CHAPTER IV

CRIMINAL JUSTICE ADMINISTRATION AND JUDICIAL RESPONSE
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I. Introduction

The democratic constitutional systems have always assigned high prestige to the judiciary especially in view of the challenging tasks entrusted to it. The notion of functional independence of the law courts in a democratic country also makes the judiciary too sensitive to its position vis-à-vis, other branches of government and the extra-constitutional structures which the democratic system creates for its sustenance.¹ The court system being somewhat away and above the democratic din and bustle, characteristic of the legislatures can play an objective guarding.

The Indian judicial system has a long and glorious history of functional accomplishments and admirable social purpose. The ancient and mediaeval period of Indian history made innovations in the field of administration of justice, but, what free India today, has in the name of judicial system is a proud legacy of the British Raj. Notwithstanding, all their hunches and precautionary susceptibilities the Britishers evolved a system of judiciary and criminal justice in country which was a queer-mixture of Anglo-Saxon principles.²

² Ibid.
The Republican Constitution of India while proclaiming its faith in Western liberalism and parliamentary democracy treated its judiciary with utmost respect and sensitivity. The Supreme Court of India and the High Courts in each State are the apex of the judicial reforms of the country which, for the purposes of dealing with criminal cases consist of a number of courts presided over by Sessions Judges, Metropolitan Magistrates and Judicial Magistrates at different places in each State. With coming into force, the Code of Criminal Procedure, 1973, the judiciary has been separated from the executive as envisaged in Article 50 of the Constitution of India and effect of separation has been established throughout the country.

The functioning of our courts is linked with the image of our judicial system. The image of the courts depends not upon the architectural beauty and the spaciousness of the courts buildings. It also does not depend upon the finally cut robes of the members of the Bench and Bar, not upon the other trappings of the courts. Likewise, the image of the courts does not depend upon long arguments, the number of authorities citied and the erudition displayed in judgements. It depends in the final analysis, upon the way the cases are handled upon the extent of confidence the courts inspire in the parties to the case before the, upon the promptness or absence of delay in the disposal of cases and upon the approximation of the judicial findings of fact with the realities of the matters.

4 For details see, Article 50 of the Constitution of India, 1950.
Administration of criminal justice is provided by a wide range of legislative measures of diverse kinds. But in recent time judiciary, particularly at the appellate level, has played a vital role in giving creative interpretations leading to broadening and evolving new concepts of criminal justice system. Such judicial role is a marked feature of judicial process, particularly, emanating from the Supreme Court. In this way it would be useful to refer to certain judicial enunciations that go in to make the character of contemporary criminal justice administration. Such enunciations relate to certain vital impacts on the processes of criminal justice administration in India.

II. Judicial Control on Police Powers

The Indian judiciary led by Supreme Court has exhibited a judicial activism in recognizing and enforcing the laws.

Commenting on the role of legal profession and lawyers in the judicial system, Mr. Justice H. R. Khanna, former Judge of the Supreme Court of India observed that "the legal profession is designed to be a profession of service . . . service to the community. The important duty of the profession is to act as an interpreter, guide and faithful servant of the community."

(A) First Information Report, Police Custody and Charge sheet

The police has been trying to build up is image as a ruthless, oppressive machinery to create terror and thus to prevent crimes. The attitude does not work well and adoption results in the loss of reputation as an effective force in carrying out the task assigned to it. The law responded to the situation by giving more and more

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safeguards to the accused. The Supreme Court has got an opportunity to dwell on the need for adding more protective rights to the accused in view of the chances of abuse of power by police.

It was held by the Supreme Court in Thulia Kaili v. State of Tamil Nadu\(^7\) that

The FIR in Section 154 in the criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed. The names of the actual culprits and the part played by them as well as the names of the eye witnesses present at the scene of occurrence. Delay in lodging the F.I.R quite often results in embellishment which is a creature of after thought on account of delay, the report not only get bereft of the advantage of spontaneity. Danger creeps into the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging the FIR report should be satisfactorily explained.

Supreme Court in Apren Joseph alias Current Kun Jukunju v. State of Kerala,\(^8\) held that:

the receipt and recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statute provide that such information report can only be made by an eye witness. FIR under Section 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in court. But this information when recorded

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\(^7\) AIR 1973 SC 501.
\(^8\) AIR 1973 SC 1
is the basis of the case set up by the informant. It is very useful if recorded before there is time and opportunity to embellish or before the informant's memory fades. Undue or unreasonable delay in lodging the F.I.R., therefore, inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation for the delay and consider its effect on trustworthiness or otherwise of the prosecution version. No duration of time in the abstract can be fixed as reasonable for giving information of a crime to the police, the question of reasonable time being a matter for determination by the court in each case. Mere delay in lodging the F.I.R. report with the police is, therefore, not necessarily, as a matter of law, fatal to the prosecution. The effect of delay in doing so in the light of the plausibility of the explanation forthcoming for such delay accordingly must fall for consideration on all the facts and circumstances of a given case. It can be used as a previous statement for the purpose of corroboration or contradiction of its maker under Section 157 and Section 145 of the Indian evidence Act.

In **Hallu v. State of M.P.**, the Apex Court refused to attach any importance to the circumstance that the names of the appellants were not mentioned in the report on the ground that though it was earliest in point of time it could not be treated as the First Information report under Section 154 of the Criminal Procedure Code. In this view the Apex Court clearly held that Section 154 does not require that the Report must be given by a person who has personal knowledge of the incident reported. The section speaks of an information relating to the commission of a cognizable offence given to an officer in charge of a police station.

In **Pudda Naryana v. State of Andhra Pradesh**, the learned counsel appearing for the appellants tried to support the
judgment of the learned Additional Sessions Judge and pointed out a number of circumstances which according to him cast a serious doubt on the veracity of the prosecution case. In the first place, it was argued that the learned Additional Sessions Judge rightly held that as the F.I.R, did not contain the overt acts attributed to each of the accused, the story of the prosecution must be held to be an afterthought. Dealing with this aspect of the matter, the High Court pointed out that the F.I.R was lodged soon after the occurrence and there was no occasion for the informant to have mentioned all the material particulars in the F.I.R. which had to be narrated and proved at the trial.

Another point taken by the learned Additional Sessions Judge was that in the inquest report details of the overt acts committed by the various accused have not been mentioned in the relevant column. The learned Judge in fact has assumed without any legal justification that because the details were not mentioned in the requisite column of the inquest report, therefore, the presumption will be that the eye witnesses did not mention the overt acts in their statements before the police. To begin with it seems that the learned Additional Sessions Judge's approach is legally erroneous. A statement recorded by the police during the investigation is not at all admissible and the proper procedure is to confront the witnesses with the contradictions.

In Balaka Singh v. State of Punjab, the brief statements of the facts of the case mentioned in the inquest report are based on the report lodged by Banta Singh. In this brief statement, however the names of Inder Singh, Sucha Singh, Teja Singh and

11 AIR 1975 SC 1962
Makhan Singh accused are not mentioned as culprits, specifically. It is correct that in the brief facts mentioned in the body there is no reference of the names of these four men."

Thus even the A. S. I. while admitting that the names of the four accused were not mentioned by Banta Singh has not chosen to give any explanation for this deliberate omission to that effect. According to the prosecution the names of the four accused who have been acquitted by the High Court had already been mentioned in the F. I. R. which was lodged 4/5 hours before the inquest report was prepared. Any Investigating Officer possessing some intelligence would have at once questioned Banta Singh as to how it is that while he had named the four accused in the F. I. R. He had not referred to them in his brief statement in the inquest report. In these circumstances, therefore, the High Court was fully justified in holding that the omission of the names of the four accused acquitted by the High Court in the inquest report was a very important circumstance which went in favour of the four accused. This omission has a two-fold reaction. In the first place it throws doubt on the complicity of the four accused acquitted by the High Court and secondly it casts serious doubt on the veracity and authenticity of the F. I. R. itself. It is not understandable as to why the four accused who are alleged to have taken an active part in the assault on the deceased were not at all mentioned in the inquest report and in the brief statement of the very person who had lodged the F. I. R. four hours before. Counsel for the State tried to justify this omission on the ground that in the inquest report the names of all the nine accused appear to have been mentioned at the top of that document. There is, however, no column for mentioning the names of the accused and therefore,
there was no occasion for the Investigating Officer to have mentioned the names of the accused in that particular place.

Finally the Investigating Officer Teja Singh admitted in his evidence that he had prepared the inquest report and that he had read out the same to Banta Singh and Harnam Singh but later tried to say that he did not recollect whether he had read out the inquest report to Banta Singh and Harnam Singh before getting their thumb impressions on the inquest report. This circumstance speaks volumes against the prosecution case. If, therefore, it is once established that the names of the four accused were deliberately added in the inquest report at the instance of the prosecution there is no guarantee regarding the truth about the participation in the assault on the deceased by the appellants.

Another finding which demolishes the entire edifice and fabric of the prosecution case is that the F. I. R. itself was not written at 10 P. M. as alleged by the informant Banta Singh but it was written out after the inquest report was prepared by the A. S. I. and after the names of the four accused acquitted by the High Court were inserted in the inquest report. If this is true then the entire case of the prosecution becomes extremely doubtful. The High Court has also derived support from another important circumstance to come to the conclusion that the F.I.R. was not written at 10 P. M. as alleged by the prosecution but after the preparation of the inquest report at about 2-30 A.M. The High Court points out that according to the prosecution the special report reached the Ilaqa Magistrate at 11 A. M. on September 2, 1966 i. e. more than 12 hours after the F. I. R. was lodged at the police station whereas it should have been delivered to the Ilaqa Magistrate during the night or at least in the early morning.
Counsel appearing for the appellants submitted that under the High Court Circulars and the Police Rules it was incumbent upon the Inspector who recorded the F. I. R. to send a copy of the F. I. R. to the Ilaqa Magistrate immediately without any loss of time and the delay in sending the F. I. R. has not been properly explained by the prosecution as rightly held by the High Court. It is, therefore, clear that the F. I. R. itself was a belated document and came into existence during the small hours of September 2, 1966. Indeed if this was so, then there was sufficient time for the prosecution party who are undoubtedly inimical to the accused to deliberate and prepare a false case not only against the four accused who have been acquitted, but against the other five appellants also. The High Court also found that the best person to explain the delay in sending the special report to the Ilaqa Magistrate was the Police Constable who had carried the F. I. R. to the Ilaqa Magistrate but the Constable has not been examined by the prosecution. On this point the High Court observed as follows:

The delay with which the special report was made available to the Ilaqa Magistrate is indicative of the fact that the first information report did not come into existence probably till about sunrise by when the dead body had already been dispatched for the purpose of post-mortem examination to Patiala along with the inquest report, so that the Investigating Officer was no longer in a position to make alterations in the body of that report and all that he could do was to add later on the names of the said four appellants to its heading.

This finding of the High Court is based on cogent materials and convincing reasons, but unfortunately the High Court has not considered the effect of this finding on the truth of the prosecution case with regard to the participation of the appellants. In our
opinion, in view of the finding given by the High Court it has been dearly established that the F. I. R. was lodged not at 10 P. M. as alleged by the prosecution but some time in the early morning of September 2, 1966. If this was so, then the F. I. R. lost its authenticity. If the prosecution could go to the extent of implicating four innocent persons by inserting their names in the inquest report and in the F. I. R. which was written subsequent to the inquest report they could very well have put in the names of the other five appellants also because they were equally inimical to the prosecution party, and there could be no difficulty in doing so because it is found by the High Court that all the prosecution witnesses belonged to one party who are on inimical terms with the accused.

In Sarwan Singh v. State of Punjab, the court was of the view that it is well settled that mere delay in despatch of the F. I. R. is not a circumstance which can throw out the prosecution case in its entirety. The matter was also considered by the Apex Court in Pola Singh v. State of Punjab, where the Court observed as follows:

But when we find in this case that the F. I. R. was actually recorded without delay and the investigation started on the basis of that F. I. R. and there is no other infirmity brought to our notice, then, however improper or objectionable the delayed receipt of the report by the Magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

In these circumstances, therefore, the learned Judges held that the Additional Sessions Judge was not at all justified in

12 AIR 1976 SC 2304; (1976) 4 SCC 369
13 AIR 1972 SC 2679
rejecting the prosecution case on the ground of the delay in despatch of the F.I.R. in the peculiar circumstances of this case.

In Kurukshetra University v. State of Haryana, the Kurukshetra University filed a first information report through its Warden with regard to an incident which is alleged to have taken place on the night between 25th and 26th of Sep., 1975 in one of the University hostels. Acting on that report, the police registered a case under Sections 448 and 452, Indian Penal Code, against respondent 2, Vinay Kumar. But before any investigation could be done by the police respondent 2 filed a petition in the High Court of Punjab and Haryana praying that the First Information Report be quashed. The High Court, without issuing notice to the University, quashed the First Information Report by its judgment dated December 22, 1975 and directed respondent 1, the State of Haryana to pay a sum of Rs.300/- by way of costs to respondent 2. The University asked for a review of the order since it had no notice of the proceedings, but that application was dismissed by the High Court, giving rise to this appeal.

The Apex Court held that the High Court in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power

14 AIR 1977 SC 2229.
has to be exercised sparingly, with circumspection and in the rarest of rare cases.

While quashing the F.I.R. the High Court went out of its way and made observations concerning the University's power to enforce discipline in its campus. The High Court seems to feel that outsiders can with impunity flout the University's rule that no outsider shall stay in a University hostel. Such a view is plainly calculated to subvert discipline in a sphere where it is most needed. We are clear that the High Court ought not to have made these observations without, at least, giving a hearing to the University.

The Supreme Court, therefore, allowed the appeal and set aside the judgment of the High Court including the order asking the State of Haryana to pay the costs amounting to Rs.300/- to the respondent.

It was held by Fazil Ali, Patanjali Sastri, S. R. Dass and Vivan Base, JJ., in *Tara Singh v. State*\(^\text{15}\) that, Section 173(1)(a) requires that as soon as the police investigation under Chapter XIV is complete, the police should forward to the Magistrate a report in the prescribed form setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of case. Where, therefore, the first report made by the police to a Magistrate, though called incomplete challan, contain all these particulars and a second report called a supplementary challan is filed subsequently, giving the names of certain witnesses who are merely formal witnesses, the First Report is in fact, a complete

\(^{15}\text{AIR 1951 SC 441}\)
report as required by Section 173(1)(a) and it is not necessarily vitiated by the mere fact that a supplementary challan is subsequently filed. The conviction and sentence are set aside and the case is sent back to the High Court with a direction that court will order a retrial *denovo* in the Session Court, treating committal as good.

In *H. N. Rishbud v. State of Delhi*, it was held by the Supreme Court of India that, Section 155(2) prohibits the police from investigating a non-cognizable case without the order of a Magistrate. A Magistrate should not order investigation in a non-cognizable offence arbitrarily or capriciously. He must apply his mind to the facts and must before ordering for investigation see whether there are reasonable grounds for believing that the offence as complained has been committed. An order for investigation cannot be passed in the belief that an offence is likely to be committed in future. Section 155(2) is mandatory and, therefore, an investigation into a non-cognizable case without order of Magistrate is illegal. But invalidity of investigation does not affect the competence of the court unless there is miscarriage of justice.

In *Baladen and others v. State of U. P.*, the Supreme Court observed that:

Ordinarily accused persons are entitled to challenge the testimony of witnesses examined in court with reference to the statement said to have been made by them before the investigating police officer.

It was further observed by the court that:

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16 AIR 1955 SC 196
17 AIR 1956 SC 181
the record made by a police investigating officer has to be considered by the court only with a view to weigh the evidence actually adduced in the court. If the police record becomes suspect on unreliable on the ground that it was deliberately perfunctory or dishonest, it loses much of its value and the court in judging the case of a particular accused has to weigh the evidence given against him in court, statement made by prosecution witnesses before the investigating police officer being the earliest statement made by them with reference to the facts of the occurrence are valuable material for testing the veracity of the witness examined in court, with particular reference to those statements which happened to be at variance with their earlier statements, but the statements made during police investigation are not substantive evidence.

In **Deoman Upadhyaya v. State of Uttar Pradesh**, S. K. Das, Kapur, Hidayatulab and Shah JJ. observed that:

By the combined operation of Section 27 of the Evidence Act and Section 162 of the Cr.P.C., the admissibility in evidence against a person in a Cr.P.C. of a statement made to a police officer leading to the discovery of a fact depends for its determination on the question whether he was in custody at the time of making the statement, it is provable if he was not in custody at the time when he made it, otherwise it is not.

It was further observed that the accused approached a police officer investigating the offence. He offered to give information leading to the discovery of fact and also having a bearing on the charge which might be made against him. The Supreme Court held that he had been submitted to the custody by action within the meaning of Sub-Section (1) of the Section 46.

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18 See, AIR 1960 SC 1125; also see AIR 1922 PC 342, AIR 1933 Pat 149.
19 Ibid.

Note: In accordance with the opinion of the majority the appeal is allowed Sec. 27 of the Evi. Act and Sec. 162 (2) of the Cr.P.C. in so far as "that Sec. 27 of the Evidence Act" are
Bachawat, J. in *Aghnoo Nagesia v. State of Bihar* held that:

The First Information Report recorded under Section 154, Cr.P.C. as such is not a substantive evidence, but may be used to corroborate the informant under Section 157 of the Evidence Act, or to contradict him under Section 145 of the Act. If the informant is called as a witness. Where the accused himself gives the first information, the fact of his giving the information is admissible against him as evidence of his conduct under Section 8 of the Evidence Act. If the information is non-confessional, it is admissible against the accused as an admission under Section 21 of the Evidence Act and is relevant. But a confessional First Information Report by the accused to a police officer cannot be used against him in view of Section 25 of the Evidence Act, where the F.I.R. is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement is receivable in evidence except to the extent that the ban 25 is lifted by 27. The test of severability, namely, that if a part of the report is properly severable from the strict confessional part, then the severable part could be tendered in evidence, is misleading and the entire confessional statement is hit by Section 25 and save and except as provided by Section 27 and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence.

In *Tula Ram v. Kishore Singh* case the court observed that:

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21 In various cases, the court has held that First Information Reports (FIRs) are not substantive evidence and can be used only to corroborate or contradict the informant. However, if the accused provides a confessional report, it cannot be used against them due to Section 25 of the Evidence Act. The test of severability, which involves assessing whether a part of the report can be severed from the confessional part, is misleading. The entire confessional statement is prohibited by Section 25, except for the formal part identifying the accused as the maker of the report.
In these circumstances we are satisfied that the action taken by the magistrate was fully supportable in law and he did not commit any error in recording the statement of the complainant and the witnesses and thereafter, issuing process against the appellants. The High Court has discussed the points involved threadbare and has also cited number of decisions and we entirely agree with the view taken by the High Court."

Fazal Ali, J. further held that:

"Thus on careful consideration of the facts and circumstances of the case the following legal proposition emerges:

(1) That the Magistrate can order investigation under Section 156(3) only at the pre-cognizance stage, that is to say before taking cognizance under Section 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter XIV he is not entitled in law to order any investigation under Section 156(3). Though in cases not falling within the proviso of Section 202 he can order an investigation by police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

(2) Where a Magistrate chooses to take cognizance he can adopt any of the following alternative:

(a) He can pursue the complaint and is satisfied that there are sufficient grounds for proceedings he can straight away issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant of his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

21 AIR 1977 SC 2401; See also AIR 1976 SC 1672, AIR 1968 SC 117.
(3) In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceedings he can dismiss the complaint.

(4) Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report and discharges the accused or straightway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above.

(5) The present case we find no merit in his appeal which is accordingly dismissed.²²

V. R. Krishna Iyer, J., in Nandini Sathpathy v. P. L. Dhani²³ held that:

Every litigation has a touch of human crisis and, as here, it is but a legal projection of life's vicissitudes. A Complaint was filed by the D.S.P., Vigilance Cuttack, against the appellant, the former Chief Minister of Orissa, under Section 179 IPC, before S. D. Judicial Magistrate, Sadar, Cuttack, alleging offending facts which we will presently explain. Thereupon the Magistrate took cognizance of the offence and issued summons for appearance against the accused. Aggrieved by the action of the Magistrate urging that the complaint did not and could not disclose an offence, the agitated accused appellant moved the High Court under Article 226 of the Constitution as well as Section 401 of the Cr.P.C., challenging the validity of the magisterial proceedings. The broads submission unsuccessfully made before the High Court, was that the charge rested upon a failure to answer interrogation by the police but this charge unsustainable because the umbrella of Article 20(3) of the Constitution and the immunity under Section 161(2) of the Cr.P.C. were wide enough to shield her in her refusal. We have declared the law on a thorny

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²² Ibid.
²³ AIR 1978 SC 1025
constitutional question where the amber light from American rulings and beacon beams from Indian precedents have aided us in our decision. Where, however, the accused person is a woman and the police constantly insists on the woman to appear at the police station, it will amount to flagrant contravention of the provisions of Section 160(1) of the Code of Cr.P.C. In view of Supreme Court such deviance must be visited with prompt punishment since police men may not be a law into themselves expecting others to obey the law.

In **Hussainara Khatoon v. Home Secretary, Bihar**, 24 P. N. Bhagwati, J. held that

When an undertrial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the case may be, the Magistrate must, before making an order of further remand to judicial custody, point out the under-trial prisoner that he is entitled to be released on bail. If there are adequate grounds to Magistrate may extend the period - not excluding 60 days, for detention of an accused in the police custody. On the expiry of the period person should be released on the bail.

In **Harpal Singh v. State of H. P.** 25 a Special Leave directed against the judgment of the High Court of Himachal Pradesh, S. M. Fazal Ali, J. held as under:

The appellants have been convicted under Section 376 of the I.P.C. and sentenced to rigorous imprisonment for four years each. The central evidence in the case consists of the testimony of Saroj Kumari, the girl who is said to have been raped by the appellant and other who was acquitted by the trial court. The occurrence according to the prosecutrix, tooks place on the night intervening the 20th and 21st August, 1972. The F.I.R. was lodged on 31st August, 1972. The complainant had given reasonable explanation for lodging it after

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24 AIR 1979 SC 1377.
ten days of the occurrence. She stated that as honour of the family was involved, its members had to decide whether to take the matter to the court or not. The police can't refuse to report the F.I.R.

**Gurnam Kaur v. Bakshish Singh.** In this case the High Court had discarded the evidence of eye witnesses on superficial and unsubstantial grounds. Apart from the fact that there were no justifiable grounds for rejecting their testimony. The Apex Court greatly impressed by the evidence of and the substantial corroboration received by it from the First Information Report and the medical and the expert evidence and observed that an examination of the First Information Report shows that Bakshish Singh was responsible for firing two shots at Karam Singh and one shot at Gurdeep Singh. He was alleged to have shot once at the legs and later again at the neck of Karam Singh and once on the right thigh of Gurdeep Singh. The medical evidence supports the evidence of and what is more important the medical evidence is in tune with the First Information Report. The empty cartridges which were found at the scene of Occurrence Show that two of them found near Karam Singh and one found near Gurdeep Singh were shot from the pistol of Bakshish Singh. The manner in which the medical evidence and the expert evidence fit in with the earliest version given in the First Information Report

In **Sevi v. State of Tamil Nadu** one of the disturbing features of the case was the strange conduct of the Sub-Inspector of Police. According to him he was told by a person on the telephone that there was some rioting at Kottaiyur and that some persons were stabbed. He made an entry in the general diary and

\[26 \quad \text{AIR 1981 SC 631} \]
\[27 \quad \text{AIR 1981 SC 1230} \]
proceeded to Kottaiyur taking with him the F.I.R. book, the hospital Memo book etc. This was indeed very extraordinary conduct on the part of the Sub-Inspector of Police. If he was not satisfied with the information that any cognizable offence had been committed he was quite right in making an entry in the general diary and proceeding to the village to verify the information without registering any F.I.R. But, we have yet not come across any case where an Officer Incharge of a Police Station has carried with him the F.I.R. Book. The First Information Report book is supposed to be at the Police Station House all the time. If the Sub-Inspector is not satisfied on the information received by him that a cognizable offence has been committed and wants to verify the information his duty is to make an entry in the general diary, proceed to the village and take a complaint at the village from someone who is in a position to give a report about the commission of a cognizable offence. Thereafter, the ordinary procedure is to send the report to the Police Station to be registered at the Police Station by the Officer Incharge of the Police Station. But, indeed, we have never come across a case where the Station House Officer has taken the First Information Report Book with him to the scene of occurrence. According to the suggestion of defence the original First Information Report which was registered was something altogether different from what has now been put forward as the First Information Report and that the present report is one which has been substituted in the place of another which was destroyed. To substantiate their suggestion the defence requested the Sessions Judge to direct the Sub-Inspector to produce the First Information Report Book in the Court so that the counterfoils might be examined. The Sub-Inspector was unable to produce the relevant
The F.I.R. book, if produced, would have contained the necessary counterfoils corresponding to the F.I.R. produced in Court. The Sub-Inspector when questioned stated that he searched for the counterfoil book but was unable to find it. Though he claimed that relevant entries had been made in the general diary at the Station. But the Sub-Inspector did not produce the general diary in Court. The production of the general diary would have certainly dispelled suspicion. In the circumstances we think that there is great force in the submission of the learned counsel for the accused that the original F.I.R. has been suppressed and, in its place some other document has been substituted. If that is so, the entire prosecution case becomes suspect. All the eye-witnesses are partisan witnesses and notwithstanding the fact that four of them were injured we are unable to accept their evidence in the peculiar circumstances of the case. Where the entire evidence is of a partisan character impartial investigation can lend assurance to the Court to enable it to accept such partisan evidence. But where the investigation itself is found to be tainted the task of the Court to shift the evidence becomes very difficult indeed. Another feature of the case which doubt the credibility of the witnesses is the photographic and somewhat dramatic account which they gave of the incident with minute details of the attack on each of the victims. According to the account of the witnesses it was as if each of the victims of the attack came upon the stage one after the other to be attacked by different accused in succession, each victim and his assailant being followed by the next victim and the next assailant. Surely the account of the witnesses is too dramatic and sounds obviously invented to allow each witness to give evidence of
the entire attack. But the witnesses themselves admit in cross-examination that they were all attacked simultaneously. If so, it was impossible for each of them to have noticed the attack on everyone else.

Having regard to all these special features of this case the Court held that the High Court was justified in setting aside the acquittal of the appellants and convicting them. The appeals are, therefore, allowed. The appellants, if not on bail, will be released forthwith. If they are on bail their bail bonds will stand cancelled.

In State (Delhi Administration) v. Dharampal and others,28 it was observed by the court that, so far as authorisation of the police custody of accused under Section 167(2) is concerned, it is legislative mandate that in no way the detention of accused in police custody can be authorised for any time after expiry of the period of first fifteen days remand. The Magistrate may allow the detention other than custody in police till 90(60), days, as the case may be. The Magistrate is competent to authorise detention of any accused in police custody for a specific period on adequate ground on in the first fifteen days and that detention in police custody or judicial custody or vice-versa can be authorised only within first fifteen days. After fifteen days detention the accused cannot be sent to police custody at all except in other cases in which remand of first fifteen days has not started. It was stated in the above citation that the words 'from time to time' occurring in Section show that several orders can be passed under Sec. 167(1) and that the nature of custody can be altered from judicial custody to police custody and vice-versa during the first period of 15 days

28 1982 CrLJ 1103
mentioned in Sec. 167(2) of Code of Criminal Procedure and that after fifteen days the accused could only be kept in judicial custody or in any other custody as ordered by the Magistrate but not in the custody of police.

Y. V. Chanderachud CJ, A. Varadarajan and Amarendra Nath Sen, JJ., held in *State of W. B. v. Swapan Kumar Guha*\(^29\) case that:

usually, in case of cognizable offences, the investigation is initiated by giving of information under Section 154 to a police officer-in-charge of a police station. However, such first information report is not an indispensable requisite for the investigation of crime. Even without any F.I.R., if a police officer-in-charge of a police station has reason to suspect the commission of a cognizable offence, he can proceed to investigate the offence under Section 157(1). The police, of course, have to unfettered discretion to commence investigation under Section 157. They can exercise the power of investigation only if FIR or other relevant material prima facie discloses the commission of a cognizable offence.

In *Darshan Singh v. State of Punjab*,\(^30\) the First Information Report lodged by Mohinder Singh mentions the names of some accused only. The fact that the names of the other accused are not mentioned in the F. I. R. was at least a circumstance which the prosecution had to explain, though no rule of law stipulates that an accused whose name is not mentioned in a F. I. R. is entitled to an acquittal. But instead of considering the circumstances in which, and the reasons for which, Mohinder Singh did not mention the names of the other accused in the F. I. R., the High Court took the view that the omission in the F. I. R.

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30 AIR 1983 SC 554
was a matter of little consequence since it was made good by the fact that Sohan Singh had mentioned the names of all the accused in his dying declaration.

According to Tulzapurkar, J., observations, in *State of U. P. v. Gokaran and others*\(^31\) case, it is not that as if every delay in sending a delayed special report to the District Magistrate under Section 157, Cr.P.C., would necessarily lead to the inference that the F.I.R. has not been lodged at the time stated or has been antetimed or antedated or that the investigation is not fair and fortnight. Where the steps in investigation by way of drawing inquest report and other panchanamas started soon which could only follow the handing over of FIR, the delayed receipt of special report by District Magistrate would not enable the court to dub the investigation as tainted one nor could FIR be regarded as antetimed and antedated.

According to Ahmadi, J., explanation in *Prithichand v. State of Himachal Pradesh*,\(^32\) case the learned counsel for the appellant submitted that there was delay in filing the first information report. We do not think so, immediately after the incident was narrated to the mother and other ladies, a decision was taken to await the return of the father before deciding on the course of action. On the arrival of the father the Sarpanch was contacted, who advised that police should be informed about the incident. The Sarpanch, however, stated that he would accompany them next morning since it was already dark. The girl was taken to Palampur Station next morning and the F.I.R. was lodged. We,

\(^{31}\) 1985 Cr.LJ. 511
\(^{32}\) AIR 1989 SC 702.
therefore, do not think that there was any delay in reporting the matter to the police.

In **Gurbachan Singh v. Satpal**[^33] case Sabyasachi Mukharji, J., observed that:

the evidentiary value of F.I.R. is reduced if it is made after such delay which is unexplained. We do not find any infirmity in this finding and we also held on consideration and appraisement of the evidences as well as the circumstances set out herein before that it was a case of suicide committed by the deceased Ravinder Kaur being constantly abused, taunted for bringing less dowry and also being defamed for carrying on illegitimate child. It is pertinent to mention that in the appeal before the High Court it was not urged on behalf of the accused that the case of suicide was not proved and such there was no finding by the High Court on this score. In such circumstances this argument is totally devoid of merit and as such it is not sustainable.

In **State of U. P. v. R. K. Srivastava**[^34] the Court expressed that, it is a well settled principle of law that if the allegations made in the FIR are taken at their face value and accepted in their entirety do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed. The question is whether the facts disclosed in the FIR constitute the offences with which the accused have been charged. It is manifestly clear from the allegations in the FIR that the respondent or the other accused had no intention whatsoever to make any wrongful gain or to make any wrongful loss to the Bank. They had accepted the said three cheques amounting to Rs. 54,600/- and sent the same for clearance after debiting the LOC account. The

[^33]: AIR 1989 SC 378.
[^34]: AIR 1989 SC 2222.
said cheques have been encashed and the money was received by the State Bank of India. The Court further observed that, the High Court has rightly held that the allegations made in the FIR do not constitute any offence of cheating, nor do they constitute any offence of forgery. No document has been referred to in the FIR as the outcome of forgery.

Finally the Supreme Court observed that the High Court has rightly held that as the criminal proceedings have been started against the respondent on the basis of a FIR which does not contain any definite accusation, it amounts to an abuse of process of the Court and, as such, is liable to be quashed.

It was observed by the Supreme Court in Tara Singh v. State of Punjab case, that delay in giving the F.I.R by itself cannot be ground to doubt the prosecution case. In the instant case, the names of the accused were consistently mentioned throughout. There was absolutely no ground to hold that the F.I.R. was brought into existence subsequently during the investigation and the mere delay in lodging the report by itself could not give scope for an adverse inference leading to rejection of the prosecution case outright. The evidence of the eye-witnesses was consistent and corroborated by the medical evidence. There was no inordinate and unexplained delay in filing F.I.R.

In State of Andhra Pradesh v. P. V. Pavithran, the High Court has quashed the First Information Report on the ground that there was inordinate delay in the investigation. Aggrieved by that judgment, the State has preferred this criminal appeal.

35 1990 CrLJ 2681 SC.
36 AIR 1990 SC 1266; Also see Raghuvir Singh v. State of Bihar, AIR 1987 SC 149.
Mr. Madhava Reddy, learned senior counsel appearing on behalf of the appellant took an exception to the observation of the learned single Judge of the High Court reading:

... hold that wherever there is an inordinate delay on the part of the investigating agency in completing investigation, the case merits quashing of the First Information Report even Generally, this Court will not quash the F.I.R. because it amounts to stopping of investigation, but where there is an inordinate delay, the same is a ground to quash even the F.I.R. and contended that the above observation is too wide a proposition and it would be detrimental to the prosecution in future under all circumstances, regardless of the reasons therefor.

Observation of the High Court makes it necessary to examine the question whether a mere delay in the investigation of a criminal proceeding will by itself serve as a sufficient ground for quashing the proceedings in pursuance of the registration of the case notwithstanding whatever may be the reasons for the delay. This question has come up for determination in a number of cases wherein this Court has examined the right of an accused for a speedy investigation and trial in a criminal case in the light of Article 21 of the Constitution of India.

There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceedings to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the Court as the
protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation.

While so, there are offences of grave magnitude such as diabolical crimes of conspiracy or clandestine crimes committed by members of the underworld with their tentacles spread over various parts of the country or even abroad. The very nature of such offences would necessarily involve considerable time for unearthing the crimes and bringing the culprits to book. Therefore, it is not possible to formulate inflexible guidelines or rigid principles of uniform application for, speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed.

The determination of the question whether the accused has been deprived of a fair trial on account of delayed or protracted investigation would also, therefore, depend on various factors including whether such delay was unreasonably long or caused deliberately or intentionally to hamper the defence of the accused or whether such delay was inevitable in the nature of things or whether it was due to the dilatory tactics adopted by the accused. The Court, in addition, has to consider whether such delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused.

The assessment of the above factors necessarily vary from case to case. It would, therefore, follow that no general and wide proposition of law can be formulated that whenever there is inordinate delay on the part of the investigating agency in completing the investigation, such delay, ipso facto, would provide
ground for quashing the First Information Report or the proceedings arising therefrom.

It follows from the above observations that no general-and wide proposition of law can be formulated that wherever there is any inordinate delay on the part of the investigating agency in completing the investigation, such delay is a ground to quash the F. I. R.

Ratnavel Pandian, J., in *State of Haryana v. Ch. Bhajan Lal and others,* observed that:

The king is under no man, but under God and the law' was the reply of the Chief Justice of England, Sir Edward Coke when James - I once declared, 'then I am to be under the law. It is a treason to affirm it' - so wrote Henry Bracon who was a Judge of the King's Bench.

The words of Bracton in his treatise in Latin 'quod rex non debat esse sub homine sed sub deo et lege' (that the King should not be underman, but under God and the law) were quoted time and time again when the stuart king claimed to rule by divine right. We would like to quote and requote those words of Sir Edward Coke even at the threshold. In our democratic polity under the Constitution based on the concept of 'Rule of Law' which we have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system. The law is supreme. Everyone whether the individually or collectively is unquestionably under the supremacy of the law. Whoever he may be, however, high he is, he is under the law. No matter how powerful he is and how rich he may be.

It was further held by the Supreme Court that:

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AIR 1992 SC 604.
If any information disclosing a cognizable offence is laid before an officer-in-charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police-officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The commencement of investigation in a cognizable offence by a police officer is subject to condition:

(1) the police officer should have reason to suspect the commission of a cognizable offence as required by Section 157(1).

(2) Secondly, the police officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under Clause (b) of the proviso to Section 157(1).

Further, as Clause (b) of the proviso permits the police officer to satisfy himself about the sufficiency of the ground even before entering on an investigation, it postulates that the police officer has to draw his satisfaction only on the material which were placed before him at that stage, namely, the first information together with the documents, if any, enclosed. In other words, the police officer has to satisfy himself only on the allegations mentioned in the F.I.R. before he enters on an investigation as to whether those allegations do constitute a cognizable offence warranting an investigation.38

In Joginder Kumar v. State of U. P.39 the petitioner, a young advocate of 28 years, was called by the SSP, Gahziabad, U. P., in his office for making enquiries in some case. It was alleged that on 7.1.1994 at about 10 O’clock he personally along with his brother appeared before the SSP, at about 12.55 p.m. the brother of the petitioner sent a telegram to the Chief Minister of U. P.

38 Ibid.
39 (1994) 4 SCC 260
apprehending the petitioner's false implication in some criminal
cases and his death in fake encounter. In the evening it came to be
known that the petitioner was detained in the illegal custody of
SHO. Next day the SHO instead of producing the petitioner before
a Magistrate, asked the relatives to approach the SSP. On 9.1.1994
in the evening the relatives of the petitioner came to know that the
petitioner had been taken to some undisclosed destination. Under
these circumstances the writ petition under Article 32 was
preferred for release of the petitioner, the Supreme Court on
11.1.1994 ordered notice to the State of U. P. as well as SSP
Gaziabad. The SSP along with the petitioner appeared before the
court on 14.1.1994 and stated that the petitioner was not in
detention at all and that his help was taken for detecting some
cases relating to abduction and the petitioner was helpful in
cooperating with the police, therefore, there was no question of
detaining him.

The M. N. Venkatachalia, CJ., S. Mohan and Dr. A. S.
Anand, JJ., of the Supreme Court held that:

The right of the arrested person to have some one
informed, upon request and to consult privately with a
lawyer was recognized by Section 56 (1) of the Police
and Criminal Evidence Act, 1984. These rights are
inherent in Articles 21 and 22(1) of the Constitution of
India and required to be recognised and scrupulously
protected. For effective enforcement of these
fundamental rights the following requirements are
issued:

(1) An arrested person being held in custody is entitled, if
he so requests to have one friend, relative or other
person who is known to him or likely to take an
interest in his welfare told as far as is practicable that
he has been arrested and where he is being detained.
(2) The police officer shall inform the arrested person when he is brought to the police station of this right.

(3) An entry shall be required to be made in the diary as to who was informed of the arrest. These protection from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.\footnote{Ibid.}

\textbf{Bar Association v. State} was a case, in which a practicing lawyer, his wife and child were abducted and murdered and the lawyers fraternity were not satisfied with investigation and demanded judicial enquiry. The Supreme Court held that:

When investigation was completed a charge-sheet filed, it is not for the Supreme Court to ordinarily direct the re-opening of investigation. However, in the facts and circumstances of the case to do complete justice in the matter and to install confidence in public mind, the Supreme Court directed fresh investigation by the CBI.

According to Dr. A. S. Anand and Faizanuddin, JJ. in a judgement delivered in \textbf{Bhiru Singh v. State of Rajasthan} the FIR is given by an accused himself to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. The Section 164 provides that 'no confession made to a police officer shall be proved as against a person accused of any offence'. If the FIR given by the accused is non-confessional, it may be admissible in evidence against the accused as an admission under Section 21 of the Evidence Act or as showing his conduct under Section 8 of the Evidence Act.

\footnotesize
\begin{itemize}
  \item \texttt{40} Ibid.
  \item \texttt{41} 1994 CrLJ 1368 SC.
  \item \texttt{42} (1994) 2 SCC 467.
\end{itemize}
In *Girish Yadav v. State of M. P.* the Learned senior counsel for the appellants invited the attention to the decision of the Apex Court in the case of *Meharaj Singh (L/Nk.) v. State of U. P.*, wherein Dr. A. S. Anand, J. sitting with Faizan Uddin, J. had to consider a similar grievance regarding the alleged ante-timing of FIR. In this connection the following pertinent observations were made:

FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye-witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets benefit of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the Courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course, the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174, Cr. P. C., is aimed at serving a statutory function, to lend credence to the

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prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR.

In **Baldev Singh v. State of Punjab**, the Supreme Court held that

The FIR is not a substantive piece of evidence, it is only relevant in judging the veracity of prosecution case and the value to be attached to it depends on the facts of each case. Only the essential or broad picture need be stated in the FIR and all minute details need not be mentioned therein. It is not a verbatim summary of the prosecution case. It need not contain details of the occurrence as if it were an "encyclopaedia" of the occurrence. It may not be even necessary to catalogue the overt acts therein. Non mentioning of some facts or vague reference to some others are not fatal.

In **Rupan Deol Bajaj v. Kanwar Pal Singh Gill** case Justice M. K. Mukherjee, observed that:

We are constrained to say that in making the observations the High Court has flagrantly disregarded - unwittingly we presume - the settled principle of law that at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegation made therein. It has been pointed out

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46 1996 CrLJ 381 SC; Also see, 1994 AIR SCW 3699; (1994) 4 SCC 602; AIR 1994 SC 2623; AIR 1966 SC 1773; AIR 1967 SC 63.
in **Bhajan Lal's case** an FIR or a complaint may be quashed if the allegation made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused but conducted investigation in a fair and impartial manner and apprehending that the police would conclude the investigation by treating the case was untraced, he was filing the complaint. On the receipt of the complaint the Chief Judicial Magistrate transferred it to a Judicial Magistrate for disposal and the latter, in view of the fact that an investigation by the police was in progress in relation to the same offences called for a report from the investigating officer in accordance with Section 210 of Cr.P.C. In mean time on December 6, 1988 to be precise Mr. Gill moved the High Court by filing a petition under Section 482 Cr.P.C. for quashing the FIR and the complaint. On that petition an interim order was passed staying the investigation into the FIR lodged by Mrs. Bajaj. Resultantly the learned Judicial Magistrate proceeded with the complaint and the witnesses produced by them. The petition earlier filed by Mr. Gill under Section 482 Cr.P.C. came up for hearing before the High Court thereafter and was allowed by its order and both the FIR and complaint were quashed. The above two orders of the High Court are under challenge under these appeals at the instance of Mr. and Mrs. Bajaj of the two appeals were first proceed the High Court has not recorded such a finding, obviously because on the allegation in the FIR is not possible to do so. For the reasons aforesaid we must hold that the High Court has committed a gross error of law in quashing the FIR and the complaint. Accordingly, we set aside the impugned judgment and dismiss the petition filed by Mr. Gill in the High Court under Section 482 Cr.P.C. Before we part with this judgment we wish to mention that in the course of his arguments, Mr. Sanghi, suggested that mater may be given a quietness if Mr. Gill was to express regret for his alleged misbehaviour. That is a matter for the parties to consider for the offences in question are compoundable with the permission of the court.

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47 1992 AIR SC 604
S. Saghir Ahmad, J. in State of Orissa v. Sharat Chandera

Sahu[48] case held that:

(1) When information is given to an officer-in-charge of a police station of a commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same power in respect of the investigation (except the power of arrest without warrant) as an officer-in-charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, not withstanding that the other offences are non-cognizable.

In a situation where a criminal case consists of both cognizable and non-cognizable offences. To meet such a situation Sec. 155(4) provides that where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. A case alleging commission of offences under Section 494 and 498-A IPC could be investigated by the police, though offences under Section 494 is a non-cognizable offence, by virtue of Section 155(4).

In Bandlamuddi Atchuta Ramaiah and others v. State of A.P.,[49] the legal position was that a statement contained in the FIR furnished by one of the accused in the case cannot, in any

[49] AIR 1997 SC 496
manner, be used against another accused. Even as against the accused who made it, statement cannot be used if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is an admission under section 21 of the Evidence Act against its maker alone unless the admission does not amount to confession. The Supreme Court observed that

A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Sec. 157, Evidence Act, or to contradict it under Sec. 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses.

The Supreme Court in Rattan Chand v. State of H.P., held that:

Criminal Courts should not be fastidious with mere omissions in First Information Statement, since such Statements cannot be expected to be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes first information to authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often the Police Officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitatory exercise. It is the voluntary narrative of the informant without interrogation which usually goes into such statement.

The Supreme Court in *State of W. B. v. Mirmohammad Omar*\(^51\) emphasized that:

Castigation of investigation unfortunately seems to be regular practice when the trial courts acquit accused in criminal cases. Where investigation was conducted completely flawless or absolutely foolproof, the function of the criminal courts should not be wasted in picking out these lapses in investigation. The Police officer in the present system, the ill equipped machinery. They have to cope with, and the traditional apathy of respectable persons to come forward for giving evidences in criminal cases which are the realities of the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is impacted with castigation remarks the courts should not overlook the fact that usually such officer is not heard in respect of such remarks made against them. In overview the court need to make such deprecatory remarks only when it is absolutely necessary in particular case, it is possible by keeping in mind the broad realities indicated above.

It was observed by the Supreme Court in *Munshi Prasad and others v. State of Bihar*\(^52\) that:

The appellants contended that delayed receipt of the FIR in the Court of the Chief Judicial Magistrate cannot but be viewed with suspicion. While it is true that Section 157 of the Cr.P.C. makes it obligatory on the officer-in-charge of the police station to send a report of the information received to a Magistrate forthwith, but that does not mean an imply to denounce and discard and otherwise positive and trustworthy evidence on record. If the court is otherwise convinced and has come to a conclusion as regards the truthfulness of the prosecution case, merely delay, which can otherwise be ascribed to be reasonable, would not itself demolish the prosecution case.

\(^{51}\) AIR 2000 SC 2988

\(^{52}\) (2001) CrLJ 4708 SC
In **Rajesh v. State of Gujarat**[^53] the trial court in its judgment dealt with the aspect that merely non-mentioning of the number of crime registered upon FIR or name of prosecution witness would not lead the court to believe that the FIR had been ante-timed in view of the unequivocal, reliable and confidence inspiring testimony.

The Supreme Court in **Narayan Rao v. State of A. P.**[^54] held that

In order to simplify commitment proceedings preceding the trial of accused persons by a Court of Session, Sec. 207-A was added by way of amendment of the Code in 1955. From Sub-Sections (3) and (4) of that Section it is clear that in cases exclusively triably by a Court of Session. It is the duty of the Magistrate while holding a preliminary inquiry, to satisfy himself that the documents referred in Sec. 173 have been furnished to the accused and if he found that the police officer concerned had not carried out his duty in that behalf, the Magistrate should see to it that is done. The provisions contained in Sec. 173(4) and Section 207-A(3) have been introduced by amending the Act of 1955, in order to simplify the procedure in respect of inquiries leading upto a Session trial, and at the same time, to safeguard the interests of accused persons by enjoining upon police officers concerned and Magistrates before whom such proceedings are brought, to see that all the documents, necessary to give the accused persons all the information for the proper conduct of their defence are furnished.

But non-compliance with those provisions has not the result of vitiating those proceedings and subsequent trial. The word 'shall' occurring both in Sub-Section (4) and Sub-Section (3) of Section 207-A, is not mandatory but only directory, because an omission by a police officer, to fully comply with the provisions of Section 173, should not be allowed to have such a far-

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[^53]: AIR 2002 SC 1412.
[^54]: AIR 1957 SC 737; Also see AIR 1927 PC 44(V14), AIR 1947 PC 67 (V 34)
reaching effect as to render the proceedings including the trial before the court of Session, wholly ineffective."

While delivering the Judgment, Sinha, J. observed that:

The main question for determination in this appeal by Special Leave is whether and, if so, how far non-compliance with the provisions of Section 173(4) and 207-A(3) of the Code of Cr.P.C., has affected the legality of the proceedings and the trial resulting in the conviction of the appellant.

After carefully considering the argument advanced on behalf of the appellant, we have come to the conclusion that the proceedings and the trial have not been vitiated by the admitted non-compliance with the provisions aforesaid, of the Code, and that the irregularity is curable by reference to Section 537 of Code, as no case of prejudice has been made out.

In the Section 46 of the Cr.P.C. in making an arrest, the police officer or other persons making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or the person may use all means necessary to effect the arrest.

The words 'all means' used in Sub-Section 2 are wide enough, meaning thereby that assistance from others may be taken in effecting the arrest. Where a public officer arrests a person under warrant he must communicate the substance of it to the person to be arrested or must show the warrant on demand."55

On this aspect the High Court held that merely, "on account of some irregularities in mentioning the names or noting the timing during the course of investigation by the prosecution or some discrepancies and contradictions, which are at the micro-level

55 Ibid.
could not be said to be sufficient and efficient to discard and dislodge the otherwise weighty and very important, serious and sound testimony of eyewitness, Rakesh one of the close relatives of the deceased, whose presence was quite natural and whose evidence is, also, found to be quite reliable and dependable and, rightly, accepted by the trial court”. After going through the testimony of the prosecution witnesses particularly perusing the record including FIR. The plea of ante-timing of the FIR is the figment of imagination of the defence and not a reality. Assuming that the FIR number and the name of the complainant was known at the time of recording of Panchanama and it was not mentioned therein, such circumstance would not probabilise the defence version that the FIR had been ante-timed, in view of the cogent, reliable and confidence inspiring testimony of Rakesh, Satish and Umaben.

After going through the whole of the evidence, the other record produced in the case and the judgments of the trial court and the High Court, the Apex Court find no reason to interfere in the concurrent findings of fact arrived at against the accused holding them guilty for which they have been convicted and sentenced.

It was observed by the Supreme Court in Ashok Kumar Pandey v. State of Delhi,\(^56\) that:

The occurrence as disclosed by solitary eyewitness, Daya Kant Pandey, who is nobody else than father of

one of the victims and father-in-law of the appellant. In his evidence in court, he has supported the case, disclosed in the first information report, that when he along with father of the appellant had gone to terrace of the house for sleeping, on hearing the cries of his daughter, went outside the room, found the same locked from inside, opened it by giving a kick and found that the appellant was inflicting knife blows upon his daughter Neelam and Annu, his daughter's daughter, was lying in the room on the ground in a pool of blood. When this witness shouted in horror, the appellant came towards him with a knife and this witness moved aside and started crying loudly whereupon the accused took to his heels. In the meantime, Sita Ram Pandey, father of the appellant, also came there from the terrace and landlord Hira Nand, arrived at first floor of the house. The witness stated that with the help of father of the appellant, and the landlord, the injured persons were brought to the ground floor and a three wheeler was hired in which this witness and took the injured persons to the hospital where the doctor declared them brought dead. He further stated that the police went to the hospital and recorded his fard beyan there. Thereafter, he went to the police station and from there to the place of occurrence. This witness has consistently supported the prosecution case. It has been pointed out on behalf of the appellant that when the witness had seen that the appellant was inflicting injury upon his daughter, he did not take any steps to rescue her which is not natural conduct of a human being, especially when he is father of the deceased and the same shows that this witness was never present at the place of occurrence, had never seen any occurrence and arrived at the hospital after having received the information at Ghaziabad where he was residing. It appears that before the witness arrived, the appellant had inflicted injuries on different parts of the body of his daughter who was lying on ground in a pool of blood and when he arrived on hearing the cries of his daughter, the appellant was found giving indiscriminate dagger blows to Neelam, daughter of this witness, on different parts of her body and when this witness protested, he ran towards him. In these circumstances, it cannot be
said to be unnatural if he could not take any step to save the life of his daughter as he being unarmed, as an ordinary normal human being, could not have taken risk of his life at the hands of the appellant which was so imminent. It was pointed out that no reliance should have been placed upon the evidence the solitary interested eyewitness, as he being father of the deceased lady and grand- father of the deceased child, chances of false implication of the appellant, who was not liked by this witness, could not be ruled out. It is well-settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or both, if otherwise the same is found to be credible.

It was held by the Supreme Court in **Ramsinah B. Judeja v. State**\(^{57}\) that:

Under Sections 154 and 162 any telephonic information about commission of a cognizable offence, if any, irrespective of the nature and details of such information cannot be treated as first information report. If a telephonic message is cryptic in nature and the officer-in-charge proceeds to the place of occurrence on the basis of that information to find out the details of the nature of the offence, if any, then it cannot be said that the information which had been received by him on telephone shall be deemed to be FIR. The object and purpose of giving such telephonic message is not to lodge the FIR but to make an officer-in-charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on the basis of that information the officer-in-charge is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information to investigate such offences then any statement made by any person in respect of the said offence including about the participant shall be deemed to be a statement made by a person to the police officer in the course of investigation covered by Section 162. In the instant daily diary entry showing

\(^{57}\) AIR 2003 SCW 5050
that unknown person had given information on telephone about a vehicle hitting the deceased. Thus, it would not constitute FIR and, therefore, the written report lodged by eye-witness was not hit by Section 162 Cr.P.C.

It was observed by the Supreme Court in Sohan Lal alias Sohan Singh v. State of Punjab,\(^{58}\) that:

The F.I.R. is only a report about the information as to the commission of an offence. It is not substantive evidence, as the police has yet to investigate the offence. If Bansi Ram's was the testimony in support of the prosecution, then perhaps the counsel's was right. The statement made by Kamlesh Rani under Section 161 of the Cr.P.C. recorded on 7.4.1996 by Satnam Singh, ASI both of which can be treated as dying declarations.

It was held by the Supreme Court in Jogender Nath Gharei v. State of Orissa,\(^{59}\) that:

A cumulative reading of the provisions of the Cr.P.C. makes it clear that Magistrate, who on receipt of a complaint orders an investigation under Section 156(3) and receives a police report under Section 173(1) may thereafter do one of three things viz. :-

1. He may decide that there is no sufficient ground for proceeding further and drop the case.

2. He may take cognizance of an offence under Section 190(1)(b) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200.

3. He may take cognizance of an offence under Section 190(1)(b) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200.

\(^{58}\) 2003 Cr LJ 456 SC

\(^{59}\) 2003 Cr LJ 3953 SC
If he adopts the third alternative, he may hold or direct an enquiry under Section 202, if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.

The Supreme Court observed in Jandel Singh v. State of M.P.,\(^{60}\) that:

Investigating officer reached the spot at about 10.00 p.m. He did not carry the investigation further at night due to darkness. He did not make any effort to search for the accused though their houses were a few steps away from the place of occurrence. It is unbelievable that an investigating officer who is going for the investigation of a murder case at night would not carry torch with him or try to procure some other source of light to carry on with the investigation. There were houses all around and could have easily arranged for some light. He did not send a copy of the First Information Report to the Jurisdictional Magistrate. Cumulatively all these facts put a doubt on the prosecution version and it leaves an impression that the prosecution has not come out with the truth. All probability the commission of crime came to notice in the morning and thereafter the investigation started. if that be so, the presence of eye-witnesses become very much doubtful.

In Krishnan and another v. State\(^ {61}\) the Supreme Court observed that:

The fact that FIR was given almost immediately, rules out any possibility of deliberation to falsely implicate any person. All the materials particulars implicating the four appellant were given. It has to be noted that both the trial courts and High Court have analysed in great detail. Prosecution witness evidence to form the basis for conviction. Therefore, the trial court and the High Court rightly acted upon the evidence the highly hypothetical imaginative story advance by the defence to contend that his family members killed the

\(^{60}\) 2003 CrLJ 3528 SC

\(^{61}\) AIR 2003 SC 2978
deceased is to hollow to be accepted. If that was really so, they would not have been chosen the place and the time for doing so. There is not even a shadow of material to substantive the plea.

It was observed by the Supreme Court in State of Maharashtra v. Christian Community Welfare Council of India and another,62 that:

Herein we notice the mandate issued by the High Court to prevent the police from arresting a lady without the presence of the lady constable, said direction also prohibits the arrest of a lady after sunset and before sunrise under any circumstances. While we do agree with the object behind the direction issued by the High Court in Cl.(vii) of operative part of its judgment, we think a strict compliance of the said direction, in a given circumstance, would cause practical difficulty in investigating agencies and might even give room for evading the process of law by unscrupulous accused. While it is necessary to protect the female sought to be arrested by the police from police misdeed, it may not be always possible and practical to have to the presence of a lady constable when the necessity for such arrest arises, therefore, we think this direction issued requires some modifications without disturbing the object behind the same. We think the object will be served if a direction is issued to the arresting authority that while arresting a female person, all efforts should be made to keep a lady constable present but in circumstances where the arresting officer is reasonably satisfied that such presence of a lady Constable is not available or possible and/or the delay in arresting caused by securing the presence of a lady constable would impede the course of investigation such arresting officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady

62 AIR 2004 SC 7
Constable. We also direct that with the above modification is regarded to the direction issued by the High Court in Cl. (vii) of this appeal, this appeal is disposed off.

It was further observed by the Supreme Court in Vidyadharan v. State of Kerala\(^\text{63}\) that:

We shall first deal with the plea about false implication. It is seen that though there were some delay in lodging the FIR, it is but natural in a traditional bound society to avoid embarrassment which is inevitable when reputation of a woman is concerned. Delay in every case cannot be a ground to arouse suspicion. It can only be so when the delay is unexplained. In the instant case the delay has been properly explained. A charge sheet under Section 354 is one which is very easy to make and is very difficult to rebut. It would however, be unusual in a conservation society that a woman would be used as pawn to wreck vengeance. When a plea is taken about false implications. Courts have a duty to make deeper scrutiny of the evidence and decide acceptability or otherwise of the accusation.

Subba Rao, J. speaking for Court in State rep. by Inspector of Police Vigilance and Anti-corruption Tiruchirapalli Tamil Nadu v. Jaya Pal\(^\text{64}\) observed that:

The police officer, who laid/recorded the FIR regarding the suspected commission of certain cognizable offences by the respondent is competent to investigate the case and submit the final report to the court of Special Judge. There is nothing in the provisions of the Cr.P.C. which preclude the Inspector of Police, vigilance from taking up to the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not disqualify him from taking up the investigation of the cognizable offence. A

\(^{63}\) 2004 CrLJ 605 SC
\(^{64}\) 2004 CrLJ 1819 SC
suo-motu move on the part of the police officer to investigate a cognizable offence impelled by the information received from some source is not outside the purview of the provisions contained in Section 154 to 157 of the Code of Criminal Procedure or any other provisions of the Code. The proceedings cannot be quashed on premise that the investigation by the same officer who 'lodged' the FIR would prejudice the accused in as much as the investigating officer cannot be expected to act fairly and objectively. There is no principle or binding authority to held that the moment the competent police officer on the basis of information received, makes out an FIR incorporating his name as informant, he forfeits his right to investigate. A suo motu move on the part of the police officer to investigate a cognizable offence impelled by the information received from some sources not outside the purview of provision of Section 154 to 157, the scheme was Sections 154, 156 and 157 was clarified thus by the court.

The Supreme Court in Inspector of Police v. N.M.T. Joy Immaculate,65 highlighted that:

The Section 167 Cr.P.C. empowers a Judicial Magistrate to authorise the detention of an accused in the custody of police. Section 209 Cr.P.C. confers powers upon a magistrate to remand an accused to custody until the case has been committed to the court of Sessions and also until the conclusion of the trial. Section 309 Cr.P.C. confers power upon a court to remand an accused to custody after taking cognizance of an offence or during commencement of trial when he finds it necessary to adjourn the enquiry or trial. The order of the remand has no baring on the proceedings of the trial itself nor it can have any effect on the ultimate decision of the case. It an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decisions in any manner. It cannot be categorized even as an 'intermediate order'.

65 2004 Cr.LJ 215 SC
The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-Section (2) of Section 397(2) Cr.P.C., a revision against the said order is not maintainable.

(B) Investigation

The investigation of an offence is the field exclusively reserved for the police whose powers in that field are unfettered so long as the power to investigate into the cognizable offense is legitimately exercised in strict compliance with the provision falling under the Criminal Procedure Code.

In Ram Kishan Mithan Lal Sharma v. State of Bombay, the Supreme Court observed that in order to resolve the conflict of opinion one has to examine the purpose of test identification parades. These parades are held by the police in the course of their investigation for the purpose of enabling witnesses to identify the properties which are the subject-matter of the offence or to identify the persons who are concerned in the offence. They are not held merely for the purpose of identifying property or persons irrespective of their connection with the offence. Whether the police officers interrogate the identifying witnesses or the Panch witnesses who are procured by the police do so, the identifying witnesses are explained the purpose of holding these parades and are asked to identify the properties which are the subject-matter of the offence or the persons who are concerned in the offence.

The Apex Court further held that an attempt has been made to argue before us that while the evidence of the police officer may be inadmissible, the evidence of the Panch witness as well as of the identifying witnesses themselves, relating to the fact of the prior

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66 AIR 1955 SC 104
identification, as an item of corroborative evidence is admissible. I agree that on the evidence given in this case, there is no scope for such differentiation and that the entire evidence relating to the prior identification parades concerning the 4th accused is in substance, evidence only of the prior statements of the identifying witnesses to the police officer and is hence inadmissible. But I wish to guard myself against being understood as having assented to the suggestion that in law a differentiation can be made in such cases between the three classes of evidence, viz. (1) of the police officer, (2) of the Panch witness, and (3) of the identifying himself, in so far as they speak to a prior identification at a parade held by the police officer. I am inclined to think that such differentiation is unsound and inadmissible. The legal permissibility of the proof is a matter of importance because, though the evidence of prior identification is only corroborative evidence, still such corroboratory is of considerable value in cases of the kind.

In *A. C. Sharma v. Delhi Administration*, the Supreme Court observed that the investigation in the present case by the Deputy Superintendent of Police cannot be considered to be in any way unauthorised or contrary to law. In this connection it may not be out of place also to point out that the function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence can scarcely be considered by itself to affect the legality of the trial by an otherwise competent Court of the offence so investigated. In *H. N. Rishbud & Inder Singh v. State of Delhi*, it was held that an illegality committed in the course of investigation does not affect the competence and

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67 AIR 1973 SC 913; (1973) 1 SCC 726
68 (1955) 1 SCR 1150; AIR 1955 SC 196
jurisdiction of the Court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby. When any breach of the mandatory provisions relating to investigation is brought to the notice of the Court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly.

The Apex Court further held that, notwithstanding anything in the Police Act, 1861, the Central Government may constitute a special Police force to be called the Delhi Special Police Establishment for the investigation in any Union territory of offences notified under Section 3. Subject to any orders which the Central Government may make in this behalf, members of the said Police establishment shall have throughout any Union territory in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which Police officers of that Union territory have in connection with the investigation of offences committed therein. Any member of the said Police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any Union territory any of the powers of the officer in charge of a Police Station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a Police Station discharging the functions of such an officer within the limits of his Station.
In *State of Bihar and another v. JAC Saldanha and others*\(^{69}\), the Supreme Court observed as under:

There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate.

In *State of Rajasthan v. Bhawani and others*\(^{70}\) the High Court has extensively relied upon the site plan prepared by the investigating officer for discarding the prosecution case and for this purpose has referred to the place from where the accused are alleged to have entered the Nohara, the place from where they are alleged to have fired upon the deceased and also has drawn an

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\(^{69}\) 1980(1) SCC 554.

\(^{70}\) AIR 2003 SC 4230
inference that the place wherefrom the accused are alleged to have fired upon the deceased, the shot could not have hit the houses on the eastern side of the Nohara. Many things mentioned in the site plan have been noted by the investigating officer on the basis of the statements given by the witnesses. Obviously, the place from where the accused entered the Nohara and the place from where they resorted to firing is based upon the statement of the witnesses. These are clearly hit by Section 162 Cr.P.C. What the investigating officer personally saw and noted alone would be admissible. This legal position was explained in Tori Singh and another v. State of U.P.,71 in following words:

A rough sketch map prepared by the sub-inspector on the basis of statements made to him by witnesses during the course of investigation and showing the place where the deceased was hit and also the places where the witnesses were at the time of the incident would not be admissible in evidence in view of the provisions of S. 162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eye-witnesses told him that the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of S. 162 of the Code of Criminal Procedure as it will be no more than a statement made to the police during investigation. Therefore, such marks on the map cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch-map.

71 AIR 1962 SC 399
The Apex Court held that the findings recorded by the High Court on the basis of the site plan prepared by the investigating officer whereby it discarded the prosecution case is clearly illegal being based upon inadmissible evidence and has to be set aside.

In *Union of India v. Prakash P. Hinduja,*\(^7^2\) the principal question requiring consideration was whether the Court can go into the validity or otherwise of the investigation done by the authorities charged with the duty of investigation under the relevant statutes and whether any error or illegality committed during the course of investigation would so vitiate the charge-sheet so as to render the cognizance taken thereon bad and invalid.

The Supreme Court referred to in several decisions and gave its view as under:

In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judiciary authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal Procedure Code, to give directions in the nature of habeas corpus. In such a case as the present, however the Court's functions begin when a charge is preferred before it and not until then.

\(^7^2\) AIR 2003 SC 2612
(C) Arrest

Our criminal justice system appears to revolve around the pivotal institution of judiciary. From the very moment of infraction of the right to freedom of movement of a citizen by way of arrest, the judiciary oversees everything at every stage in the criminal justice process.

The Supreme Court in Joginder Kumar v. State of U.P. and others[^3] held that:

No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave Station without permission would do.

The Court further observed that:

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the law abider.

The quality of a nation’s civilisation can be largely measured by the methods it uses in the enforcement of criminal law. The Apex Court in *Smt. Nandini Satpathy v. P. L. Dani* quoting Lewis Mayers stated:

To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft. The pendulum over the years has swung to the right.

The Apex Court while quoting the National Police Commission’s Third Report referring the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. The said Commission in its Third Report observed that:

It is obvious that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant
avoidable expenditure on their maintenance. In the above period it was estimated that 43.2 per cent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all.

Lastly the Supreme Court held that effective enforcement of the fundamental rights granted under Articles 21 and 22(1) of the Constitution and required to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, the court issued the following requirements:

1. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

In *Sajan Abraham V. State of Kerala*\(^7\) the Apex Court observe that an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. It is true that the communication to the immediate superior has not been made in the form of a report, which is also recorded by the High Court that has sent copies of FIR and other documents to his superior officer which is not in dispute. The copies of the FIR along with other

\(7\) AIR 2001 SC 3190; (2001) 6 SCC 692
records regarding the arrest of appellant and seizure of the contraband articles were sent to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said it has prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case it would not vitiate the prosecution case.

In *State of Punjab v. Balbir Singh*, the Supreme court held that:

The provisions of Sections 52 and 57 of the Code of Criminal Procedure, which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory.

In *D. K. Basu v. State of West Bengal* the Supreme Court considered it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

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76 (1994) 3 SCC 299; AIR 1994 SC 1872
77 AIR 1997 SC 610; 1997 CrLJ 743.
(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or and through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the (sic) Magistrate for his record.
(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.

The Court further held that these directions are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

III. Criminal Courts Proceeding and Judicial Interpretation

The Trial Court Judges and Magistrates is one of the most important factors to ensure the efficient working of our judicial system. The quality of justice, it needs to be stressed, depends not merely upon having well worded codes and statutes, but much more so upon the way they are administered and enforced. In an evaluation is to be made of the role of the different functionaries who play their parts in the administration of justice, the top position would necessarily have assigned to the trial court. The image of the judiciary for the common man is projected by the trial court and this in turn depends upon their intellectual, moral and personal qualities.

(A) Charge

Framing of charges is the concern of the court under the criminal justice system. However, it is generally complained that courts accept the charges framed by police in the report under Section 173 of Cr.P.C. Though the power to discharge is conferred
on courts, it is seen that ordinarily courts do not discharge an accused as they can find *prima facie* case against the persons reported upon by the police under Sec. 173 of Cr.P.C.

In *Municipal Corporation of Delhi v. Ram Kishan Rohtagi*, the Supreme Court held that where the allegations set out in the complaint did not constitute any offence and the High Court quashed the order passed by the Magistrate taking cognizance of the offence there would be no bar to the Court's discretion under Section 319, Cr. P.C. if it was made out on the additional evidence laid before it. Section 319 gives ample powers to any Court to take cognizance against any person not being an accused before it and try him along with the other accused. This Court clearly observed that:

In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfied the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But we would hasten to add that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the Court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondents will not prevent the Court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it.

78 AIR 1983 SC 67
In *Sohan Lal v. State of Rajasthan*\(^79\) the Supreme Court held that:

Add to any charge means the addition of a new charge. An alteration of a charge means changing or variation of an existing charge or making of a different charge. Addition to and alteration of a charge or charges implies one or more existing charge or charges.

In *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya*,\(^80\) after considering the provisions of Sections 227 and 228, Code of Criminal Procedure, the Court posed a question, whether at the stage of framing the charge, trial Court should marshal the materials on the record of the case as he would do on the conclusion of the trial? The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may peruse the records for the limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions\(^81\) in and held thus:

It seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose shift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed

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79 AIR 1990 SC 2158  
80 AIR 1990 SC 1962; 1990 Cri LJ 1869  
to common sense or the broad probabilities of the case.

If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that accused committed the particular offence then the charge can be quashed.

In the case of Minakshi Bala v. Sudhir Kumar, the Apex Court considered the question of quashing of charge by the High Court in invoking its inherent jurisdiction under Sec. 482, Code of Criminal Procedure. In that context, this Court made the following pertinent observations:

"... To put it differently, once charges are framed under Sec. 240, Cr.P.C. the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240, Cr.P.C.; nor would it be justified in invoking its inherent jurisdiction under Sec. 482, Cr.P.C. to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

Apart from the infirmity in the approach of the High Court in dealing with the matter which the Supreme Court has already noticed, further find that instead of adverting to and confining its attention to the documents referred to in Sections

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82 (1994) 4 SCC 142
239 and 240, Cr.P.C. the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a trial Court to delve into and decide upon the respective merits of the case.

In *State of M.P. v. Mohan Lal Soni*,83 the High Court in revision quashed the charges accepting the contentions raised by the accused after detailed consideration of material produced on record. Having regard to the facts and circumstances of the case and referring to earlier decisions of the Apex Court held thus:

In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charges, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or

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83 AIR 2000 SC 2583
rebutted by the defence evidence, if any, cannot show that accused committed the particular offence.

In State of M. P. v. S. B. Johari,\(^{84}\) the Supreme Court, adverting to the question of quashing of charges in the light of the provisions contained in Sections 227 and 288, 401 and 397 and 482, Cr.P.C. did not favour the approach of the High Court in meticulously examining the materials on record for coming to the conclusion that the charge could not have been framed for a particular offence.

In Roy V. D. v. State of Kerala\(^{85}\) the Supreme Court held that, it is well settled that the power under Section 482 of the Cr.P.C. has to be exercised by the High Court, \textit{inter alia}, to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot be but amount to abuse of the process of the Court in such a case not quashing the proceedings would perpetuate abuse of the process of the Court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under Section 482 of the Cr.P.C. to quash proceedings in a case like the one on hand, would indeed secure the ends of justice.

\(^{84}\) (2000) 2 SCC 57; AIR 2000 SC 665
\(^{85}\) AIR 2001 SC 137
In **State of Delhi v. Gyani Devi** the Supreme Court, while quashing and setting aside the order passed by the High Court, made the following observations:

... After considering the material on record, learned Sessions Judge framed the charge as stated above. That charge is quashed by the High Court against the respondents by accepting the contention raised and considering the details of the material produced on record. The same is challenged by filing these appeals. In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons record by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial . . . . .

The Court further judged in the light of the settled position of law as reiterated in the decisions noted above, the order under challenge in the present case does not stand the scrutiny. The High Court has erred in its approach to the case as if it was evaluating the medical evidence for the purpose of determining the

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86 AIR 2001 SC 40; (2000) 8 SCC 239
question whether the charge under Sec. 304/34, I.P.C. framed against the accused respondents was likely to succeed or not. This question was to be considered by the trial Judge after recording the entire evidence in the case. It was not for the High Court to pre-judge the case at the stage when only a few witnesses (doctors) had been examined by the prosecution and that too under the direction of the High Court in the revision petition filed by the accused. The High Court has not observed that the prosecution had closed the evidence from its side. There is also no discussion or observation in the impugned order that the facts and circumstances of the case make it an exceptional case in which immediate interference of the High Court by invoking its inherent jurisdiction under Sec. 482, Cr. P.C. is warranted in the interest of justice. On consideration of the matter we have no hesitation to hold that the order under challenge is vitiated on account of erroneous approach of the High Court and it is clearly unsustainable.

In *Munna Devi v. State of Rajasthan*, the Apex Court held that the revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers, the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety.
do not constitute the offence for which the accused has been charged.

In the instant case, the learned judge ignored the basic principles which conferred the jurisdiction upon the High Court for exercise of revisional powers. It was premature for the High Court to say that the material placed before the trial court was insufficient for framing the charge or that the statement of the prosecutrix herself was not sufficient to proceed further against the accused-respondent.

As the impugned order has been passed against the settled position of law, it is unsustainable and is accordingly set aside. The order of framing the charge passed by the trial court against the accused is upheld with directions to proceed with the trial of the case and dispose of the same on merits in accordance with law.

(B) Bail

As far as granting of bail is concerned the broad guidelines laid down in the Criminal Procedure Code, 1973, but the courts have evolved certain standards. For the purpose of cancellation of bail the courts have also evolved certain guidelines. These are generally found in judgements of various High Courts and Supreme Court.

It was observed by Krishna Iyer. J., in Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh that:

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88 (1978) 1 SCC 240; AIR 1978 SC 429
the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Art. 21 are the life of that human right.

In **Balchand Jain v. State of Madhya Pradesh**, Bhagwati J. who spoke for himself and A. C. Gupta, J. observed that:

> the power of granting 'anticipatory bail is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised.

In **Shahzad Hasan Khan v. Ishtiaq Hasan Khan & another** the Supreme Court observed as below:

> Had the learned Judge granted time to the complainant for filing counter-affidavit correct facts would have been placed before the court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judiciously. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be

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89 AIR 1977 SC 366
90 1987 (2) SCC 684
secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case.

**Kashmira Singh V. Duman Singh.** The appellant, Kashmira Singh was arrested subsequent to the registration of an F.I.R. upon a complaint filed by the respondent, Duman Singh. The accused and his family members had been involved in a long standing dispute over a certain piece of land. Being apprehensive of a quarrel, the local police had initiated proceedings under Section 145 of the Code of Criminal Procedure, 1973. In the F.I.R., the complainant alleges that he was led to believe that the accused and his family members had, on 28-5-1993, violated the Tehsildar's order, not to interfere with the land and had ploughed the land and sown a paddy crop. To verify whether this was true, the complainant and a few others went to the village of the accused. He alleges that after having confirmed the news, he and five others were returning in their vehicles when they came upon the accused, his three brothers and his fathers, who were armed and were standing near the village chowk. The complainant and his party stopped their vehicles and, one member of the complainant's party, who was armed with a Dang, went up to the accused's party to enquire why they had violated the Tehsildar's order. According to the complainant, the accused's brother reacted by attacking that person, whereupon an altercation ensued between both sides. The members of both parties were armed with

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91 AIR 1996 SC 2176
Dangs, Sotis and rifles. The skirmish resulted in the death of some of the persons present. (The F.I.R. records the death of two members of the complainant's party while the impugned judgment states that one member of the accused's party was also killed).

In the impugned judgment, the learned Judge states that while seeking bail, the accused had concealed material facts from the Court in that he had only relied on the fact that Chamkaur Singh had not pressed his application for bail on 14-9-1993, without mentioning that Chamkaur Singh's applications for bail were later rejected on two occasions. Moreover, the learned Judge stated that while granting bail, he had been under the impression that there were two cross versions and both parties had been challenged by the police whereas, in fact, only one challan, against the accused party, had been issued. For these reasons, the learned Judge saw it fit to cancel the bail granted to the accused.

The Supreme Court in *Kashi Nath Roy v. State of Bihar*92 held that the criminal jurisprudence obtaining in this country, Courts exercising bail jurisdiction normally do and should refrain from indulging in elaborate reasoning in their orders in justification of grant or non-grant of bail. For, in that manner, the principle of "presumption of innocence of an accused" gets jeopardized; and the structural principle of "not guilty till proved guilty" gets destroyed, even though all same elements have always understood that such views are tentative and not final, so as to affect the merit of the matter. Here, the appellant has been caught and exposed to a certain adverse comment and action solely

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92 AIR 1996 SC 3240
because in reasoning he had disclosed his mind while granting bail.

In Chandraswami v. Central Bureau of Investigation, the complaint relates to an offence alleged to have been committed by the appellants nearly 16 years ago. Not much progress has taken place in the conduct of the proceedings but the examination-in-chief and a part of the cross-examination of the complainant, the main witness, has been completed. The appellants have been in custody since 2-5-1996. The only reason put forth by the trial Court, as well as the High Court, for not releasing the appellants on bail is that there is an apprehension that they are likely to influence the witnesses or tamper with the evidence. The main witness in the present case is the complainant himself, who has been zealously pursuing this case since 1987. It is his perseverance throughout these long years that has made it possible for the case to reach the stage at which it presently stands. His commitment to see the prosecution reach its logical end is strong and he is not likely to be influenced by the accused. In spite of our query at the hearing, the learned Additional Solicitor General was unable to point out any evidence which could now be tampered or influenced by the accused. We are, therefore, not satisfied that if the appellants are released on bail, they would be in a position to influence the witnesses, the main witness being the complainant himself, or tamper with the evidence.

In State of Maharashtra v. Ramesh Taurani the only evidence collected against the respondent was that he handed over an amount of Rs. 25 lacs to the contract killers (who according to

93 AIR 1997 SC 2575; (1996) 6 SCC 751
94 AIR 1998 SC 586
the prosecution committed the murder of Gulshan Kumar). Apart from the fact that in the context of the prosecution case, the above circumstance incriminates the respondent in a large way, the Apex Court find that the Investigating Agency has collected other incriminating materials also against the respondent, to make out a strong *prima facie* case against him. It is trite that among other considerations which the Court has to take into account in deciding whether bail should be granted in a non-bailable offence is the nature and gravity of the offence. The Supreme Court therefore was of the opinion that the High Court should not have granted bail to the respondent considering the seriousness of the allegations levelled against him, particularly at a stage when investigation is continuing.

In *Dolat Ram v. State of Haryana*, the Supreme Court while drawing a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, opined:

> Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to

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95 (1995) 1 SCC 349
a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.

In Ram Govind Upadhyay v. Sudarshan Singh,\textsuperscript{96} undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on to the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. The subsequent FIR is on record and incorporated therein are the charges under Sections 323 and 504 IPC in which the charge-sheet have already been issued, the Court ought to take note of the facts on record rather than ignoring it. In any event, the discretion to be used shall always have to be strictly in accordance with law and not de-hors the same. The High Court thought it fit not to record any reason far less any cogent reason as to why there should be a departure when in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot in the view of the Apex Court be a relevant consideration in the matter of grant of bail more so by reason of the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment. It is a heinous crime against the society and as such the Court ought to

\textsuperscript{96} AIR 2002 SC 1475; (2002)3 SCC 598
be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of very serious nature.

The Apex Court held that grant of bail though being a discretionary order - but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail - more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

The Court further held that apart from the above, certain other conditions which may be attributed to be relevant considerations may also be noticed at this juncture though however, the same are only illustrative and nor exhaustive neither there can be any. The considerations being: (a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations. (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail. (c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but
there ought always to be a prima facie satisfaction of the Court in support of the charge. (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

The Supreme Court in *Uday Mohanlal Acharya v. State of Maharashtra*,\(^7\) held that:

There is no provision in the Criminal Procedure Code authorising detention of an accused in custody after the expiry of the period indicated in the proviso to sub-section (2) of S. 167 excepting the contingency indicated in Explanation I, namely, if the accused does not furnish the bail. It is in this sense it can be stated that if after expiry of the period, an application for being released on bail is filed, and the accused offers to furnish the bail, and thereby avail of his indefeasible right and then an order of bail is passed on certain terms and conditions but the accused fails to furnish the bail, and at that point of time a challan is filed then possibly it can be said that the right of the accused stood extinguished. But so long as the accused files an application and indicates in the application to offer bail on being released by appropriate orders of the Court then the right of the accused on being released on bail cannot be frustrated on the oft chance of Magistrate not being available and the matter not being moved, or that the Magistrate erroneously refuses to pass an order and the matter is moved to the higher forum and a challan is filed in interregnum. This is the only way how a balance can be struck between the so-called indefeasible right of the accused on failure on the part of the prosecution to file challan within the specified period and the interest of the society, at large, in lawfully preventing

\(^7\) AIR 2001 SC 1910
an accused for being released on bail on account of inaction on the part of the prosecuting agency. On the aforesaid premises, we would record our conclusions as follows:—

1. Under sub-section (2) of S. 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days in the whole.

2. Under the proviso to aforesaid sub-section (2) of S. 167, the Magistrate may authorise detention of the accused otherwise than the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the Investigating Agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnish the bail, as directed by the Magistrate.

4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/Court must dispose it of forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the Investigating Agency. Such prompt action on the part of the Magistrate/Court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the
Investigating Agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation I and proviso to sub-section (2) of S. 167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and therefore, if during that period the investigation is complete and charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

6. The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (1994 AIR SCW 3857 : 1995 Cri LJ 477) must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-section (2) of S. 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.

In Dr. Bipin Shantilal Panchal v. State of Gujarat, a three-Judge Bench decision, the Supreme Court referred to the proviso to sub-section (2) of S. 167 of the Code of Criminal Procedure and held that though the aforesaid provisions would apply to an accused under NDPS Act, but since charge-sheet had already been filed and the accused is in custody on the basis of orders of remand passed under other provisions of the Code the so-called indefeasible right of the accused must be held to have been extinguished. The Court observed thus:

Therefore, if an accused person fails to exercise his right to be released on bail for the failure of the prosecution to file the charge-sheet within the maximum time allowed by law, he cannot contend that he had an indefeasible right to exercise it at any time notwithstanding the fact that in the meantime the

98 AIR 1996 SC 2897 : 1996 Cri LJ 1652
charge-sheet is filed. But on the other hand if he exercises the right within the time allowed by law and is released on bail under such circumstances, he cannot be rearrested on the mere filing of the charge-sheet.

In **Bharat Chaudhary and another v. State of Bihar and another** the Supreme Court held that, when the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of limited duration only and ordinarily on the expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge sheet is submitted.

**(C) Trial**

A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to Judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie

99 AIR 2003 SC 4662.
trustworthy on grounds which are fanciful or in the nature of conjectures.\textsuperscript{100}

The Court taking the plea of the previous case \textbf{State of Maharashtra v. Chandraprakash Kewalchand Jain}\textsuperscript{101} in which Ahmadi, J, (as the Lord Chief Justice then was) speaking for the Bench summarised the position in the following words:

A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the valuation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction of her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances

\textsuperscript{100} \textit{State of Punjab v. Jagir Singh Baljit Singh and Karam Singh, AIR 1973 SC 2407}

\textsuperscript{101} 1990 (1) SCC 550; AIR 1990 SC 658
appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

As a result of the aforesaid discussion, the Apex Court held that the prosecutrix has made a truthful statement and the prosecution has established the case against the respondents beyond every reasonable doubt. The trial Court fell in error in acquitting them of the charges levelled against them. The appreciation of evidence by the trial Court is not only unreasonable but perverse.

The Supreme Court in *Niranjan Singh Punjabi v. Jitendra Bijjaya*,¹⁰² held that at Sections 227 and 228 of Cr.P.C. stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

¹⁰² (1990) 4 SCC 76
State of Punjab v. Gurmit Singh. On 30th March, 1984 the sufferer girl was forcibly abducted by four desperate persons who were out and out to molest her honour. It has been admitted by the prosecutrix that she was taken through the bus adda of Pakhowal via metalled road. It has come in the evidence that it is a busy centre. In spite of that fact she has not raised any alram, so as to attract persons that she was being forcibly taken. The height of her own unnatural conduct is that she was left by the accused at the same point on the next morning. The accused would be the last person to extend sympathy to the prosecutrix. Had it been so, the natural conduct of the prosecutrix was first to reach to the house of her maternal uncle to apprise him that she had been forcibly abducted on the previous day. The witness after her being left at the place of abduction lightly takes her examination. She does not complain to the lady teachers who were deployed to keep a watch on the girl students because these students are to appear in the centre of Boys School. She does not complain to anybody nor her friend that she was raped during the previous night. She prefers her examination rather than to go to the house of her parents or relations. Thereafter, she goes to her village Mangal Kalan and informs for the first time her mother that she was raped on the previous night. This part of the prosecution story does not look to be probable.

The trial Court, thus, disbelieved the version of the prosecutrix basically for the reasons; (i) "she is so ignorant about the make etc, of the car that entire story that she was abducted in the car becomes doubtful" particularly because she could not explain the difference between a Fiat car, Ambassador car or a

103 AIR 1996 SC 1393.
Master Car; (ii) the Investigating Officer had "shown pitiable negligence" during the Investigation by not tracing out the car and the driver, (iii) that the prosecutrix did not raise any alarm while being abducted even though she had passed through the bus adda of village Pakhowal (iv) that the story of abduction" has been introduced by the prosecutrix or by father or by the thanedar just to give the gravity of offence and (v) that no corroboration of the statement of the prosecutrix was available on the record and the story that the accused had left her near the school next morning was not believable because the accused could have no "sympathy" for her.

In Vineet Narain v. Union of India,104 it is settled by the Apex Court that the requirement of a public hearing in a Court of law for a fair trial is subject to the need of proceeding being held in camera to the extent necessary in public interest and to avoid prejudice to the accused. The Apex Court considered it appropriate to mention these facts in view of the nature of these proceedings wherein innovations in procedure were required to be made from time to time to sub-serve the public interest, avoid any prejudice to the accused and to advance the cause of justice.

The Supreme Court in State of M. P. v. Mohan Lal Soni105 observed that:

The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and
cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his power to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.

In *Shaliendra Kumar v. State of Bihar*\(^{106}\) the Supreme Court was of the view that, in a murder trial it is sordid and repulsive matter that without informing the police station officer-in-charge, the matters are proceeded by the court and by the APP and tried to be disposed of as if the prosecution has not led any evidence. From the facts stated above, it appears that accused wants to frustrate the prosecution by unjustified means and it appears that by one way or the other the addl. sessions judge as well as the APP have not taken any interest in discharge of their duties. It was the duty of the sessions judge to issue summons to the investigating officer if he failed to remain present at the time of trial of the case. The presence of investigating officer at the time of trial is must. It is his duty to keep the witnesses present. If there is failure on part of any witness to remain present, it is the duty of the court to take appropriate action including issuance of bailable/non-bailable warrants as the case may be. It should be well understood that prosecution cannot be frustrated by such methods and victims of the crime cannot be left in lurch.

The Apex Court in *Rajendra Prasad v. Narcotic Cell*\(^{107}\) observed that:

\(^{106}\) AIR 2002 SC 270
\(^{107}\) (1999) 6 SCC 110
After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.

The Supreme Court in **Surender Singh Rautela v. State of Bihar**⁠¹⁰⁸ submitted that the High Court was not justified in enhancing the punishment awarded against this appellant from imprisonment for life to death sentence as no appeal under section 377 of the Code of Criminal Procedure, 1973 was filed by the State for enhancement of sentence. It has been further submitted that no opportunity of hearing was afforded to appellant Surendra Singh Rautela against the enhancement of sentence. It is well settled that the High Court, *suo motu* in exercise of revisional jurisdiction can enhance the sentence of an accused awarded by the trial court and the same is not affected merely because an appeal has been provided under section 377 of the Code for enhancement of sentence and no such appeal has been preferred.

It has been settled by the Apex Court in previous cases⁠¹⁰⁹ that the *suo motu* powers of enhancement under revisional jurisdiction can be exercised only after giving opportunity of hearing to the accused.

The Supreme Court in **State of Karnataka v. M. Devendrappa and others**⁠¹¹⁰ noted that, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its

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⁠¹¹⁰ AIR 2002 SC 671; Also see, The Janata Dal etc. vs. H.S. Chowdhary and Ors. etc., AIR 1993 SC 892; Dr. Raghubir Saran vs. State of Bihar & Anr, AIR 1964 SC 1.
exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by the Apex Court in State of Haryana and others vs. Ch. Bhajan Lal and others. The illustrative categories indicated by this Court are as follows:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused. (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not

111 AIR 1992 SC 604
disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where the allegations in the F.I. R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with malafide 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.
IV. Correctional Institutions and Judicial Interpretation

You cannot rehabilitate a man through brutality and disrespect....If you treat a man like an animal, then you must expect him to act like one. For every action there is a reaction....And in order for an inmate, to act like a human being you must trust him as such....You can't spit in his face and expect him to smile and say thank you.

The problem of law, when it is called upon to defend persons hidden by the law is to evolve a positive culture and higher consciousness and preventive mechanisms, sensitized strategies and humanist agencies which will bring healing balm to bleeding hearts. Indeed, counsel on both sides carefully endeavoured to help the Court to evolve remedial processes and personal within the framework of the Prisons Act and the parameters of the Constitution.¹¹²

(A) Prison

Prisons are built with stones of law, and so it behoves the court to insist that, in the eye of law, prisoners are persons, not animals, and punish the deviant 'guardians' of the prison system where they go berserk and defile the dignity of the human inmate. Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials 'dressed in a little, brief authority', when Part III is invoked by a convict. For when a prisoner is traumatized, the Constitution suffers a shock. And when the Court takes cognizance of such violence and violation, it does, like the hound of Heaven, 'But with unhurrying chase. And

¹¹² Sunil Batra v. Delhi Administration, AIR 1980 SC 1579
unperturbed pace, Deliberate speed and Majestic instancy' follow the official offender and frown down the outlaw adventure.\textsuperscript{113}

In \textit{Gopal Vinayak Godse v. State of Maharashtra}\textsuperscript{114} the Supreme Court decided that the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act. The rules, inter alia, provide for three types of remissions by way of rewards for good conduct, namely, (i) ordinary, (ii) special and (iii) State. For the working out of the said remissions, under rule 1419 (c), transportation for life is ordinarily to be taken as 15 years' actual imprisonment. The rule cannot be construed as a statutory equation of 15 years' actual imprisonment for transportation for life. The equation is only for a particular purpose, namely, for the purpose of "remission system" and not for all purposes. The word "ordinarily" in the rule also supports the said construction. The non obstante clause in sub rule (2) of rule 1447 reiterates that notwithstanding anything contained in rule 1419 no prisoner who has been sentenced to transportation for life shall be released on completion of his term unless orders of Government have been received on a report submitted to it. This also indicates that the period of 15 years' actual imprisonment specified in the rule is only for the purpose of calculating the remission and that the completion of the term on that basis does not ipso facto confer any

\textsuperscript{113} \textit{Ibid.}
\textsuperscript{114} AIR 1961 SC 600
right upon the prisoner to release. The order of Government contemplated in rule 1447 in the case of a prisoner sentenced to transportation for life can only be an order under S. 401 of the Code of Criminal Procedure, for in the case of a sentence of transportation for life the release of the prisoner can legally be effected only by remitting the entire balance of the sentence. Rules 934 and 937 (c) provide for that contingency. Under the said rules the orders of an appropriate Government under S. 401, Criminal Procedure Code, are a pre-requisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

In *Sunil Batra v. Delhi Administration*,¹¹⁵ the Supreme Court was of the view that prisoners are peculiary and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and the like. Secondly, the prison house is a walled-off world which incommunicado for the human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. So it is imperative, as implicit in Art.21, that life or liberty, shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure.

In *Maneka Gandhi v. Union of India*,¹¹⁶ the 'meaning of life' given by the Field J. bears exception that:

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¹¹⁵ AIR 1980 SC 1579
¹¹⁶ (1978) 1 SCC 248; AIR 1978 SC 597.
Something more than mere animal existence. The inhibition against its deprivation extended to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

Therefore, inside prisons are persons and their personhood, if crippled by law keepers turning law-breakers, shall be forbidden by the writ of this court from such wrong-doing. Fair procedure, in dealing with prisoners, therefore, calls for another dimension of access of law-provision, within easy reach, of the law which limits liberty to persons who are prevented from moving out of prison gates.

In Bhuvan Mohan Patnaik v. State of A. P.\(^{117}\) Chandrachud, J., spelt out the position of prisoners and affirmed that:

Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to practise a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law."

\(^{117}\) AIR 1974 SC 2092
In Sunil Batra v. Delhi Administration the Supreme Court stated and directed constitute the mandatory part of the judgment and shall be complied with by the State. But implicit in the discussion and conclusions are certain directives for which it did not fix any specific time limit except to indicate the urgency of their implementation. The Apex Court spelt out four such quasi-mandates.

1. The State shall take early steps to prepare a Hindi, a Prisoner's Handbook and circulate copies to bring legal awareness home to the inmates. Periodical jail bulletins stating how improvements and habilitative programmes are brought into the prison may crease a fellowship which will ease tensions. A prisoners' wall paper, which will freely ventilate grievances will also reduce stress. All these are implementary of S. 61 of the Prisons Act.

2. The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community contact and correctional strategies. In this latter aspect the observations we have made of holistic development of personality shall be kept in view.

3. The Prisons Act needs rehabilitation and the Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional-cum-orientation course is necessitous for the prison staff

118 AIR 1980 SC 1579
inculcating the constitutional values, therapeutic approaches and tension-free management.

4. The prisoners' rights shall be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes shall be promoted by professional organisations recognised by the Court such as for e.g. Free Legal Aid (Supreme Court) Society. The District Bar shall, we recommend, keep a cell for prisoner relief.

On the question whether a sentence of transportation for life could be executed in jails within the country or the same was executable only beyond the seas. The position has been clearly enunciated by the Privy Council in Pt. Kishori Lal's case.\textsuperscript{119} After considering the history of the sentence of transportation, the relevant provisions of the Penal Code, the Code of Criminal Procedure and the Prisoners Act, the Privy Council came to the conclusion that the said provisions clearly showed that a sentence of transportation was not necessarily executable beyond the seas. It observed thus:

These sections make it plain that when a sentence of transportation has been passed it is no longer necessarily a sentence of transportation beyond the seas. Nowhere is any obligation imposed on the Government either of India or of the provinces to Provide any places overseas for the reception of prisoners. It appears that for many years the only place to which they have been sent is the Andaman Islands are now in Japanese occupation. Their Lordships have been referred to various orders and directions of an administrative and not a legislative character showing what prisoners are, and are not.

\textsuperscript{119} AIR 1945 PC 641
regarded as fit subjects for transportation thereto and showing also that now-a-days only such of those prisoners sentenced to transportation 'as may volunteer to undergo, transportation overseas are sent to those islands............... But at the present day transportation is in truth but a name given in India to a sentence for life and in a few special cases for a lesser period, just as in England the term imprisonment is applied to all sentences which do not exceed two years and penal servitude to those of 3 years and upwards..............So in India, a prisoner sentenced to transportation may be sent to the Andamans or may be kept in one of the jails in India, appointed for transportation prisoners.120

It may be pointed out that even thereafter there is no dearth of judicial precedents where, in the matter of nature of punishment, imprisonment for life has been regarded as equivalent to rigorous imprisonment for life. In State of Madhya Pradesh v. Ahmadulla,121 the Apex Court after reversing the judgment of acquittal recorded by the High Court on a charge of murder imposed the following sentence:

But taking into account the fact that the accused has been acquitted by the Sessions Judge - an order which was affirmed by the High Court - we consider that the ends of justice would be met if we sentence the accused to rigorous, imprisonment for life.

In K. M. Nanavati v. State of Maharashtra,122 the Bombay High Court had sentenced the accused expressly to 'rigorous imprisonment for life" and the Supreme Court while dismissing the appeal upheld the sentence as being correctly awarded.

120 Naib Singh v. State of Punjab, AIR 1983 SC 855
121 AIR 1961 SC 998
122 AIR 1962 SC 605
State of Haryana v. Ghaseeta Ram.\textsuperscript{123} In the instant case, the respondent was admittedly convicted and sentenced by the Additional Sessions Judge for committing various offences under the Indian Penal Code, while he was undergoing sentence for a previous conviction vide judgment dated 22-2-1986. An order of cancellation of remission under Para 633-A of the Punjab Jail Manual could, therefore, be made only after 22-2-1986. It could not precede his conviction. The punishment of forfeiture of remission as already noticed, was imposed by the Superintendent of Jail on the respondent on 17-9-1984, much before his conviction had been recorded by the trial Court. This certainly was not permissible under Para 633-A of the Punjab Jail Manual. The order of punishment dated 17-9-1984 is, thus, not sustainable on the plain language of Para 633-A of the Punjab Jail Manual. The respondent appears to have been punished by the Superintendent Jail under Para 613 of the Punjab Jail Manual for commission of the prison offence and not under Para 633-A of the Punjab Manual. The respondent has, therefore, been punished for the same offence twice - once by the Superintendent of the Jail and the second time by the trial Court on his conviction for the same offence. It could not be done in view of the bar contained in Section 52 of the Prison Act read with Para 627 of the Punjab Jail Manual. The High Court, therefore, committed no error in quashing the order of the Superintendent of Jail dated 17-9-1984.

In State of Punjab v. Nihal Singh,\textsuperscript{124} the respondent Nihal Singh was a convict under section 302 Indian Penal Code sentenced by Court Martial to undergo imprisonment for life and

\textsuperscript{123} AIR 1997 SC 1868
\textsuperscript{124} (2002) 7 SCC 513
incarcerated in Civil Jail, Sangrur (Punjab). Nihal Singh filed a writ petition in the High Court of Punjab and Haryana seeking to be classified as Class-B prisoner and being allowed the facilities available to such prisoners in accordance with para 576-A of the Punjab Jail Manual. Punjab Jail Manual is a compilation of statutory provisions, rules and executive instructions, referable to prison and prisoners, issued from time to time and is meant to guide the jail administration and the jail officers. Para 576-A contemplates classification of convicted persons into 3 categories, namely, classes A, B and C and catalogues the factors which would be relevant for classification and enumerates the benefits and facilities to which the prisoner would be entitled depending on the classification. The petition came up for hearing before a learned single judge o the High Court of Punjab & Haryana, who formed an opinion that the classification of prisoners into classes A, B and C was violative of Articles 14 and 15(1) of the Constitution, and therefore, declared such classification *ultra vires* of the Constitution. Consequent upon such declaration the petition filed by the respondent was directed to be dismissed.

It is pertinent to note that the question of *ultra vires* of para 576-A of Punjab Jail Manual was not raised by anyone before the High Court. The High Court also, before formulating its opinion as expressed in the impugned order, did not give any indication of its mind that adjudication upon the constitutional validity of the provision was proposed. None was put on notice. Nobody was afforded an opportunity of bringing on record material relevant for adjudication upon such validity. The advocate general of the state was not put on notice. The procedure adopted by the High Court
while invalidating para 576-A of the Punjab Jail Manual was wholly unsatisfactory and unsustainable.

Judgment under appeal was set aside by the Supreme Court and writ petition filed by respondent restored as fresh for hearing again. The Apex court disposed of other two appeals on the ground that other two appeals emerged after decision of High Court. Therefore, as High Court orders were set aside, these appeals become infructuous & disposed of accordingly.

In *State of Maharashtra v. Asha Arun Gawali*, doubts at times were entertained about the authenticity of such news having regard to the normal good faith to be reposed in the regularity of officials activities. But the admissions made in the affidavits filed by the Jail Authorities and the officials, accept it as a fact. What is still more shocking is that persons have entered the jail, met the inmates and if the statements of the officials are seen hatched conspiracies for committing murders. The High Court was therefore justified in holding that without the active co-operation of the officials concerned these things would not have been possible. The High Court appears to have justifiably felt aghast at such acts of omissions and commissions of the jail officials which per se constituted offences punishable under various provisions of the Indian Penal Code and has, therefore, necessarily directed the launching of criminal prosecution against them, besides mulcting them with exemplary costs.

The Apex Court observed that the High Court noticed correctly that when the names of visitors who allegedly were a part of the conspiracy warranting detention of the detenu were not in

125 AIR 2004 SC 2223
the list of visitors during the concerned period, there is a patent admission about people getting unauthorised entry into the jails without their names being recorded in the official records something which would be impossible except with the connivance of those who otherwise should have prevented such things happening. It was noted by the High Court there was no explanation as to how somebody could gain entry in the Jail and meet the detenu and yet no entry would be made therefor. It is not possible unless the Jail officials are themselves a party to the same. If the criminal activities of the detenu were to be prevented and the recurrence of lapses which are serious on the part of those concerned were to be averted, firm action was necessary which yet was not even taken for reasons best known to themselves. In the aforesaid background the concern exhibited by the High Court as a necessary corollary by imposition of costs cannot at all be found fault with.

(B) Parole

In our country, there are no statutory provisions dealing with the question of grant of parole. The Code of Criminal Procedure does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States, regulating the grant of parole. Thus, the action for grant of parole is generally speaking an administrative action.126

In Poonam Lata v. M. L. Wadhwa127 the Supreme Court observed that there is abundance of authority that High Courts in exercise of their jurisdiction under Art. 226 of the Constitution do

not release a detenu on bail or parole. There is no reason why a different view should be taken in regard to exercise of jurisdiction under Art. 32 of the Constitution particularly when the power to grant relief to a detenu in such proceedings is exercisable on very narrow and limited grounds. In *State of Bihar v. Rambalak Singh*, a Constitution Bench laid down that the release of a detenu placed under detention under Rule 30 of the Defence of India Rules, 1962, on bail pending the hearing of a petition for grant of a writ of habeas corpus was an improper exercise of jurisdiction. It was observed in that case that if the High Court was of the view that prima facie the impugned order of detention was patently illegal in that there was a serious defect in the order of detention which would justify the release of the detenu, the proper and more sensible and reasonable course would invariably be to expedite the hearing of the writ petition and deal with the merits without any delay rather than direct release of the detenu on bail. The learned Judge observed as under:

> It is appropriate for a democratic Government not merely to confine preventive detention to serious cases but also to review periodically the need for the continuance of the incarceration. The rule of law and public conscience must be respected to the maximum extent risk-taking permits, and it is hoped that the petitioner and others like him will not languish in prison cells for a day longer than the administration thinks is absolutely necessary for the critical safety of society.

In *State of Uttar Pradesh v. Jairam*, a three Judges Bench speaking through Chandrachud, C. J., referred to Rambalak Singh’s case and set aside the order passed by the

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128 AIR 1966 SC 1441
129 AIR 1982 SC 942
learned single Judge of the High Court admitting the detenu to bail on the ground that it was an improper exercise of jurisdiction. As to grant of parole, it is worthy of note that in none of the cases this Court made a direction under Art. 32 of the Constitution for grant of parole to the detenu but left it to the executive to consider whether it should make an order in terms of the relevant provision for temporary release of the person detained as under Section 12 of the COFEPOSA, in the facts and circumstances of a particular case.

In *Samir Chatterjee v. State of West Bengal*, the Court set aside the order of the Calcutta High Court releasing on parole a person detained under Sec. 3(1) of the Maintenance of Internal Security Act. 1971 and viewed with disfavour the observations made by the High Court that 'it was not often that the State Government lost sight of Sec. 15 of the Act providing for temporary release in such situations' as in its view 'long term preventive detention can be self-defeating or criminally counter-productive' and that 'it was fair that persons kept incarcerated and embittered without trial should be given some chance to reform themselves by reasonable recourse to the parole power under Sec. 15. Alagiriswamy, J. speaking for the Court, said that there was no occasion for the High Court to have made these observations, and added:

> We fail to see that these observations lay down any principle of law. Section 15 merely confers a power on the Government. The power and duty of this Court is to decide cases coming before it according to law. In so doing it may take various considerations into account. But to advise the Government as to how they should

130 (1975) 1 SCC 80; AIR 1975 SC 1165.
exercise their functions or powers conferred on them by statute is not one of this Court's functions. Where the Court is able to give effect to its view in the form of a valid and binding order that is a different matter. Furthermore, S. 15 deals with release on parole and there is nothing to show that the petitioner applied for to be released on parole for any specific purpose. As far as we are able to see, release on parole is made only on the request of the party and for a specific purpose.

In Babulal Das v. State of West Bengal, Krishna Iyer, J. however struck a discordant note and adopted the observations made by the Calcutta High Court and observed:

It is fair that persons kept incarcerated and embittered without trial should be given some chance to reform themselves by reasonable recourse to the parole power under S. 15. Calculated risks by release for short periods may, perhaps, be a social gain, the beneficent jurisdiction being wisely exercised.

In Sunil Fulchand Shah v. Union of India, Apex Court observed that release on parole is only a temporary arrangement by which a detenu is released for a temporary fixed period to meet certain situations, it does not interrupt the period of detention and, thus, needs to be counted towards the total period of detention unless the rules, instructions or terms for grant of parole, prescribe otherwise. The period during which parole is availed of is not aimed to extend the outer limit of the maximum period of detention indicated in the order of detention. The period during which a detenu has been out of custody on temporary release on parole, unless otherwise prescribed by the order granting parole, or by rules or instructions, has to be included as a part of the total period of detention because of the very nature of parole. An order

132 AIR 2000 SC 1023
made under Section 12 of temporary release of a detenu on parole does not bring the detention to an end for any period - it does not interrupt the period of detention - it only changes the mode of detention by restraining the movement of the detenu in accordance with the conditions prescribed in the order of parole. The detenu is not a free man while out on parole. Even while on parole he continues to serve the sentence or undergo the period of detention in a manner different than from being in custody. He is not a free person. Parole does not keep the period of detention in a state of suspended animation. The period of detention keeps ticking during this period of temporary release of a detenu also because a parolee remains in legal custody of the State and under the control of its agents, subject to any time, for breach of condition, to be returned to custody.

It was further observed by the Apex Court that personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanising the harsh authority over individual liberty. Since, preventive detention is a form of precautionary State action, intended to prevent a person from indulging in a conduct, injurious to the society or the security of State or public order, it has been recognised as "a necessary evil" and is tolerated in a free society in the larger interest of security of State and maintenance of public order. However, the power being drastic, the restrictions placed on a person to preventively detain must, consistently
with the effectiveness of detention, be minimal. In a democracy
governed by the Rule of Law, the drastic power to detain a
person without trial for security of the State and/or
maintenance of public order, must be strictly construed. This
Court, as the guardian of the Constitution, though not the only
guardian, has zealously attempted to preserve and protect the
liberty of a citizen. However, where individual liberty comes into
conflict with an interest of the security of the State or public
order, then the liberty of the individual must give way to the
larger interest of the nation.

In Dadu v. State of Maharashtra, the Supreme Court
held that parole is not a suspension of the sentence. The
convict continues to be serving the sentence despite granting of
parole under the Statute, Rules, Jail Manual or the
Government Orders. "Parole" means the release of a prisoner
temporarily for a special purpose before the expiry of a
sentence, on the promise of good behaviour and return to jail. It
is a release from jail, prison or other internment after actually
been in jail serving part of sentence.

Grant of parole is essentially an Executive function to be
exercised within the limits prescribed in that behalf. It would
not be open to the Court to reduce the period of detention by
admitting a detenu or convict on parole. Court cannot
substitute the period of detention either by abridging or
enlarging it. Dealing with the concept of parole and its effect on
period of detention in a preventive detention matter., this Court
in Poonam Lata v. M. L. Wadhawan held:

133 AIR 2000 SC 3203
134 AIR 1987 SC 1383 : 1987 Cri LJ 1130
There is no denying of the fact that preventive detention is not punishment and the concept of serving out a sentence would not legitimately be within the purview of preventive detention. The grant of parole is essentially an executive function and instances of release of detenus on parole were literally unknown until this Court and some of the High Courts in India in recent years made orders of release on parole on humanitarian considerations. Historically 'parole' is a concept known to military law and denotes release of a prisoner of war on promise to return. Parole has become an integral part of the English and American systems of criminal justice intertwined with the evolution of changing attitudes of the society towards crime and criminals. As a consequence of the introduction of parole into the penal system, all fixed term sentences of imprisonment of above 18 months are subject to release on licence, that is, parole after a third of the period of sentence has been served. In those countries, parole is taken as an act of grace and not as a matter of right and the convict prisoner may be released on condition that he abides by the promise. It is a provisional release from confinement, but is deemed to be a part of the imprisonment. Release on parole is a wing of the reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus a grant of partial liberty of lessening of restrictions to a convict prisoner, but release on parole does not change the status of the prisoner. Rules are framed providing supervision by parole authorities of the convicts released on parole and in case of failure to perform the promise, the convict released on parole is directed to surrender to custody. It follows that parole is the release of a very long term prisoner from a penal or correctional institution after he has served a part of his sentence under the continuous custody of the State and under conditions that permit his incarceration in the event of misbehaviour.

(C) Probation

The legislation for consideration to gives effect to this penal philosophy of probation recommends rehabilitation of the criminals
so that they come out of the prison to return to society as law abiding citizens. Certain classes of prisoners which appear to the Government from their antecedents and their conduct in the prison as likely to abstain from crime and lead a peaceable life, can be released on a "licence" but their conduct outside prison shall be supervised by specified individuals or institutions. The period of release on licence or probation granted to them would give them opportunity to lead a crime free and peaceable life. Such period shall be counted towards the sentence of imprisonment imposed on them. Such licensed releases legislatively sanctioned have been recognised as valid law by the Supreme Court in the case of Maru Ram vs. Union of India. Release on licence is an experiment with prisoners for open jails or as the Court describes it is an "imprisonment of loose and liberal type."

The Supreme Court has indicated in Dalbir Singh v. State of Haryana that benefit of Probation of Offenders Act should not normally be afforded in respect of the offences under Section 304-A, IPC when it involves rash or negligent driving. Those are instances for showing how the nature of the offence could dissuade the Court to give the benefit. However, in a case of trivial nature as the respondent is stated to have committed and keeping in view its peculiar circumstances, we find it to be a fit case where powers under Section 3 of the Probation of Offenders Act can be exercised.

In Chandra Prakash Shahi v. State of U.P., the Supreme Court held that the period of probation is two years. The Regulation is silent as to the maximum period beyond which the

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136 1981(I) SCC 100
138 AIR 2000 SC 1706
period of probation cannot be extended. In the absence of this prohibition, even if the appellant completed two years of probationary period successfully and without any blemish, his period of probation shall be treated to have been extended as a 'permanent' status can be acquired only by means of a specific order of confirmation.

In **State of Orissa v. Ram Narayan Das**\(^{139}\) the Supreme Court observed:

Where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment.

In **Commandant 20 BN ITB Police v. Sanjay Binjoai**\(^{140}\) the Supreme Court held that Probation of Offenders Act has been enacted in view of the increasing emphasis on the reformation and rehabilitation of the offenders as a useful and self-reliant members of society without subjecting them to deleterious effects of jail life. The Act empowers the Court to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life or for the description mentioned in Sections 3 and 4 of the said Act.

Section 3 of the Probation of Offenders Act provides:

Power of Court to release certain offenders after admonition- When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code (45 of 1860), or any

\(^{139}\) AIR 1961 SC 177  
\(^{140}\) AIR 2001 SC 2058
offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition.

Explanation - For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or Section 4.

The Court further said that it is not disputed that for an offence punishable under Section 10 of the Act, the sentence provided is one year with fine entitling the respondent to claim the benefit of Section 3 of the Probation of Offenders Act. It transpires that both the appellate as well as the High Court, after passing the order of conviction and sentence and having regard to the circumstances of the case including the nature of the offence and character of the offender, thought it expedient to take a lenient view and instead of sending him to jail opted to pass a sentence till the rising of the Court. On the point of sentence, the appellate Court observed:

I think it justified to consider leniently because the accused Sanjay Binjoa is a young boy and he just took excessive liquor on the alleged liquor day. It is also to be kept in mind that in the Para Military Forces liquor is provided comparatively cheaper to the para military personals, hence I find that the punishment given to the accused for sentences of 3 months is severe consequently, I reach at the conclusion that the
sentence awarded by the lower Court is modified accordingly.

V. Sum-up

The Supreme Court of India has opened new vistas on ‘human rights’ movement by liberally interpreting and expanding the meaning of criminal justice system. Apex Court under constitutional scheme is guardian, and protector of fundamental rights of the citizen, to enforce the right, to ensure justice administered to all and protect the individual rights without encroachment on individual liberty and with human dignity. Every effects have been devoted to protect and guard the pre-trial detainees. From the very initial stage of First Information Report, investigation, arrest, search, seizure, bail, legal aid, custodial violence and compensation to the victims the Supreme Court has always played a key role.

Protections of rights are the cardinal importance to the process of criminal justice at all levels of investigation, trial and punishment. The Code of Criminal Procedure in India contains salient features in this respect. In the face of new and divergent crime trends, the public trends to have mixed feeling towards crime prevention, control and punishment. While there appears to be widespread demand for making the criminal justice more fair, there is also a push for stronger deterrents and justice rendered on those responsible for disrupting public order, peace and tranquility or restricting them from criminal acts at the cost of injury to human life.