

Amit Kapoor vs Ramesh Chander & Anr on 13 September, 2012

Equivalent citations: AIRONLINE 2012 SC 668

Author: Swatanter Kumar

Bench: Swatanter Kumar, A.K. Patnaik

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1407 OF 2012
(Arising out of SLP (Crl.) No.1516 of 2010)

Amit Kapoor

... Appellant

Versus

Ramesh Chander & Anr.

... Respondents

J U D G M E N T

Swatanter Kumar, J.

1. Leave granted.

2. A question of law that arises more often than not in criminal cases is that of the extent and scope of the powers exercisable by the High Court under Section 397 independently or read with Section 482 of the Code of Criminal Procedure, 1973 (for short, the 'Code').

3. The facts as they emerge from the record fall within a very narrow compass. On 4th December, 2007, the Rajouri Garden Police Station received information that a woman had committed suicide at C-224, Tagore Garden Extension, Delhi. Upon making entry under DD No.16A of that date, Sub Inspector O.P. Mandal commenced investigation and reached the place of occurrence. The deceased was identified as Komal Kapoor. Her body was sent for post mortem. The Investigating Officer recorded the statement of her son Amit Kapoor and on 5.12.2007 at about 12.15 p.m. an FIR was registered on the complaint filed by him. This FIR was registered against Ramesh Chander Sibbal (the accused) and another, on the basis of the statement of Amit Kapoor and the suicide note. According to Amit Kapoor, he knew Ramesh Chander Sibbal for the last 10 years. Father of Amit

Kapoor was running a paint brush business and had purchased property No.C-225, Tagore Garden, Delhi through the said Ramesh Chander Sibbal. Since the father of Amit Kapoor had fallen ill, his mother was also looking after the business. However, the family business suffered acute losses. The family discussed the possibility of selling their moveable and immoveable property situated at Rohini. The accused persons are stated to have fraudulently obtained signatures of the deceased in this connection. In order to get over the financial crises and to meet their liabilities, the deceased had also discussed the possibility of selling another plot owned by the family situated in Bawana Industrial Area. At that time also, the accused told the deceased that certain documents have to be executed before the plot is sold. On this pretext, he again got some papers signed by them. The accused paid a sum of Rs.5,00,000/- to the deceased at the first instance and thereafter a sum of Rs.3,00,000/- for the plot situated in Bawana as against the market value of Rs.28,00,000/-, with an assurance that the rest of the amount will be paid after execution of the sale deed.

4. Around the time of Dussehra in 2007, the accused approached the deceased claiming that he be given accommodation on a temporary basis for a period of ten to twelve days on the ground floor of her house situated at C- 224, Tagore Garden, Delhi on the pretext that his own house was under

renovation. The deceased believing him and keeping the relationship in mind, agreed and allowed him to occupy two rooms on the ground floor. It is alleged that while the deceased was away at Haridwar, just before the festival of Diwali, the accused encroached upon one more room in the said house. When the deceased asked the accused to vacate the said premises, he refused and, on the contrary, stated that he had paid a sum of Rs.24,00,000/- and that it was his house. Not only this, the accused as well as his son threatened the deceased and her family to vacate the house or else they would ruin them. It is also alleged that when the deceased asked the accused as to when she will get rid of this problem, he is said to have replied that she could get rid of this only after her death. This was followed by the accused sending a legal notice dated 1st December, 2007 to the deceased which was received on 3rd December, 2007 in which similar claim was made by the accused against the deceased. The trust that she had placed upon the accused was totally betrayed by him. This led to the deceased slipping into depression. In face of all these circumstances, coupled with the threats extended by the accused persons, the deceased committed suicide on 4.12.2007 at about 7.30 a.m. by hanging herself from a ceiling fan, using a scarf (chunni). It may be noticed at this stage, that the deceased had left a suicide note which can appropriately be reproduced at this stage as under :

“This Ramesh Sibbal, his wife Suman and his son Gaurav.

I am committing suicide for the reason that the aforesaid persons who are residing in our house forcefully, used to say that he was to do white wash so please allow him to keep some of his articles. But after some time, when I came, I saw that the aforesaid person has completely occupied my house as his own house. When my children objected to his aforesaid act, he said that he was to stay there only for a period of 04 days and that he would perform Diwali worship pooja ceremony at his own house but

he did not vacate the house. When I had gone to Haridwar, he occupied front room of my house as well after giving beatings to my children. I know this person since that day when he had got my plot of Rohini disposed off. As we both (husband and wife) had not read those papers (relating to disposal of our Rohini plot) so this person kept on obtaining our signatures on the stamp papers relating to our House No. C-224 on the pretext that these papers were required to execute the lease. My husband was ill and I used to remain busy in looking after him.

Whenever, he came to us he used to show urgency in taking our signature by stating that the sale proceed of our plot would be given to us that day itself. He kept on giving payment time to time to us and we kept on receiving the same.

Written on the top of page 411 This man gave me only a sum of Rs 05 lacs of my plot situated in Bawana, but he obtained my signature on Rs 15 lacs as I did not read the contents thereof.

When this man got our Bawana a plot sold, he took the file from us but I do not know as to what he had done with that amount. He used to say that he had given us the entire amount. Whatever amount he gave to us he used to take in writing on a paper. After giving his amount, when I asked for the file, he demanded Rs.05 lacs otherwise, he would reveal it to my daughter that the file was lying with him. He also threatened me to sign the paper without raising any objection otherwise, he would get our children grandson and granddaughter kidnapped. On this, I used to scare and this man used to succeed in getting the stamp papers signed by me. When he got our plot of Rohini sold, he started obtaining my signatures. But at the time when the plot of Rohini was sold, he told me that the plot situated in Bawana has been sold and he asked us to accompany him to sign the papers. Thereafter, he said that the person with whom he has kept the file was saying to him that he could take away the file from that person but only in lieu of keeping papers of some other house with that person. When this man (suggested) me to keep other file (of property) in lieu of taking the said file from that person and this man (also assured me) that he would return those papers of property to me as and when the plot of Bawana would be sold. On this, I handed over the file of property No. C-225 to this man. After that, he told that the plot was not getting higher price and so he offered us to take some amount, if required by us urgently whereupon, this man gave us a sum of Rs. 3 lacs but he kept on taking an interest at the rate of 10%. This man gave us Rs.5 lacs earlier and Rs.3 lacs later so he kept on taking an interest on Rs. 8 lacs. Before Diwali, I gave him a cheque of Rs.2,50,000/- and also gave a sum of Rs.3 lacs in cash to his son. Thereafter, I gave a sum of Rs.2 lacs in cash and his son knows the account of it whose name is Gaurav. When I gave money, I asked him to give me the written paper as I have returned the as I have returned the money whereupon, he (Gaurav) said that since he had no paper with him that time so the same would be returned to her by his father. This man's son Gaurav and wife Suman are together involved (in this conspiracy). His son also used to do my fake signatures. Whenever, I demanded my file back from him, he used to ask me to return Rs.15 lacs first. On this, when I asked him as to how the amount of Rs.5 lacs became to Rs.15 lacs? He replied that it had become Rs.15 lacs including interest thereon. I kept on giving him interest because of the fear of my family. He has also grabbed my entire money which I had taken on loan basis from somewhere. I kept on giving him interest only for the reason that since he used to promise me to return the papers that day itself or on the next day.

Written on top of page no.415 He said that the money of Bawana's (plot) has been sent by his father and he asked me to write down a receipt of Rs.04 lacs and when I wrote a receipt of it, he said that the money was kept in the motorcycle and he was first giving me the cash but this man's son did not give me the said cash. He asked me to sign the papers related to Bawana's (plot) first and then he would return the paper as well as the money to me. On reaching the house, I demanded the money and paper from him whereupon he said that he had the paper written by me and that he would show that paper to my son and when my son asked him to return the paper, he replied that he would not return the paper as his mother had taken a sum of Rs.15 lacs from him. Kindly take it guaranteed that out of aforesaid Rs.15 lacs I have returned a sum of Rs. of Seven and a half lacs to him. After that, this man's son came to me and said that his father was saying to give papers of property No.C-225 to you and in lieu thereof he asked me to show him the file of lease. On this, when I started to show him the said file to him then, this man's son Gaurav said that he was just giving me the said paper and saying this he took away the lease file from me and since then, he had not returned me the said paper. Kindly save my house. Please save my children from this person. I have not visited any court to sign. One day these persons crossed all the limits when his wife said that she was agreed to return all the papers in lieu of giving a receipt of the same in writing. After that, they gave me the amount of sale proceeds of Rohini and Bawana's properties. She brought fake papers which were related to some other person's property, to me. I saw that those papers were fake papers and were in English language and when I showed those papers to someone, it was found that those papers were not related to my plot. When I went to this man's house to show him that those papers were not related to my plot, his wife said that since there was no electricity in her house that time so they had given some others property paper to her mistakenly and that they were just sending their son Gaurav to give me the correct papers but Gaurav did not come to me till today. Thereafter, we started receiving threats from Gunda elements that they would harm us in different ways. I have no proof of the money returned by me. This man used to say to my female friends that he would show them after purchasing my house by hook and crook. He used to spread rumour in the street that I, Komal have sold out my house to him and that there were several cases pending related to that house.

I pray, with folded hands, that keeping in view the illness of my husband, my house and the papers related thereto may please be restored to me. This man's wife Suman and their son Gaurav are most dishonest persons. His wife Suman used to talk in such an artificial way as she was telling a truth. One of my sons had died due to cancer and if I am dishonest to anyone, my rest of both children may also die from cancer. You can verify these facts from the residents of the street as to how many houses (families) has been ruined by this person. This man is supported by some reputed persons who use to give him money but he did not return their money. He kept on keeping papers of our property with him and used to lend our money on interest to other persons. This man intends to grab my house. My matter may please be decided. This man Ramesh Sibbal, his wife Suman and son Gaurav may be punished so that they may not commit such an act with anyone in future. He kept on threatening me while involving my daughter-in-law that he would do this and that. Since the day this man entered my house, everything has been ruined by him. I may please be imparted justice.

Sd/- Komal Kapur (In English)"

5. The Investigating Officer prepared the site plan, effected recoveries of the articles from the place of occurrence and thereafter recorded the statements of the witnesses. Upon completion of the investigation, a charge sheet was filed in terms of Section 173(2) of the Code wherein Ramesh Chander Sibbal was stated as the accused and names of his wife, Suman Sibbal and son Gaurav Sibbal were shown in Column No.2. Upon committal, the learned Additional Sessions Judge framed charges against the accused under Sections 306 and 448 of the Indian Penal Code, 1860 (IPC).

6. The accused filed a criminal revision being Criminal Revision No.227 of 2009 in the High Court of Delhi at New Delhi challenging the order of the trial Court dated 2nd April, 2009, framing the charge. The High Court vide its judgment dated 13th August, 2009 quashed the charge framed under Section 306 IPC, while permitting the Trial Court to continue the trial in relation to the offence under Section 448 IPC. It will be useful to refer to certain findings recorded by the High Court in its judgment dated 13th August, 2009 :

“3. In the background of the aforesaid case set up by the prosecution the learned counsel for the petitioner submitted that the ingredients of an offence under Section 306 of the IPC were not present in the instant case. As a matter of fact the learned counsel for the petitioner went further to say that this is not a case of suicide, rather is, a case of homicide. For this purpose he took me through the post mortem report and also the literature (Pathology of Neck Injury by Peter Venezis). On being told that since the trial was on and hence, the learned counsel decided to give up the arguments initially advanced on this aspect of the matter.

3.1 As regards whether a charge could be framed under Section 306 of the IPC, the upshot of his submissions was that even if the entire material/evidence placed on record by the prosecution is fully accepted to be correct, no offence under Section 306 of the IPC is made out against the petitioner accused. For this purpose the learned counsel for the petitioner took me through the suicide note dated 04.12.2007, the statement of the sons of the deceased Amit Kapoor (the complainant) and Sumit Kapoor, as well as, the report of the Forensic Science Laboratory.

It was his submission that merely because the petitioner- accused is named in the suicide note and has been referred to as the reason which propelled the deceased to take the extreme step of suicide, it would still not fall within the realm of Section 306 of the IPC.

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g. a perusal of the suicide note brings to fore the fact the

petitioner-accused is not only named but his illegal occupation of the house of the deceased is stated to be one of the primary reasons for Kamol Kapoor, to have committed suicide. The statement of the sons of the deceased, Amit Kapoor and Sumit Kapoor, is primarily on the same lines. The issue for consideration is that, even if it is assumed at this stage, that the suicide note was written in the hand writing of the deceased and the statement of Amit Kapoor is believed to be true in its entirety would

it be sufficient to charge the petitioner- accused with the offence of abetment of suicide by Komal Kapoor. In my view the answer is in the negative. The mere fact that the actions of the petitioner-accused, that is, forcible occupation of the portion of the house of the deceased, led her to take the extreme step of committing suicide would not bring his act within the definition of abetment as there is no material or evidence placed by the prosecution on record to show that he intended or had the necessary mens rea that the Komal Kapoor should take the extreme step of committing suicide. As long as there is absence of material and/or evidence on record to show that the abettor had intended to aid or encourage the commission of the principal offence, the accused cannot be charged with the offence of abetment and, therefore, in the present case, abetment to commit suicide. Nor I am persuaded by the submission that because the name of the petitioner-accused appears in the suicide note it would be sufficient to charge him with an offence under Section 306 of the IPC. In this context see observation in Sanju @ Sanjay Singh Senger (supra) and Mahender Singh (supra). In both the cases not only was the accused named in the suicide note but they were also cited as the reason for committing suicide by the deceased. The learned APP may perhaps be correct in his submission that the agreement to sell dated 30.06.2007 was executed by the petitioner- accused, only to grab the property of the deceased after a receipt had been executed by the deceased acknowledging that she had taken a loan from the petitioner-accused in the first instance in the sum of Rs.15 lacs and thereafter, another sum of Rs. 1 lac, but then, this aspect of the matter will get unravelled only after a full- fledged trial. I do not wish to comment any further on this aspect of the matter as it could impact both, the case of the prosecution as well as that of the defence, and perhaps wisely, therefore, even the learned counsel or the petitioner-accused has not assailed the charge framed under Section 448 of the IPC.

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12. For the aforementioned reasons, I am of the opinion that it is a fit case in which this Court should exercise its revisional and inherent powers to quash the charge framed against the petitioner accused under Section 306 of the IPC. The revision petition is thus partially allowed. The charge framed against the petitioner-accused under Section 306 of the IPC shall be dropped. The trial court will continue with the trial of the petitioner-accused in respect of the remaining charge framed against him.”

7. Aggrieved from the judgment of the High Court, in the present appeal, the appellant impugnes the same primarily on the ground that the High Court had exceeded and not appropriately exercised its jurisdiction under Sections 397 and 482 of the Code in quashing the charge framed against the respondent under Section 306 IPC.

8. Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under Section 397 and Section 482 of the Code. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of

careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

9. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice *ex facie*. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the Cr.P.C. Right from the case of *State of West Bengal & Ors. v. Swapan Kumar Guha & Ors.* [(1982) 1 SCC 561], which was reiterated with approval in the case of *State of Haryana & Ors. v. Bhajan Lal & Ors.* [1992 Supp. (1) SCC 335], the courts have stated the principle that if the FIR does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received. It is further stated that the legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to have been committed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. Whether an offence has been disclosed or not, must necessarily depend on the facts and circumstances of each case. If on consideration of the relevant materials, the Court is satisfied that an offence is disclosed, it will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed in order to collect materials for proving the offence. In *Bhajan Lal's* case (*supra*), the Court also stated that though it may not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formulae or to give an exhaustive list of myriad kinds of cases wherein power under Section 482 of the Code for quashing of an FIR should be exercised, there are circumstances where the Court may be justified in exercising such jurisdiction. These are, where the FIR does not *prima facie* constitute any offence, does not disclose a cognizable offence justifying investigation by the police; where the allegations 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; where there is an expressed legal bar engrafted in any of the provisions of the Code; and 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. Despite stating these grounds, the Court unambiguously uttered a note of caution to the effect that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases; the Court also warned that the Court would 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 whims or caprice.

10. The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

11. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39:

“4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If “the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing”, as enjoined by Section 227. If, on the other hand, “the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the Court, he shall frame in writing a

charge against the accused”, as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.”

12. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression ‘prevent abuse of process of any court or otherwise to secure the ends of justice’, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest*, i.e., when the law gives anything to

anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.

13. It may be somewhat necessary to have a comparative examination of the powers exercisable by the Court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to *Raj Kapoor & Ors. v. State of Punjab & Ors.* [AIR 1980 SC 258 : (1980) 1 SCC 43]. In this very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In this very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the Court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the Court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction.

14. In *Dinesh Dutt Joshi v. State of Rajasthan & Anr.* [(2001) 8 SCC 570], the Court held that Section 482 does not confer any power but only declares that the High Court possesses inherent powers for the purposes specified in the Section. As lacunae are sometimes found in procedural law, the Section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are, however, required to be reserved as far as possible for extraordinary cases.

15. In *Janata Dal v. H.S. Chowdhary & Ors.* [(1992) 4 SCC 305], the Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercise in appropriate cases *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist. The powers possessed by the High Court under

Section 482 of the Code are very wide and the very plenitude of the powers requires a great caution in its exercise. The High Court, as the highest court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes 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.

16. If one looks at the development of law in relation to exercise of inherent powers under the Code, it will be useful to refer to the following details :

As far back as in 1926, a Division bench of this Court In Re: Llewelyn Evans, took the view that the provisions of Section 561A (equivalent to present Section 482) extend to cases not only of a person accused of an offence in a criminal court, but to the cases of any person against whom proceedings are instituted under the Code in any Court. Explaining the word “process”, the Court said that it was a general word, meaning in effect anything done by the Court. Explaining the limitations and scope of Section 561A, the Court referred to “inherent jurisdiction”, “to prevent abuse of process” and “to secure the ends of justice” which are terms incapable of having a precise definition or enumeration, and capable, at the most, of test, according to well-established principles of criminal jurisprudence. The ends of justice are to be understood by ascertainment of the truth as to the facts on balance of evidence on each side. With reference to the facts of the case, the Court held that in the absence of any other method, it has no choice left in the application of the Section except, such tests subject to the caution to be exercised in the use of inherent jurisdiction and the avoidance of interference in details and directed providing of a legal practitioner.

17. Having examined the inter-relationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court but framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the Court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the Court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the Court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the Court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

18. This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction. In the case of *Indian Oil Corporation v. NEPC India Ltd. & Ors.* [(2006) 6 SCC 736], this Court took the similar view and upheld the order of the High Court declining to quash the criminal proceedings because a civil contract between the parties was pending.

19. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :

- 1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
- 2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.
- 3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.
- 4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.
- 5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a

bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-

fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power

is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist.

{Ref. State of West Bengal & Ors. v. Swapan Kumar Guha & Ors. [AIR 1982 SC 949]; Madhavrao Jiwaji Rao Scindia & Anr. v. Sambhajirao Chandrojirao Angre & Ors. [AIR 1988 SC 709]; Janata Dal v. H.S. Chowdhary & Ors. [AIR 1993 SC 892]; Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Ors. [AIR 1996 SC 309]; G. Sagar Suri & Anr. v. State of U.P. & Ors. [AIR 2000 SC 754]; Ajay Mitra v. State of M.P. [AIR 2003 SC 1069]; M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. [AIR 1988 SC 128]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705]; Ganesh Narayan Hegde v. s. Bangarappa & Ors. [(1995) 4 SCC 41]; Zundu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque & Ors. [AIR 2005 SC 9]; M/s. Medchl Chemicals & Pharma (P) Ltd. v. M/s. Biological E. Ltd. & Ors. [AIR 2000 SC 1869]; Shakson Belthissor v. State of Kerala & Anr. [(2009) 14 SCC 466]; V.V.S. Rama Sharma & Ors. v. State of U.P. & Ors. [(2009) 7 SCC 234]; Chunduru Siva Ram Krishna & Anr. v. Peddi Ravindra Babu & Anr. [(2009) 11 SCC 203]; Sheo Nandan Paswan v. State of Bihar & Ors. [AIR 1987 SC 877]; State of Bihar & Anr. v. P.P. Sharma & Anr. [AIR 1991 SC 1260]; Lalmuni Devi (Smt.) v. State of Bihar & Ors. [(2001) 2 SCC 17]; M. Krishnan v. Vijay Singh & Anr. [(2001) 8 SCC 645]; Savita v. State of Rajasthan [(2005) 12 SCC 338]; and S.M. Datta v. State of Gujarat & Anr. [(2001) 7 SCC 659]}.

20. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence. At this stage, we may also notice that the principle stated by this Court in the case of Madhavrao Jiwaji Rao Scindia (supra) was reconsidered and explained in two subsequent judgments of this Court in the cases of State of Bihar & Anr. v. Shri P.P. Sharma & Anr. [AIR 1991 SC 1260] and M.N. Damani v. S.K. Sinha & Ors. [AIR 2001 SC 2037]. In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent.

21. In light of the above principles, now if we examine the findings recorded by the High Court, then it is evident that what weighed with the High Court was that firstly it was an abuse of the process of court and, secondly, it was a case of civil nature and that the facts, as stated, would not constitute an offence under Section 306 read with Section 107 IPC. Interestingly and as is evident from the findings recorded by the High Court reproduced supra that ‘this aspect of the matter will get unravelled only after a full-fledged trial’, once the High Court itself was of the opinion that clear facts and correctness of the allegations made can be examined only upon full trial, where was the need for the Court to quash the charge under Section 306 at that stage. Framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings.

22. We have already noticed that the legislature in its wisdom has used the expression 'there is ground for presuming that the accused has committed an offence'. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in the case of *State of Maharashtra v. Som Nath Thapa & Ors.* [(1996) 4 SCC 659] referred to the meaning of the word 'presume' while relying upon the *Black's Law Dictionary*. It was defined to mean 'to believe or accept upon probable evidence'; 'to take as proved until evidence to the contrary is forthcoming'. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence. This was not a case where the allegations were so predominately of a civil nature that it would have eliminated criminal intent and liability. On the contrary, it is a fact and, in fact, is not even disputed that the deceased committed suicide and left a suicide note. May be, the accused are able to prove their non-involvement in inducing or creating circumstances which compelled the deceased to commit suicide but that again is a matter of trial. The ingredients of Section 306 are that a person commits suicide and somebody alone abets commission of such suicide which renders him liable for punishment. Both these ingredients appear to exist in the present case in terms of the language of Section 228 of the Code, subject to trial. The deceased committed suicide and as per the suicide note left by her and the statement of her son, the abetment by the accused cannot be ruled out at this stage, but is obviously subject to the final view that the court may take upon trial. One very serious averment that was made in the suicide note was that the deceased was totally frustrated when the accused persons took possession of the ground floor of her property, C-224, Tagore Garden, Delhi and refused to vacate the same. It is possible and if the Court believes the version given by the prosecution and finds that there was actual sale of property in favour of the accused, as alleged by him, in that event, the Court may acquit them of not only the offence under Section 306 IPC but under Section 107 IPC also. There appears to be some contradiction in the judgment of the High Court primarily for the reason that if charge under Section 306 is to be quashed and the accused is not to be put to trial for this offence, then where would be the question of trying them for an offence of criminal trespass in terms of Section 448 IPC based on some facts, which has been permitted by the High Court.

23. The High Court could not have appreciated or evaluated the record and documents filed with it. It was not the stage. The Court ought to have examined if the case falls in any of the above-stated categories.

24. The High Court has also noticed that perusal of the suicide note brings to fore the fact that the petitioner-accused is not only named but his illegal occupation of the house of the deceased is stated to be one of the primary reasons for Komal Kapoor in committing the suicide. The statement of the son of the deceased is also on the same line. Then the High Court proceeds further to notice that even if it is assumed at this stage that the suicide note and statement were correct, the action of the petitioner-accused in forcibly occupying the portion of the house of the deceased and the deceased

taking the extreme step would not bring his act within the definition of abetment, as there is no material or evidence placed by the prosecution on record. This finding could hardly be recorded without travelling into the merits of the case and appreciating the evidence. The Court could pronounce whether the offence falls within the ambit and scope of Section 306 IPC or not. These documents clearly show that the accused persons had brought in existence the circumstances which, as claimed by the prosecution, led to the extreme step of suicide being taken by the deceased. It cannot be equated to inflictment of cruelty as discussed by the High Court in its judgment. Once Sections 107 and 306 IPC are read together, then the Court has to merely examine as to whether apparently the person could be termed as causing abetment of a thing. An abettor under Section 108 is a person who abets an offence. It includes both the person who abets either the commission of an offence or the commission of an act which would be an offence. In terms of Section 107 IPC, Explanation (1) to Section 107 has been worded very widely. We may refer to the judgment of this Court in the case of *Goura Venkata Reddy v. State of A.P.* [(2003) 12 SCC 469], wherein this Court held as under :

“8. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section

107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. “Act abetted” in Section 109 means the specific offence abetted.

Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence. In the instant case, the abetted persons have been convicted for commission of offence punishable under Section

304. So in the case of A-1 it is Section 304 read with Section 109 IPC, that is attracted.”

25. A wilful misrepresentation or wilful concealment of material fact and such person voluntarily causing or procuring or attempting to cause or procure a thing to be done is said to instigate the doing of that thing. According to the record, the accused had made a wrong statement that he had paid a sum of Rs.24,00,000/- for purchase of the property C-224, Tagore Garden, Delhi and the property belonged to him. Whether it was a misrepresentation of the accused and was an attempt to harass the deceased and her family which ultimately led to her suicide is a question to be examined by the Court. The allegations as made in the afore-stated documents clearly reflect that blank documents were got signed, but the purpose, the consideration and complete facts relating to the transaction were not disclosed to the deceased or the family. This would, at least at this stage, not be

a case for examining the correctness or otherwise of these statements as these allegations cannot be said to be ex facie perverse, untenable or malicious. It would have been more appropriate exercise of jurisdiction by the High Court, if it would have left the matter to be determined by the Court upon complete trial. May be the accused would be entitled to get some benefits, but this is not the stage. These are matters, though of some civil nature, but are so intricately connected with criminal nature and have elements of criminality that they cannot fall in the kind of cases which have been stated by us above. There, the case has to be entirely of a civil nature involving no element of criminality.

26. The learned counsel appearing for the appellant has relied upon the judgment of this Court in the case of Chitresh Kumar Chopra v. State (Government of NCT of Delhi) [(2009) 16 SCC 605] to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word 'instigate' used in Section 107 of the IPC has been explained by this Court in the case of Ramesh Kumar v. State of Chhattisgarh [(2001) 9 SCC 618] to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence. Husband of the deceased was a paralysed person. They were in financial crises. They had sold their property. They had great faith in the accused and were heavily relying on him as their property transactions were transacted through the accused itself. Grabbing of the property, as alleged in the suicide note and the statement made by the son of the deceased as well as getting blank papers signed and not giving monies due to them are the circumstances stated to have led to the suicide of the deceased. The Court is not expected to form even a firm opinion at this stage but a tentative view that would evoke the presumption referred to under Section 228 of the Code.

27. Thus, we are of the considered view that the finding returned by the High Court suffers from an error of law. It has delved into the field of appreciation and evaluation of the evidence which is beyond the jurisdiction, either revisional or inherent, of the High Court under Sections 397 and 482 of the Code.

28. For the reasons afore-recorded, this appeal is allowed. The order of the High Court is set aside. The trial Court shall proceed with the trial in accordance with law, uninfluenced in any way whatsoever from what has been recorded in this judgment. Charge against the accused under Section 306 read with Section 107 and Section 448 IPC are found to be in order.

.....J. (A.K. Patnaik)J. (Swatanter Kumar) New Delhi;

September 13, 2012.