IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1248 OF 2015

Harsh Mander S/o. Har Mander Singh
R/o. 6233/C6, VasantKunj,
New Delhi-110070 .. Applicant

v/s.

1. Amit Anilchandra Shah
R/o 10, Shiv-Kunj Society,
Near Sanghvi High School,
Hasmukh Colony,
Naranpura, Ahmedabad 380013

2.Central Bureau of Investigation,
Special Crime Branch, Mumbai

3.State of Maharashtra ..Respondents

Mr. Anand Grover, Sr. Advocate with Mr. Ayaz Khan i/b. Ms. Zehra Charania for the Applicant.
Mr. S.V. Raju, Senior Advocate with Ms Khushbu Jain i/b. Dhurve Liladhar & Co. for Respondent No.1
Mr. Anil Singh, Additional Solicitor General with Mr. S.K.Shinde Addl.PP. And Y.M. Nakhwa Addl. PP for CBI-Respondent No.2.
Ms R.V. Newton, APP for Respondent No.3-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
RESERVED : DECEMBER 23, 2015.
PRONOUNCED ON : MARCH 11, 2016.

JUDGMENT.

1. By this application filed under Section 482 of Cr.P.C. the applicant has prayed for quashing and setting aside the order dated 30.12.2014, discharging the respondent no.1, one of the accused in Sessions Cases Nos. 177 of 2013, 178 of 2013, 577 of 2013 and 312 of 2014 pending in the Sessions Court, Gr. Bombay at Mumbai. The applicant has also sought to direct an independent agency to investigate the circumstances under which Rubabuddin Shaikh, the applicant in Criminal Revision Application (St.) No. 413 of 2015, has approached this Court for withdrawal of the said revision application and the application for condonation of delay.

2. The brief facts necessary to decide this application are as under:

. The respondent no.1 had filed a discharge application in the aforestated sessions cases. By order dated 30.12.2014, the learned Sessions Judge, Gr. Bombay allowed the discharge application and consequently discharged him of the offences u/s. 120B, 364, 365, 368, 341, 342, 384, 302, 218 rw/. 201 of IPC. The said order was not challenged by the CBI, but was challenged by Rubabuddin, the brother of the deceased Shorabuddin, by filing Criminal Revision Application No.413 of 2015,

along with an application for condonation of delay being Cri. Application No.355 of 2015.

3. By application dated 5.10.2015, said Rubabuddin had sought to withdraw the said revision application as well as the application for condonation of delay. The said application was allowed by this court by order dated 23.11.2015. Accordingly, the application for condonation of delay was disposed of as withdrawn. Consequently, the revision application was also disposed of.

4. The applicant had filed this application during the pendency of the withdrawal application dated 5.10.2015, filed by Rubabuddin Shaikh. The applicant claims that the crime being a gross case of custodial murder has caused violence, trauma, fear and loss not only to the interested parties, but also to the entire law abiding society. The applicant claims that though there is sufficient prima facie material to proceed against the respondent no.1, the CBI did not challenge the discharge order which has resulted in abuse of process of law and gross failure of justice. The applicant claims that Rubabuddin, the brother of the deceased Sorabuddin, who had

challenged the said order had sought to withdraw the revision application as well as the application for condonation of delay, and as such it was left to the concerned citizens to pursue the matter in order to ensure justice in the larger interest of the society. The applicant claims that withdrawal of the revision application by Rubabuddin appears to be suspicious, under threats, inducement and promise. The applicant, who claims to be a socially responsible citizen has thus filed this application for the reliefs as stated above.

5. At the outset it may be mentioned that Mr. Raju, the learned Sr. Counsel for the respondent no.1 has submitted that the application is liable to be dismissed for suppression of material fact and for approaching the court with unclean hands. Elaborating this submission, the learned Counsel for the applicant has submitted that this court by order dated 21.10.2015 had dismissed a similar application filed by one Rajesh Kamble and that the applicant had suppressed the said material fact. Relying upon the decision ***Ram Naran Vs. Ramesh Narang 1995 (2) SCC 513*****,** the learned senior counsel for the Applicant has submitted that a litigant cannot play hide and seek with the court and must approach the court candidly and with clean

hands.

6. Whereas, the learned Sr. Counsel Shri Grover has submitted that the relief sought by Shri Kamble was entirely different from the relief sought by the applicant in this case. He has submitted that the order passed in Cri. Application No.420 of 2015 is not relevant for deciding this application.

7. It is to be noted that by application dated 5.10.2015 Rubabuddin Shaikh, the brother of the deceased Sorabuddin had sought leave to withdraw the said revision application as well as the application for condonation of delay. During the pendency of this application one Shri Rajesh M. Kamble, who claimed to be an alert citizen, had filed an application being Criminal Application No.420 of 2015, opposing withdrawal of the said application by Rubabuddin Shaikh. The said application was dismissed by this court on merits by order dated 21.10.2015, interalia holding that the applicant Rajesh Kamble was neither a victim nor an aggrieved person. It was further held that the said applicant had not demonstrated that his legal rights were impaired or that any harm, injury was caused him or likely to be caused due to withdrawal of the

Application. It was therefore, held that the Intervenor had no legal right to intervene in the proceedings, and accordingly the application filed by Rajesh Kamble was dismissed.

8. It is true that the applicant had not referred to this order in the present application. However, the same by itself would not be a ground to reject the application, moreover when the applicant has not obtained any favourable order by suppressing the said order dated 21.10.2015. The decisions relied upon by the respondent no.1 are therefore distinguishable and not applicable to the facts of the case. Consequently, the application cannot be dismissed on the ground of suppression of material facts.

9. Shri S.V. Raju, the learned Sr. Counsel for the respondent no.1 has also raised the issue of maintainability of this application as well as the locus standi of the applicant in filing the application under Section 482 of Cr.P.C. The learned Senior Counsel for the applicant as well as the learned Sr. Counsel for the respondent no.1 have stated that since the issue of maintainability goes to the root of the matter, the same should be decided at the threshold. Hence both the learned Senior Counsels were heard on these

preliminary objections raised by the learned Sr. Counsel for the respondent no.1.

10. Shri Grover, the learned Sr. Counsel for the applicant has submitted that the learned Sessions Judge has discharged the respondent no.1 by order dated 30.12.2014. The CBI had not challenged the discharge order, hence Rubabuddin, the brother of the deceased was compelled to file the revision application alongwith an application for condonation of delay. The learned Sr. Counsel has submitted that since Rubabuddin, the aggrieved party had already filed a revision application, it was not necessary for the Applicant to challenge the discharge order. He has submitted that filing of withdrawal application by the aggrieved party has necessitated the applicant, a concerned citizen, to file the present application.

11. The learned Senior Counsel for the applicant has further submitted that the opening words "**Nothing in this Code ...**" in section 482 of the Cr.P.C. is a non-obstante clause and it has overriding effect over other provisions including Section 397(2) of Cr.P.C. Mr. Grover, the learned senior counsel therefore, contends that even when the order is hit by

Section 397(2) Cr.P.C. the inherent powers under Section 482 Cr.P.C. are wide and can be exercised to prevent abuse of process of court or to secure ends of justice. In support of this contention, he has relied upon the judgments of the Apex Court in ***Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551, Dharival Tobacco Products Ltd & Ors. V. State of Maharashtra (2009) 2SCC 370. Raajkapoor vs. State (1980) 1 SCC 43***.

12. On the issue of locus standi, the learned Counsel for the applicant has submitted that the concept of locus standi is foreign to criminal jurisprudence. Relying upon the judgment of the Apex Court in ***A.R.Antulay v. Srinivas Nayak (1984) 2 SCC 500, Subramanian Swamy v. Manmohan Singh (2012) 3 SCC 64***, the learned Senior Counsel Shri Grover has submitted that any one can set the criminal law in motion and this principal remains intact unless contra indicated by statutory provision. The learned Senior Counsel has urged that when the crime is against the society it is the primary duty of the State to initiate prosecution and continue the same. Relying upon the view taken by the Apex Court in ***Sheonandan Paswan v. State of Bhiar (1987) 1 SCC 288*** (Justice Bhagwat & Justice Oza) which has been termed as minority judgment, he has

submitted that the citizen who finds that the offence against society is being wrongly withdrawn, is entitled to oppose the withdrawal. The learned Senior Counsel for the applicant therefore submits that the application is maintainable.

13. Mr. Raju, the learned Sr. Counsel for the respondent no.1 has further submitted that the order of discharge is not an interlocutory order and that the order is revisable under section 397 of Cr.P.C. Relying upon the decision of the Apex Court in ***Mohit @ Sonu v. State of U.P. (2013) 7 SCC 789***, the learned Sr. Counsel has submitted that the powers under Section 482 of Cr.P.C. cannot be resorted when there is specific provision in the code for the redressal of grievance of the aggrieved party.

14. The learned Sr. Counsel for the respondent no.1 has submitted that though the criminal law can be set in motion by any person, the criminal law does not recognize the right of a third party or a stranger to the proceedings to participate in further proceedings and that this right is conferred only to the State and in some cases to the victims or to the aggrieved persons. He has placed reliance on the decision of the Apex

Court in the case of ***Subramanium Swamy v. Raju (2013) 10 SCC 465***, in ***Karanjit Singh v. Union of India (1992) 4 SCC 666, Sulochana Devi v. District Magistrate 1993 (OLR) 47***. The learned counsel for the respondent no.1 has further submitted that the decision in Shivanandan Paswan (supra) is a minority view of the Bench and cannot be relied upon, and to fortify this contention he has relied upon the decision of the Delhi high Court in ***Peoples Union for Civil Liberties vs. Central Bureau of Investigation [1997 [(41) DRJ]***.

15. The learned Sr. Counsel for the respondent no.1 has submitted that Rubabuddin had filed his affidavit stating that he did not want to proceed with the matter. He was given ample opportunity and after being satisfied that his request for withdrawal was voluntary, he was allowed to withdraw the application for condonation of delay. Under the circumstances, granting the relief as sought in prayer clause (b) would tantamount to enquiring into the proceeding conducted by this court, which is impermissible in law. The learned counsel for the respondent no.1 has further stated that the High Court cannot invoke powers under section 482 of Cr.P.C. to direct a particular investigating agency to investigate a case or

to follow a particular procedure. He has submitted that granting such relief as prayed for in prayer clause(b) would be contrary to the ratio of the Honourable Apex Court in ***State of Punjab v. Dalvinder Pal Singh Bhullar [(2001) 14 SCC 270***].

16. The learned counsel for the respondent no.1 has further submitted that the application lacks bonafides and is filed with ulterior motive and this is evident from the fact that though the alleged incident had occurred in the year 2005, the applicant has shown interest in the proceedings only in the year 2015 and that too after rejection of Criminal Application No.420 of 2015 filed by one Rajesh Kamble in this very matter. Furthermore, several other accused have been discharged, but the applicant has targeted only the respondent no.1, which fact clearly shows malafides on the part of the applicant.

17. Mr. Raju, the learned Sr. Counsel for the respondent no.1 has further submitted that the applicant was a member of the National Advisor Committee appointed by the rival political party, which fact has been concealed in the application, and the said fact coupled with the fact that the

applicant has shown interest in the matter after a period of 10 years from the date of the alleged incident shows that the applicant lacks bonafides and that the application is politically motivated.

18. The learned Addl. PP Shri Singh and Shri Shinde for the CBI have also submitted that the applicant is not an aggrieved person and that Rubabuddin, who was the aggrieved person was permitted to withdraw the revision application, and hence the present application is not maintainable. Relying upon the decision of the Apex Court in ***Abdul Basit alias Raju and Others vs. Mohd. Abdul Kadir Chaudhary & Anr. (2014) 10 SCC 754, and Dalip Singh vs. State of U.P. & Ors.(2010) 2 SCC 114,*** learned Senior Counsel Shri Anil Singh has submitted that the application under Section 482 is not maintainable at the behest of the applicant who is totally stranger to the proceeding.

19. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties. The respondent no.1 was one of the accused in the aforestated sessions cases pending before the Session Court, Gr. Bombay. The allegations against the respondent no.1 in

brief were that, during the period 2004 to 2006 when he was the Minister of State (Home), State of Gujarat, he and some of the police officers of Gujarat and Rajasthan entered into a criminal conspiracy, to nab and kill one Sorabuddin. It is alleged that said Sohrabuddin was killed on 26.11.2005 in a fake encounter at the instance of the respondent no.1. Some days later, Kausarbi, the wife of Sorabuddin, was also killed and her body was burnt and disposed of in a river near village near Illol. About a year later, on 27.12.2006, Tulsiram Prajapati was also allegedly killed in a fake encounter.

20. The anti-terrorism squad of Gujrat Police had registered a criminal case vide Crime No. 15 of 2005 against Sohrabuddin under Section 120B, 121, 121A, 122, 123, 307, 186, 254 of IPC r/w. 25(1) of the Arms Act. After investigation, a brief summary report was filed before the learned Metropolitan Magistrate at Ahmedabad. By order dated 1.2.2007 the said crime was closed as abated.

21. Rubabuddin, the brother of Sorabuddin had written a letter to the Honourable the Chief Justice of India to direct an enquiry in the matter of

his brother's death and disappearance of his sister-in-law. The Honourable Supreme Court of India had directed the Director General of Police, Gujarat to inquire into the matter and pursuant to the directions, initially an enquiry was conducted and thereafter the C.I.D. Crime, Gujarat investigated the crime and had filed a charge-sheet against 13 accused persons. Not being satisfied with the action, Rubabuddin filed a Writ petition before the Apex Court with a request to direct the C.B.I. to investigate the crime afresh. By order dated 12.1.2010 in Writ Petition No.6 of 2007, the Honourable Supreme Court directed the C.B.I. to investigate into the matter and pursuant to the said directions, CBI authorities took over the investigation. In the course of the investigation, the CBI recorded statements of several witnesses. After completing the investigation, one main charge sheet and 3 supplementary chargesheets were filed before the Addl. Chief Metropolitan Magistrate, Mirzapur, Ahmedabad. By order dated 22.9.2012 the Honourable Supreme Court transferred the case to Mumbai.

22. The respondent no.1 had filed a discharge application under section 227 of Cr.P.C. The same came to be allowed by order dated 30.12.2014. The CBI did not challenge the said order. Nonetheless, Rubabuddin

Shaikh, the brother of the deceased Sorabuddin filed Criminal Revision Application No.413 of 2015 challenging the order of discharge of the respondent no.1. Filing of the application dated 5.10.2005 by Rubabuddin, seeking leave to withdraw the said revision application along with Criminal Application No.355 of 2015 for condonation of delay, has led to filing of the present application under Section 482 of Cr.P.C.

23. Relying upon the decision of the Apex Court in Dhariwal (supra) the learned Sr. Counsel Shri Grover has submitted that availability of an alternative remedy of filing the revision appliCation is not a bar for invoking jurisdiction under Section 482 of Cr.P.C. It may be mentioned here that in the case of Dhariwal the powers under Section 482 of Cr.P.C. were invoked to challenge the summons issued under Prevention of Food Adulteration Act/Rule. The said application was not entertained in view of availability of alternative remedy of filing a revision application under Section 397 of the Code. While setting aside the said order, the Apex Court held that :

> *"Undisputedly, issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. This court in a large number of decisions beginning from R.P.Kapoor vs. State of Punjab, to Som Mittal v. Govt. of*

> *Karnataka has laid down the criterion for entertaining an application under Section 482. Only because a revision petition is maintainable, the same by itself, in our considered opinion, wuld not constitute a bar for entertaining an application under Section 482 of the Code"* .

24. Section 482 Cr.P.C. spells out the inherent powers of the High Court as under :

> "Sec. 482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

25. The scope of section 482 vis-a-vis section 397(2) of the Code has been elaborately explained by a three Judge Bench of the Apex Court in ***Madhu Limaye vs. State of Maharashtra (1977) 4 SCC 551*** as under:

> "8*...At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions :-*
>
> *(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party ;*
>
> *(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;*
>
> *(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.*

9...

10... On a plain reading of section 482, however, it would follow that nothing in the Code, which would include subsection (2) of section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the 754 said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is-the harmonious way out ? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code. the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction...."

26. In ***Gian Singh v. State of Punjab (2012) 10 SCC 303,*** the question before the Apex Court was whether the inherent power of the High Court

could be invoked for quashing the criminal proceedings against an offender who had settled the dispute with the victim; in respect of the crime which was not compoundable under section 320 of the Code. A three Judge Bench of the Apex Court after analysing the previous decisions has reiterated as under :

> "53. Section 482 *of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions* of the Code *limits or restricts the inherent power. The guideline for exercise of such power is provided in* Section 482 *itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that* Section 482 *confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in* the Code *for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision* of the Code.
>
> *54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under* Section 482 *on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.*
>
> *55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of*

administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 *of the Code is of wide amplitude but requires exercise with great caution and circumspection.*

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. *No precise and inflexible guidelines can also be provided. "*

27. In ***Mohit @ Sonu & Anr. v. State of Uttar Pradesh & Anr. (2013) 7 SCC 789*** while considering the question whether the application under Section 482 of Cr.P.C. challenging the order of the Sessions Court passed under Section 319 of Cr.P.C. was maintainable, the Apex Court has held as under :

" So far as the inherent power of the High Court as contained in Section 482 of Cr.P.C. is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in

> *revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that the inherent power of the Court can ordinarily be exercised when there is no express provision in the code under which order impugned can be challenged."*

27. In the instant case, the applicant has invoked the power under Section 482 of Cr.P.C. to challenge the order of discharge dated 30.12.2014 whereby the learned Sessions Judge Gr. Bombay has discharged the respondent no.1 of the offences under Sections 120B, 364, 365, 368, 341, 342, 384, 302, 218 rw/. 201 of IPC. It is not in dispute that the said order is not an interlocutory order and could be challenged by invoking the revisional jurisdiction of the High Court under Section 397 /401 of Cr.P.C. Hence, in the light of the law laid down by a three Judge Bench of the Apex Court in the case of Madhu Limaye and which has been followed in Gian Singh and Mohit (supra), the powers under Section 482 cannot be resorted to in view of the said specific provision of the code for the redressal of the grievance particularly when the aggrieved party had already assailed the said order in revisional jurisdiction of this Court.

28. The Applicant had sought to invoke the power under section 482 of Cr.P.C. mainly on the ground that the Respondent No.1 through powerful network of forces at his command has prevailed upon the Rubabuddin Shaikh to withdraw the revision application. The Applicant has alleged that the withdrawal appears to be suspicious, under threat, inducement and promise.

29. It is no doubt true that the powers under sections 482 and 483 of the Cr.P.C. are wide. However, it is well settled that these powers should be exercised sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice or to prevent misuse of judicial mechanism or miscarriage of justice. In the instant case, Rubabuddin , the brother of the deceased who is an aggrieved party and at whose instance the crime was registered had by application dated 5.10.2015 which was supported by his affidavit, sought leave to withdraw the revision application as well the application for condonation of delay. Since said Rubabuddin was not represented by an advocate, no order was passed on the said application on the said date. On 6.10.2015 said Rubabuddin had remained present alongwith his counsel and had once again sought leave to withdraw the said

applications. The counsel for Rubabuddin had also stated that Rubabuddin had expressed his desire to withdraw the revision application. Rubabuddin who was present in the court, upon being questioned, had reiterated that he was seeking to withdraw the application voluntarily and that he was not under pressure, threat or coercion from any person to withdraw the said applications. Despite the said statement, no order was passed on the withdrawal application as it was felt necessary to ascertain whether the withdrawal was voluntary. Once again on 20.10.2015 Rubabuddin remained present before the court along with his counsel and reiterated his desire to withdraw the said applications. He was heard in person in the chamber to ascertain whether his decision to withdraw the application was voluntary. Since said Rubabuddin did not appear to be in a physically fit condition, further time of one month was granted. The records reveal that on 23.11.2015 said Rubabuddin had remained present before the court and had once again reiterated his request to withdraw the application for condonation of delay. He had also made a statement that he did not want to file any application in future in respect of the subject matter of the revision application. In view of the said statement made by Rubabuddin, this court (Coram: A.V. Nirgude, J.) allowed the withdrawal of the

application for condonation of delay and consequently, disposed of the revision application.

30. The records thus reveal that Rubabuddin, the aggrieved person had challenged the order of discharge dated 30.10.2014 by filing the revision application along with the application for condonation of delay. He had therefore, filed an application to withdraw the said revision application for condonation of delay. The aggrieved person was allowed to withdraw the application after giving him ample opportunities to reconsider his request and after being satisfied that the request was voluntary. Consequently, there is no merit in the grounds raised by the Applicant to invoke the inherent power of the Court.

31. Now, coming to the question of locus standi of the applicant, it is well settled that anyone can set the criminal law in motion. In ***A.R.Antulay v. Ramdas Sirinivas Nayak (1984) 2 SCC 500*** the Apex Court has held thus:

> *"It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The Scheme of the Code of*

> *Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus Standi of the complaint is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complaint, by necessary implication the general principle gets excluded by such statutory provision."*

32. These principles have been reiterated in ***Subramanian Swamy (2012) 3 SCC 64*** (supra) in following words:

> "*The right of private citizen to file a complaint against a corrupt public servant must be equated with his right to access the court in order to set the criminal law in motion against a corrupt public official. The right of access, a constitutional right should not be burdened with unreasonable fetters. When a private citizen approaches a court of law against a corrupt public servant who is highly placed, what is at stake is not only a vindiction of personal grievance of that citizen but also the question of bringing orderliness in society and maintaining equal balance in the Rule of law.*"

33. In Sheonandan Paswan (supra) the main controversy was whether the prosecution launched against Dr. Jagannath Mishra is rightly allowed to be withdrawn, or whether the withdrawal was invalid. The minority view, expressed by Justice Bhagwati on the question of locus standi in respect of interpretation and scope of section 321 was as under:

> "*Now if any citizen can lodge a first information report of file a complaint and set the machinery of criminal law in motion and his locus standi to do so cannot be questioned, we do not see why a citizen who finds that the prosecution for an offence against the society is wrongly withdrawn, cannot oppose such withdrawal. If he can be a complainant or initiator of criminal prosecution, he should be equally entitled to oppose withdrawal of the criminal prosecution which has already been initiated at his instance. If the offence for which a prosecution is launched is an offence against the society and not merely and individual wrong, any member of the society must have locus to initiate a prosecution as also to resist withdrawal of such prosecution, if initiated."*

34. The present case does not involve the issue of locus standi of a third party / stranger for setting the criminal law in motion The issue in the present case is whether the applicant, who is a total stranger to the proceedings can invoke the powers under Section 482 of Cr.P.C. to challenge the discharge order. Hence, the decisions in Antulay is not strictly applicable to the facts of the present case.

35. The observations in Sheonandan Paswan on the question of locus standi were restricted to the interpretation and scope of Section 321 of Cr.P.C.. The judgment does not lay down that a stranger to the proceeding can invoke the inherent powers of the court under Section 482 of Cr.P.C. for challenging the order of discharge particularly when the order of discharge

is revisable.

36. At this stage it would be advantageous to refer to the decision of the Apex Court in ***Subramanian Swamy (2013) 10 SCC 465*** (supra) wherein the Petitioner, in a public interest litigation had sought an authoritative pronouncement of the true purport and effect of the different provisions of the JJ Act so as to take a juvenile out of the purview of the said Act. The High Court had declined to answer the question raised on the ground that the Petitioners had an alternative remedy under the JJ Act against the order as may have been passed by the Board. In SLP filed before the Apex Court, an objection was raised as regards its maintainability on the ground that it suffers from the vice of absence of locus on the part of the petitioner. While considering this objection the Apex Court has observed thus:

> " *The administration of criminal justice in Indian can be divided into two broad stages at which the machinery operates. The first is the investigation of an alleged offence leading to prosecution and the second is the actual prosecution of the offender in a court of law. The jurisprudence that has evolved over the decades as assigned the primary role and responsibility at both stages to the State though we must hasten to add that in certain exceptional situations there is a recognition of limited right in a victim or his family members to take part in the process, particularly, at the stage of the trial The law, however, frowns upon and prohibits any abdication by the State of its role in the matter*

> *at each of the stages and, in fact, does not recognize the right of a third party/stranger to participate or even to come to the aid of the State at any of the stages.*"

On merits the SLP was held to be maintainable as the adjudication that the Petitioner was seeking had implications beyond the case/proceedings. It was held that the interpretations of the provisions of Juvenile Justice Act would have effect on all juveniles, who may come in conflict with law- both in the immediate and near future.

37. In Simranjit Singham & Karamjit Singh (supra) while considering the question whether a third party who is a total stranger to the prosecution culminating in the conviction of the accused, has any locus standi to challenge the conviction and sentence awarded to them, by invoking Article 32 of the Constitution, the Apex Court has reiterated that neither the provisions of the Code of Criminal Procedure, 1973 nor any other statute permits a third party stranger to question the correctness of conviction and sentence imposed by the court after the regular trial.

38. In Sulochana Devi (supra**)** the Petitioner who was not a party to the proceedings had invoked the powers of the High Court under section 482 of

the Cr.P.C. to challenge the order of issuance of proclamation under section 82 of the Code and attachment of the property. Raising the issue of locus standi, preliminary objection was raised to the maintainability of the application at the behest of the Petitioner. The Orissa High Court after considering the scope of section 482 of the Cr.P.C. as well as the decisions of the Apex Court in Madhu Limaye, Simerjeet Singh (supra) and in the case of the ***Janata Dal V/s. H.S. Choudhary & Ors. 1993 Cri.L.J. 600*** citation held that :

> *..."Even if there are million questions of law to be deeply gone into and examine in a criminal case registered against specified accused persons, it is for him/ them to riase all such questions and challenge the proceedings initiated at appropriate time before the proper forum and not for third parties either individually or under the garb of public interest litigation. ordinarily, the aggrieved party, which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order unless such party is a minor and in same person or is suffering from any other disability which law recognises as sufficient to permit another person e.g. next friend, to move the court in his behalf. "*

39. Reverting to the case in hand, it is not in dispute that the applicant is neither a victim nor an aggrieved person. He is not in any manner connected with the proceedings pending before the learned Sessions Court

Greater Bombay. The Applicant has not suffered any prejudice and has not demonstrated that his legal rights are impaired or any harm /injury is caused to him or is likely to be caused. The Applicant has thus not been able to demonstrate that his legal right has been invaded so as to give him locus standi to challenge the order.

40. The Applicant who claims to be a socially responsible citizen has allegedly filed this application for preventing abuse of process of court. It is pertinent to note that though the alleged incident had occurred in the year 2005, and no case was registered against the respondent no.1 and the other police officers, the applicant herein had not shown any interest to set the criminal law in motion. The said crime was registered only pursuant to the directions given by the Honourable Supreme Court in view of the letter of grievance made by Rubabuddin, the brother of the deceased.

41. It is also pertinent to note that the respondent no.1 was discharged by the order dated 30.12.2014. The CBI had not challenged the said order. The aggrieved person, Rubabuddin had also not filed any revision application within the period of limitation. Despite which the applicant,

who claims to be a socially responsible citizen, had not taken any steps to challenge the said order. It is to be noted that one Shri Rajesh Kamble, who was also not a party to the proceedings had opposed the withdrawal application filed by Rubabuddin Shaikh, in his capacity of being "an alert citizen". The said application was dismissed vide order dated 21.10.2015. The Applicant has shown interest in this matter only after the dismissal of the application filed by Rajesh Kamble.

42. It is also pertinent to note that several other accused in the said crime have also been discharged, but the applicant has not challenged the said orders, but has sought to challenge only the order whereby the present respondent no.1 has been discharged. The social interest and responsibility proclaimed by the Applicant is thus restricted only to the relief sought against the Respondent No.1 and does not even extend to other accused in the said case much less having larger implications beyond the case. This is a predominant distinguishing feature in the relief sought in the present case vis- a-vis a relief in Subramanian Swami (supra). The above facts coupled with the fact that applicant has shown sudden interest in matter after a period of over 10 years gives an indication of lack of bonafides.

Needless to state that the criminal law cannot be permitted to be used as an instruments to wreck vengeance due to personal or political grudge or to spite the accused for any other oblique purpose.

43. In the instant case, the State had not challenged the order of discharge. nonetheless the aggrieved person, Rubabuddin Shaikh, the brother of the deceased Shorabuddin had challenged the said order in revision application (st) 413 of 2015 which was filed along with the application for condonation of delay being application No.355 of 2015. As stated earlier this Court has allowed the aggrieved person to withdraw the said application after being satisfied that the request for withdrawal was voluntary and that the same was not made under threat, pressure, inducement or promise. Hence, this is not one of those rare cases which brings about a situation which is an abuse of the process of the Court, which necessitates exercise of inherent jurisdiction.

. Under the circumstances and in view of the discussion supra, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)