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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 19<sup>th</sup> February, 2016

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**W.P.(CRL) 3034/2015**

DEPUTY COMMISSIONER OF POLICE

..... Petitioner

Through: Mr.Vikas Arora and Mr.Radhika  
Arora, Advocates.

versus

BADLU PASWAN & ORS

..... Respondents

Through: Mr.Rahul Mehra, St.Counsel for the  
State/R-3 with Mr.Sanjay Lao, ASC,  
Mr.Shekhar Budakoti, Advocate and  
ACP N.S.Minhas, PS Madhu Vihar.

**PRATIBHA RANI, J. (Oral)**

1. Session case No.10/2012 (FIR No.64/2012 under Sections 302/392/201/411 IPC, PS Nand Nagri) pertaining to murder of Ashok (deceased) was solved by the investigating agency with all promptness. Prosecution of the two accused was conducted on the basis of material which the prosecution considered to be sufficient to connect them with offence to prove their guilt. On conclusion of trial, both the accused earned honorable acquittal. But what followed thereafter was persecution of prosecution and investigating agency.

2. The petitioner before this Court is DCP (North-East) who was compelled to impugn the directions issued by learned ASJ in the judgment

dated 23.02.2015 directing the Commissioner of Police for taking action against the IO as well re-investigation of the matter.

3. The directions/orders impugned before this Court are glaring examples of overstepping of jurisdiction not only by the learned ASJ-03 who passed the judgment but also by his successor who vigorously perpetuated the wrong which has been caused by his predecessor.

4. On the night intervening 14/15.02.2012, the Watchman/Guard at District Park, A-Block, Nand Nagri noticed a dead body in the park. Information was given to local police and recorded vide DD No.9A. The local police visited the spot and found the blood oozing from the nose of the dead body. One slip of Ramala Sehkari Chini Mill - Baghpat, one matchbox and one blood stained lungi were recovered from the spot. The investigating officer made all possible efforts to establish the identity of the deceased and for that purpose, hue and cry notices were published. On 18.02.2012, the identity of the deceased was established to be as Ashok and was identified by his brother Ishwar (PW-8) and daughter Pooja (PW-7) on the basis of photograph shown to them. On 19.02.2012 postmortem was conducted and opinion given about cause of death was asphyxia as a result of antemortem compression of neck by a hard blunt object.

5. Record also reveals that mobile handset of deceased was missing and on surveillance, it was found that the said handset was used on Mobile No.9540668276, SIM was in the name of one Bunty (PW-6) but used by Mohan Lal (PW-5), who were questioned. PW-5 Mohan Lal disclosed that this handset was offered to him for sale by accused Badlu Paswan but deal could not materialize. At the instance of Badlu Paswan, one blood stained lungi was recovered from the bushes of Tikona Park, A-Block, Nand Nagri.

At the instance of co-accused Rinku Sharma, one mobile phone of make NOKIA bearing IMEI No.351545/04/362914/5 was recovered. During TIP, the mobile phone was identified to be belonging to the deceased. Both the accused persons were sent to face trial.

6. During trial, twenty three witnesses were examined by the prosecution and none of them has been stated to have turned hostile. The learned ASJ was of the opinion that both the accused persons deserve honorable acquittal. Paras 67 to 71 of the judgment dated 23.02.2015 by learned ASJ are essential for disposal of this writ petition, hence extracted as under:-

*'67. In view of these overall facts and circumstances, I find that the prosecution has not only failed to prove its case against both the accused but, there is a high probability that the accused were falsely implicated in this case as the investigation in all angles of the matter was deliberately not done. Therefore, both the accused are honorably acquitted of the charges framed against them. Their bail bonds stand cancelled. Sureties stand discharged.*

*68. Before parting, I find it necessary that a finding regarding the conduct of investigation needs to be given in this case in view of the judgment of Hon'ble Supreme Court in **State of Gujarat vs. Kishanbhai, etc. 2014(1)SCALE 177** wherein it is held that:*

*"21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned officials may be*

*withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability....”*

69. *I am unable to fathom why the IO despite a clear doubt on his theory of how the deceased was murdered as according to him the deceased was strangled by a lungi whereas according to the autopsy surgeon the death of deceased was caused by compression of neck by a hard blunt object; where the deceased could have been murdered (as at around 11.30 pm, he was near his village); the motive to murder the deceased (As accordingly to the CDR, the deceased did not have any money on him); the persons who may have killed the deceased (As the deceased fearing his life was hiding from some persons in the sugarcane field and these persons could not have been the accused); the IO did not investigate all the angles in this case. I am constrained to observe that for reasons unknown the IO deliberately took line of investigation which resulted in false implication of accused and real culprits remaining at large.*

70. *In view of my observation into the conduct of the IO in the present case, I direct learned Commissioner of Police, Delhi to initiate an inquiry against the IO for his failure to discharge his duty and file an action taken report in this Court within one month. For that purpose, I find it necessary that the case diary of the police be paginated and place in a sealed cover, after taking photocopy of the file if the prosecution finds it necessary, and attached with this file.*

71. *As the accused have been honorably acquitted by the Court and this case had never been solved by the police, justice remains elusive to the deceased and his family members, who are victims of the crime. Therefore, I further direct the learned Commissioner of Police, Delhi to have this matter re-investigated under the direct supervision of an officer not below the rank of DCP so that the long arms of the law can reach the*

*real culprits. A compliance report be filed within one month from today. File be consigned to the record room.*

*Sd/-  
(Parveen Singh)  
ASJ-03 (NE)  
Karkardooma Courts  
Delhi'*

7. In terms of the directions given in the judgment dated 23.02.2015, a report (Annexure-C) was submitted by Addl. Commissioner of Police/Legal Cell detailing the steps taken in compliance of the observations made in the judgment and further time was requested to complete the inquiry/re-investigation.

8. On 23.05.2015, the Successor Court declined the request by passing the following order:-

*'23.05.2015*

*File is taken up on the report received from the office of DCP concerned.*

*Present : Sh.Zenul Abedeen, Ld. Addl. PP for the State.  
Sh.O.P.Sharma, ACP Shahdara is present on behalf of ACP  
Seema Puri*

*Inspector Tarkeshwar Singh, SHO PS Nand Nagri.*

*Inspector Sunil Kumar, PG Cell.*

*SI Chanchal Singh, PG Cell.*

*Arguments heard.*

*The ld. Predecessor directed the Commissioner of Police to have this matter re-investigated under the direct supervision of an officer not below the rank of DCP. A compliance report was to be filed within one month from the date of judgment i.e.23.02.2015. After the directions of Ld. Predecessor, this*

*report has been received on 23.05.2015. A further investigation is being carried out by Inspector PG Cell, but it is under the supervision of concerned DCP as this report has been forwarded by Addl. DCP (NE). The judgment pronounced by Ld. Predecessor shows that an enquiry against IO was directed with direction to file ATR within four weeks, but no such Action Taken Report has been filed before this Court, and during the course of arguments, it is submitted by ACP Seemapuri that show cause notice has been issued to the IO on 20.05.2015 which is in fact against the directions of the Ld. Predecessor. It is further argued that 8 weeks time was granted by Ld. Predecessor to conclude enquiry against the IO but no such written order is reflecting on the case file to substantiate the submission made by police officers appeared on behalf of the Commissioner of Police. **In fact, it is clear that the progress of re-investigation of the case under direct supervision of an officer not below the DCP, as directed in the judgment, and action taken report against IO is not trustworthy.** The Commissioner of Police is directed to conclude the reinvestigation of the case and to file action taken report against the IO within four weeks and to communicate to this Court positively, in failure, an officer not below the rank of DCP under whose directions re-investigation is being conducted shall appear before the Court for explanation. Copy of order be sent to the office of the Commissioner of Police and also to DCP concerned. File be consigned to Record Room.*

*Sd/-  
Devender Kumar  
ASJ-03 (NE)  
Delhi'*

9. On 19.06.2015, the Addl. Commissioner of Police/Legal Cell apprised the Successor Court that the Court order has been sent to Director (Prosecution) for obtaining his opinion with regard to filing an appropriate application before the High Court. Request was also made to the Court for

giving sufficient time to file a comprehensive report in the matter. DCP (North-East) was also directed to instruct ACP, Seema Puri to appear before the Court concerned to explain the above facts.

10. The request dated 19.06.2015 has been declined by the learned ASJ vide order dated 22.06.2015 which has also been impugned before this Court. The order dated 22.06.2015 reads as under :-

22.06.2015

*Present : Sh.Zenul Abedeen, Ld.Addl. PP for the State.*

*ASI Ramvir from PHQ Legal Cell.*

*File is taken up on a letter received from Police Head Quarters sent on behalf of the Commissioner of Police. Time has been sought on behalf of the Commissioner of Police on the ground that sufficient time may be granted for filing a comprehensive report in this matter as the matter has been referred to the prosecution for filing appropriate petition.*

*I have heard arguments and perused the record.*

*During passing of the judgment dated 23.02.2015, Ld. Predecessor directed the Commissioner of Police to re-investigate the matter and to file an Action Taken Report within one month. Thereafter again time was sought on behalf of the Commissioner of Police vide a separate letter which was put up on 23.05.2015 before this Court. On 23.05.2015, the Commissioner of Police was directed to complete the re-investigation of the case and to file Action Taken Report against the IO within four weeks, in default, an officer up to the rank of DCP who is supervising re-investigation was directed to appear for explanation. However, today again, this letter has been received. It appears that the office of the Commissioner of Police is just avoiding to take action in this case otherwise on the last date of hearing, progress of re-investigation was*

*submitted before this Court. Now, a plea has been taken that matter has been referred to the Director of Prosecution for further opinion. It is not a sufficient ground as opinion was to be sought on judgment before proceeding to re-investigation the matter. I found no ground to extend further time. The office of Commissioner of Police is directed to comply with the order dated 23.05.2015 in spirit otherwise consequences of not following directions shall follow.*

*File be consigned to record room.*

*Sd/-*

*(Devender Kumar)*

*Vacation Judge*

*ASJ-03/NE/22.06.2015'*

11. Though while considering the prayer made in this writ petition, there was hardly any necessity to go through the judgment dated 23.02.2015 by learned ASJ whereby he has honorably acquitted both the accused persons, but with a view to know the reasons behind observations against the Investigating Officer as well the opinion of the Court that real accused have not been sent to face trial, I have perused the entire judgment, running into 52 pages, fully conscious of the fact that it is not a petition seeking leave to appeal or an appeal against acquittal. The following points have been noted by the learned ASJ :-

- (i) In para 30 of the judgment, it has been noted by the learned ASJ that the mobile phone of the deceased was put on surveillance.
- (ii) On 27.02.2012 the IO received the call details of the said mobile phone and came to know about IMEI number of the handset.

- (iii) On 02.03.2012 Investigating Officer came to know that one mobile phone number of Idea subscriber was used on mobile instrument belonging to the deceased.
- (iv) On 03.03.2012 Bunty and Mohan came to the police station and informed that the said mobile instrument was offered for sale to Mohan by accused Badlu Prasad and Mohan used his SIM on that handset but the deal could not materialize.
- (v) In para 8 of the judgment, it is recorded that PW-5 Mohan Lal was having mobile Phone No.9546668276 and the SIM was taken on the ID proof of his friends namely Bunty.
- (vi) PW-6 Bunty confirms this fact.
- (vii) The mobile phone handset was identified by Pooja, daughter of the deceased.
- (viii) Mobile phone was recovered on arrest of accused Rinku Sharma on 03.03.2012.
- (ix) The postmortem report disclosed the cause of death due to compression of neck by hard blunt object, leaving no scope for the IO to seek opinion as to whether lungi was ligature material. The Court question could have been put to PW-21 Dr.Neha Gupta, who conducted the postmortem, in case of any clarification required by the Court about the manner of strangulation or material used.

**Remarks against Investigating Officer**

12. The record shows that the investigating officer was so alert that the day the handset was put into use by PW-5 Mohan Lal, IMEI number being on surveillance he was immediately made to join the investigation. Not only that, PW-6 Bunty, on whose ID proof SIM was issued which was used by

Mohan Lal, was also made to join the investigation. In respect of the dead body which was found lying in the park on the night intervening 14/15.02.2012, by 31.03.2012 i.e. within 1½ month not only the dead body was got identified but also the mobile phone of the deceased recovered which could not have been planted by the police and CDR also obtained. IMEI number was available with the IO much prior to 31.03.2012 i.e. the date when CDR was generated.

13. It is relevant to record that in para 69 and 70 of the judgment, the learned ASJ has virtually given a finding of guilt against the Investigating Officer for his failure to discharge his duty, directing the Commissioner of Police to initiate an inquiry against him for that. Finding against the Investigating Officer has been recorded by the learned ASJ without giving any opportunity of being heard to him. With such type of direction, there is hardly anything left at the discretion of the Inquiry Officer/Disciplinary Authority except to award the penalty. Unfortunately, the State or the Investigating Officer did not prefer any appeal against the judgment dated 23.02.2015 that resulted into honorable acquittal of the two accused persons. The learned ASJ failed to take note of the fact that IMEI number of any mobile phone can be retrieved immediately on recovery of the phone and not after the CDR is received from the Service Provider. Further the Investigating Officer was not an eye witness and cause of death was to be ascertained after the postmortem examination. When the postmortem report disclosed the cause of death being caused due to asphyxia as a result of antemortem compression of neck by a hard blunt object, where was the occasion for the Investigating Officer to seek opinion about the lungi being used for commission of offence.

14. It is worth noting here that while issuing directions to initiate action against the Investigating Officer after observing that for the reasons unknown, he took line of investigation that resulted into false implication of both the accused, learned ASJ has placed reliance on para 21 of the report *State of Gujarat vs. Kishanbhai, etc. 2014(1)SCALE 177* ignoring the preceding and succeeding paras laying down the procedure and guidelines to be followed.

15. In the case *State of Gujarat vs. Kishanbhai etc. (2014) 5 SCC 108*, the Supreme Court had noted the impression of Fudging and padding statement of witnesses and while dismissing the appeal expressed their anguish by making following observations :-

*'15. The investigating officials and the prosecutors involved in presenting this case, have miserably failed in discharging their duties. They have been instrumental in denying to serve the cause of justice. The misery of the family of the victim Gomi has remained unredressed. The perpetrators of a horrendous crime, involving extremely ruthless and savage treatment to the victim, have remained unpunished. A heartless and merciless criminal, who has committed an extremely heinous crime, has gone scot-free. He must be walking around in Ahmedabad, or some other city/town in India, with his head held high. A criminal on the move. Fearless and fearsome. Fearless now, because he could not be administered the punishment, he ought to have suffered. And fearsome, on account of his having remained unaffected by the brutal crime committed by him. His actions now, know of no barriers. He could be expected to act in an unfathomable savage manner, incomprehensible to a sane mind.*

*16. As we discharge our responsibility in deciding the instant criminal appeal, we proceed to apply principles of law, and draw inferences. For, that is our job. We are trained, not to be swayed by mercy or compassion. We are trained to adjudicate*

*without taking sides, and without being mindful of the consequences. We are required to adjudicate on the basis of well drawn parameters. We have done all that. Despite thereof, we feel crestfallen, heartbroken and sorrowful. We could not serve the cause of justice, to an innocent child. We could not even serve the cause of justice, to her immediate family. The members of the family of Gomi must never have stopped cursing themselves, for not adequately protecting their child from a prowler, who had snatched an opportunity to brutalise her, during their lapse in attentiveness. And if the prosecution version about motive is correct, the crime was committed for a mere consideration of Rs. 1,000/-.'*

To tackle such situation, certain guidelines were laid by the Supreme Court in paras 19 to 21 of the report as under :-

*'19. The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct, that on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured, that the evidence gathered during investigation is truly and faithfully utilized, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigors of criminal prosecution. By following the above procedure, in most criminal prosecutions, the concerned agencies will be able to successfully establish the guilt of the accused.*

*20. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is*

served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or

*blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.'*

The Supreme Court while issuing above directions neither directed for 're-investigation' of the case nor any finding of guilt was recorded in the matter against the Investigating Officer at his back. The limited observations made in para 23 of the report are to the following effect :-

*'23. We hope and trust the Home Department of the State of Gujarat, will identify the erring officers in the instant case, and will take appropriate departmental action against them, as may be considered appropriate, in accordance with law.'*

16. Thus, the learned ASJ failed to appreciate and apply the observations made in *State of Gujarat vs. Kishanbhai, etc* (Supra) in correct perspective.
17. It has been held in various decisions by the Supreme Court that in case of lapse being found on the part of investigating agency, it can be recorded

but directing departmental proceedings virtually amounts to holding person guilty which is not a permissible course.

18. In the case *State of West Bengal and Ors vs. Babu Chakraborty, (2004) 12 SCC 201*, the Supreme Court while dealing with the judgment of Calcutta High Court in a case relating to NDPS Act held as under:-

*“31. As rightly pointed out by Mr Tapash Ray, the observations of the High Court in the impugned judgment passing strictures against the appellants have been made while against the record of the case and penalise the two police officers who were discharging their official duties as per the law. The action taken by Appellants 2 and 3 has been taken in the case of discharging of their official duties. While discharging their duties, the official would have violated certain provisions. That does not, in our opinion, enable the court to pass strictures against the officials and order compensation. There is no evidence or circumstance to show that there were any mala fides on the part of these officers.*

*32. Likewise, the direction issued by the High Court directing the State of West Bengal to pay compensation of Rs 1 lakh to the respondent-accused giving liberty to the State to realise or to recover the whole of such compensation from Appellant 2 Mr K.L. Meena, a member of the Indian Police Service, is wholly unjustified.*

*33. In our view, officers who are discharging their statutory duties cannot be blamed when the action taken by the State Government and the officials concerned is for implementing the objects behind the Act by resorting the check (sic) and to direct the raids, etc. The High Court has further penalised the State Government and its officers for such an action. Since the strictures passed against them are wholly unjustified, we have no hesitation in expunging the remarks.”*

19. The learned ASJ by seeking action taken report in respect of the action against the Investigating Officer encroached upon the administrative power of the Disciplinary Authority. He not only started monitoring the disciplinary proceedings but also “re-investigation” which is not even permissible under the law.

**Re-investigation**

20. In para 71 of the judgment, the learned ASJ has directed the Commissioner of Police to have re-investigated the matter. Under the Code of Criminal Procedure, no such power is vested in learned ASJ so as to order reinvestigation. It is difficult to comprehend as to what learned ASJ expected investigating agency to do while ordering reinvestigation and submission of compliance report within a month from the date of order.

21. Under the Code of Criminal Procedure, re-investigation cannot be ordered. The legal position in this regard has been considered by the Supreme Court in *Mithabhai Pashabhai Patel & Ors. vs. State of Gujarat (2009) 6 SCC 332*. The appellants before the Supreme Court were facing prosecution in Sessions Case No.70/2002 for commission of offence punishable under Sections 302/307/395/396/397/201/435/324/143/147/148/149/153-A/341/ 337/427 and 120-B IPC as well as under Section 135 of the Bombay Police Act in the occurrence dated 20.08.2002. During investigation, they were arrested and subsequently released on bail by the High Court. After completion of investigation, chargesheet was submitted and case was committed to the Court of Sessions wherein they were facing trial.

22. In the above noted case, the question involved was about the right of the investigating agency to seek police custody after the constitution of

special investigation team by the Supreme Court vide order dated 26.03.2008 passed in W.P.(Crl.) No.109/2003. Pursuant to the said order, the State of Gujarat issued a notification dated 01.04.2008 constituting a special investigation team to investigate into cases arising out of Godhra incident and communal riots erupted thereafter in the year 2002.

23. Although the learned Sessions Judge declined the prayer of the investigating agency to grant police custody, the High Court granted permission for custodial interrogation. The order passed in W.P.(Crl.) No.109/2003 for constitution of special investigation team to investigate into the cases arising out of Godhra incident and communal riots erupted thereafter in the year 2002, was clarified that there was no direction for re-investigation. Relevant para 17 to 19 of the report are extracted as under:-

*'17. It is, however, beyond any cavil that `further investigation' and `re- investigation' stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely under Articles 226 and 32 of the Constitution of India could direct a `State' to get an offence investigated and/or further investigated by a different agency. Direction of a re-investigation, however, being forbidden in law, no superior could would ordinarily issue such a direction.*

*Pasayat, J. in Ramachandran v. R. Udhayakumar 2008CriLJ4309 , opined as under:*

*7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under Sub-section (2) of Section 173 of the Code, the police has right to further investigate under Sub-section (8), but not fresh investigation or reinvestigation...*

*18. A distinction, therefore, exists between a re-investigation and further investigation.*

*19. If the investigating authority, in terms of the provisions of the Code, could not ask for re-investigation, we would have to proceed on the basis that this Court in its order dated 26<sup>th</sup> March, 2008 only directed further investigation.*

24. In view of settled legal position, the learned ASJ had no power to order re-investigation. Investigation in case of murder of Ashok was completed and chargesheet was filed. After the case was committed to the Court of Sessions, the learned ASJ on recording his satisfaction that apart from the persons sent for trial, other persons with whom the deceased was last seen or some other persons were also involved, was vested with the power to summon them as accused.

25. In the case of ***Kishun Singh v. State of Bihar (1993) 2 SCC 500*** the scope and power of a Court Under Sections 193, 209 and 319 have been discussed as under:

*16. We have already indicated earlier from the ratio of this Court's decisions in the cases of Raghubans Dubey and Hareram that once the court takes cognizance of the offence (not the offender) it becomes the court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the court's duty to summon them to stand trial along with those already named, since summoning them would only be a part of the process of taking cognizance. We have also pointed out the difference in the language of Section 193 of the two Codes; under the old Code the Court of Session was precluded from taking cognizance of any offence as a court of original jurisdiction unless the accused was committed to it whereas under the present Code the embargo is diluted by the replacement of the*

*words the accused by the words the case. Thus, on a plain reading of Section 193, as it presently stands once the case is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case Under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record. The Full Bench of the High Court of Patna rightly appreciated the shift in Section 193 of the Code from that under the old Code in the case of Sk. Lutfur Rahman as under:*

*“Therefore, what the law Under Section 193 seeks to visualise and provide for now is that the whole of the incident constituting the offence is to be taken cognizance of by the Court of Session on commitment and not that every individual offender must be so committed or that in case it is not so done then the Court of Session would be powerless to proceed against persons regarding whom it may be fully convinced at the very threshold of the trial that they are prima facie guilty of the crime as well ....Once the case has been committed, the bar of Section 193 is removed or, to put it in other words, the condition. therefore stands satisfied vesting the Court of Session with the fullest jurisdiction to summon any individual accused of the crime.”*

*We are in respectful agreement with the distinction brought out between the old Section 193 and the provision as it now stands.’*

26. Re-investigation into the matter could not have been ordered by learned ASJ as no such power is vested with any Court under the provisions of Code of Criminal Procedure. The situation in which the learned ASJ has directed for re-investigation could have been dealt by him as the 'long arm of law' referred to by the Trial Court in its judgment, was of the Trial Judge and not of the investigating agency. They had already completed the investigation and on the basis of investigation, sent two accused persons namely Badlu Paswan and Rinku Sharma for trial.

27. Legal position is well settled that after the committal of the case, Court of Sessions becomes the Court of Original Jurisdiction capable of taking cognizance.

28. In the case of *Raghubans Dubey v. State of Bihar* AIR 1967 SC 1167, the Supreme Court has held that once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders and once he comes to the conclusion that apart from the persons sent by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.

29. The investigating agency and/or Court can exercise the jurisdiction as conferred by the Code of Criminal Procedure. The Court of Session is not vested with any inherent power which can be exercised by the High Court under Section 482 of Code of Criminal Procedure.

30. Thus, the observation made by learned ASJ in judgment dated 23.02.2015 passed in Session Case No.10/2012, being made without any power vested in the Court under the Code of Criminal Procedure, has to be set aside.

31. It is surprising that the opinion sought by the concerned DCP from Directorate of Prosecution has been prima facie considered as contempt of Court. If there was a delay on the part of investigating agency to seek any opinion from Directorate of Prosecution, to avail their remedy before the High Court, by no stretch of imagination it amounts to contempt of Court. The delay, if any, in seeking opinion was not required to be explained to the concerned Court which had already disposed of the matter but to the High Court while filing petition on the opinion given by the Directorate of Prosecution. The reasons for imposing cost of ₹25,000/- on Directorate of Prosecution is beyond comprehension.

32. Since the observation/direction in the judgment dated 23.02.2015 from paras 69 to 72 as well as the subsequent orders dated 23.05.2015 and 22.06.2015 are not legally sustainable under the law, the same are hereby set aside. The order dated 02.12.2015 imposing cost of ₹25,000/- on the Directorate of Prosecution is also set aside.

33. Various instances of overstepping the jurisdiction have come before this Court. The inherent power vested in this Court under Section 482 CrPC can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any Court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings.

34. This Court while exercising power under Section 482 CrPC considers that it is high time that judicial officers be sensitized about the need to

exercise judicial restraint while passing judgments by nor making uncalled for observations on the performance, competence of conduct of a person unless it is required for deciding the case. Whenever a lapse is noted on the part of investigating or prosecuting agency, guidance can be taken from Delhi High Court Rules Chapter-1-H paragraph 6 which reads as under :-

*“9. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. Courts are temples of justice and such respect they also deserve because they do not identify themselves with the causes before them or those litigating for such causes. The parties before them and the counsel are considered to be devotees and pandits who perform the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine.*

*10. Courts are not expected to play to the gallery or for any applause from anyone or even need to take up cudgels as well against anyone, either to please their own or anyone's fantasies. Uncalled-for observations on the professional competence or conduct of a counsel, or any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case.”*

35. A copy of this order be transmitted to all the District & Sessions Judges with direction to sensitize the officers on the above issues during their monthly meetings and interaction with the officers.

36. A copy of this order alongwith copy of judgment dated 23.02.2015 passed by Sh.Parveen Singh, ASJ-03, (NE), Karkardooma Courts, Delhi,

orders dated 23.05.2015, 22.06.2015 & 02.12.2015 passed by Sh.Devender Kumar, ASJ-03/NE, Karkardooma Court, Delhi shall be placed before the Inspecting Committee of Sh.Parveen Singh, Addl. Sessions Judge and Mr.Devender Kumar, Addl. Sessions Judges.

**Crl.M.A. No.18642/2015 (Stay**

Dismissed as infructuous.

**PRATIBHA RANI, J.**

**FEBRUARY 19, 2016**

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