Amanullah & Anr vs State Of Bihar & Ors on 12 April, 2016

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Bench: Uday Umesh Lalit, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 299 OF 2016
(Arising out of SLP (Crl.) No.2866 of 2011)

AMANULLAH AND ANR. .....APPELLANTS

Vs.

STATE OF BIHAR AND ORS. .....RESPONDENTS

J U D G M E N T

V.GOPALA GOWDA, J.

Leave granted.

This criminal appeal by special leave is directed against the impugned judgment and order dated 08.12.2010 in Crl. Misc. No. 5777 of 2009 passed by the High Court of Judicature at Patna whereby it allowed the said criminal miscellaneous petition filed by the respondent nos.2 to 9 herein, by setting aside the cognizance order dated 10.11.2008 passed by the learned Addl. Chief Judicial Magistrate, Rosera, Bihar in Singhia Police Case No.37/2008 and quashed the criminal prosecution.

Brief facts of the case are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties:

> The case of the prosecution is that on 29.03.2008, the informant-Mukhtar went to the house of his relative at village-Navdega and stayed there. On 30.03.2008, at about 12.00 noon, his uncle Md. Hasim informed him on telephone that his wife's condition was serious and she was being taken to Singhia for treatment. Mukhtar was asked to reach Singhia. It is alleged by the informant that on reaching Singhia, he neither found his wife nor his uncle. On enquiry from his uncle, he was informed about the death of his wife. Thereafter, he reached his house and saw the dead body of his wife.

His uncle disclosed him that his wife-Tamanna Khatoon (since deceased) had gone to maize field wherein she was found lying with her mouth and nose tied with her dupatta. She was spotted by one Hira Sada (PW-2), who was returning with her daughter. Upon hearing the noise made by the deceased she raised alarm and upon hearing the same informant's uncle-Md. Hasim along with others reached the spot and took Tamanna Khatoon to Singhia for treatment. She died on the way to Singhia. On 30.03.2008 FIR was lodged by Mukhtar, husband of the deceased against Md. Raju and Md. Halim @ Mangnu- appellant no.2 herein for the offences punishable under Sections 302 and 120B read with Section 34 of the Indian Penal Code (for short "IPC").

During investigation, many witnesses deposed before the Judicial Magistrate, Rosera under Section 164 of the CrPC wherein it has been alleged that Mukhtar, husband of the deceased has killed his wife.

On 30.09.2008 charge sheet no.111/2008 in respect of FIR No. 37/2008 was filed in the Court of Chief Judicial Magistrate (CJM), Rosera by the police against Md. Hasim, Md. Noor Hasan, Md. Safique and Jhothi Sada.

After filing of the charge sheet, Mukhtar started threatening the witnesses. With a view to threaten the appellant no.1 on 17.10.2008, he reached his house with pistol and dagger. The appellant no.1 raised hue and cry and upon hearing the same, co-villagers caught Mukhtar with arms, after a chase. FIR No. 104/08 was registered against him for the offence punishable under Sections 25 and 26 of the Arms Act, 1959 at Singhia Police Station.

On 31.10.2008, a supplementary charge sheet no.126/2008, in respect of FIR No. 37/2008 was filed before the learned CJM by the police against Md. Mukhtar @ Munna, Md. Nazre Alam and Md. Farukh.

The learned CJM after considering the material placed before him vide order dated 10.11.2008.took cognizance under Sections 302 and 120B read with Section 34 of the IPC against Mukhtar and other accused-persons.

Aggrieved by the cognizance order passed by the learned CJM in PS Case No. 37/2008, respondent nos. 2 to 9 approached the High Court of Judicature at Patna by preferring Crl. Misc. No. 5777/2009 under Section 482 of Cr.PC for quashing the order of learned CJM dated 10.11.2008.

The High Court by its order dated 08.12.2010 allowed the said petition by setting aside the cognizance order passed by the learned CJM and also quashed the criminal prosecution. Aggrieved by the said order, the appellants herein, who are interested private parties, have filed this appeal urging various grounds.

Mr. Neeraj Shekhar, the learned counsel for the appellants contended that the High Court has failed to appreciate that the FIR and the charge sheet establish a prima-facie case against the respondent nos. 2-9. He submitted that when the allegations made against the accused person show a prima-facie case, criminal proceedings ought not to have been quashed by the High Court in exercise of its power under Section 482 of Cr.PC.

It was further contended that the High Court has erred in setting aside the cognizance order passed by the learned CJM as the extraordinary or inherent powers do not confer an arbitrary jurisdiction to act according to whim or caprice. He further submitted that the power of quashing criminal proceedings is to be exercised sparingly and with circumspection and that too in rarest of rare cases.

It was further contended by the learned counsel that at the stage of taking cognizance of the offence it would not be proper, simply on the basis of material placed before the court by investigating agency, to determine whether a conviction is sustainable or not. The High Court has erred in appreciating the same by quashing the cognizance order passed by the learned CJM. He further submitted that the inherent power to quash the proceedings can be exercised only in a case where the material placed before the court does not disclose any offence or the allegations made therein are found frivolous, vexatious or oppressive. At this stage there should not be any meticulous analysis of the case, before the trial, to find out whether the case would end in conviction or acquittal.

It was further contended that in the instant case the charge sheet and FIR clearly establish the involvement and active participation of the accused- persons which the High Court has failed to appreciate.

It was further submitted by the learned counsel that the appellants have locus standi to maintain this appeal for the reason that the appellants have connection with matter at hand as appellant no.1 was threatened by the informant-Mukhtar and appellant no.2 was falsely implicated by the informant-Mukhtar in the case of murder of his wife. Both the appellants are aggrieved by the impugned order passed by the High Court setting aside the cognizance order passed by the Trial Court. In support of the aforesaid he placed reliance upon the Constitution Bench decision of this Court in the case of P.S.R Sadhanantham v. Arunanchalam[1]. He further placed reliance upon the decisions of this Court in Ramakant Rai v. Madan Rai & Ors[2], Esher Singh v. State of A.P.[3], Ramakant Verma v. State of U.P.[4] and Ashish Chadha v. Asha Kumari & Ors[5].

Per contra, Mr. Shivam Singh, the learned counsel appearing on behalf of the respondents contended that the answering respondents have not been named in the FIR. The FIR in this case is based on the statement of Mukhtar against two persons, namely Md. Raju and Md. Halim for the murder of his wife and it was registered under Sections 302 and 120B read with Section 34 of the IPC. He further submitted that on 11.04.2008, the informant-Mukhtar filed a protest petition before the learned CJM, Rosera. In the said protest petition it was brought to the notice of the court that originally he had given a written complaint to the police about the murder of his wife against five persons, namely Md. Raju, Md. Halim @ Mangnu, Khalid Gulab, Abu Quaiyum and Md. Amid Hussain for offences under Sections 376, 302 read with Section 34 of the IPC. However, the local police in collusion with the accused-persons dropped the names of three accused persons and also dropped charge under Section 376 of the IPC against them knowingly and intentionally. The course of investigation was diverted in wrong direction to falsely implicate the respondent nos. 2-9.

It was further contended by the learned counsel that the instant case is a unique case as the accused-persons are made prosecution witnesses and apart from them another set of tutored witnesses have been introduced in the case, who are not eye witnesses to the incident and have in their deposition under Section 164 of the CrPC, before the Judicial Magistrate deposed that the informant-husband might have killed his wife. The High Court has rightly taken a very serious view of the whole matter and after proper scrutiny of the documents and material placed on record has come to an appropriate finding that the case against the respondent nos.2-9 is merely based on suspicion and therefore, it has rightly quashed the proceedings against them.

He further submitted that after the incident Manjoor Alam father of the deceased in his statement before the police did not blame Mukhtar husband of the deceased for the murder of his daughter. As far as other respondents are concerned, apart from the informant, they all are strangers to the matter and have been falsely implicated in this case by the local police at the behest of the real accused persons.

It was further submitted by the learned counsel that the father and mother of the deceased have given their statement on a stamp paper before the Notary Public that their daughter was having a cordial matrimonial life with her husband and she was not being tortured by her husband or his family members in connection with any dowry demand.

By placing reliance upon the decision of this Court in J.K. International v. State (Govt. of Delhi) and Ors[6] and HDFC Bank Ltd. & Anr. v. Nagpur District Security Guard Board & Anr.[7], it was further submitted by the learned counsel that the appellants have failed to disclose their bonafide connection with the cause of action, to be precise with the victim and thus, have no locus standi to maintain this appeal. Therefore, this appeal deserves to be dismissed on this score.

While concluding his contentions he submitted that the order passed by the High Court is a well reasoned order and the same does not suffer from any ambiguity. The decision of the High Court is also justified in the light of decision of this Court in the case of State of Haryana v. Bhajan Lal[8]. Therefore, no interference of this Court is required in exercise of its appellate jurisdiction.

After considering the rival legal contentions urged on behalf of both the parties, following issues would arise for our consideration:

> Whether this appeal is maintainable by the appellants on the ground of the locus standi?
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> Whether the High Court, in the instant case, has exceeded its jurisdiction while exercising its inherent power under Section 482 of the CrPC?
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> What order?
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> Answer to Point No.1 The term 'locus standi' is a latin term, the general meaning of which is 'place of standing'. The Concise Oxford English Dictionary, 10th Edn., at page 834, defines the term 'locus standi' as the right or capacity to bring an action or to appear in a court. The traditional view of 'locus standi' has been that the person who is aggrieved or affected has the standing before the court, i.e., to say he only has a right to move the court for seeking justice. Later, this Court, with justice-oriented approach, relaxed the strict rule with regard to 'locus standi', allowing any person from the society not related to the cause of action to approach the court seeking justice for those who could not approach themselves. Now turning our attention towards the criminal trial, which is conducted, largely, by following the procedure laid down in the CrPC. Since, offence is considered to be a wrong committed against the society, the prosecution against the accused person is launched by the State. It is the duty of the State to get the culprit booked for the offence committed by him. The focal point, here, is that if the State fails in this regard and the party having bonafide connection with the cause of action, who is aggrieved by the order of the court cannot be left at the mercy of the State and without any option to approach the appellate court for seeking justice. In this regard, the Constitution Bench of this Court in the case of P.S.R. Sadhanantham's case (supra) has elaborately dealt with the aforesaid fact situation. The relevant paras 13, 14 and 25 of which read thus:
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> "13. It is true that the strictest vigilance over abuse of the process of the court, especially at the expensively exalted level of the Supreme Court, should be maintained and ordinarily meddlesome bystanders should not be granted "visa". It is also true that in the criminal jurisdiction this strictness applies a fortiori since an adverse verdict from this Court may result in irretrievable injury to life or liberty.
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> 14. Having said this, we must emphasise that we are living in times when many societal pollutants create new problems of unredressed grievance when the State becomes the sole repository for initiation of criminal action.

Sometimes, pachydermic indifference of bureaucratic officials, at other times politicisation of higher functionaries may result in refusal to take a case to this Court under Article 136 even though the justice of the lis may well justify it. While "the criminal law should not be used as a weapon in

personal vendettas between private individuals", as Lord Shawcross once wrote, in the absence of an independent prosecution authority easily accessible to every citizen, a wider connotation of the expression "standing" is necessary for Article 136 to further its mission. There are jurisdictions in which private individuals — not the State alone — may it statute criminal proceedings. The Law Reforms Commission (Australia) in its Discussion Paper No. 4 on "Access to Courts — I Standing: Public Interest Suits" wrote:

> "The general rule, at the present time, is that anyone may commence proceedings and prosecute in the Magistrate court. The argument for retention of that right arises at either end of the spectrum — the great cases and the frequent petty cases. The great cases are those touching Government itself — a Watergate or a Poulson. However independent they may legally be any public official, police or prosecuting authority, must be subject to some government supervision and be dependent on Government funds; its officers will inevitably have personal links with government. They will be part of the 'establishment'. There may be cases where a decision not to prosecute a case having political ramifications will be seen, rightly or wrongly, as politically motivated. Accepting the possibility of occasional abuse the Commission sees merit in retaining some right of a citizen to ventilate such a matter in the courts." Even the English System, as pointed by the Discussion Paper permits a private citizen to file an indictment. In our view the narrow limits set in vintage English Law, into the concept of person aggrieved and "standing" needs liberalisation in our democratic situation. In Dabholkar case this Court imparted such a wider meaning. The American Supreme Court relaxed the restrictive attitude towards "standing" in the famous case of Baker v. Carr. Lord Denning, in the notable case of the Attorney-General of the Gambia v. Pierra Sarr N'jie, spoke thus:
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> "... the words "person aggrieved" are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him;" Prof. S.A. de Smith takes the same view:
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> "All developed legal systems have had to face the problem of adjusting conflicts between two aspects of the public interest — the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome interloper to invoke the jurisdiction of the courts in matters that do not concern him." Prof. H.W.R. Wade strikes a similar note:
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> "In other words, certiorari is not confined by a narrow conception of locus standi. It contains an element of the actio popularis. This is because it looks beyond the personal rights of the applicant; it is designed to keep the machinery of justice in proper working order by preventing inferior tribunals and public authorities from abusing their powers." In Dabholkar case, one of us wrote in his separate opinion: "The possible apprehension that widening legal standing with a public connotation

> may unloose a flood of litigation which may overwhelm the Judges is misplaced because public resort to court to suppress public mischief is a tribute to the justice system." This view is echoed by the Australian Law Reforms Commission.
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> 25. In India also, the criminal law envisages the State as a prosecutor.

Under the Code of Criminal Procedure, the machinery of the State is set in motion on information received by the police or on a complaint filed by a private person before a Magistrate. If the case proceeds to trial and the accused is acquitted, the right to appeal against the acquittal is closely circumscribed. Under the Code of Criminal Procedure, 1898, the State was entitled to appeal to the High Court, and the complainant could do so only if granted special leave to appeal by the High Court. The right of appeal was not given to other interested persons. Under the Code of Criminal Procedure 1973, the right of appeal vested in the States has now been made subject to leave being granted to the State by the High Court. The complainant continues to be subject to the prerequisite condition that he must obtain special leave to appeal. The fetters so imposed on the right to appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. The Law Commission of India gave anxious thought to this matter, and while noting that the Code recognised a few exceptions by way of permitting a person aggrieved to initiate proceedings in certain cases and permitting the complainant to appeal against an acquittal with special leave of the High Court, expressed itself against the general desirability to encourage appeals against acquittal. It referred to the common law jurisprudence obtaining in England and other countries where a limited right of appeal against acquittal was vested in the State and where the emphasis rested on the need to decide a point of law of general importance in the interests of the general administration and proper development of the criminal law. But simultaneously the Law Commission also noted that if the right to appeal against acquittal was retained and extended to a complainant the law should logically cover also cases not instituted on complaint. It observed:

> "Extreme cases of manifest injustice, where the Government fails to act, and the party aggrieved has a strong feeling that the matter requires further consideration, should not, in our view, be left to the mercy of the Government. To inspire and maintain confidence in the administration of justice, the limited right of appeal with leave given to a private party should be retained, and should embrace cases initiated on private complaint or otherwise at the instance of an aggrieved person." However, when the Criminal Procedure Code, 1973 was enacted the statute, as we have seen, confined the right to appeal, in the case of private parties to a complainant. This is, as it were, a material indication of the policy of the law." (emphasis supplied by this Court) Further, this Court in the case of Ramakant Rai's case (supra) has held thus:
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> "12. A doubt has been raised about the competence of a private party as distinguished from the State, to invoke the jurisdiction of this Court under Article 136 of the Constitution of India, 1950 (in short "the Constitution") against a judgment of

> acquittal by the High Court. We do not see any substance in the doubt. The appellate power vested in this Court under Article 136 of the Constitution is not to be confused with the ordinary appellate power exercised by appellate courts and Appellate Tribunals under specific statutes. It is a plenary power, "exercisable outside the purview of ordinary law" to meet the pressing demands of justice (see Durga Shankar Mehta v. Raghuraj Singh). Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of this Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in this Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of this Court is not circumscribed by any limitation as to who may invoke it. Where a judgment of acquittal by the High Court has led to a serious miscarriage of justice, this Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction. We do not have slightest doubt that we can entertain appeals against judgments of acquittal by the High Court at the instance of interested private parties also. The circumstance that the Criminal Procedure Code, 1973 (in short "the Code") does not provide for an appeal to the High Court against an order of acquittal by a subordinate court, at the instance of a private party, has no relevance to the question of the power of this Court under Article 136. We may mention that in Mohan Lal v. Ajit Singh this Court interfered with a judgment of acquittal by the High Court at the instance of a private party. An apprehension was expressed that if appeals against judgments of acquittal at the instance of private parties are permitted there may be a flood of appeals. We do not share the apprehension. Appeals under Article 136 of the Constitution are entertained by special leave granted by this Court, whether it is the State or a private party that invokes the jurisdiction of this Court, and special leave is not granted as a matter of course but only for good and sufficient reasons, on well-established practice of this Court." In Esher Singh's case (supra), it has been held by this Court that Article 136 of the Constitution of India neither confers on anyone the right to invoke the jurisdiction of this Court nor inhibits anyone from invoking it.

The relevant para 29 of the case reads thus:

> "29. A doubt has been raised in many cases about the competence of a private party as distinguished from the State, to invoke the jurisdiction of this Court under Article 136 of the Constitution against a judgment of acquittal by the High Court. We do not see any substance in the doubt. The appellate power vested in this Court under Article 136 of the Constitution is not to be confused with ordinary appellate power exercised by appellate courts and appellate tribunals under specific statutes. It is a plenary power "exercisable outside the purview of ordinary law" to meet the pressing demands of justice. (See Durga Shankar Mehta v. Raghuraj Singh.) Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of this Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in this Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of this Court is not circumscribed by any limitation as to who

may invoke it. Where a judgment of acquittal by the High Court has led to a serious miscarriage of justice, this Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction. We do not have the slightest doubt that we can entertain appeals against judgments of acquittal by the High Court at the instance of interested private parties also. The circumstance that the Code does not provide for an appeal to the High Court against an order of acquittal by a subordinate court, at the instance of a private party, has no relevance to the question of the power of this Court under Article 136. We may mention that in Mohan Lal v. Ajit Singh this Court interfered with a judgment of acquittal by the High Court at the instance of a private party. An apprehension was expressed that if appeals against judgments of acquittal at the instance of private parties are permitted, there may be a flood of appeals. We do not share the apprehension. Appeals under Article 136 of the Constitution are entertained by special leave granted by this Court, whether it is the State or a private party that invokes the jurisdiction of this Court, and special leave is not granted as a matter of course but only for good and sufficient reasons, well established by the practice of this Court." (emphasis supplied by this Court) Further, in Rama Kant Verma's case (supra) this Court has reiterated the aforesaid view that the appellate power of this Court under Article 136 of the Constitution of India is not just an ordinary appellate power exercised by appellate courts and appellate tribunals under specific statutes. It is a plenary power which can be exercised outside the purview of ordinary law to meet the ends of justice. The relevant para 16 of the case reads thus:

"16. In Ramakant Rai v. Madan Rai it was inter alia observed as follows: (SCC p. 402, para 12) "12. A doubt has been raised about the competence of a private party as distinguished from the State, to invoke the jurisdiction of this Court under Article 136 of the Constitution of India, 1950 (in short 'the Constitution') against a judgment of acquittal by the High Court. We do not see any substance in the doubt. The appellate power vested in this Court under Article 136 of the Constitution is not to be confused with the ordinary appellate power exercised by appellate courts and Appellate Tribunals under specific statutes. It is a plenary power, 'exercisable outside the purview of ordinary law' to meet the pressing demands of justice (see Durga Shankar Mehta v. Thakur Raghuraj Singh). Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of this Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in this Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of this Court is not circumscribed by any limitation as to who may invoke it. Where a judgment of acquittal by the High Court has led to a serious miscarriage of justice, this Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction. We do not have slightest doubt that we can entertain appeals against judgments of acquittal by the High Court at the instance of interested private parties also. The circumstance that the Criminal Procedure Code, 1973 (in short 'the Code') does not provide for an appeal to the High Court against an order of acquittal by a subordinate

court, at the instance of a private party, has no relevance to the question of the power of this Court under Article 136. We may mention that in Mohan Lal v. Ajit Singh this Court interfered with a judgment of acquittal by the High Court at the instance of a private party. An apprehension was expressed that if appeals against judgments of acquittal at the instance of private parties are permitted there may be a flood of appeals. We do not share the apprehension. Appeals under Article 136 of the Constitution are entertained by special leave granted by this Court, whether it is the State or a private party that invokes the jurisdiction of this Court, and special leave is not granted as a matter of course but only for good and sufficient reasons, on well-established practice of this Court."" (emphasis supplied by this Court) After considering the case law relied upon by the learned counsel for the appellants as well as the respondents, in the light of the material placed on record, we are of the view that the appellants have locus standi to maintain this appeal. From the material placed on record, it is clear that the appellants have precise connection with the matter at hand and thus, have locus to maintain this appeal. The learned counsel for the appellants has rightly placed reliance upon the Constitution Bench judgment of this Court, namely, P.S.R Sadhanantham (supra) and other decisions of this Court in Ramakant Rai, Esher Singh, Ramakant Verma (supra). Further, it is pertinent here to observe that it may not be possible to strictly enumerate as to who all will have locus to maintain an appeal before this Court invoking Article 136 of the Constitution of India, it depends upon the factual matrix of each case, as each case has its unique set of facts. It is clear from the aforementioned case law that the Court should be liberal in allowing any third party, having bonafide connection with the matter, to maintain the appeal with a view to advance substantial justice. However, this power of allowing a third party to maintain an appeal should be exercised with due care and caution. Persons, unconnected with the matter under consideration or having personal grievance against the accused should be checked. A strict vigilance is required to be maintained in this regard.

Answer to Point No.2 A careful reading of the material placed on record reveals that the learned CJM took cognizance of the offences alleged against the accused- persons after a perusal of case diary, chargesheet and other material placed before the court. The cognizance was taken, as a prima facie case was made out against the accused-persons. It is well settled that at the stage of taking cognizance, the court should not get into the merits of the case made out by the police, in the chargesheet filed by them, with a view to calculate the success rate of prosecution in that particular case. At this stage, the court's duty is limited to the extent of finding out whether from the material placed before it, offence alleged therein against the accused is made out or not with a view to proceed further with the case. The proposition of law relating to Section 482 of the CrPC has been elaborately dealt with by this Court in Bhajan Lal's case (supra). The relevant paras 102 and 103 of which read thus:

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

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or

inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice." Further, this Court in the case of Rajiv Thapar v. Madan Lal Kapoor[9] has laid down certain parameters to be followed by the High Court while exercising its inherent power under Section 482 of the CrPC, in the following manner:

> "29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.
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> 30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:
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> 30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?
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> 30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

> 30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant? 30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? 30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused." (emphasis supplied by this Court) After considering the rival legal contentions urged by both the parties, case law referred to supra and the material placed on record, we are of the view that the High Court has exceeded its jurisdiction under Section 482 of the CrPC. It has erred in quashing the cognizance order passed by the learned CJM without appreciating the material placed before it in correct perspective. The High Court has ignored certain important facts, namely, that on 17.10.2008, the appellant no.1 was allegedly threatened by the accused-Mukhtar for which FIR No. 104/08 was registered against him for offences punishable under Sections 25 and 26 of the Arms Act, 1959.

Further, there are statements of various witnesses made under Section 164 of the CrPC, before a judicial magistrate, to the effect that the deceased has been murdered by none other than her husband-Mukhtar. The evidence collected by the I.O. by recording the statement of prosecution witnesses, filed alongwith the chargesheet was duly considered by the learned CJM before taking cognizance and therefore, the same should not have been interfered with by the High Court in exercise of its inherent power under Section 482 of the CrPC.

Further, the High Court has failed to take into consideration another important aspect that the case at hand relates to the grave offence of murder and that the criminal proceedings related thereto should not lightly be interfered with, which is a well settled proposition of law.

Answer to Point No.3 Thus, for the aforesaid reasons, this Court is of the view that the High Court in the instant case has failed to appreciate the material placed before it in the light of law laid down by this Court in Bhajan Lal's case (supra) and has exceeded its jurisdiction while exercising its power under Section 482 of the CrPC. Therefore, the impugned judgment and order passed by the High Court is liable to be set aside by this Court.

The impugned judgment and order of the High Court is set aside and the matter is remitted to the learned CJM for proceeding further in accordance with law. The appeal is allowed.

... ... J. [V. GOPALA GOWDA]
.....J. [UDAY UMESH LALIT] New Delhi, 12th April, 2016

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[2] (1980) 3 SCC 141 [4] (2003) 12 SCC 395 [6] (2004) 11 SCC 585 [8] (2008) 17 SCC 257 [10] (2012) 1 SCC 680 [12] (2001) 3 SCC 462 [14] 2008 Cri. L.J. 995 [16] 1992 Supp(1) SCC 335 [18] (2013) 3 SCC 330