State, Through Special Cell, New Delhi vs Navjot Sandhu @ Afshan Guru & Ors on 9 May, 2003

Author: S. N. Variava

Bench: S.N. Variava, Brijesh Kumar

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           CASE NO.:
Appeal (crl.)   of 725-

PETITIONER:
State, through Special Cell, New Delhi

RESPONDENT:
Navjot Sandhu @ Afshan Guru & Ors.

DATE OF JUDGMENT: 09/05/2003

BENCH:
S.N. Variava &  Brijesh Kumar.

JUDGMENT:
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J U D G M E N T (Arising out of SLP (Crl.) Nos. 577-580 of 2003) S. N. VARIAVA, J.

Leave granted.

Heard parties.

Briefly stated the facts are as follows:

> On 13th December, 2001 five terrorist attacked the Parliament of India. After an encounter, with the security forces, the five terrorists were shot dead. A F.I.R was lodged by the Station House Officer, Police Station, Parliament Street. A case under Sections 120,120B, 121, 121A, 122, 124, 186, 332, 353, 302, and 307 IPC, Sections 3, 4 and 5 of the Explosive Substances Act and Sections 25 and 27 of the Arms Act was registered. Investigation was then initiated. From the slain terrorists apart from arms, ammunitions and other items, three mobile phones, 6 sim cards and slips of paper containing five mobile telephone numbers and other two telephone numbers were recovered. It is the case of the prosecution that due to urgency authorisation to intercept was granted by the Joint Director of Intelligence Bureau, who was associated with the investigation. It is the case of the prosecution that this authorisation was as per the provisions of the Telegraph Act i.e. Section 5 of the Telegraph Act read with Rule 419A. It is the case of the prosecution that the interception disclosed the involvement of the respondents in the conspiracy to attack

the Parliament of India. It is the case of the prosecution that as a result of the interceptions and the interrogation of the respondents, it was disclosed that the slain terrorists and the respondents were in touch with one Ghazi Baba, who is a Pakistani national and the supreme commander of Jaish-e-Mohammed which is a notified and banned terrorist organisation under Section 18 of Prevention of Terrorism Act, 2002 and the schedule thereto (the Prevention of Terrorism Act will hereinafter be referred to as POTA). It is the case of the prosecution that after the investigating officers had, in the course of the investigation, collected the relevant and cogent material it was found that a case under POTA was made out. It is the case of the prosecution that relevant sections of POTA were added on 19th December, 2001 only after it was ensured that offences under POTA were made out. It is the case of the prosecution that this was done in view of the well established law laid down by this Court, in the context of TADA, that there must be due application of mind and cogent material before the special rigorous regime is added. It is the case of the prosecution that on 31st December, 2001 and 19th January, 2002 the Home Secretary approved the interception.

It is the case of the prosecution that after the investigation was completed the charge-sheet was filed on 14th May, 2002. It is the case of the prosecution that copy of the transcripts of the intercepted conversation were given to the accused along with the charge sheet. On 8th July, 2002 the respondents applied before the Special Judge seeking a direction that the intercepted conversation not be used as evidence in the trial for proving the charge/s under POTA. The procedure which the Special Judge should have followed is as laid down by this Court in the case of Bipin Shantilal Panchal versus State of Gujarat and Another reported in (2001) 3 SCC 1. In this case it has been held as follows:

"12. As pointed out earlier, on different occasions the trial Judge has chosen to decide questions of admissibility of documents or other items of evidence, as and when objections thereto were raised and then detailed orders were passed either upholding or overruling such objections. The worse part is that after passing the orders the trial court waited for days and weeks for the parties concerned to go before the higher courts for the purpose of challenging such interlocutory orders.

13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this : Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the

trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

16. We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence."

Had the Special Judge followed the above dictum no prejudice would have been caused to the respondents inasmuch as their arguments/objections would have been decided at the stage of final hearing. If the Court was in their favour the evidence could have been eschewed and not considered. Any decision given at that stage could then have been challenged in the appeal under Section 34, POTA. Ignoring the above dictum the Special Judge chose to hear detailed arguments and by his order dated 11th July, 2002, dismissed the applications. The Special Judge held that the evidence collected by various police officials when the case was registered under different provisions of law cannot be washed away merely because the provisions of POTA were added on 19th December, 2001. The Special Judge held that the provisions of POTA had to be followed only if the investigation was done under the provisions of the POTA. By dictating an order and passing the

interlocutory Order the Special Judge enabled the respondents to adopt the course that they have. This has resulted in a peculiar situation where two judges of the High Court, hearing the statutory appeal under Section 34, POTA, may be precluded from deciding an important point of law by an order passed by a Single Judge of the High Court.

Thereafter the trial proceeded. The evidence was recorded/taken. The respondent Ms Navjot Sandhu filed Criminal Writ Petition No 774 of 2002. On 22nd July, 2002 the following order was passed therein:

> "Learned counsel for the petitioner wishes to withdraw this petition in order to take appropriate action in accordance with law. Leave as prayed is granted.
>
> Crl. W. 774/2002 and Crl. M. 588/2002 are accordingly disposed of."

Respondent Ms Navjot Sandhu then filed Criminal Misc. No 2331 of 2002 under Section 482 Criminal Procedure Code read with Articles 226 and 227 of the Constitution of India seeking quashing of the order dated 11th July, 2002 of the Special Judge. Respondent Syed Abdul Rehman Geelani filed Criminal Appeal the title of which reads as under:

> "IN THE HIGH COURT OF DELHI AT NEW DELHI Criminal Appeal No. of 2002 In the matter of :
>
> Syed Abdul Rehman Geelani S/o Syed Abdul Wali Geelani, R/o 535, IInd Floor, Mukherje Nagar, Delhi .. Appellant/accused Versus State (NCT of Delhi) IN THE MATTER OF:-
>
> U/S 3/4/5 POTA 2002 R/w 120-B/121/121A/122 IPC, AND SEC 3/5 of Explosive Substances Act PS: Parliament Street Pending before the court of Sh. S. N. Dhingra, Special Judge (POTA), New Delhi Next Date of Hearing:- 25-7-2002 APPEAL, U/S 34 OF THE PREVENTION OF TERRORISM ACT, 2002 READ 'WITH SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE AGAINST THE ORDER DATED 11-7-2002, WHEREBY T HE APPLICATION MADE ON BEHALF OF APPELLANT/ACCUSED FOR ESCHEWING/EXCLUSION OF EVIDENCE RELATING TO ALLEGED INTERCEPTED COMMUNICATION WAS DISMISSED."

The affidavit in support of the Appeal, inter-alia, reads as follows:

> "2. That the accompanying memorandum of appeal has been drafted by the counsel under my instructions. I have read and understood the contents thereof and the same are true and correct to my knowledge."

Thus Respondent Geelani had not invoked Article 227 of the Constitution of India. He had filed an appeal under Section 34, POTA against the order dated 11th July, 2002. As Section 482 Criminal Procedure Code was invoked the petition was numbered as a Criminal Misc. Petition and was placed

before a single Judge of the High Court. It nevertheless remained an Appeal under Section 34, POTA.

It would be appropriate to set out, at this stage, Section 34, POTA. It reads as follows:

> "34. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.
>
> Explanation.- For the purposes of this section, "High Court" means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.
>
> (2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court.
>
> (3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.
>
> (4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.
>
> (5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:
>
> Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

A plain reading of Section 34 shows that no appeal would lie against an interlocutory order. It could not be denied that the order dated 11th July, 2002 was an interlocutory order. It must also be noted that the Appeal must be heard by a bench of two judges of the High Court.

It must be mentioned that Respondent Shaukat Hussain had also filed a Criminal Misc Application No. 2484 of 2002 praying that the order dated 11th July, 2002 be quashed.

By the impugned judgment the High Court has disposed of all the above Petitions/Applications. The High Court has not mentioned whether it was exercising its power of superintendence under Article 227 of the Constitution of India or its inherent power under Section 482 of the Criminal Procedure Code. The question thus arises as to what power or jurisdiction the High Court has exercised. The only source of power which might have been used/invoked was either under Article 227 of the Constitution of India or the inherent power under Section 482 Criminal Procedure Code. The further question which then arises is whether, on the facts of this case, the High Court could or

should have exercised power under Article 227 or jurisdiction under Section 482. For a consideration of these questions it is first necessary to note the stage at which the trial was when the impugned judgment was delivered. This is best indicated by reproducing herein a relevant paragraph from the impugned judgment. The paragraph reads as follows:

> "I am told that in the meantime the prosecution evidence has been completed and the trial of the case is at its fag end. Therefore, it will be appropriate that this court restricts the decision on the legal points which are absolutely necessary to decide leaving all other objections raised in these petitions to be canvassed before the trial court for consideration at the time of the final decision."

As is being set out hereafter there is no legal point which was "absolutely necessary" to be decided at that stage.

Mr Shanti Bhushan submitted that the High Court had exercised power under Article 227 of the Constitution of India. As stated above the High Court does not state that it is exercising power of superintendence under Article 227 of the Constitution of India. To be remembered that Respondent Geelani had not invoked Article 227 of the Constitution of India. Thus Dr. Dhavan submitted that the order was passed in exercise of inherent jurisdiction under Section 482 of the Criminal Procedure Code. The impugned order is a common order passed in all the Applications/Petitions. It therefore follows that the impugned order cannot be in exercise of the power of superintendence under Article 227 of the Constitution of India. For this reason it is difficult to accept the submission of Mr Shanti Bhushan that the order is under Article 227 of the Constitution of India. We however are not required to go into the controversy whether the impugned order is under Article 227 of the Constitution of India or passed in exercise of inherent jurisdiction under Section 482 of the Criminal Procedure Code. It appears to us that, on facts of this case, neither the power under Article 227 of the Constitution of India nor inherent jurisdiction under Section 482 of the Criminal Procedure Code should have been exercised, even if such powers were available.

The law on the subject is clear. It is now necessary to look at the law. In the case of State of Gujarat versus V. S. Vaghela & others reported in (1968) 3 SCR 869 it is held that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is held that this jurisdiction cannot be limited or fettered by any act of the State Legislature. It is held that the supervisory jurisdiction extends to keeping the subordinate Tribunal's within the limits of the authority and to seeing that they obey the law.

In the case of Madhu Limaye versus State of Maharashtra reported in AIR (1978) SC 47 the question was whether the High Court can exercise its inherent power under Section 482 of the Criminal Procedure Code to quash an interlocutory order. In this judgment the provision of Section 397 (2) of the Criminal Procedure Code, which barred a revision against an interlocutory order, were also considered. It was held that the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of cases finally. It was held that more often than not the revisional power of the

High Court was resorted to in relation to interlocutory orders for delaying the final disposal of the proceeding it was held that the Legislature in its wisdom decided to check this delay by introducing Section 397 (2). It was held that Section 482 provided that "Nothing in the Code" shall be deemed to limit or affect the inherent powers of the High Court. It was held that the term "Nothing in the Code" would include Section 397 (2). It was held that Section 397 (2) could not prevent the High Court from exercising its inherent powers under Section 482. It was held that in exercising power under Section 482 the High Court must adhere to the following principles viz (a) that the power is not to be resorted to if there is a specific provision in the Code for redress of grievance of the aggrieved party; (b) that it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the end of justice; (c) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

In the case of Jagir Singh versus Ranbir Singh and another reported in (1979) 1 SCC 560 it is held as follows:

> "6. If the revision application to the High Court could not be maintained under the provisions of the Criminal Procedure Code, could the order of the High Court be sustained under Articloe 227 of the Constitution, as now suggested by the respondent? In the first place the High Court did not purport to exercise its power of superintendence under Article 227. The power under Article 227 is a discretionary power and it is difficult to attribute to the order of the High Court such a source of power when the High Court itself did not, in terms, purport to exercise any such discretionary power. In the second place the power of judicial superintendence under Article 227 could only be exercised sparingly, to keep subordinate Courts and Tribunals within the bounds of their authority and not to correct mere errors. Where the statute banned the exercise of revisional powers by the High Court, it would indeed require very exceptional circumstances to warrant interference under Article 227 of the Constitution since the power of superintendence was not meant to circumvent statutory law."

In the case of Krishnan versus Krishnaveni reported in (1997) 4 SCC 241 it is held that even though a second revision to the High Court is prohibited by Section 397(3) of the Criminal Procedure Code, the inherent power is still available under Section 482 of the Criminal Procedure Code. It was held that the object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. It is held that the recent trend is to delay the trial and threaten the witnesses or to win even the witnesses by promise or inducement. It is held that these malpractices need to be curbed and that public justice can be ensured only if trial is allowed to be conducted expeditiously. It is held that even though the power under Section 482 is very wide it must be exercised sparingly and cautiously and only to prevent abuse of process or miscarriage of justice.

In the case of Pepsi foods Ltd and another versus Special Judicial Magistrates and others reported in (1998) 5 SCC 749 it has been held as follows:

"21. The question which arise for consideration are if in the circumstances of the case, the appellants rightly approached the High Court under Articles 226 and 227 of the Constitution and if so, was the High Court justified in refusing to grant any relief to the appellants because of the view which it took of the law and the facts of the case. We have, thus, to examine the power of the High Court under Articles 226 and 227 of the Constitution and Section 482 of the Code.

22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana vs. Bhajan Lal this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but wit the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is 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. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Article 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

23. In Waryam Singh v. Amarnath [AIR 1954 SC 215] this Court considered the scope of Article 227. It was held that the High Court has not only administrative superintendence over the subordinate courts and tribunals but it has also the power of judicial superintendence. The Court approved the decision of the Calcutta High Court in Dalmia Jain Airways Ltd. vs. Sukumar Mukherjee [AIR 1951 Cal 193] where the High Court said that the power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting their mere errors. The Court said that it was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so.

24. In Bathutmal Raichand Oswal vs. Laxmibai R. Tarta [(1975) 1 SCC 858] this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. It said that the High Court could not, while exercising jurisdiction under Article 227, interfere with the findings of fact recorded by the subordinate court or tribunal functioned within the limits of its authority and that it could not correct mere errors of fact by examining the evidence or reappreciating it. The Court further said that the jurisdiction under Article 227 could not be exercised, "as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings". The Court referred with approval the dictum of Morris, L.J. in R. v. Northumberland Compensation Appeal Tribunal [(1952)1 All ER 122].

25. In Nagendra Nath Bora v. Commr. Of Hills Divisions [AIR 1958 SC 398] this Court observed as under:

22. "It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution.

Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. " (emphasis supplied) In the case of Industrial Credit and Investment Corporation of India Ltd versus Grapco Industries Ltd and others reported in (1999) 4 SCC 710 it has been held that there is no bar on the High Court examining merits of a case in exercise of its jurisdiction under Article 227 of the Constitution of India if the circumstances so require. It has been held that, under Article 227 of the Constitution of India, the High Court can even interfere with interim orders of Courts and Tribunal's if the order is made without jurisdiction.

In the case of Roy V. D. versus State of Kerala reported in (2000) 8 SCC 590 the question was whether arrest and search by an officer not empowered or authorised and therefore in violation of sections 41 and 42 of the Narcotics Drugs and Psychotropic Substances Act, 1985 was per se illegal and would vitiate trial. This Court held that when Criminal proceedings are initiated on the basis of material collected on search and arrest which are per se illegal, power under Section 482 can be exercised to quash the proceedings as continuance of such proceedings would amount to abuse of the process of the Court.

In the case of Puran versus Rambilas and another reported in (2001) 6 SCC 338 this Court has held that the High Court's inherent jurisdiction under Section 482 is not affected by the provisions of Section 397 (3) of the Code of Criminal Procedure. It is held that the High Court can interfere even if the order is an interlocutory order. It is held that for securing the end of justice the High Court can interfere with an order which causes miscarriage of justice or is palpably illegal or is unjustified. It was also noticed that the High Court may refuse to exercise jurisdiction, under Section 482, on the

basis of self- imposed restriction.

In the case of Satya Narayanan Sharma versus State of Rajasthan reported in (2001) 8 SCC 607 it has been held that Section 482 of the Criminal Procedure Code starts with the words "Nothing in the Code". It is held that this inherent power can be exercised even if there is a contrary provision in the Criminal Procedure Code. It is held that Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised "notwithstanding any other provision contained in any other enactment". It has been held that if any other enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar.

In the case of Ouseph Mathai and others versus M. Abdul Khadir reported in (2002) 1 SCC 319 it has been held as follows:

> "In Waryam Singh v. Amarnath [AIR 1954 SC 215] this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora v. Commr. Of Hills Division and Appeals [AIR 1958 SC 398]. In Babhutmal Raichand Oswal v. Laxmibai R. Tarte [(1975) 1 SCC 858] this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R. v. Northumberland Compensation Appeal Tribunal, ex p. Shaw (All ER at p. 128) this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram held: (SCC p. 460, para 20) "20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Telang v. Ramchandra Ganesh Bhide, [(1977)2 SCC 437]. Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

6. In Laxmikant Revchand Bhojwani vs. Pratapsing Mohansingh Pardeshi [(1995) 6 SCC 576] this Court held that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in a dispute regarding eviction of tenant under the Rent Control Act, a special legislation governing landlord-tenant relationship. To the same effect is the judgment in Koyilerian Janaki v. Rent Controller (Munsiff) [(2000) 9 SCC 406].

7. In the present appeals, the High Court appears to have assumed the jurisdiction under Article 227 of the Constitution without referring to the facts of the case warranting the exercise of such a jurisdiction. Extraordinary power appear to have been exercised in a routine manner as if the power under Article 227 of the Constitution was the extension of powers conferred upon a litigant under a specified statute. Such an approach and interpretation is unwarranted. By adopting such an approach some High courts have assumed jurisdiction even in matters to which the legislature has assigned finality under the specified statutes. Liberal assumption of powers without reference to the facts of the case and the corresponding hardship to be suffered by a litigant has unnecessarily burdened the courts resulting in accumulation of arrears adversely affecting the attention of the court to the deserving cases pending before it." (emphasis supplied) In the case of State of Karnataka versus M. Devendrappa and Anr. reported in (2002) 3 SCC 89, this Court has held that the High Court has inherent power under Section 482 Criminal Procedure Code to quash proceedings. It is held that the power should be exercised to stifle a legitimate prosecution. It is held that the High Court should not assume the role of a trial Court and embark upon an enquiry. It is held that the power should be exercised sparingly, with caution and circumspection. Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate Tribunal's within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and Tribunal's within the bounds of their authority and not to correct mere errors. Further where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise".

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However as is set out in Satya Narayanan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used

only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.

This being the law let us now see whether the High Court was right in interfering at this stage. As has been set out herein above, by the time the High Court delivered the impugned judgment the evidence, objected to, had already been recorded. The order dated 11th July 2002 was clearly an interlocutory order. Section 34, POTA clearly provides that no appeal or revision would lie to any Court from an order which was an interlocutory order. As stated above the impugned order is a common order in all Applications/Petitions. Respondent Geelani had filed an Appeal under Section 34, POTA. Merely because he chose to invoke Section 482 of the Criminal Procedure Code did not mean that his application was not an Appeal. Clearly the High Court could not have interfered at this stage. The High Court has not indicated that it was exercising power of superintendence under Article 227. Such a power being a discretionary power it is difficult to attribute to the order of the High Court such a source of power. Even otherwise in respect of Respondent Geelani power under Article 227 could not have been invoked or exercised.

On facts of this case we find that the effect of the impugned order is that the statutory provision of Section 34, POTA have been circumvented. The impugned order has also led to the very peculiar situation set out hereinabove. To repeat under Section 34, POTA the appeal is to be heard by a bench of two judges of the High Court. We are informed that the appeal is being heard by a bench of two Judges of the High Court. An appeal under Section 34, POTA is both on facts and on law. The correctness of the interlocutory order could, by virtue of Section 34, POTA, have been challenged only in the appeal filed against the final judgment. The respondents by filing the Application/Petitions and the learned Judge having chosen to entertain them, has resulted in a party being deprived of an opportunity of canvassing an important point of law in the statutory Appeal before the division bench. The peculiar situation is that the division bench, hearing a statutory appeal (both on law and facts) is bound/constrained by an order of a single Judge. The order of the Special Judge is based on an interpretation of the various provisions of POTA. The Special Judge undoubtedly had authority and jurisdiction to interpret the various provisions of POTA and other laws. The Special Judge had jurisdiction to decide whether the evidence collected by interception could be used for proving a charge under POTA. The Special Judge was acting within the limits of his authority in passing the impugned order. We are told that before single Judge of the High Court the arguments, by both sides, went on for approximately two weeks. Even before us considerable time was taken. This is being mentioned only to indicate that the question is not so clear. It requires interpretation of various provisions of POTA. Neither the power under Article 227 nor the power under Section 482 enabled the High Court to correct an error in interpretation even if

the High Court felt that the order dated 11th July 2002 was erroneous. Even if the High Court did not agree with the correctness of that order, the High Court should have refused to interfere as the order could be corrected in the appeal under Section 34, POTA. To be remembered that by the time the impugned order was passed the evidence had already been recorded. Thus there was no abuse of process of Court which could now be prevented. Even the end of justice did not require interference at this stage. In fact the ends of justice required that the statutory intent of Section 34, POTA be given effect to. The High Court should have directed the Respondents to raise all such points in the statutory appeal, if any required to be filed, under Section 34, POTA. If in the appeal the division bench felt that the order was not correct or that it was erroneous it would set aside the order, eschew the evidence and not take the same into consideration. Thus no prejudice was being caused or would be caused to the respondents. Their rights were fully protected as per the provisions of POTA. At this stage there was no miscarriage of justice or palpable illegality which required immediate interference. We are therefore of the opinion that even if powers under Section 227 or under Section 482 could have been exercised this was a case where the High Court should not have exercised those powers.

It was submitted that the prosecution had not raised the point of maintainability of the Applications/Petitions before the High Court. It was submitted that the prosecution chose to argue on merits before the High Court and therefore they should now not be permitted to raise these contentions before this Court. It does appear that the question of maintainability was not argued before the High Court. However we are informed that Section 34, POTA was brought to the notice of the High Court. The High Court was also aware that, by the time it heard the matter, the evidence had already been recorded and the trial had reached the final stage. On the above-mentioned settled law the High Court should have on its own refused to interfere and should have left the parties to agitate their contentions in the appeal to be filed under Section 34, POTA.

It must be mentioned that before us also arguments on merits were made. At one stage this Court did consider giving a decision on merits. However on a proper consideration of the matter it appears to us that to give a decision on merits would be to perpetrate the mistake committed by the High Court. It would result in depriving one or the other party of a valuable rights of agitating the point in the statutory appeals, which are at present going on before the division bench of the High Court. We therefore refrain from expressing any opinion on merits. We clarify that all parties will be free to urge all questions in the pending appeals before the division bench of the High Court.

In the above view we allow the appeals and set aside the impugned order. There will be no order as to cost.