®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF DECEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

CRIMINAL REVISION PETITION NO.638/2016
C/W
CRIMINAL REVISION PETITION NO.550/2016

IN CRL.RP NO.638/2016
BETWEEN

SMT. PREMALATHA DIVAKAR
AGED ABOUT 49 YEARS,
W/O C.M. DIVAKAR SHASTRY,
R/AT NO.42, "RAAGA", 10TH MAIN,
27TH CROSS, BANASHANKARI 2ND STAGE,
BANGALORE-560070

...PETITIONER

(BY SRI M.T.NANAIAH, SR. ADVOCATE FOR
SRI M N NEHRU, ADVOCATE)

AND

1 . THE STATE OF KARNATAKA
REP. BY INVESTIGATING OFFICER,
CID, CARLTON HOUSE,
BANGALORE-560001

2 . SHREEMAD JAGADGURU SHANKARACHARYA
SHREE SHREE RAGHAVESHWARA BHARATHI
SHRI SWAMIJI
(FORMERLY KNOWN AS SRI HARISH)
AGED ABOUT 40 YEARS,
SHREE SAMSTHANA-GOKARNA,

SHREE RAMACHANDRAPURA MATH,
HANIYA POST, HOSANAGARA TALUK,
SHIVAMOGGA DISTRICT-577418

NOW R/AT THE ADMINISTRATIVE OFFICE AT
RAMASHRAMA, NO.2A, JP ROAD,
GIRINAGAR,
BENGALURU-560 085.

…RESPONDENTS

(BY SRI THEJESH.P, HCGP FOR R1;
SRI C.V.NAGESH, SR. ADVOCATE FOR
SRI MANMOHAN.P.N AND VINAY.N, ADVOCATES FOR R2)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION. 397 READ WITH 401 CR.P.C, PRAYING TO SET ASIDE THE ORDER DATED 31.03.2016 PASSED IN S.C.NO.1242/2015 BY THE LIII ADDL. CITY CIVIL AND S.J., BANGALORE, AND DIRECT THE 2ND RESPONDENT BE TRIED FOR OFFENCES P/U/S 376(2)(f) AND 376(2)(n) AND 508 OF IPC.

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IN CRL.RP NO.550/2016

BETWEEN

STATE OF KARNATAKA BY INVESTIGATING OFFICER
C.I.D.,BENGALURU
REP. BY THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-01

...PETITIONER

(BY SRI THEJESH.P, HCGP)

AND

SHREEMAD JAGADGURU SHANKARACHARYA
SHREE SHREE RAGHAVESHWARA

BHARATHI SHRI SWAMIJI
(FORMERLY KNOWN AS SRI HARISH)
AGED ABOUT 40 YEARS
SHREE SAMSTHANA-GOKARNA,
SHREE RAMACHANDRAPURA MUTT,
HANIYA POST,
HOSANAGARA TALUK,
SHIVAMOGGA DISTRICT
NOW R/AT THE ADMINISTRATIVE OFFICE
RAMASHRAMA, NO.2A, J.P ROAD,
GIRINAGAR,
BENGALURU-560 085

…RESPONDENT

(BY SRI C.V.NAGESH, SR. ADVOCATE FOR
SRI MANMOHAN P.N AND SRI VINAY.N, ADVOCATES)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION. 397 READ WITH 401 CR.P.C, PRAYING TO SET ASIDE THE ORDER DATED 31.03.2016 PASSED ON THE APPLICATION FILED BY THE RESPONDENT U/S 227 OF CR.P.C. IN S.C.NO.1242/2015 ON THE FILE OF THE LIII ADDL. CITY CIVIL AND S.J., BANGALORE.

THESE CRIMINAL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.12.2021, COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The victim and the State are in Revision challenging the order dated 31.03.2016 passed in SC No.1242/2015 by the learned LIII Additional City Civil and Sessions Judge, Bengaluru Special Court (CCH-54) and direct the 2nd respondent (Pontiff of the Ramachandrapura Mutt) be

tried for the offence punishable under Section 376(2)(f), 376(2)(n) and 508 of the IPC.

2. The brief facts which are necessary for the disposal of the Revision Petitions are as under:

A complaint came to be filed by Smt. Amshumathi @ Amshu Shastry (not victim) who is the daughter of the victim, for the offence punishable under Section 354A and 506 of IPC against the second respondent herein on 26.8.2014 which was initially registered in Banashankari Police Station in Crime No. 219/2014, later on transferred to Girinagar Police Station. Crime. Girinagar police, after recording the further statement of the victim, invoked Sections 376(2)(f) of the IPC in Cr.No. 164/2015. The investigation was referred to Crime Investigation Department (hereinafter referred to as '**CID**' for short), Bengaluru. Matter was thoroughly investigated by CID and filed charge sheet against the second respondent Pontiff under Sections 376(2)(f), 376(2)(n) and 508 of the IPC.

3. On receipt of charge sheet, the learned Magistrate took cognizance of the matter and committed the matter to the Sessions Court. Presence of the second respondent was secured. At that juncture, accused-second respondent filed an application under Section 227 Cr.PC. seeking an order of discharge. State resisted the same by filing written objections. When the matter was under consideration, the victim filed a petition before this court in Criminal Petition No.1329/2016 which was dismissed by order dated 10.03.2016. Against the said order, the victim said to have approached the Hon'ble Supreme Court by filing a SLP. In the meantime, the learned Sessions Court proceeded with the hearing on discharge application filed by accused and by order dated 31.3.2016, learned Trial Judge allowed the application filed by the accused and acquitted the accused from the charges . Being aggrieved by the same, the victim as well as the State are before the Court in these revision petitions.

4. In the Revision Petition filed by the victim, following grounds have been raised:

- *The order of the learned Sessions Judge is bad in law and materials on record. As laid down in the statute under section 327 of Code of Criminal Procedure, 1973 as amended in 1983. and 2009 the enquiry into and trial should be conducted in camera and in camera trial shall be conducted by a Women Judge or a Magistrate. Even though such Women Judges were also available in Bengaluru City, it was not considered.*

- *The charge sheet filed by the 1st respondent had clearly indicated the offence falling within the purview of offences punishable under section 376(2)(f), 376(2)(n) and 508 of Indian Penal Code.*

- *It is strange that the learned Sessions Judge passed an order running into 117 pages. In the said order the learned Sessions Judge had discussed with regard to the statements made by the charge sheet witnesses during the course of the investigation. Further, the learned Sessions Judge also discussed about the scientific experts opinion. The entire order looks as if a mini trial has been conducted in the said case.*

- *The Hon'ble Apex Court as well as various High Courts have repeatedly held that, while passing an order on discharge application, the trial court shall not pass elaborate orders discussing about the statements of witnesses and other documents filed along with the charge sheet. Accepting the contention of the charge sheet on the whole, if the court comes to the conclusion that no case is made out, it is justified to pass an order of discharge. In the instant case the learned Sessions Judge discussed the statement of witnesses, the expert's opinion, the documents produced by the Prosecution and came to the conclusion that it is not a fit case for trial. In the ordinary course it is sufficient to set aside the order passed by the learned Sessions Judge.*

- *Further, it is also well settled that while passing the order for discharge, elaborate, detail discussions would either prejudice the case of the prosecution or the defense.*

- *It is interesting to note that the learned Sessions Judge had traversed into several extraneous aspects which are not found in the charge sheet. While order for discharge, the court should not have embarked into other materials which are not found in the charge sheet.*

- *The learned Sessions Judge had made out his findings to the effect that the act of sex between the petitioner and the are respondent is by consent. Further, it is found in the said order dated 31-3-2016 that "viewing from any angle, the acts of the sex did not amount to rape at all, but, ill-intimacy". Again this finding clearly goes to show that such ill-intimacy also amounts to rape as narrated by the Hon'ble Apex Court.*

- *The learned Sessions Judge also has shown that the relationship of the victim and 2nd respondent is that of continuously living in adultery also amounts to rape, when the victim herself disagrees the act committed by the accused.*

- *The Hon'ble Apex Court also settled down the issue that, in the charge sheet if it is found that there are strong suspicions, in the ordinary course, is sufficient to frame the charge for the offences that are disclosed in the charge sheet.*

- *The offences are serious in nature and the 2nd respondent claims to be highly religious, pious person having the status of a Mathadhipathy and there are devotees who trust and believe such persons. In the instant case, there is a serious complaint about the manner in which the 2nd respondent had committed the offence by making*

the ordinate devotee that he is the incarnation of Lord Rama. The devotees fall into the prey of which the 2nd respondent took advantage of the victim lady and constantly committed rape on helpless lady. She was unable to report, complain or bring into the attention of her husband or young daughters as the said 2nd respondent had imposed fear by threatening her that such disclosure would anger Lord Rama. Further the 2nd respondent posed himself that he himself is Lord Rama and he has God Gifted Powers in him.

- *Viewing from any angle, the order of the learned Sessions Judge is liable to be set aside and the 2nd respondent shall have to face the trial for the offences under section 376(2)(f)(n) and 508 of Indian Penal Code. Though the 1st respondent produced several citations which did not find place in the order and on the contrary the citations produced by the 2nd respondent was cited. It is strange that the learned Sessions Judge had not referred any of the citations referred therein by the 1st respondent."*

5. Likewise, in the Revision Petition filed by the State, following grounds have been raised:

- *"The impugned Order passed by the Court below thereby allowing the Petition filed under Section 227 of Cr.P.C. is illegal, invalid, contrary to law, facts and*

probabilities of the case and therefore, the same is liable to be set aside by this Hon'ble Court.

- *The Court below has completely lost sight of the scope of Section 227 of Cr.P.C. and exceeded its jurisdiction while considering the Petition filed under the said provision. The impugned order is perverse, illegal and liable to be set aside.*

- *The Court below has failed to appreciate that the scope of interference under Section 227 of Cr.P.C. while considering an application for discharge is of limited nature. The Court cannot sift the evidence one way or the other and test the worthiness of the prosecution material at the stage of considering an application for discharge under Section 227 of Cr.P.C. The approach of the Court below in allowing the Application filed by the Accused is not in accordance with law.*

- *The Court below has not at all appreciated the case of the prosecution in its proper perspective inasmuch as the Court has proceeded to pass the order in respect of the offences punishable under Sections 376(2) (F) and (N) and 506 of IPC, though the charge sheet was filed for the offences under Sections 376 (2)(f), 376(2)(n) and Section 508 of IPC, which establishes the lack of application of mind by the Court below.*

- *The Court below has grossly erred in disbelieving the statement of the victim of rape recorded under Sections 161 and 164 of Cr.P.C. The veracity of the statement of the victim in a case of this nature cannot be tested and discussed at the stage of framing of charges. Statement under Section 164 of Cr.P.C. having been recorded by the competent Magistrate, the same cannot be judged even before the prosecution has been given a fair chance to establish its case by way of trial, Such statement unless demolished, impeached by rebuttal evidence during the course of trial, cannot be doubted and demolished even before the victim is given a right to corroborate her previous statement. The findings given by the Court below are perverse, illegal and liable to be interfered with and set aside.*

- *The Court below has grossly erred in disbelieving the DNA Reports collected during investigation, establishing the facts that the DNA profile of the seminal stains detected on the panty liner recovered under seizure mahazar, wherein the blood samples of the accused and the DNA profile of the seminal stains detected on the panty liner of the victim is matching, which is a clinching evidence in the above crime. The finding of the Court below holding that the Investigating Agency and the FSL Authorities have joined hands to fabricate the evidence against*

the Accused is without any basis and the observations made in that regard are uncalled for and the same is a matter to be taken a serious note of.

- *The Court below has failed to appreciate that the expert opinion in the form of DNA Report has a presumptive value and prima-facie to be accepted to be true unless discredited or impeached in trial. In the case on hand, the Court below has substituted its own theory that unless there is a mixture of the fluid of the semen and ovum, the opinion of the FSL Authorities cannot be believed. The said reasoning of the Court below is again perverse, illegal and liable to be interfered with.*

- *The Court below grossly erred in holding that to constitute the offence of the above nature; the victim should have been held in captivity. The learned Judge has completely ignored the case of the prosecution and the offences charge sheeted against the Accused which does not contemplate captivity to be the ingredient of the offence and therefore the impugned order is bad in law.*

- *The Court below grossly erred in holding that 'the emission of semen constitutes not a part of the crime of rape alleged either positively or negatively. For the lack of this essential evidence, it is very difficult*

to hold that the Accused had indulged in sex with the victim and the evidence does not establishes the charges under Section 376(2) (F) and (N) of IPC.' The reasons assigned to come to the said conclusion by the Court below holding that the mixture of semen and ovum and mixture of epithelial cell of both victim and the Accused were not detected etc and further, holding that the presence of semen itself is not sufficient to hold that the Accused had indulged in sex with the victim and therefore, DNA profile of the blood of the Accused and the seminal profile of the disputed seminal stain is of no assistance to the prosecution that the Accused had committed a crime of rape on the victim etc. is not legal and proper. The said finding and approach of the Court below in discharging the Accused has resulted in miscarriage of justice.

- *The Court below grossly erred in holding that 'it is impermissible in law to dissect the two isolated acts from whole period and to judge it as rape' etc. That the said finding is contrary to law regarding the offence of rape and against various pronouncements of the Hon'ble Apex Court.*

- *The Court below grossly erred in holding that the 'seminal analysis test of the disputed stain and the DNA profile of the blood of the Accused cannot form basis to draw a conclusion term the acts of sex as a*

rape' and further erred in holding that 'the above DNA profile of Accused and disputed seminal analysis test are of little value to hold that the Accused had indulged in sex with the victim women.'

- *The Court below committed a grave error in holding that there is delay in lodging the complaint and thus making it a tool for discharging the Accused thereby, completely ignoring the background and the circumstances under which the offences are committed by the Accused. Even otherwise, the delay in a case of this nature cannot be equated with the case involving other offences. As held by the Apex Court in catena of decisions, there are several factors which weigh in the minds of the prosecutrix and her family members before bringing the crime, acts and misdeeds of an accused to light. The fear and apprehension in the mind of the prosecutrix would include the social stigma, character assassination etc., which the victim would have to face throughout her life.*

- *The Court below has exceeded its jurisdiction by making an attempt in minutely going into the evidence and the materials collected by the prosecution which is not the scope while appreciating the prosecution case before proceeding to frame charges against the Accused. A rowing enquiry cannot be done while considering an Application filed*

by the Accused under Section 227 of Cr.P.C. The evidence cannot be discussed before the Accused is sent for trial and said evidence or materials collected by the prosecution cannot be found fault with and the Accused cannot be discharged even without giving the prosecution an opportunity to establish its case.

- *The Court below grossly erred in holding that the material objects and the articles have been planted and fabricated.*

- *The Court below has committed a grave error in holding that the Complaint given by the prosecutrix and the daughter is nothing but a counter blast. The said reasoning is totally misconceived. The learned Judge has failed to appreciate that the prosecution has collected sufficient materials apart from the statements of the prosecutrix and several other witnesses to substantiate the charge. The said materials cannot be termed to be improbable and opposed and cannot be lightly discarded by holding that the same is unworthy of credence etc. Prima facie case has been made out against the Accused from the Charge Sheeted materials which are sufficient to proceed against the Accused.*

- *The entire findings of the Court below are only based on the arguments addressed by the defence*

and on presumption and assumptions, wherein the scope of interference under Section 227 of Cr.P.C. is limited to the materials available on record collected by the Investigating Agency during the course of investigation, further ignoring the fact that the above crime was still under investigation. The Hon'ble Court has exceeded its jurisdiction by discharging as well as acquitting the Accused by disbelieving the entire case of the prosecution by sifting the evidence against the prosecution without there being any contra evidence, by substituting its own theory and therefore the impugned Order is liable to be set aside.

- *The Court below, while considering the Petition filed under Section 227 of Cr.P.C., has committed a grave error by sifting and weighing material on record, contrary to various decisions of the Hon'ble Supreme Court, ultimately ordering that the Accused be acquitted of the offences punishable under Section 376(2)(F)(N) and 506 of IPC.*

- *The Court below, while exercising jurisdiction under Section 227 of Cr.P.C., lost sight of the fact that the Court should not make a rowing enquiry into pros and cons of the matter or weigh the evidence as if it is conducting a trial. At the initial stage, if there is a strong suspicion which leads the Court to think that there is a ground for presuming that the Accused has*

committed the offence, in that event, it is not open to the Court to hold that there is no sufficient ground for proceeding against the Accused. Sifting and weighing materials on record is only to see whether there is a prima facie case for charge and not whether sufficient evidence for conviction.

- *The Hon'ble Supreme Court in the case of 'Amit Kapoor Vs. Ramesh Chander & Anr.' reported in (2012) 9 SCC 460 while discussing the scope of Sections 227 and 228 of the Cr.P.C. has held thus*

> *"Court at that stage is not concerned with proof but merely strong suspicion that the accused has committed an offence. The final test of guilt is not to be applied at the stage of framing of a charge."*

It is further held that

> *"the words -there is ground for presuming that the Accused has committed an offence- referred in Section 228 of Cr.P.C. has inbuilt element of presumption. The Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste."*

- *The Hon'ble Supreme Court while considering the scope of Section 228 of Cr.P.C., has held that,*

> *"the meaning of the word "presume" means "to believe or accept upon probable evidence; to take as proved until evidence to the contrary is*

forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence are put to the Accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps, the trial concludes with the court forming its final opinion and delivering its judgment."

- *It is settled law that at the stage of framing charge, the Court has to look into prima facie material available against the Accused. If there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.*

- *The Court below failed to see that as held by the Hon'ble Supreme Court,*

  "framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings. Further no mini trial is contemplated at the stage of consideration of discharge application; the Court is not expected to go deep into the matter and hold that materials would not warrant conviction. Only

probative value of the material has to be gone into to see if there is a prima facie case for proceedings against the Accused."

- *The Court below has further erred in not appreciating that truthfulness of the allegation would not be determined at the stage of framing charges. That can be ascertained only after conclusion of the trial. The Court cannot speculate truthfulness or falsity of the allegations made against the Accused while framing of charge. Contradictions and inconsistencies in the statement of the witness cannot be considered at this stage for discharging the Accused, though they may be considered after conclusion of the trial.*

- *The Apex Court in the case State of Maharashtra Vs. Priya Sharan Maharaj & ors.' reported in (1997) 4 SCC 393 has held that,*

  "the Court has to sift evidence on record only for the limited purpose of observing whether a prima facie case made out against the accused. At the stage of framing of charges, the Court is not required to elaborate enquiry in undertake an sifting and weighing the material to arrive at the conclusion. "

- *The trial Court, by passing the impugned Order, has exceeded its jurisdiction by evaluating and scanning*

evidence and materials even before the commencement of the trial and virtually acquitting the Accused.

- *The learned Judge has failed to appreciate that offence of rape is a monstrous burial of dignity of a woman in the darkness and it is a crime not only against the holy body of a woman but also soul of the society. Besides psychological trauma, there is also social stigma to the victim and violation of her right to privacy. It is a blatant violation of woman bodily integrity. The act of rape in any form causes psychological and physical harm and degrades the victims soul, honour and dignity and leaves a permanent scar in her life. In such cases, the Courts should be more cautious to see that the accused should not be left scot free.*

- *The Court below has committed a grave error in passing the impugned Order of both discharging and acquitting the Accused which is an error apparent on the face of record. Discharge and acquittal of the Accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effects of "discharge" and "acquittal" are also different. In the present case, the Court below has exceeded its jurisdiction cast upon it in dealing with a Petition under Section 227 of the Cr.P.C. and passing the*

impugned Order which has resulted in miscarriage of justice.

- *Since, the impugned Order is passed on a Petition seeking discharge under Section 227 of Cr.P.C., the impugned final Order which is passed before the commencement of the trial of the case is amenable to the revisional jurisdiction of this Hon'ble Court under Sections 397 and 401 of Cr.P.C., the State is challenging the correctness, legality and propriety of the said final Order passed on a Petition filed under Section 227 of Cr.P.C. Hence, the Criminal Revision Petition is maintainable before this Hon'ble Court.*
- *The State has not preferred any other Petition or Appeal challenging the impugned Order before this Hon'ble Court or any other Authority."*

Reiterating the grounds urged in the Revision Petitions, on behalf of the victim, Sri M.T. Nanaiah, learned Senior counsel, contended that the impugned order is not only suffering from legal infirmities but also against all set of principles of law.

6. He also contended that the learned Trial Judge failed to appreciate the scope of the application seeking

discharge and has un-necessarily proceeded to discuss the merits of the matter and has recorded a finding which is almost in the nature of acquitting the accused. To substantiate said contention he also pointed out the operative portion of the impugned order which reads as under:

> *"The application under Sec. 227 of Cr.P.C. filed on behalf of the accused/Mathadipathi is hereby allowed as prayed for. The accused/Mathadipathi is ordered to be discharged from the case.*
>
> *Hence, the accused is ordered to be acquitted of the offences punishable under Sections 376 (2) (F) and (N) and 506 of Indian Penal code.*
>
> *The Bond and Bail bond of the accused shall continue till the conclusion of trial under Section 437(a) of Cr.P.C., completely.*
>
> *The accused is set at liberty."*

7. In support of his contention on behalf of the petitioner victim he has relied on the following judgments:

1. *"(2014) 1 SCC 663*
2. *(1998) 5 SCC 637*
3. *(2000) 10 SCC 518*
4. *Laws (SC)-2017-12-60, Para No.7(v)(vi)&8*

5. *Laws(SC)-2015-3-48, Para No.7, 13 & 14*

6. *Writ Appeal No.2843/2014 reported in 9th day of February 2015 (reported ILR (KAR)-2015)842.*

7. *AIR 2009 SC 887 Para 12*

8. *2005(1)SCC 568, paras No.11, 12, 14, 18, 30 & 31.*

9. *High Court of Kerala Cr. Rev. Pet. 404/2020 Paras 33, 34 (Reported in (2020)3 KLJ-878)*

10.AIR 2019 Supreme Court 1995 Paras 13, 14 & 15.

11.AIR 2019 Supreme Court 1857.

12.(1997)4 SCC 393 Paras 3, 6, 7 & 8.

13.WRIT PETITION NO.41508 OF 2015 (GM-RES)

14.WRIT PETITION NO.49254 OF 2014 (GM-RES)

15.*(2019) 2 Supreme Court Cases 752"*

8. Learned Government Advocate Sri Thejesh, on behalf of the State, while re-iterating the grounds urged in the Revision Petitions, contended that the learned Trial Judge has not properly considered the scope of the Petitions and has wrongly appreciated the materials on record while passing the impugned order and sought for allowing the revision petition.

9. In support of his arguments, he has relied on the following judgments;

- AIR 2021 SC 2351
- (1979) 3 SCC 4
- (1990) 4 SCC 76
- (1977) 2 SCC 699
- (2000) 6 SCC 338
- 2020(2) SCC Cri 361
- 2017(2) SCC 155
- 2013 (1) SCC Cri 986
- 2010 SCC Cri 1091
- 2016 (3) SCC Cri 407
- AIR 2007 SC 155
- (2019) 5 SCC 628
- ILR 2006 KAR 4632
- (2013) 9 SCC 293
- (2017) 13 SCC 369
- 2013 SCC Online Ker 24281
- 2013 SCC Online Kar 10054
- (2008) 14 SCC 1
- (2011) 3 SCC 351
- (2014) 5 SCC 108

10. Per contra, learned Senior Counsel representing the accused, Sri C.V. Nagesh, opposed the Revision Petitions on following grounds:

- *The victim has no locus standi to challenge the impugned order.*
- *A third party has no role to play in the intermediate stages of a trial.*
- *Scheme of Cr.PC., even after amendment does not permit the defacto complainant or victim to challenge each and every order that would be passed in the trial. The only right which is granted to the de-facto complainant or victim as the case may be, would be to challenge the final order. As such, the Revision Petition filed by the victim needs to be dismissed in limine.*
- *The charge sheet filed by the CID is not a charge sheet, or final report in accordance with law.*
- *CID is not a police station and as such, there is no compliance of Section 173 Cr.P.C., resulting in vitiating the very investigation. As such, the final report filed by CID cannot be taken note of by the court and as such, the further proceedings including the impugned order is non est and therefore, the charge sheet is to be discarded.*

11. He also points out that this court in **Criminal Petition No.3033/2014** in almost similar set of

facts, has already ruled that the CID cannot file a charge sheet under Section 173 of the Cr.PC., as the Officer of CID cannot be construed as Officer in charge of a Police Station as per Section 173 of Cr.P.C.

12. In reply, State has relied on the notification issued by the Home Secretariat dated 18th February, 1970 bearing No.HD 83 PEG 69 which reads as under:

> *"HOME SECRETARIAT*
>
> *NOTIFICATION*
>
> *Bangalore, dated 18th February 1979.*
>
> *S.O.424,- In exercise of the powers conferred by Sections 4, 5 and 6 of the Mysore Police Act, 1963 (Mysore Act 4 of 1964), the Government of Mysore hereby directs that whenever a Sub-Inspector of Police of the* ***State Criminal Investigation Department, investigates at any place in the State an offence, he shall be deemed to be an officer in charge of the Police Station*** *within the limits of which such place is situate.*
>
> *[No.HD 83 PEG 69]"*
>
> *(Emphasis added)*

13. Based on the said notification, State has contended that whenever a matter is investigated by CID of any Police Station within Karnataka, the Officer in

charge of such investigation by the CID would be deemed to be an Officer in-charge of such Police Station so as to enable him to file charge sheet.

14. Learned Government Advocate also points out that any other interpretation of the said notification, would result in far reaching consequences and therefore, sought for allowing the revision petition.

15. In view of the rival contentions, the following points would arise for consideration:

(i) Whether the Revision Petition filed by the victim is maintainable?

(ii) Whether the charge sheet filed by the CID investigating Crime No. 164/2014 pertaining to Girinagar Police Station is not a final report in accordance with law, and thus the entire trial stood vitiated and impugned order is non est?

16. In the case on hand, the following undisputed facts emerge:

- *Second respondent being the pontiff of Shree Ramachandrapura Mutt, Hania Post, Hosanagar, Shivamogga District, used to carry out number of*

religious programmes including 'Ramakatha' programme. Victim was part of said programme as a singer.. Serious disputes arose between victim and the second respondent including allegation of sexual relationship between victim and second respondent.

- *The news appeared in public media. There were serious allegations and counter allegations.*
- *Second respondent filed a complaint against the victim and others on 17.8.2018 in Crime No. 342/2014 on the file of Honnavara Police Station.*
- *On 26.8.2014, daughter of victim namely Amshumathi filed a complaint against the second respondent in Banashankari Police Station for the offence punishable under Section 354A and 506 IPC which was transferred to Girinagar Police Station in Crime No.164/2014.*
- *On recording the statement of the victim, Girinagar police included 376(2)(f) of the IPC against the second respondent.*
- *State Government decided to get the matter investigated through CID.*
- *CID took over the investigation and after thorough investigation filed charge sheet against the second*

respondent for the offence punishable under Sections 376(2)(f) and 376(2)(n) and 508 IPC.

- *Learned Trial Magistrate took cognizance and committed the matter to the Sessions Court. The learned Judge in the Sessions Court secured the presence of the accused-second respondent.*

- *The second respondent filed application under Section 227 Cr.PC., on 6.2.2016 which was opposed by the State.*

- *In the meantime, the victim challenged the proceedings before the Sessions Court in SC No.1242/2015 and the same came to be dismissed on 31.3.2016. Victim challenged the same before the Hon'ble Supreme Court in Special Leave Petition but no details are forthcoming.*

17. Learned Trial Judge taking note of the fact that there was no stay order, proceeded to hear the parties on application filed by the second respondent and by impugned order dated 31.3.2016 allowed the application filed by the second respondent - accused.

18. In the light of the above facts which are not in dispute, this court considered the rival contentions of the parties.

19. In order to address the issue of maintainability of the Revision Petition filed by the victim, it is necessary for this court to cull out the definition of victim as is found in Section 2(wa) of the Cr.PC., which reads as under:

> *"**Victim**" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;"*

20. Further, the right which is engrafted on a victim is found in Section 372 of Cr.PC., which reads as under:

> *"No appeal to lie unless otherwise provided.—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force: Provided that the victim shall have a right to prefer an appeal against any order passed by the Court*

acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

21. A bare reading of the above facts, makes it clear the intention of the legislature in conferring right to a victim to challenge the final order only on three conditions namely:-

(a) Against an Order of acquittal

(b) Inadequacy of sentence;

(c) Inadequacy of compensation.

22. It is also necessary for this court to consider the provisions of sections 301 and 302 of Cr.PC., and the same is culled out hereunder:

"301. Appearance by Public Prosecutors:

(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case, any private person instructs a pleader to prosecute any person in any Court, the

Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

302. Permission to conduct prosecution:

(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission: Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

23. On careful reading of the above provisions, it is crystal clear that under Section 301(2) of Cr.PC., in any case a private person may instruct a pleader to prosecute any person in any court, for which a Public Prosecutor or

Assistant Public Prosecutor is in-charge of the case, and pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor and may, with the permission of the court, submit written arguments after the closure of evidence.

24. However, the said right is a restricted right. The trial before the Magistrate may be permitted to be conducted by any person other than Police Officer below the rank of inspector.

25. When Cr.P.C. has been amended by amending the Act No.5 of 2009, which came into effect, on 31.12.2009, amending Act granted a special right for a victim under Section 372 of Cr.P.C. But, framers of legislation did not deem it fit to carve out a separate right for the victim or the complainant by amending Section 301 and 302 of Cr.P.C. However, a victim or a complainant should not be considered as alien or an outsider to the proceedings before the Trial Court. While victimology is developing concept in India, since there is a specific right

carved out by the legislature in granting only right of appeal, the same cannot be enlarged to the effect that the victim will have a right to challenge each and every order that would be passed by trial Court. More so, having regard to scope of revisional jurisdiction. Suffice to say that such a right is not recognized by the legislature, in not amending Sections 301 or 302 or 397 or 401 of Cr.PC.

26. In this regard, it is worthy to note the judgment of Hon'ble Apex Court in the case of ***Amir Hamza Shaikh and others vs. State of Maharashtra*** **and another** reported in (**2019) 8 SCC 387** wherein, the Hon'ble Apex Court has held as under:

> *"From the scheme of the Code the legislative intention is manifestly clear that prosecution in a Sessions Court cannot be conducted by anyone other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a Sessions Court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true*

facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor."

9) In a three Judge Bench of this Court in J.K. International v. State (Govt. of NCT of Delhi) & Ors.5, where offences under Sections 420, 406 and 120-B IPC were investigated and charge sheet filed 5 (2001) 3 SCC 462 on the basis of complaint of the appellant, the accused filed a petition for quashing of the charges in which the complainant wanted to be heard. The Public Prosecutor filed an application before the

Magistrate for amending the charge for incorporating two more offences which were exclusively triable by the Court of Sessions. The Magistrate dismissed the application but the said order was not challenged by the prosecution. It was held that the scheme in the Code indicates that the person who is aggrieved by the offence committed is not altogether wiped out from the scene of the trial merely because the investigation was taken over by the police. This Court while considering the provisions of sub-section (2) of Section 301 and Section 302, held as under:

"9. The scheme envisaged in the Code of Criminal Procedure indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge-sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the Sessions Court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the

trial. This can be discerned from Section 301(2) of the Code which reads thus:

"301. (2) If in any such case any private person instructs a pleader to prosecute any person in any court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the court, submit written arguments after the evidence is closed in the case."

10. The said provision falls within the Chapter titled "General Provisions as to Inquiries and Trials". When such a role is permitted to be played by a private person, though it is a limited role, even in the Sessions Courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal court merely because the case was charge-sheeted by the police. It has to be stated further, that the court is given power to permit even such private person to submit his written arguments in the court including the Sessions Court. If he submits any such written arguments the court has a duty to consider such arguments before taking a decision.

11. In view of such a scheme as delineated above how can it be said that the aggrieved private person must keep himself outside the corridors of the court when the case involving his grievance regarding the offence alleged to have been committed by the persons arrayed as accused is tried or considered by the court. In this context it is appropriate to mention that when the trial is before a Magistrate's Court the scope of any other private person intending to participate in the conduct of the prosecution is still wider… xx xx xx

12. The private person who is permitted to conduct prosecution in the Magistrate's Court can engage a counsel to do the needful in the court in his behalf. It further amplifies the position that if a private person is aggrieved by the offence committed against him or against anyone in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the court to consider his request. If the court thinks that the cause of justice would be served better by granting such permission the court would generally grant such permission. Of course, this wider amplitude is limited to Magistrates' Courts, as the right of such private individual to participate in the conduct of prosecution in the

Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor. The limited role which a private person can be permitted to play for prosecution in the Sessions Court has been adverted to above. All these would show that an aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them."

10) Both the aforesaid judgments came up for consideration before this Court in Dhariwal Industries Limited v. Kishore Wadhwani & Ors.6 wherein the learned Magistrate had held that the complainant is not alien to the proceeding and, therefore, he has a right to be heard even at the stage of framing of charge. The High Court modified the order and permitted the counsel engaged by the complainant to act under the directions of the Public Prosecutor in charge of the case. The Court held as under:

"13. Having carefully perused both the decisions, we do not perceive any kind of

anomaly either in the analysis or ultimate conclusion arrived at by the Court. We may note with profit that in Shiv Kumar [Shiv Kumar v. Hukam Chand, (1999) 7 SCC 467 : 1999 SCC (Cri) 1277] , the Court was dealing with the ambit and sweep of Section 301 CrPC and in that context observed that Section 302 CrPC is intended only for the Magistrate's Court. In J.K. International [J.K.

International v. State (Govt. of NCT of Delhi), (2001) 3 SCC 462 : 2001 SCC (Cri) 547] from the passage we have quoted hereinbefore it is evident that the Court has expressed the view that a private person can be permitted to conduct the prosecution in the Magistrate's Court and can engage a counsel to do the needful on his behalf. The further observation therein is that when permission is sought to conduct the 6 (2016) 10 SCC 378 prosecution by a private person, it is open to the court to consider his request. The Court has proceeded to state that the court has to form an opinion that cause of justice would be best subserved and it is better to grant such permission. And, it would generally grant such permission. Thus, there is no cleavage of opinion."

11) In Mallikarjun Kodagali (Dead) represented through LRs v. State of Karnataka & Ors. 7, three Judge Bench of this Court considered the victim's right to file an appeal in terms of proviso to Section 372 inserted by Central Act No. 5 of 2009 w.e.f. December 31, 2009. This Court considered 154th Report of the Law Commission of India submitted on August 14, 1996; the Report of the Committee on Reforms of Criminal Justice System commonly known as the Report of the Justice Malimath Committee; Draft National Policy on Criminal Justice of July, 2007 known as the Professor Madhava Menon Committee and 221st Report of the Law Commission of India, April, 2009, and observed as under:

"5. Parliament also has been proactive in recognising the rights of victims of an offence. One such recognition is through the provisions of Chapter XXI-A CrPC which deals with plea bargaining. Parliament has recognised the rights of a victim to participate in a mutually satisfactory disposition of the case. This is a great leap forward in the recognition of the right of a victim to participate in the proceedings of a non-compoundable case. Similarly, Parliament has amended CrPC introducing the right of appeal to the victim of an offence, in certain circumstances.

The present appeals deal with this right incorporated in the proviso to Section 372 CrPC. xx xx xx

8. The rights of victims, and indeed victimology, is an 7 (2019) 2 SCC 752 evolving jurisprudence and it is more than appropriate to move forward in a positive direction, rather than stand still or worse, take a step backward. A voice has been given to victims of crime by Parliament and the judiciary and that voice needs to be heard, and if not already heard, it needs to be raised to a higher decibel so that it is clearly heard."

12) The Court dealt with Justice Malimath Committee in the following manner:

"16. Thereafter, in the substantive Chapter on Justice to Victims, it is noted that victims of crime, in many jurisdictions, have the right to participate in the proceedings and to receive compensation for injury suffered. It was noted as follows:

"6.3. Basically two types of rights are recognised in many jurisdictions, particularly in continental countries in respect of victims of crime. They are, firstly, the victim's right to participate in criminal proceedings (right to be

impleaded, right to know, right to be heard and right to assist the court in the pursuit of truth) and secondly, the right to seek and receive compensation from the criminal court itself for injuries suffered as well as appropriate interim reliefs in the course of proceedings.""

13) In J.K. International, it has been held that if the cause of justice would be better served by granting such permission, the Magistrate's court would generally grant such permission. An aggrieved private person is not altogether eclipsed from the scenario when the criminal court take cognizance of the offences based on the report submitted by the police.

14) In Mallikarjun Kodagali, this Court approved the Justice Malimath Committee, wherein the victim's right to participate in the criminal proceedings which includes right to be impleaded, right to know, right to be heard and right to assist the court in the pursuit of truth had been recognised.

15) In view of such principles laid down, we find that though the Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate. The Magistrate may

consider as to whether the victim is in a position to assist the Court and as to whether the trial does not involve such complexities which cannot be handled by the victim. On satisfaction of such facts, the Magistrate would be within its jurisdiction to grant of permission to the victim to take over the inquiry of the pendency before the Magistrate.

16) We find that the High Court has granted permission to the complainant to prosecute the trial without examining the parameters laid down hereinabove."

27. Applying the legal principles enunciated in the above case to the case on hand, the Hon'ble Apex Court in the above case has cautioned the learned Trial Magistrate that an application filed under Section 301 of Cr.PC., cannot be allowed just for asking and the Magistrate is required to weigh the pros and cons of a given case while allowing or rejecting such an application by a reasoned order. When such is the caution by the Hon'ble Apex Court in a magisterial trial, having regard to the nature of proceedings before the Sessions Court, to be conducted only by the Public Prosecutor as is envisaged in Section

225 Cr.P.C, the Revision Petition at the instance of the victim cannot be countenanced in law. Further, in the case on hand, since the State has already preferred revision challenging the impugned order, victim cannot have any better right than the State to ventilate the injustice if any that has occasioned to the victim.

28. In future, on further development of victimology, legislature may carve out necessary rights for the victim as well even to challenge the orders that would be passed during the trial depending upon the need that may arise in a given case. Till such time, this court is of the considered opinion that courts cannot usurp on the area of legislature in carving out a right through judicial pronouncement. Therefore, it should be construed that no other right is granted to a victim under the scheme of amended Code of Criminal Procedure. In other words, when the framers of legislation themselves were clear in their mind as to the rights that would be available to a victim/de facto complainant, only to the above extent,

courts cannot recognize any other right for the victim. Consequently, there cannot be any right of a victim to challenge each and every order that would be passed during the trial. More over, the filing of the Revision Petition itself is not a right which is granted to a party to a criminal trial.

29. Having said thus, whether third party can have a right to challenge the order in a given case is doubted by the Hon'ble Apex Court in the judgment of T.N. Dhakkal Vs. James Basnett and another reported in (**2001) 10 SCC 419** wherein it is held as under:

> *"10. Was there any justification, in the facts and circumstances of the present case, for the High Court to exercise its discretionary jurisdiction on a petition filed by a third party and not the State, is the question requiring our consideration. Even though we have some doubts about the locus of Respondent 1 to file a criminal revision petition in the High Court, however, we refrain from dealing with that issue in this case as, in our opinion, the order of the High Court, for what follows is even otherwise not sustainable."*

30. Further, when the State has challenged the very same order which the victim is intending to challenge, a Revision Petition by a private person (victim) would be maintainable or not was a question before this court way back in the year 1981 itself.

31. In the case of M/s. Kerala Transport Company and Sri B. Somashekar and others, reported in ILR 1982 KAR 169, this court by order dated 25.9.1981 after considering various judicial pronouncements has held as under:

> *"13. Sections 397 or 401 Cr.P.C. confer general revisional jurisdiction on the High Court and Sessions Judge. Section 397 Cr.P.C. empowers the High Court and Sessions Judge to call for and examine the record of any proceeding before any inferior Criminal Court within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, as to the regularity of any proceedings of such inferior criminal court. Section 401 Cr.P.C. specifies the revisional powers of the High Court in dealing with any proceeding the record of which has been called for under Section 397 or which otherwise*

has come to its knowledge. In Pranab Kumar Mitra v. State of West Bengal, the Supreme Court has observed thus :-

"The revisional powers of the High Court vested in it by this section, read with S. 397, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rule of criminal jurisprudence, and that subordinate criminal courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code."

On the other hand, as already indicated, a right of appeal is a statutory right which has got to be recognised by the courts and the right of appeal, whenever exist, cannot be denied in exercise of the discretionary power even by the High Court. Therefore, the revisional powers of the Court are discretionary and are exercised for the ends of justice. The revisional power is again subject to three limitations, -

Firstly, no order can be made to the prejudice of the accused or any person, unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding a acquittal into one of conviction; and Thirdly, no revision can be entertained at the instance of a party who could have

appealed under the Code and has not appealed. It, therefore, follows that in an appeal the appellant is given a statutory right to demand adjudication upon a question of law or on a question of fact or on both; but in a revisional jurisdiction, the applicant has no right whatsoever beyond the right of bringing his case to the notice of the court and it is then for the court to interfere in exceptional cases where it seems to it that some real and substantial injustice has been done. Further, in an appeal, the appellant has to be heard as a matter of right but in a revision, the petitioner, as is clearly enacted in Section 403, Cr.P.C., has no such right unless his case falls under Section 398 or sub-section (2) of S. 401, Cr.P.C.

14-17. Now adverting to the cases on hand, it is seen that on 10-4-1976 one Sri Bhanu, the Deputy General Manager of Messrs. Kerala Transport Company (Regd.) Bombay, gave a complaint to the Superintendent of Police, Tumkur, stating the circumstances and how the accused conspired among themselves, forged certain valuable securities and cheated the Company and committed offence punishable under Sections 467, 468, 471, 477-A and 420 of the Penal Code all read with S. 120-B of the I.P.C. After receipt of the said complaint, the Superintendent of Police, Tumkur, referred the same with a covering letter dated 19-4-1976 to Dy. S.P. Tiptur for getting them registered and to get them

investigated by the Circle Inspector of Police, Tiptur. In pursuance of the same, a case was registered in Crime No. 36/76 of Tiptur Police Station against the accused for offence under Sections 467, 468, 471, 477-A, 420 and 120-B of the Penal Code and F.I.R. was forwarded to the Judicial Magistrate at Tiptur. After investigation, a charge-seet was filed against the accused for the aforesaid offences on 27-12-1977, which came to be registered in C.C. No. 1051 of 1977 on the file of the Judicial Magistrate First Class, Tiptur. It is, therefore, seen that the complaint filed by the Deputy General Manager of M/s. Kerala Transport Co., is an information under Section 154, Cr.P.C., relating to the commission of cognizable offences. Thereafter, the Station House Officer, Tiptur Police Station, acted under Section 157, Cr.P.C. and followed the provisions of Chapter XII of Cr.P.C. and finally submitted a report before the Magistrate under Section 173, Cr.P.C. Further, sub-clause (ii) of sub-section (2) of S. 173, Cr.P.C. provides that the officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given. Under sub-section (2) of S. 157, Cr.P.C., the officer-in-charge of the police station, if it appears that there is no ground for entering on an investigation, shall also forthwith notify to the informant, if any, in such manner as may be prescribed

by the State Government, the fact hat he will not investigate the case or cause it to be investigated.

Reading the aforesaid provisions, makes it clear that M/s. Kerala Transport Co., is the informant of commission of cognizable offence and after completing the investigation police filed the chargesheet. Similarly, an information of commission of cognizable offence by the accused, furnished by the State Bank of Mysore (H.O.) to Inspector General of Police on 23-4-1976, was registered in Crime No. 45 of 1976 and after investigation similar charge-sheet was filed against the accused for the aforesaid offences. Here again, the State Bank of Mysore is the informant. What flows from the aforesaid discussion is that the investigating agency, namely, Police, has taken the place of the informants and after investigation, charge-shees have been filed against the accused. Under these circumstances, the informants become witnesses to the prosecution. After filing the final report under Section 173, Cr.P.C., the State of the complainant before the Magistrate and it is then the duty of the State to prosecute the accused. The State thereafter steps into the shoes of the informant, and conducts the prosecution, in which case, the informant would not be having independent status to conduct the case to the finish. In other words, the informant could be termed as a private party who has set the law in motion. Therefore, the proceedings before the Magistrate in all the cases have proceeded on a

police report and if that is so a private party has no locus standi to invoke revisional jurisdiction. In Thakur Ram v. State of Bihar, , the Supreme Court while considering the revisional powers under Section 435, Cr.P.C. (Old Code) has observed thus :-

"In a case which has proceeded on a police report a private party has really no locus standi. No doubt, the terms of S. 435 under which the jurisdiction of the learned Sessions Judge was invoked are very wide and he could even have taken up the matter suo motu. It would, however, not be irrelevant to bear in mind the fact that the Court's jurisdiction was invoked by a private party. The criminal law is not to be used as in instrument of wrecking private vengeance by an aggrieved party against the person who according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book."

The ratio laid down by the Supreme Court makes it clear that tin criminal matters the party who is treated as the 'aggrieved party' is the State, which is the custodian of the social interests of the community at large; so it is the primary duty of the State to take all

the steps necessary for bringing the person who has acted against the social interests of the community to book. It is also observed that the criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person, who according to that party had caused injury to it. Applying the aforesaid ratio to the facts of the case, it is seen that M/s. Kerala Transport Co., the Court in all these revision petitions is the informant of commission of cognizable offences by the accused and that it has been aggrieved by the illegal acts of the accused along with the State Bank of Mysore and as such an aggrieved party. M/s. Kerala Transport co., ceases to be an aggrieved party the moment the State steps into its place by placing a charge-sheet against the accused and it is for the State of continue the proceedings to its conclusion. M/s. Kerala Transport Co., recedes to the position of a third party and if it is permitted to prosecute the revision petitions parallel to the revision petitions filed by the State in respect of the very same impugned orders, it would amount to permitting M/s. Kerala Transport Co., a third party, to use criminal law to wreck private vengeance against the accused. The state being saddled with the primary responsibility of safeguarding the social interests of the community at large is to take all necessary steps to book the person who has acted against the social interest of the community. If that is so, it cannot be said that M/s. Kerala Transport Co., could maintain and continue the

aforesaid revision petitions in view of the State having challenged the very impugned orders in Crl.R.P. Nos. 334 to 370 of 1979.

18. This view finds further support from the pronouncement in Bisheshar v. Rex, (AIR 1949 All 213) : (1949-50) Cri LJ 322) in which a Bench of the Allahabad High Court while considering the powers of the High Court under Section 439, Cr.P.C. (Old Code) has observed thus :

"A complainant can invoke the revisional jurisdiction of the High Court to bring to its notice that the case is one in which higher punishment should have been awarded .....

So far as the question a audience is concerned nobody has a right to be heard in a revision. It is purely discretionary with the High Court whether it will hear any party in a revision or not. But in the ordinary course the High Court does hear counsel appearing in revisions and in that respect a complainant can be in no worse position .....

The rights of a complainant are only subordinate to the rights of the Crown and it is for this reason that when the Crown takes up a case and the Government Advocate or other counsel appears on its behalf a complainant or his counsel has no right to audience unless permitted by the counsel of the Crown. But

where the Crown is taking no interest in any particular matter, the complainant can take action, if no prevented by law from doing so."

In the instant cases, State has preferred revision petitions thereby safeguarding the interest of M/s. Kerala Transport Co., in which case, the interests of the said private party has merged with the interest of the State, whose primary duty is to safeguard the interest of the wronged.

19. This takes us to the next point urged by Sri Jagirdar, namely, that under sub-section (2) of S. 401, Cr.P.C. no order under sub-section (1) of S. 401 shall be made to the prejudice of the accused or other person, unless he has had an opportunity of being heard either personally or by pleader in his own defence. The learned counsel fairly admitted that his party cannot be termed as an accused but he relied upon the words 'or other person'. Elaborating his contention what he submitted was that his party squarely falls under the category of 'other person' appearing in the said sub-section, in which case an order under sub-section (1) of S. 401, Cr.P.C. shall not be made unless he has had an opportunity of being heard. In other words, what he submitted was that he has a right of audience in case this Court interest. It is true that before amendment of the Code of Criminal were not in sub-section (2) of S. 439, Cr.P.C. (Old Code). After the amendment of the

Code the said words 'or other person' have been inserted in S. 401(2), Cr.P.C. (New Code). Relying on the said amendment, the learned counsel Sri Jagirdar submitted that the words 'other person' in the said-section includes the first informant or the complainant in which case no order under Section 401 could be passed by this Court to the prejudice of his clients unless they had no opportunity of being heard. There is no substance in the said contention of Sri Jagirdar. The High Court would exercise its revisional jurisdiction in respect of orders passed under Sections 107, 125 and its allied provisions and also under Section 145 and its allied provisions.

In these proceedings, the parties are not termed as 'accused' and on the other hand they are usually designated as 'petitioner' or 'respondent' used in sub-section (2) of S. 439 embraced 'parties' under the aforesaid and similar provisions where the parties are not accused of an offences. It is to obviate such an anomaly the legislature thought it fit to amend the said provision and incorporated the words 'or other person' to denote the parties appearing in the proceedings under the Code who are not accused of any offence. If that is so, the words 'or other person' implies 'person' who are similarly placed as an 'accused'. This is made clear by the following words in the said sub-section (2) of S. 401, namely, -

"No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence".

Defence could be of an accused or a person or party who is similarly placed and who is on the defensive. An informant or a complainant is not a person who is similarly placed and therefore M/s. Kerala Transport Co., in the instant case, cannot claim protection under sub-section (2) of S. 401, Cr.P.C.

20. Sri Jagirdar relied upon the decision in S. P. Dubey v. Narsing Bahadur, . The said High Court while considering as to who can apply in revision under 439 (Old Code) has observed thus :-

"Although revision applications are not usually accepted from third persons who are not directly affected by the illegality or irregularity the High Court has jurisdiction to entertain such applications from third parties if it chooses and there is no legal bar to their being entertained. Thus where the unfairness of the procedure adopted by the trial Magistrate is patent and glaring the High Court is entitled to take cognizance of the matter, whether brought to its notice by the actual parties to the case or by any one else. Section 439(5) only prevents a revision being filed at the instance of a party who could have appealed".

The court was considering a revision application filed by one S. P. Dubey, Ticket Examiner, who actually caught the accused while committing an offence under Section 112 of the Railways Act. In that case he was a witness. A preliminary objection was taken that he had no locus standi to file any such application since he was not a party to the case, but he was only a witness. As aforesaid thereafter the court observed that there was no legal bar to entertain his petition as under sub-section (5) of S. 439, Cr.P.C. (Old Code). In the said case, the complainant or the State had not preferred a revision against the order of acquittal passed by the trial Court and under those circumstances the Court found that a third party was not debarred in approaching the High Court under its revisional jurisdiction. The facts in that case differ from the facts appearing in the cases on hand. As the party who ought to have revisioned has filed the petitions, the revision petitions filed by M/s. Kerala Transport Co., are not maintainable in view of the Supreme Court ruling in Thakur Ram's case (1966 Cri LJ 700) referred to above. Likewise the decision cited by Sri Jagirdar in Raman v. Emperor (AIR 1929 Cal 319 at page 321) : (1930-31 Cri LJ 315 at pp. 317, 318) that an order of discharge of an accused person, many be interfered with at the instance of a third party when such an order has the effect of operating to the detriment of such third person and that he has in such cases a right to apply in revision against such an order, also does not apply to the facts of the case for the same

reasons stated above and further, the facts in the said case differ from the facts of the cases on hand."

32. Thus, applying legal principles in **Dhakkal's** case and **Kerala Transport Company's** case supra to the case on hand, on conjoint reading of the definition of victim and the right granted to a victim under the amended provisions of Cr.PC., referred to supra, since the State has already challenged the impugned order in Criminal Revision Petition No.550/2016, a separate Revision Petition by the victim in Criminal Revision Petition No.638/2016 cannot be countenanced in law.

33. Therefore, the Revision Petition filed by the victim is not maintainable. Accordingly, in view of the foregoing discussions, Point No.1 is answered in the Negative.

Regarding Point No.2:

34. A co-ordinate bench of this Court in Writ Petition No.56754/2018 while dealing with almost a similar aspects by order dated 13.12.2021 has ruled as under:

"It is germane to notice certain provisions of the Criminal Procedure Code to consider this point. Notification is defined under Section 2(m); Section 2(o) defines officer in charge of a police station; Police report is defined under Section 2(r); Police Station is defined under Section 2(s). These provisions read as follows:

*"2. **Definitions**.- In this Code, unless the context otherwise requires , -*

…. …. …

(m) "notification" means a notification published in the official gazetted.

…. …. …

*(o) **"officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;***

… …. …

(r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173;

(s) "Police station" means any post or place declared generally or specially by the State Government to be a police station, and includes any local area specified by the State Government in this behalf."

(Emphasis supplied)

Section 36 of the Cr.P.C. which deals with powers of superior officers of police reads as follows:

*"36. **Powers of superior officers of police**.- Police officers superior in rank to officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."*

The afore-quoted provisions are germane for consideration of this point. Investigation was handed over to an officer of CID. The officer of CID after collection of evidence frames a report and files the same before the Magistrate. The final report is the charge sheet. The issue whether the officer of CID is an officer in-charge of the police station or not is required to be considered.

15. The basic requirement of declaration of an officer of CID to be an officer in-charge of the police station, is, the office of CID should be declared to be a police station. Admittedly, there is no notification issued under Section 2(m) (supra) declaring office of CID to be a police station. Therefore, the officer in-charge in the office of the CID cannot be an officer in-charge of a police station, without at the outset the office of the CID being declared as a police station.

16. It is now necessary to consider the purport of Section 36. Section 36 of the Cr.P.C. depicts powers of superior officers of police. The Police Officers who are superior in rank of the officer-in-charge of a police station

may exercise the same power throughout the local area to which they are appointed as may be exercised by such officer within the limits of the station. What unmistakably emerges is that the police officer superior in rank to an officer in-charge of the police station will have to be a superior officer in-charge of a police station. The officer of the CID cannot mean to be a superior officer in-charge of a police station as the office of CID is not a police station.

17. The learned counsel for the 2nd respondent/complainant would contend that a notification is issued by Government empowering CID to conduct investigation in terms of a general order/standing order which empowers CID to investigate and file a report. Therefore, it becomes germane to notice the said notification issued by Government of Mysore under the Mysore Police Act on 18.02.1970. The said notification reads as follows:

"HOME SECRETARIAT

NOTIFICATION

Bangalore, dated 18th February 1979.

S.O.424,- In exercise of the powers conferred by Sections 4, 5 and 6 of the Mysore Police Act, 1963 (Mysore Act 4 of 1964), the Government of Mysore hereby directs that whenever a Sub-Inspector of Police of the ***State Criminal Investigation Department, investigates at any place in the State an offence, he shall be deemed to be an officer in charge of the***

Police Station *within the limits of which such place is situate.*

[No.HD 83 PEG 69]"

(Emphasis added)

A perusal at the Notification would indicate that investigation department is empowered to investigate at any place in the State an offence and for such investigation he shall be deemed to be an officer in-charge of the police station within the limits of which such place is situated.

18. On the strength of the said notification the contention advanced by the learned counsel for the complainant or the State is unacceptable for the reason that the investigation department which is now the CID, is directed to investigate under the Notification and not file a charge sheet. Filing of a charge sheet is only by an officer in-charge of a police station. Section 173 (2) of the Cr.P.C. deals with report of a police officer on completion of investigation and reads as follows:

"173. ***Report of police officer on completion of investigation****.-(1) Every investigation under this Chapter shall be completed without unnecessary delay.*

(1A) The investigation in relation to an offence under sections 376, 376A, 376 AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months from the

date ***on which the information was recorded by the officer in charge of the police station.***

(2) (i) ***As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government,*** *stating-*

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, weather with or without sureties;

(g) whether he has been forwarded in custody under section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860)

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom

the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient

in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).”

(Emphasis supplied)

Section 173 of the Cr.P.C. mandates that a final report/charge sheet shall be filed by an officer in-charge of a police station. It is now germane to notice the law, as laid down by the Apex Court, on the subject issue. The

Apex Court in the case of ***STATE OF BIHAR AND ANOTHER v. LALU SINGH*** [1] *has held as under:*

"11. *The Sta0te Government, in exercise of the powers under Sections 7 and 12 of the Police Act, 1861, has framed the Bihar Police Manual. Chapter 15 thereof deals with the constitution and functions of the Criminal Investigation Department. Rule 431, with which we are concerned in the present appeal, reads as follows:*

*"****431. (a)*** *Sub-Inspectors of the department deputed to districts have not the powers of an officer in charge of a police station nor of the subordinate of such an officer, unless they are posted to a police station for the purpose of exercising such powers. It follows that unless so posted they have not the powers of investigation conferred by Chapter XII CrPC and their functions are confined to supervising or advising the local officers concerned. If for any reason it be deemed advisable that a Sub-Inspector of the department should conduct an investigation in person, the orders of the Inspector General shall be taken to post him to a district where he shall be appointed by the Superintendent to the police station concerned. Such a necessity will not arise in case of Inspectors of CID as given in sub-rule (b) below.*

Sub-Inspectors of the department shall not be employed to conduct investigations in person unless such orders have been obtained.

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[1] ***(2014) 1 SCC 663***

(b) Under Section 36 CrPC Inspectors and superior officers of CID are superior in rank to an officer in charge of a police station and as such may exercise the same powers throughout the State as may be exercised by an officer in charge of a police station within the limits of his station."

Rule 431(b) makes the Inspectors and superior officers of CID superior in rank to an officer in charge of a police station and they have been conferred with the same powers as may be exercised by an officer in charge of a police station. This Rule, therefore, envisages that an Inspector of CID can exercise the power of an officer in charge of a police station.

12. Here, in the present case, as stated earlier, the investigation was conducted by the Inspector of CID and it is he who had submitted the report in terms of Section 173 of the Code. In view of what we have observed above, the Inspector of CID can exercise the power of an officer in charge of a police station and once it is held so, its natural corollary is that the Inspector of CID is competent to submit the report as contemplated under Section 173 of the Code. The case in hand is not one of those cases where the officer in charge of the police station had deputed the Inspector of CID to conduct some steps necessary during the course of investigation. Rather, in the present case, the investigation itself was entrusted to the Inspector of CID by the order of the Director General of Police. In such circumstances, in our

opinion, it shall not be necessary for the officer in charge of the police station to submit the report under Section 173(2) of the Code. The formation of an opinion as to whether or not there is a case to forward the accused for trial shall always be with the officer in charge of the police station or the officers superior in rank to him, but in a case investigated by the Inspector of CID, all these powers have to be performed by the Inspector himself or the officer superior to him. In view of what we have discussed above, the observations made by the High Court in the impugned judgment [Lalu Singh v. State of Bihar, Cri WJC No. 996 of 2007, order dated 23-3-2009 (Pat)] are erroneous and deserve to be set aside.

(Emphasis supplied)

The Apex Court in the afore-extracted judgment held that it was permissible for a superior officer to conduct investigation and file a final report since the Rules i.e., Rule 43(1)(b) empowered such an act. The corollary of the said finding would be that if the Rules permit such an investigation and filing of a final report would become sustainable.

Later, the Apex Court in the case of ***TOFAN SINGH v. STATE OF TAMIL NADU***[2]*, while considering Section 173 has held as follows:*

"77. *The Court in Mukesh Singh [Mukesh Singh v. State (NCT of Delhi), (2020) 10 SCC 120] then*

[2] ***(2021) 4 SCC 1***

set out the provisions of the NDPS Act and concluded: (SCC p. 160, para 10)

"10.3.6. Section 52 of the NDPS Act mandates that any officer arresting a person under Sections 41, 42, 43 or 44 to inform the person arrested of the grounds for such arrest. Sub-section (2) of Section 52 further provides that every person arrested and article seized under warrant issued under sub-section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued. As per sub-section (3) of Section 52, every person arrested and article seized under sub-section (2) of Sections 41, 42, 43, or 44 shall be forwarded without unnecessary delay to the officer in charge of the nearest police station, or the officer empowered under Section 53. That thereafter the investigation is to be conducted by the officer in charge of a police station."

(emphasis supplied)

78. The Court in Mukesh Singh [Mukesh Singh v. State (NCT of Delhi), (2020) 10 SCC 120] then went on to state: (SCC p. 161, para 10)

"10.3.8. … Section 53 does not speak that all those officers to be authorised to exercise the powers of an officer in charge of a police station for the investigation of the offences under the NDPS Act shall be other than those officers authorised under Sections 41, 42, 43, and 44 of the NDPS Act. It appears that the legislature in its wisdom has never thought that the officers authorised to

exercise the powers under Sections 41, 42, 43 and 44 cannot be the officer in charge of a police station for the investigation of the offences under the NDPS Act.

10.4. Investigation includes even search and seizure. As the investigation is to be carried out by the officer in charge of a police station and none other and therefore purposely Section 53 authorises the Central Government or the State Government, as the case may be, invest any officer of the Department of Drugs Control, Revenue or Excise or any other department or any class of such officers with the powers of an officer in charge of a police station for the investigation of offences under the NDPS Act. Section 42 confers power of entry, search, seizure and arrest without warrant or authorisation to any such officer as mentioned in Section 42 including any such officer of the Revenue, Drugs Control, Excise, Police or any other department of a State Government or the Central Government, as the case may be, and as observed hereinabove, Section 53 authorises the Central Government to invest any officer of the Department of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Department of the Central Government….or any class of such officers with the powers of an officer in charge of a police station for the investigation. Similar powers are with the State Government. The only change in Sections 42 and 53 is that in Section 42 the word "police" is there, however in Section 53 the word "police" is not there. There is an obvious reason as for police such

requirement is not warranted as he always can be the officer in charge of a police station as per the definition of an "officer in charge of a police station" as defined under Cr.P.C."

79. *On the basis of this judgment, Shri Lekhi argued that "investigation" under the NDPS Act includes search and seizure which is to be done by a Section 42 officer and would, therefore, begin from that stage.*

80. In this connection, it is important to advert first to the decision of this Court in H.N. Rishbud v. State of Delhi [H.N. Rishbud v. State of Delhi, (1955) 1 SCR 1150 : AIR 1955 SC 196 : 1955 Cri LJ 526] . This judgment explains in great detail as to what exactly the scope of "investigation" is under the CrPC. It states: (SCR pp. 1156-58: AIR pp. 200-202, para 5)

"5. … In order to ascertain the scope of and the reason for requiring such investigation to be conducted by an officer of high rank (except when otherwise permitted by a Magistrate), it is useful to consider what "investigation" under the Code comprises.

Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the

case and if necessary to take measures for the discovery and arrest of the offender.

Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes 'all the proceedings under the Code for the collection of evidence conducted by a police officer'. For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for use in the manner provided in this behalf in Section 162.

Under Section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under Section 54 of the Code. A police officer making an investigation is enjoined to enter his

proceedings in a diary from day-to-day. Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned.

It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefor under Section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under Section 173 of the Code in the prescribed form furnishing various details.

Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected

offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.

The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551."

This statement of the law was reiterated in State of M.P. v. Mubarak Ali [State of M.P. v. Mubarak Ali, 1959 Supp (2) SCR 201 : AIR 1959 SC 707 : 1959 Cri LJ 920] , SCR at pp. 211 & 212: AIR p. 711."

(Emphasis supplied)

In the aforesaid judgment the Apex Court considered a sub-ordinate officer conducting investigation, but held that the filing of the final report should be only from the hands of an officer in-charge of the police station.

19. Therefore, the unmistakable conclusion on a coalesce of the aforesaid direction, the notification, the investigation conducted by the officer of the CID and the law laid down by the Apex Court interpreting Section 173 of the Cr.P.C. would be that the chargesheet that is filed by the officer of the CID who is not the officer in- charge of a police station would stand vitiated. Accordingly, this point as well, is answered against the prosecution.

20. The submission of the learned High Court Government Pleader that this Court should hold its hands in considering and answering the subject issue on the score that, a Co-ordinate Bench has taken a similar view and the same is stayed by Hon'ble Apex Court is unacceptable, in the light of enunciation of law by the Apex Court in the afore-extracted judgments."

35. This court has carefully examined the aspects involved of the **Hebbar's** case supra and the case on

hand. It is pertinent to note that the allegations found in Hebbar's case was also against the second respondent herein indirectly.

36. On meticulous consideration of the entire material on record in the form of charge sheet filed by the CID, the contentions urged by parties before this court and before the co-ordinate bench of this court in Writ Petition No.56754/2018, referred to supra are practically similar. No doubt, counsel for the victim has also relied on the judgment of the Hon'ble Apex Court in the case of **Lalu Singh** supra. While supporting the arguments of State that head of investigation of CID is competent to file charge sheet.

37. It is pertinent to note that after rendering judgment in **Lalu Singh's** case, the Hon'ble Apex Court had an occasion to re-consider similar legal aspects in the case of **Mukesh Singh** and in **Tufan Sing**h's case. Since the law on the point is now settled in **Tufan Singh's** case and same has been rightly applied by the co-ordinate

bench of this court, this court has no hesitation whatsoever in accepting the view taken by the co-ordinate bench in **Hebbar's** case supra. No other grounds are urged on behalf of the parties to take a different view in the present case as well.

38. The issue with regard to an officer of Crime Investigation Branch (CID) could be treated as an Officer in-charge of a Police Station has been dealt in detail by the co-ordinate bench of this Court by considering the arguments put forth on behalf of parties and recorded a categorical finding that an officer of CID cannot be construed as an Officer in-charge of Police Station as is found in Section 173 of the Cr.PC., In order to avoid repetition and for the sake of brevity, this Court is not re-iterating the same reasons in this Revision Petition.

39. The contention urged on behalf of the State and the view taken by the co-ordinate bench of this Court will have far reaching consequences alone cannot be a ground to take altogether different view. It is also

pertinent to note that the State in a similar situation has notified CCB as a Police Station. Therefore, nothing prevented the State to issue similar notification in respect of the CID.

40. In view of the foregoing discussion, this court is of the considered opinion that the arguments put forth on behalf of the second respondent that the charge sheet filed by the Head of the investigation team of the CID before the jurisdictional Magistrate, is not a charge sheet in the eye of law as it is not filed by the Officer in-charge of a Police Station is to be accepted.

41. If the charge sheet is filed by a person who is not the authorised person to file a final report as is contemplated under Section 173 of Cr.P.C., the entire proceedings would definitely stands vitiated. Consequently, the further proceedings in pursuance of the said charge sheet is to be declared as *non est*.

42. However, there is some force with regard to the operative portion of the impugned order in as much as

while considering the application filed under Section 227 of Cr.PC., the learned Trial Judge ought not to have acquitted the accused. Since, the entire charge sheet stood vitiated and the proceedings in furtherance to such a charge sheet has been held as *non est*, there is no necessity for this court to consider the argument on behalf of the victim in this regard any further. For the sake of un-ambiguity, it is made clear that the impugned order being *non est* has no consequence whatsoever in law.

43. Accordingly, this court has no option but to answer the Point No.2 in the Affirmative and accordingly, it is answered.

44. In view of the findings of this court on points 1 & 2, pass the following:

ORDER

Criminal Revision Petitions are hereby dismissed.

Sd/-
JUDGE

PL*