. Before the enactment of the present Criminal Procedure Code of 1973, the corresponding provision contained in the 1898 Act is Section 561A.

10. The inherent power of the High Court to do real and substantial justice between the parties was statutorily recognized by Section 561-A of the Code of Criminal Procedure, 1898. In *Emperor v. Sukh Dev* 1929 Lahore, 705 it was held that the inherent power cannot be exercised for doing act which would conflict with any of the provisions of law or general principles of criminal jurisprudence. The rule of law is firmly established that when a statute confers upon a Court a specific power the Court cannot by relying upon its inherent jurisdiction extend its scope of that power. The 41st Law Commission Report recommended that the Section may be expanded as follows:

561A. Nothing in this Code shall be deemed to limit or affect the inherent power--

(a) 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, or

(b) of any other Criminal Court to make such orders as may be necessary to prevent abuse of its process or otherwise to secure the ends of justice.

11. Even though in the earlier report it was noticed that statutory recommendation of inherent power extends only to the power of the High Court and a recommendation was made for such statutory recommendation of the inherent power as vesting in all the subordinate criminal courts the Commission did not however considered it necessary or desirable to go further and recognise an

'inherent power' in Courts of Session and other Courts of Appeal; however, expanded the provisions as noticed above. In re State of U.P. (1959 Allahabad 69) it was held that Section 561 A Cr.P.C. confers no additional powers on the High Court, but it is only a statutory recognition of the inherent powers possessed by the Judges of the High Court. It was necessary to make this statutory recognition because the High Courts hesitated to exercise their inherent powers to secure the ends of justice even where the injustice was palpable and apparent, because they felt that the finality of the order which was sought to be revised could not be disturbed under the frame work of the old Criminal Procedure Code. Section 561-A was a sort of reminder to the High Court that they were not merely the Courts of law, but also the courts of justice and as such they possessed inherent powers to remove injustice. In Rule P. Kapur v. State of Punjab : 1960 CriLJ1239 it was held by the apex court that the inherent power of the High Court under Section 561 A, Cr.P.C. cannot be exercised in regard to matters specifically covered by the other provisions of the Code. 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. It was further held that some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category;

(ii) 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, and (iii) where 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 the 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 Section 561-A the High Court would not embark upon an enquiry 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 under Section 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point. In that case, it was found that the allegation made against the petitioner in the F.I.R. constituted certain offences against him and there was no legal bar to institution of the proceedings commenced on that F.I.R. or their continuance. But the police did not submit their report under Section 173 Cr.P.C. for several months and it was filed only after the petitioner had filed the application under Section 561 -A for quashing the proceedings. In such circumstances, it was held that the High Court was justified in refusing to quash the proceedings which had reached the criminal court and the allegations made by the petitioner that the F.I.R. was false or about the dilatory conduct on the part of investigating agency could not assist him in his prayer.

12. In *Dr. Raghubir Saran v. State of Bihar* : 1964 CriLJ1 the apex court again held that the High Court has inherent power under Section 561-A to expunge objectionable remarks in judgment or order of subordinate court against stranger, after it has become final. It was held that every High Court as the highest court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice. Being an extra ordinary power it will, however, 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 is unwarranted or is likely to harm or prejudice another. In *Madhavarao, J. Scindia v. Sambhajirao C. Angre* 1988 SCC (Crl.) 234 referring to Section 482 of the Code of Criminal Procedure 1973, it was held that when a prosecution at the initial stage is asked to be quashed the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

13. In *State of Karnataka v. L. Muniswamy* : 1977 CriLJ1125 the apex court held that the High Court can under its inherent power quash proceedings pending before the Sessions Judge on ground of insufficiency of evidence. It was further held that saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or prosecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. In exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the strait-jacket of a rigid formula. It is also wrong to say that at the stage of framing charges the court cannot apply its judicial mind to the

consideration whether or not there is any ground for presuming the commission of the offence by the accused. The order framing a charge affects a person's liberty substantially and therefore, it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. So that for the purpose of determining whether there is sufficient ground for proceeding against an accused the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible.

14. In *Karpoori Thakur v. Baikunth Nath Dey* 1990 SCC (Crl.) 642 it was held that the High Court cannot advert to case diary, or rely upon letter addressed by parties to officer-in-charge of police station and quash the prosecution on ground that parties had settled their dispute. In *Chand Dhawan v. Jawahar Lal* 1992 SCC (Crl.) 636 the Apex Court held that the power under Section 482 Cr.P.C. to quash a complaint and consequent criminal proceedings should not be exercised where allegations prima facie constituting the offence alleged in the complaint and such power should be exercised only to save abuse of process of court or to secure ends of justice. It was held that where clear and specific allegations made in the complaint that accused 1 and 2, having married during subsistence of a valid marriage of the first accused with the complainant, committed offence under Section 494 IPC and Magistrate having regard to the statement made on oath by the complainant as also evidence of witnesses produced by her and other material reached his satisfaction regarding existence of a prima facie case against the accused, the High Court was not justified in quashing the complaint and the criminal proceedings on the ground of abuse of process of court by relying on some additional material produced by the accused not admitted or accepted by the complainant. In *State of Haryana v. Ch. Bhajan Lal* : 1992 CriLJ527, in a case relating to a complaint alleging commission of offence under Section 5(1) of the Prevention of Corruption Act, it was held by the Apex Court that the investigation cannot be quashed on the basis of denial of statement of party against whom commission of offence is alleged. In *Minakshi Bala v. Sudhir Kumar* 1994 SCC (Crl.) 1181 it was held that if charges are framed in accordance with Section 240

Cr.P.C. on a finding that a prima facie case has been made out the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge sheet submitted under Section 173 Cr.P.C. and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 Cr.P.C. the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Section 239 and 240 Cr.P.C.; nor would it be justified in invoking its inherent jurisdiction under Section 482 Cr.P.C. to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course-Even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

15. That was a case where the High Court dealt with the rival contentions of the parties, raised through respective affidavits at length and on a threadbare discussion thereof passed an order quashing the proceedings. It was held that the course adopted cannot be supported firstly because the finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly because at the stage of framing of charge the Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case. In *State of Bihar v. Rajendra Agrawalla* 1996 SCC (Cri.) 628 it was held by the Supreme Court that the inherent power of the court under Section 482 Cr.P.C. should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage, it is not open for the court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out. That was a case where after investigation, charge sheet was filed and the Magistrate on perusal of the papers submitted by the police and

other materials took cognizance of the offence. It was thereafter that an application was filed invoking the jurisdiction of the Court under Section 482 Cr.P.C. The High Court quashed the cognizance taken by the Magistrate. It was held that the High Court was wholly unjustified in invoking its inherent power under Section 482 of the Code of Criminal Procedure to quash the cognizance taken inasmuch as the allegation in the FIR and material referred to in the charge sheet do make out an offence and the Magistrate was directed to proceed with the trial against the respondent

16. *Satish Mehra v. Delhi Administration* : (1996)9SCC766 was a case where the Sessions Judge framed charges on two counts. The first charge was that the appellant had outraged the modesty of his minor daughter and the second charge was that he made an attempt to commit rape on the infant child. It was held that consideration which should weigh with the Sessions Court at the stage of framing of charge have been well designed by Parliament through Section 227 Cr.P.C. Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. It was also held that if the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself. On the facts of those case, the proceedings and charges made by the Sessions Judge was quashed and the appellant discharged. In *Pepsi Foods Ltd. v. Special Judicial Magistrate* : 1998 CriLJ1 it was held that it is settled that High Court can exercise its power of judicial review in criminal matters. 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 is mandatory. If in a case the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Code. It was also observed that though the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, that does not mean that the accused cannot approach the High Court under Section 482 Cr.P.C. or Article 227 of the Constitution to have the proceedings 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. Though the High Court refused to quash the complaint on the ground that there was sufficient ground to proceed against the accused the same was set aside and the complaint was quashed. In *Arun Shankar Shukla v. State of U.P.* 1999 SCC (CrL.) 1076 it was held by the apex court that the inherent jurisdiction of the High Court is not to be exercised in a matter covered by specific provision of the Code and the expressions 'abuse of the process of law' or 'to secure the ends of justice' do not confer unlimited jurisdiction on the High Court. In that case, the trial court pronounced judgment of conviction and posted the case for hearing on sentence. The convicted accused instead of preferring statutory appeal against the conviction filed a petition under Section 482 Cr.P.C. The order of the High Court staying the proceedings was held illegal. In *Ashok Chaturvedi v. Shitul H. Chanchani*, : 1998 CriLJ4091 , it was held by the Apex Court that merely because the accused has right to plead at the time of framing of charges that there is no material for framing of charges he is not debarred from invoking the inherent jurisdiction of the court at the earliest point of time when the Magistrate has taken cognizance. In that case, the complaint was quashed not only against the appellants but also against two accused who did not prefer any appeal.

17. In *Dinesh Dutt Joshi v. State of Rajasthan* : 2001 CriLJ4697 it was held that Section 482 Cr.PC. has been embodied to cover the lacunae which are sometimes found in the procedural law. However, this extraordinary power is to be used in extraordinary cases -- Maxims-- '*quando lex aliquid alicui concedit. concedere videtur et id sine quo res ipsae esse non potest*' and '*ex debito iustitiae*'. In *State of Karnataka v. M. Devendrappa* : 2002 CriLJ998 it was held that the power under Section 482 Cr.PC should be exercised *ex debito iustitiae* to prevent abuse of process of court, but it should not be exercised to stifle legitimate prosecution. The High Court should not assume the role of a trial court and embark upon an enquiry as to reliability of the evidence and sustainability of the accusation on a reasonable appreciation of such evidence. Power should be exercised sparingly with caution and circumspection. That was a case where on receipt of a complaint, a charge-sheet was submitted by the police against the respondents alleging commission of offences punishable under Sections 465, 468, 471 and 420 r/w Section 120-B IPC. The accused approached the High Court under Section 482

Cr.PC contending that the allegations made have not been borne out by the materials/evidence collected during investigation and continuance of proceedings against them would be against the ends of justice. The High Court held that there were not materials to hold that the accused persons have committed offence and quashed the criminal proceedings. On appeal, the Apex Court allowed the appeal, setting aside the order of the High Court. In that context it was held that the exercise of power under Section 482 Cr.PC in a case of such nature is the exception and not the rule. It was also held that while exercising the power under Section 482 Cr.PC. the court does not function as a court of appeal or revision and though the jurisdiction under the section is wide, it 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 was held that 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 clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 Cr.P.C. the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression or needless harassment. However, the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should not be exercised to stifle a legitimate prosecution.

18. In *B.S. Joshi v. State of Haryana* : 2003 CriLJ2028 , the Apex Court held that the power under Section 482 Cr.PC. has no limits and therefore, utmost care and caution are required while invoking such powers. In *State of M.R v. Awadh Kishore Gupta* 2004 (1) KLT (SC)(SN) 35 : (2004) SCC (CrL.) 353 it was held that quashing of a proceedings by appreciating evidence is not permissible under Section 482 Cr.PC. Even if charge is framed at that stage, the High Court cannot appreciate the evidence, but can evaluate material and documents on records to the extent of its prima facie satisfaction about the existence of sufficient ground for proceeding against the accused. Quashing of investigation and proceedings by the High Court acting upon documents annexed to the petition under Section 482 Cr.PC is not

proper. It was held that without going into the question of conviction or acquittal where on consideration of the allegations in the light of the statements made on oath of the complainant it appears that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, the proceedings cannot be quashed. When evidence has not been collected and produced before the court, issues involved are of magnitude and cannot be seen in their true perspective without sufficient material, yet no hard-and-fast rule can be laid down for exercise of the extraordinary jurisdiction.

19. In *State of AP. v. Golconda Linga Swamy* 2004 (3) KLT (SC)(SN)95 : 2004 SCC (Crl.) 1805 the apex court reiterated the position of law with regard to the scope and power of Section 482 Cr.PC and held that the inherent jurisdiction 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 Section 482. It was further held that the power should not be exercised to stifle legitimate prosecution and the High Court should not assume the role of a trial court and embark upon an enquiry as to reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence. It was held that that if on consideration of the allegations in the light of the statement made on oath of the complainant or made in FIR it appears that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, the proceedings cannot be quashed; but when it appears to the contrary, interference by High Court would be justified. Yet no hard-and-fast rule can be laid down for exercise of the extraordinary jurisdiction.

20. That was a case where the allegation was that the accused concerned was either transporting or storing black jaggery/molasses for the purpose of manufacturing illicit distilled liquor or was an abettor so far as the offence of manufacturing illicit liquor was concerned. The accused concerned sought to quash the FIR and the High Court accepted the plea and the FIR was quashed. In para 5 of the judgment, it was held that 'exercise of power under Section 482 of the Code 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) otherwise to 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. 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. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or 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 complainant, 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. Reference was made to the decision in *Rule P. Kapur v. State of Punjab* : 1960 CriLJ1239 and also the principles enunciated therein. Three principles were stated in the aforesaid decision. The third category of cases where the inherent power was held could be exercised was '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'. Referring to the above said principle, it was held in the decision cited supra that in dealing with the last category, 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 clearly inconsistent with the accusation made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. The High' Court, under Section 482 of the Code, would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression or needless harassment. The section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

The apex court referred to its earlier decision in *State of Haryana v. Bhajan Lal* : AIR 1992 SC81 , particularly, para 102 of the said decision where the illustrative categories indicated by the apex court were extracted. The apex court proceeded to hold after referring to the above principles that the powers possessed by the High Court under Section 482 of the Code are very wide and the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal are of magnitude and cannot be seen in their true perspective without sufficient material. In para 11 of the judgment it concluded that 'ultimately the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the cases concerned.'

21. In *Central Bureau of Investigation v. Akhilesh Singh* : AIR 2005 SC268 the Apex Court considered the scope of Section 482 in the matter of quashing charges and discharge of the co-accused. That was a case where an appeal was preferred by the C.B.I., against an order passed by the High Court of Allahabad by which the High Court discharged the respondent in the criminal case filed against him. The charges framed against the accused were on the allegation that he entered into a conspiracy with another accused Dr. Sanjay Singh and in furtherance of the common object of the conspiracy joined hands with the other accused to cause the murder of one Syed Modi who was shot dead by Amar Bahadur Singh and two others at Lucknow when he was coming back after his badminton practice. All the three killers escaped from the place of incident. The police recovered some bullets from the place of occurrence and also from the dead body of Syed Modi. Dr. Sanjay Singh and Mr. Amita Kulkarni were implicated as accused but both of them were discharged by an order passed by the Sessions Judge which was challenged by the State before the High Court unsuccessfully. A Special Leave Petition also was filed before the Supreme Court which also was dismissed. In those circumstances, after assessing the factual situation, it was held that 'therefore the very basis of the alleged conspiracy by the respondent with Dr. Sanjay Singh lost

its substratum. Admittedly, the respondent was not present at Lucknow when the incident happened. The respondent was implicated in the case on the basis of the alleged conspiracy between himself and the original accused Dr. Sanjay Singh. There was no direct evidence to show that the respondent had supplied the weapons and rendered assistance to the assailants in carrying out the common object of killing Modi. It was held that had the conspiracy charge been established, at least some of the acts and conduct of the respondent could have been made admissible under the provisions of Section 10 of the Evidence Act. Once the main accused, who is alleged to have hatched the conspiracy and who had the motive to kill the deceased was discharged, and when that matter had attained finality, the learned Single Judge was fully justified in holding that no purpose would be served in further proceeding with the case against the respondent. That was a case where the accused preferred a petition under Section 482 Cr.P.C. before the High Court and the learned Single Judge quashed the charges framed against the accused which was impugned in the appeal Tiled before the apex court. But the apex court, on the aforesaid reasons as stated above, upheld the order of the High Court.

22. In *Subramaniam Sethurainan v. State of Maharashtra* 2005 SCC (Crl.) 242 the question arose for consideration was when process was issued under Section 204 Cr.P.C. what is the remedy available against the same. It was held that issuance of a process under Section 204 Cr.P.C. is a preliminary step in trial contemplated in Chapter 20 (Sections 251 to 259) of the Code of Criminal Procedure and is therefore an interlocutory order which cannot be reviewed, reconsidered or recalled by the Magistrate, there being no provision therefor in the Code. The remedy available to an aggrieved accused is the extraordinary remedy under Section 482 and not by way of application to recall the summons or to seek discharge, the latter not being contemplated in trial of a summons case. It was also held that Sections 251 to 259 do not contemplate discharge from a summons case and once the plea of the accused is recorded under Section 252 of the Code, the procedure contemplated under Chapter 20 has to be followed which is to take the trial to its logical conclusion. It was also held that a party aggrieved cannot be estopped from having recourse to Section 482 it being the only course open to it to challenge process issued under Section 204 as affirmed by the apex court because of his conduct in successfully having kept trial in abeyance by filing one

proceeding after another. It has to be noticed that the Supreme Court and the High Court in the earlier proceedings had directed the question of validity of said statutory notice issued under Section 138 of the [Negotiable Instruments Act, 1881](#) to be considered at trial stage. Even so in the light of the same and conduct of the appellant in initiating one proceeding after another, even up to the Supreme Court, thereby successfully managing to keep trial in abeyance in proceedings initiated in 1996, it was held that still the accused person cannot be prevented from taking recourse to the remedy which is available under law to him. Hence while permission sought by the appellant from the apex court to file a petition under Section 482 is not being granted, the statutory right available to him in law cannot be denied.

23. Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Hagu 2005 SCC (Cr.) 283 the apex court reiterated the principles in the matter of exercise of the power under Section 482 as held in Golconda Linga Swamy's case 2004 (3) KIT (SC)(SN) 95 : 2004 SCC (Cr.) 1805 to which reference has already been made. In Rupan Deol Bajal v. Kanwar Pal Singh Gill 1995 SCC (Cr.) 1059 the apex court considered the scope of the power under Section 482 Cr.P.C. in the matter of quashing F.I.R. or complaint and the guidelines laid down by the Supreme Court in State of Haryana v. Bhajan Lal : AIR 1992 SC81 was applied. It was held that when a prima facie offence under Sections 354 and 509 IPC was made out the High Court was not justified in quashing the FIR and complaint. That was a case where the accused moved the High Court by filing a petition under Section 482 of the Code of Criminal Procedure for quashing the FIR and the complaint and an interim stay was granted staying the investigation in to the FIR lodged by the appellant; but not the proceedings initiated on the complaint of the appellant's husband. Resultantly, the husband moved an application for summoning two officers as witnesses and for producing certain documents which was allowed. A criminal revision was filed by the State of Punjab which was allowed by the High Court. Earlier petition filed by the respondent under Section 482 Cr.P.C. came up for hearing before the High Court thereafter which was allowed and both the FIR and the complaint were quashed. Both the orders of the High Court were challenged before the Supreme Court. It was allowing the appeals that the above observations were made.

24. Following the decisions of the Apex Court as discussed above, it admits of no doubt that the inherent power of the High Court as statutorily recognised under Section 482 Cr.P.C. of the present Code corresponding to Section 561 A of the old Code has no limit but the exercise of which is to be to prevent abuse of process of Court and to secure the ends of justice. The very fact that such a power is vested only in the High Court is a safeguard of the power being not abused and hence utmost care and caution are required while invoking the powers. The object of exercise of the power being to prevent abuse of process of court and to secure the ends of justice, it follows that ends of justice are higher than the ends of mere law. The power can be invoked to quash a proceeding even at a preliminary stage but once charges are framed the High Court will not normally exercise the power to quash the proceedings and bar the trial except where forensic exigencies and formidable compulsions justify such a course or when the court comes to the conclusion that there would be manifest injustice or when there is abuse of the process of the court, if the power is not exercised. But then, the court will not sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out nor could it be exercised to stifle a legitimate prosecution. The High Court also cannot assume the role of a trial court and embark upon enquiry as regards the reliability of the evidence and sustainability of the accusation based on reappraisal of the evidence. As held in B.S. Joshi's case : 2003 CriLJ2028 no hard and fast rule can be laid down for the exercise of the extra ordinary jurisdiction, but at the same time exercise of the power is an exception and not a rule. At a stage when evidence is not collected, normally court will refrain from giving prima facie decision when facts are incomplete and hazy.

25. The petitioners in this case placed reliance on the judgment of acquittal in the case of their co-accused as a ground for seeking relief under Section 482 of the Code to quash further proceedings in their cases. Both sides have in that regard argued the question of 'issue estoppel' and 'res judicata' in a criminal trial. Learned Counsel appearing on behalf of the petitioners contended that though the petitioners are not parties to the earlier judgment still the principle of 'issue estoppel' could be extended and applied when it is shown that no purpose shall be served by proceeding against the petitioners when their co-accused are acquitted after a full trial. According to them, it will be a waste of judicial time and abuse of

process of court in proceeding against the petitioners when the State failed to prove the accusation as against the other accused and were acquitted on trial. It was the contention by the State that merely because the co-accused were acquitted for one reason or the other, based on appreciation of the evidence on record, does not ipso facto constitute any issue estoppel barring a trial as against the petitioners. We shall now consider the rival submissions in the light of the principles enunciated by the Supreme Court in the following cases.

26. In *Pritam Singh v. The State of Punjab* : 1956 CriLJ805 the Apex Court considered the ambit of Section 403 of the Code of Criminal Procedure. It was held that the effect of a verdict of an acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim '*res judicata pro veritate accipitur*' is no less applicable to criminal than to civil proceedings. Thus an acquittal of an accused in a trial under Section 19(f) Arms Act, is tantamount to a finding that the prosecution had failed to establish the possession of certain revolver by the accused as alleged. The possession of that revolver was a fact in issue which had to be established by the prosecution before he could be convicted of the offence under Section 19(f). That fact was found against the prosecution and could not be proved against the accused in the subsequent proceeding between the Crown and him, under a charge of murder. The evidence against him in the latter proceedings would have to be considered regardless of the evidence of recovery of the revolver from him. The above observations were made in an appeal with Special Leave filed by the accused against the conviction and sentence of death.

27. In *Sheo Nandan v. The State* : AIR1964 All139 the principle of *res judicata* and its application are stated thus: 'Where after several persons who were tried for the offence of dacoity were acquitted with a finding that the currency notes recovered from one of the accused were not looted property but belonged to him, two more persons who were concerned in the same dacoity and who were absconding were arrested and tried for the same offence separately. It was held that the principle of

res judicata as it was enunciated in Pritam Singh's case : 1956 CriLJ805 in relation to criminal proceedings required that the previous judgment must be inter parties and hence, the accused not being the same in the two trials, the finding that the currency notes recovered were not looted property did not preclude the Court in the second trial from recording a contrary finding though such finding could not in any way affect the accused in the previous trial.

28. A Constitution Bench of the Supreme Court in Manipur Administration v. Thokchom Bira Singh : [1964]7SCR123 considered the rule as to issue estoppel with reference to Section 403 Cr.P.C. 1898 and held that Section 403 does not preclude its application as regard the rule as to issue estoppel. The rule of issue estoppel in a criminal trial is that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2). The rule is not the same as the plea of double jeopardy or autrefois acquit. The rule does not introduce any variation in the Code of Criminal Procedure either in investigation, enquiry or trial. It also does not prevent the trial of any offence as does autrefois acquit but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a court of competent jurisdiction. The rule thus relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court at a previous trial. Further, Section 403 Cr.P.C. does not preclude the applicability of this rule of issue estoppel. The rule being one which is in accord with sound principle and supported by high authority and there being a decision of Supreme Court which has accepted it as a proper one to be adopted, there is no reason for discarding it. The decision rendered in Pritam Singh's case : 1956 CriLJ805 was affirmed. Both in the case of Article 20(2) of the Constitution as well as Section 26 of the General Clauses Act, it was held that, to operate as a bar the second prosecution and the consequential punishment thereunder, must be for 'the same offence' ie., an offence whose ingredients are the same. The apex court

addressed the question as to whether what is termed 'issue estoppel' which has been held by that court in Pritam Singh's case, to be applicable to criminal proceedings is excluded by reason of the provisions of the Criminal Procedure Code. After considering the matter at length it was concluded by saying that Pritam Singh's case : 1956 CriLJ805 was rightly decided.

29. In *Kharkan v. State of U.P.* 1965 (1) Cri.L.J. 116 the applicability of Section 403 was considered by the apex court and held that the plea will arise when a person is tried again for the same offence or on same facts for any other offence under conditions attracting Section 236 or Section 237. When there are two different trials for distinct offences arising out of different transactions and common object in both the cases being different the acquittal in one does not bar conviction in another. It was also held that the plea of *autrefois acquit* which is recognised under Section 403 Cr.P.C. arises when a person is tried again for the same offence or on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236 or for which he might have been convicted under Section 237. It has to be noticed that in that case the accused were charged under Section 302 IPC read with Section 149 IPC for murder of one T. They were convicted under Section 325 read with Section 149 and some other provisions. There was another trial at which the accused were tried under Section 307 I.P.C. for causing hurt to one P with such intention and under such circumstances that if by that act they had caused his death they would have been guilty of murder and also under Sections 147 and 148 of the Penal Code for being members of an unlawful assembly. The trial resulting in the acquittal preceded the trial for murder. In appeal against the conviction the accused contended that their acquittal in the other trial operated as a bar against their conviction for murder. It was also contended that the earlier judgment involved almost the same evidence and the reasoning given in the judgment in P's case destroyed the prosecution case. It was held that the acquittal did not operate as a bar to the conviction of the accused for murder. The two offences were distinct and required separate charges. It was also held that the reasoning in the earlier judgment could not be relied upon as it proceeded on evidence which was recorded separately and separately considered. The earlier judgment could be admissible to show the parties and the decision but it was not admissible for the

purpose of relying upon the appreciation of evidence. Since the bar under Section 403 Cr.P.C. did not operate, the earlier judgment was not relevant for the interpretation of evidence in the latter case.

30. In *State of Andhra Pradesh v. Kokkiliagada Meerayya* : AIR 1970 SC771 the principle of 'Issue estoppel' in criminal cases is stated thus:

1. Section 403, Cr.P.C. governs the entire principle of *autrefois acquit* and *autrefois convict*. But apart from this the Australian 'principle of issue estoppel' has been followed in India. (Reliance was placed on *Pritam Singh's case* : 1956 CriLJ805 and *Thokchom Bira Singh's case* ((1964) 7 SCR 123).

2. *Autrefois acquit* and *autrefois convict* are pleas which are concerned with the judicial determination of an alleged criminal liability and in the case of conviction with the substitution of a new liability. 'Issue of estoppel' is concerned with the judicial establishment of a proposition of law or fact between parties. It depends upon well known doctrines which control the re-litigation of issues which are settled by prior litigation.

3. A proceeding under Section 107 Cr.P.C. is not a trial. So the rejection of evidence given in the earlier proceeding to sustain an order for binding over the respondents to keep the peace does not preclude the trial of the respondents in respect of specific incident which together with the other incident was sought to be made the basis of the order of binding over the respondents. No principle of issue estoppel arises in such cases.

31. The following principles were held as emerging from the terms of Section 403 Cr. P.C.

(1) An order of conviction or acquittal in respect of any offence constituted by any act against or in favour of a person does not prohibit a trial for any other offence constituted by the same act which he may have committed, if the court trying the first offence was incompetent to try that other offence.

(2) If in the course of a transaction several offences are committed for which separate charges could have been made, but if a person is tried in respect of

some of those charges, and not all, and is acquitted or convicted, he may be tried for any distinct offence for which at the former trial a separate charge may have been, but was not, made.

(3) If a person is convicted of any offence constituted by any act, and that act together with the consequences which resulted therefrom constituted a different offence, he may again be tried for that different offence arising out of the consequences, if the consequences had not happened or were not known to the court to have happened, at the time when he was convicted.

(4) A person who has once been tried by a court of competent jurisdiction for an offence and has been either convicted or acquitted shall not be tried for the same offence or for any other offence arising out of the same facts, for which a different charge from the one made against him might have been made or for which he might have been convicted under the Code of Criminal Procedure.

32. It was also held that the rule of issue estoppel in criminal trials evolved by the High Court of Australia and approved by the Judicial Committee has been applied to criminal trials in India, apart from the terms of Section 403 of the Code of Criminal Procedure. It was further held that the rule does not predicate that evidence given at one trial against the accused cannot again be given in the trial of the accused in a distinct offence. If in respect of an offence arising out of a transaction a trial has taken place and the accused has been acquitted, another trial in respect of the offence alleged to arise out of that transaction or of a related transaction which requires the court to arrive at a conclusion inconsistent with the conclusion reached at the earlier trial is prohibited by the rule of issue estoppel.

33. In *Gopal Prasad Sinha v. State of Bihar* : 1971 CriLJ420 the question considered was whether the finding of the High Court on the charge of criminal breach of trust with regard to a particular period operate as issue estoppel on a similar charge with regard to a different period. It was held that the basic principle underlying the rule of issue-estoppel is that the same issue of fact and law must have been determined in the previous litigation. If there is any likelihood of facts or conditions changing during the two periods which are under consideration then it is difficult to say that the prosecution would be bound by the finding in a previous trial

on a similar issue of fact. There cannot be a contradiction if the periods are different and the facts relating to the carrying on of the duties of a cashier are different. In *Masud Khan v. State of Uttar Pradesh* : [1974]1SCR793 it was held that the principle of issue estoppel simply stated is that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or *res judicata* against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by law. It was further held that the plea of issue estoppel is not the same as the plea of double jeopardy or *autrefois acquit*. Issue estoppel arises only if the earlier as well as the subsequent proceedings were criminal prosecutions.

34. In *Amritlal Ratilal Mehta v. State of Gujarat* : 1980 CriLJ214 it was held that an earlier finding which has attained finality is binding in the subsequent proceedings in the case. The question is not whether the ingredients of the two offences are the same or substantially the same. That question would be relevant if the plea was one *autrefois acquit* or *autrefois convict*. The question is not even of 'Issue estoppel' properly so called as there were no separate trials. The question really is about the binding force and the conclusive nature, at later stage of a case, of a finding of fact finally determined at an earlier stage of the case which would depend on the question as to what the allegations were, what facts were required to be proved and what findings were arrived at. That was a case where the appellants were charged under Section 420 read with Section 34 and other provisions of the Indian Penal Code. They were acquitted of the charge under Section 420, but convicted for the offence under Section 477. There were two appeals - one against the acquittal by the trial court and the other against the acquittal by the appellate court. The High Court dismissed the appeal against the acquittal on the charge under Section 477 but allowed the appeal on the charge under Section 420 of the Code. Before the Supreme Court, the appellants contended that in view of the finding of fact recorded by the first appellate court on the charge under Section 477 which had become final as a result of the dismissal of the appeal by the High Court the charge under Section 420 Cr.P.C. must

automatically fail. It was while allowing the appeal that the Supreme Court enunciated the above principles.

35. In *McIlkenny v. Chief Constable* (1980) 2 All ER. 227 the principle of issue estoppel was considered in the following background:

The accused alleged in the criminal proceeding that he was assaulted by police officers to procure confession while in custody. But the assault was not proved and the accused convicted. Civil proceedings were also initiated by the accused against the police officers claiming damages for assault. The questions arose as to whether 'issue estoppel' will apply and whether the civil action is an abuse of process of court. It was held that the plaintiffs were estopped from raising in their action against the chief constable the issue whether they had been assaulted by his police officers because that issue had already been finally determined against them by a court of competent jurisdiction in the criminal proceedings to which they were parties and in those proceedings they had a full and fair opportunity of presenting their case and in all the circumstances it would not be just to allow them to reopen the issue.

36. In *North West Water Ltd. v. Binnie & Partners* (1990) 3 All ER 547) the principle of estoppel and *res judicata* were considered by the Queen's Bench Division. That was a case where the Water Authority commissioned a firm of consultant engineers to design and supervise the construction by contractors of an underground tunnel link and valve house to take water from one river to another. The scheme prompted protests from local residents which caused the plaintiff to arrange a meeting of the local residents at the valve house in order to demonstrate the operation of the scheme. During the meeting an explosion occurred because unknown to anyone the valve house had filled with methane gas which ignited. Some people were killed and the rest injured. The Victims brought action claiming damages for injury or death against the Water Authority, the contractors who constructed the system and the consultant engineers. In the trial the Judge held that all three defendants were to blame and apportioned liability between them. All of them appealed to the court of appeal which allowed the appeal of the Water Authority and contractors and held that the consultant engineers were wholly to

blame. In a separate proceedings the water authority issued proceedings against the consultant engineers seeking to recover damages to the tunnel system caused by the explosion. The water authority contended that the damage had been caused by the consultant engineers' negligence and further alleged that as between the water authority and the consultant engineers the issue of negligence had been decided in the first action and was res judicata and that the consultant engineers' defence denying negligence was an abuse of process and should be struck out. The question was whether the consultant engineers were estopped from denying negligence and whether their defence should be struck out. It was held that where an issue had for all practical purposes been decided in a court of competent jurisdiction the court would not allow that issue to be raised in separate proceedings between different parties arising out of identical facts and dependent on the same evidence since not only was the party seeking to relitigate the issue prevented from doing so by issue estoppel but it would also be an abuse of process to allow the issue to be relitigated.

37. The above decision was strongly relied on by the petitioners to support their contention that even if they are not parties to the earlier proceedings, the principle as stated in the above decision should be extended and applied.

38. As regards the question of applicability of the decisions of English Courts, the Constitution Bench of the Supreme Court in *Manipur Administration v. Thokchom Bira Singh* : [1964]7SCR123 held that the decisions of the High Courts are merely persuasive authority. In the very same decision the court observed that the rule of issue estoppel in a criminal case is that where an issue of fact has been tried by a competent court on an earlier occasion and finding has been reached in favour of the accused that will constitute an issue estoppel or res judicata against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but only precludes reception of evidence to disturb the finding of facts when the accused is tried even for a different offence. It does not prevent the trial as *autrefois acquit*.

39. As we have already noticed the Apex Court in *Kokkiliagada Meerayya's case* : AIR 1970 SC771 has held that the principle of issue estoppel has received

approval of the Supreme Court in *Manipur Administration v. Thokcham Bira Singh* : [1964]7SCR123 , *Banwari Godara v. The State of Rajasthan* (Crl.A.141/1960 decided on 7th February, 1961), *Lalta and Ors. v. The State of U.P.* (Crl.A. 185/1966 decided on 25.10.1968), and in *The Assistant Collector of Customs and Anr. v. LR. Malwani and Anr.* (Cr.As. Nos. 15 & 35/1967 decided on 16.10.1968) etc. It was also held that it is too late now to make a departure from the rule accepted by the apex Court and in the American courts also the rule of issue estoppel has received approval (*Sealfon v. United State* (1948) 332 US Rep. 575.)

40. In para 12 reference was also made to *Connelly v. Director of Public Prosecutions* LR (1964) AC 1254 decided by the House of Lords and the Apex Court observed that in the aforesaid decision there was some difference of opinion amongst the Law Lords regarding the applicability of the rule to criminal trials in the English Courts and added to say that our criminal jurisprudence is largely founded upon the basic rules of English Law though the procedure is somewhat different. In criminal trials under the Code of Criminal Procedure, there is no uncertainty in the determination of issues decided and the difficulties envisaged in *Connelly's case* (LR (1964) AC 1254) in the application of the rule of issue estoppel do not therefore arise under our system. In *Gopal Prasad Singha's case* : 1971 CriLJ420 it was specifically held that the basic principle underlying the rule of issue estoppel is that the same issue of fact and law must have been determined in the previous litigation. In *Mst. Harkori v. State of Rajasthan* AIR 1998 SC 1491 it was held by the apex court that that when the conviction was based on evidence of two witnesses and leave to appeal was refused to two out of the three convicts, in appeal by the third convict the evidence of the two witnesses could not be held to be unbelievable. *Shankar Mahto v. State of Bihar* : 2002 CriLJ3775 was a case of assault leading to death of three family members. Two of the seven accused were convicted for murder and others under Section 364 Cr.P.C. Special Leave against the conviction of the two murder convicts rejected. In appeal against the conviction under Section 364 the question about identification of accused in the absence of source of light was held cannot be gone into. It was held that since night was moon lit, accused were known persons and fire was burning at the place of incident, the identification could not be doubted.

41. Nextly it was contended that the judgment rendered in the case of the co-accused is a relevant judgment and this Court, while exercising the power under Section 482 Cr.P.C. is entitled to look into the circumstances under which the accused were acquitted so as to form an opinion as to whether the trial in the case of the petitioner at the bleak chance of being convicted and it will only be an abuse of process of court to permit the trial being continued. On the other hand, the State would contend that the judgment rendered in the case of the co-accused is relevant within the meaning of Sections 40 to 43 of the Evidence Act and at any rate, it is only a rule of evidence and hence even if the co-accused were acquitted is not a ground to bar the trial in the case of the petitioner. As per Section 40 of the Evidence Act, the existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial. Section 41 deals with relevancy of certain judgments in probate etc. jurisdiction and Section 42 deals with relevancy and effect of judgments, orders or decrees other than those mentioned in Section 41 and says that the judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state. As per Section 43 judgments, orders or decrees other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provisions of this Act.

42. A three Judges' Bench of the Supreme Court in *Kharkan v. state of Uttar Pradesh* : [1964]4SCR673 considered the question where in two different trials for distinct offences arising out of different transactions and when common object in both cases are different, whether acquittal in one is a bar to convict in the other. It was held that the reasoning of judgment of acquittal not admissible as evidence. It was further held that a plea of *autrefois acquit* which is recognised under Section 403 Cr.P.C. arises when a person is tried again for the same offence or on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236 or for which he might have been convicted under Section 237. It was also held that the reasonings in the

earlier judgment could not be relied upon as it proceeded on evidence which was recorded separately and separately considered. The earlier judgment could be admissible only if it fulfilled the conditions laid down in Sections 40-43 of the Evidence Act. The earlier judgment was admissible to show the parties and the decision but it was not admissible for the purpose of relying upon the appreciation of evidence. Since the bar under Section 403 Cr.P.C. did not operate, the earlier judgment was not relevant for the interpretation of evidence in the latter case. To operate as a bar under Section 403 Cr.P.C. a Constitution Bench of the Supreme Court in *Thokchom Bira Singh's case* : [1964]7SCR123 to which reference has already made, held that Section 403 Cr.P.C. does not preclude the application regarding the rule of issue estoppel. The rule of issue estoppel in a criminal trial is that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or *res judicata* against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2). It was held that Section 403 Cr.P.C. embodies in statutory form the accepted English rule of *autrefois acquit*.

43. Therefore, in order to apply the principle of *autrefois acquit* as is applicable to India, it should be brought within the ambit of Section 403 Cr.P.C. On a reading of Section 403 Cr.P.C. it can be seen that the bar will apply only if it is shown that the petitioner had been tried earlier. In other words, only a judgment *inter parties* would be relevant within the meaning of Sections 40 to 43 of the Evidence Act to bar a second trial as contemplated under Section 403 Cr.P.C. If it is an issue estoppel necessarily it is only a rule of evidence that does not bar a trial.

44. In *Ali Hasan v. State* 1975 CrL.J. 345 a Division Bench of the Allahabad High Court, following the decision in *Kharkan's case* : [1964]4SCR673 held that neither reasons for acquittal in earlier case nor evidence on record is relevant for decision in later case. The contention was that the accused in that case was acquitted in an earlier case and a certified copy of the judgment in that case was attempted to be produced. It was held that even if the certified copy of judgment was accepted as

additional evidence, it does not in any way advance the case of the accused since the judgment produced can be utilised for the purpose of showing that he was acquitted in the sessions trial. Neither the evidence on record nor the reasons contained the judgment can be taken into consideration for deciding the present appeal. The reasoning in the earlier judgment could not be relied upon as it proceeded on evidence which was recorded separately and which was considered separately. It was also noticed that the sessions trial which ended in acquittal was connected with a dacoity and the acquittal was on the ground that the identification witness did not have sufficient opportunity to recognise the accused. In *Balakrishna Pillai v. State of Kerala* 1971 KLT Section N. 3 Krishna Iyer, J. as he then was, held that the contention that as the court had in a connected case evaluated the credibility of testimony of some witnesses and disbelieved them, the same view should have been taken by the magistrate who tried the present case about the witnesses, cannot be sustained. It is odd that out of the same facts and virtually the testimony of the same witnesses imputing the same criminal conduct to two persons one should be acquitted and the other convicted. In *Chellappan Pillai v. State of Kerala* 1992 (1) KLT 609 a Division Bench of this Court held that in a case where the co-accused was acquitted in the prior trial, it does not mean that the absconding accused who is subsequently tried is also entitled to be acquitted. When the absconding accused is apprehended and tried later the court has necessarily to consider the legally available evidence and cannot adopt the easy course of acquittal on the premise that the co-accused was acquitted. So long as no inconsistencies or contradictions or infirmities were brought out to discredit the witnesses merely because the co-accused was acquitted in the prior trial, case against the absconding accused cannot be thrown out. The case of the absconding accused should be tried and decided on its own evidence unless the evidence was specially recorded under Section 299 Cr.P.C. Merely because the co-accused was acquitted the court cannot ignore the evidence against the absconding accused and jump to the same conclusion as in the case of the co-accused.

45. In *Raja Ram v. State of M.P.* 1994 SCC (Cri.) 573 it was held that in the case of non appealing accused identical to the case of the appellants, the benefit of altered conviction and sentence must also be made available to such non-

appealing accused also. It must be noticed in this connection that it was only after the full trial that the benefit of the appellate judgment was extended to the non appealing accused.

46. In *Ramaswami Goundan v. Subbaraya Goundan* AIR (35) 1948 Madras 388 reference was made to Section 35 of the Evidence Act. It was held that a previous judgment though not inter parties is admissible under Section 35 to prove a statement made by a predecessor in title of the party against whom the document is sought to be used. Consequently, where such a judgment contains an admission as to the date of death of the father of the predecessor in title, the admission is admissible to prove the date of the death of such person. The above decision would show that even if a judgment is not inter parties and may not be relevant within the meaning of Section 40 to 43, the question will be admissible under Section 35 to prove certain facts. In *Gangadhar Behera v. State of Orissa* 2003 SCC (Crl.) 32 the apex court held that merely because some of the accused have been acquitted, though evidence against all of them, so far as direct testimony went, the same does not lead as a necessary corollary that those who have been convicted must also be acquitted and it is always open to a court to differentiate the accused who had been acquitted from those who were convicted. Reference was made to *Gurcharan Singh v. State of Punjab* : 1956 CriLJ827 .

47. The above decision would show that there may be distinguishing features in the evidence so far as the acquitted and convicted accused are concerned and merely because some of the accused were acquitted by itself may not be a ground to bar a trial itself leaving the question as to whether the co-accused is entitled to rely on the earlier judgment as the rule of estoppel at the time of trial. It was also held in the said decision that the principle of *Falsus in uno falsus in omnibus* was not applicable in India and it is only a rule of caution. The same principle was laid down in *Bijoy Singh v. State of Bihar* 2003 SCC (Crl.) 1093. It was also held that when a part of the evidence of a witness is found to be unreliable court should scrutinise the remaining part cautiously and if the same is found trustworthy and the basis of the prosecution case is found intact, the same can be accepted. Again, in *Sucha Singh v. State of Punjab* : 2003 CriLJ3876 the principle of *Falsus in uno, falsus in omnibus* is not applicable in India has been reiterated.

48. In *Megh Singh v. State of Punjab* 2004 SCC (CrL.) 58 the apex court held that the acquittal of the co-accused does not by itself entitle the other accused in the same case to acquittal as a single significant detail may alter the entire aspect. It may be noticed that the co-accused was acquitted in the same trial still it was held that that by itself is not a reason to acquit the other accused. In *Gorle Section Naidu v. State of A.P.* AIR 2004 SC 1169 referring to Section 3 of the Evidence Act and credibility of evidence, it was held that mere acquittal of large number of co-accused does not per se entitle others to acquittal. The court has duty in suit cases to separate grain from chaff.

49. In *Raju Rai v. State of Bihar* 2006 (1) KLT (SC)(SN) 8 : 2005 (7) Supreme 459 the apex court held that the judgment of acquittal in the trial of the co-accused tried separately is wholly irrelevant in the subsequent trial of the other accused who was not tried earlier: but separated and that the judgment in their case is not admissible within the meaning of Sections 40 to 44 of the Evidence Act.

50. From the above discussion, it can thus be seen that a judgment to be relevant within the meaning of Sections 40 to 43 of the Evidence Act so as to bar a trial under Section 403 Cr.P.C. should be a judgment inter parties. So however, it does not mean that the judgment is not admissible if it is admissible under any other provisions of the Evidence Act. Thus, in order to prove as to who were the accused in the previous trial or ought to prove the factum of acquittal in those cases it will still be admissible under Section 30 or 35 of the Evidence Act. At the same time, the judgment rendered in the case of a co-accused and the reasoning of the judgment contained therein or appreciation of the evidence therein are not matters to be taken into account for the purpose of granting any relief to quash the proceedings and thus bar the trial itself. It may however, be a case where the very substratum of the case is lost which may be an exception to this rule. However, as held by the apex court it has to be held that even when a co-accused is acquitted in the very same trial, the other accused can be convicted if there are good reasons to do so. In other words, the acquittal of some of the accused by itself is not a reason to bar the trial in the case of the other accused.

51. The broad principle stated in the decision in Arunkumar v. State of Kerala : 2004(2)KLT1039 is that it is up to the Judge who hears the petition under Section 482 Cr.P.C. to examine the factual situation in each case with reference to the overt act attributed and such other relevant factors and to decide as to whether the discretion vested in the court should be exercised or not. The court also held that it will not be justified to give a straight jacket formula to deal with the case like one on hand. The principle that no straight jacket formula can be applied is consistent with the various decisions of the apex court and all that could be said is that the power has to be exercised with the object of preventing abuse of process of court and to secure the ends of justice.

52. To quash the proceeding after referring to the overt act of the petitioner with reference to the evidence tendered in the judgment rendered in a case of a co-accused who faced the trial and based on evidence therein case of the accused cannot be done as the judgment in the earlier case is not judgment relevant within the meaning of Sections 40 to 44 of the Evidence Act. To do so will be in the realm of appreciation of the evidence which has to be done by the trial judge. In the above view, with great respect we cannot agree with the proposition of law thus, stated in Arun Kumar's case. The acquittal of some of the co-accused based on appreciation of evidence in their case is no ground to bar a criminal trial as the appreciation by the concerned judge in a criminal trial is not binding when the latter case is tried in the case of the other co-accused and it is for the learned trial Judge to appreciate the evidence adduced in the latter case. In that regard, possibly a particular witness may or may not be believed and his reliability may also be tested in the light of what he has stated in the earlier case etc. But those are all matters for the trial Judge to do. All that we want to say is that it will not preclude the trial of the case for the mere reason that the co-accused were acquitted. This is the principle that is stated by the Apex Court in Megh Singh v. State of Punjab 2004 SCC CrI. 58, Gorle Section Naidu v. State of AP. AIR 2004 SC 1169 etc. Further, as held by the apex court in Raju Rai's case 2006 (1) KLT (SC) (SN) 8 : 2005(7) Supreme 459 the judgment in the case of the co-accused is not at all a judgment relevant within the meaning of Sections 40 to 44 of the Evidence Act. The Rule of estoppel as held by the Apex Court is a rule of admissibility of evidence and which does not bar the trial as such. Hence it has to

be held that the power under Section 482 Cr.P.C. cannot be invoked to prevent the trial of the petitioners/accused solely by referring to the overt act played by the accused as spoken to by the witnesses in the case of the co-accused and this Court cannot in exercise of its jurisdiction under Section 482 Cr.P.C. quash the proceedings and prevent the trial. Hence the dictum laid down in Arun Kumar's case to the extent it has taken a contrary view of what is stated above, is not a correct law and the same is overruled.

53. In the light of the above discussions, we may summarise the legal position as follows:

(i) The inherent powers of the High Court reserved and recognised under Section 482 of the Code of Criminal Procedure are sweeping and awesome; but such powers can be invoked only

(a) to give effect to any order passed under the Code of Criminal Procedure or

(b) to prevent abuse of process of any court or

(c) otherwise to secure the ends of justice.

Such powers may have to be exercised in an appropriate case to render justice even beyond the law.

(ii) Considering the nature, width and amplitude of the powers, it would be unnecessary, inexpedient and imprudent to prescribe or stipulate any straight jacket formula to identify cases where such powers can or need not be invoked.

(iii) But such powers can be invoked only in exceptional and rare cases and cannot be invoked as a matter of course. Where the Code provides methods and procedures to deal with the given situation, in the absence of exceptional and compelling reasons, invocation of the powers under Section 482 of the Code of Criminal Procedure is not necessary or permissible.

(iv) The fact that an accused can seek discharge/dropping of proceedings/acquittal under the relevant provisions of the Code in the normal course would certainly be a justifiable reason, in the absence of exceptional and compelling reasons, for the

High Court not invoking its extraordinary powers under Section 482 Cr.P.C.

(v) In a trial against the co-accused the prosecution is not called upon, nor is it expected to adduce evidence against the absconding co-accused'. In such trial the prosecution cannot be held to have the opportunity or obligation to adduce all evidence against the absconding co-accused. The fact that the testimony of a witness was not accepted or acted upon in the trial against the co-accused is no reason to assume that he shall not tender incriminating evidence or that his evidence will not be accepted in such later trial.

(vi) On the basis of materials placed before the High Court in proceedings under Section 482 of the Code of Criminal Procedure (which materials can be placed before the court in appropriate proceedings before the subordinate courts) such extraordinary inherent powers under Section 482 of the Code of Criminal Procedure cannot normally be invoked, unless such materials are of an unimpeachable nature which can be translated into legal evidence in the course of trial.

(vii) The judgment of acquittal of a co-accused in a criminal trial is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot hence be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 Cr.P.C. Such judgments will be admissible only to show as to who were the parties in the earlier proceedings or the factum of acquittal.

(viii) While considering the prayer for invocation of the extraordinary inherent jurisdiction to serve the ends of justice, it is perfectly permissible for the court to consider the bona fides - the cleanliness of the hands of the seeker. If he is a fugitive from justice having absconded or jumped bail without sufficient reason or having waited for manipulation of hostility of witnesses, such improper conduct would certainly be a justifiable reason for the court to refuse to invoke its powers under Section 482 of the Code of Criminal Procedure.

(ix) The fact that the co-accused have secured acquittal in the trial against them in the absence of absconding co-accused cannot by itself be reckoned as a relevant

circumstance while considering invocation of the powers under Section 482 of the Code of Criminal Procedure.

(x) A judgment not interparties cannot justify the invocation of the doctrine of issue estoppel under the Indian law at present.

(xi) Conscious of the above general principles, the High Court has to consider in each case whether the powers under Section 482 of the Code of Criminal Procedure deserve to be invoked. Judicial wisdom, sagacity, sobriety and circumspection have to be pressed into service to identify that rare and exceptional case where invocation of the extraordinary inherent jurisdiction is warranted to bring about premature termination of proceedings subject of course to the general principles narrated above.

54. In the light of what is stated above, each of the cases is to be considered by the learned Single Judge exercising the jurisdiction under Section 482 Cr.P.C. We notice that interim orders of stay of trial were passed in the above said cases. Hence the Office will take steps for posting the above cases before appropriate Bench to expedite the disposal.

R. Basant, J.

55. I have had the advantage of perusing the exhaustive and thorough judgment prepared by my learned brother Justice P.R. Raman. I concur completely with the legal position summarised by my learned brother in Para 53 and the directions in para 54.

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