

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRL. REVISION No.3747 OF 2017
DATE OF DECISION : 2ND FEBRUARY, 2018

Manjot Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. P. S. Ahluwalia, Advocate and
Mr. Jasraj Singh, Advocate for the petitioner.

Mr. Dhruv Dayal, Sr. D.A.G. Punjab.

Mr. D. S. Pheruman, Advocate for respondent No.3.

Mr. Animesh Singh, Advocate for respondent No. 4.

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A. B. CHAUDHARI, J.

1. By the present petition, petitioner Manjot Singh has put to challenge order dated 29.09.2017 passed by Additional Sessions Judge, Hoshiarpur in trial of FIR case No.91 dated 28.06.2012 (Annexure P-1), by which the prayer by complainant for cross-examining the defence witness DW-5 Jaspal Singh (respondent No.4 herein) was declined. There is further prayer to pass such order as this Court deems fit and proper in view of the facts and circumstances by invoking the inherent power of this Court, under Section 482 Cr. P. C.

Facts:

2. A sessions trial arising out of FIR No.91 dated 28.06.2012 registered at police station Mukerian, District Hoshiarpur under Sections 302, 307, 323, 325, 506, 148, 149 IPC and 30 of Arms Act, is pending

before the Court of Additional Sessions Judge, Hoshiarpur. The prosecution case in the FIR No.91 is that Haqiqat Singh got his statement recorded with the police station regarding murder of his nephew Gurpreet Singh, receipt of injuries by him and the present petitioner Manjot Singh by fire arms, caused by the accused persons. There is a cross-case at the behest of the accused persons in the FIR No.91, registered against Haqiqat Singh and others for commission of offences punishable under Sections 452, 307, 326, 324, 427, 148, 149 and 506 IPC vide DDR No.34A dated 02.07.2012, which is also being tried in the same Court. During the trial in FIR No.91, one ASI Gurkirpal Singh was examined as PW-11. In his examination-in-chief he proved various documents prepared by him during the course of investigation and recovery made by him pursuant to the disclosure statements made by the accused persons. Thus in examination-in-chief (Annexure P-3) he deposed as per the prosecution case. When the cross-examination started, he took somersault and in answer to the questions virtually gave clean chit to the accused persons. According to the petitioner, in cross-examination he deposed in such a manner that he had appeared for all intents and purpose as a defence witness for the accused persons and gone his way to help the accused in the said murder case FIR No.91. He went to the extent that the injuries have been caused by the accused in their defence, when that was never the case of the prosecution. The petitioner then filed petition under Section 311 Cr.P.C. to summon him for recalling the witness but the trial Court dismissed the said application. The petitioner, therefore, filed Criminal Revision No.4774 of 2016 and this Court vide order dated

16.08.2017 set aside the order made by the trial Court and allowed ASI Gurkirpal Singh to be recalled. The statement of accused No.3-Jaspal Singh @ Pal (respondent No.4 herein) under Section 313 Cr.P.C. was recorded on 29.11.2016 and another supplementary statement was recorded on 02.12.2016. Accused No.3-Jaspal Singh @ Pal (respondent No.4 herein) wanted himself to be examined as defence witness in the said FIR No.91 and therefore he entered the witness box as DW-5. Needless to say that in the cross-case DDR No.34A the statement of accused No.3-Jaspal Singh was recorded which is to be found in the said DDR case. DW-5-Jaspal Singh was cross-examined by the learned Additional Public Prosecutor who according to the petitioner supported the case of the accused persons. During the cross-examination counsel for the petitioner-complainant requested that he wanted to cross-examine the said witness DW-5 Jaspal Singh on behalf of the complainant. The trial Court heard learned counsel for the rival parties on the issue and passed the impugned order holding that under Section 311 Cr. P. C., the complainant cannot be allowed to cross-examine the witness independent of the public prosecutor.

3. In the alternative the petitioner has invoked the inherent power of this Court under Section 482 Cr. P. C. in the peculiar facts of the case. Hence, this petition.

4. This Court at the time of admission of the petition on the first date of hearing made order dated 12.10.2017, which reads thus:

“Heard learned counsel for the petitioner.

He contended that one of the accused in the

Sessions trial entered the witness box and examined

himself. According to him the concerned public prosecutor did not perform his duty and therefore, the complainant applied to the trial Court to allow him to cross-examine the accused-respondent No.4-Jaspal Singh who entered the witness box. The trial Court, however, rejected the said application and in my opinion rightly, since there is no provision in Cr.P.C. to allow complainant in Sessions trial to cross-examine any witness dehors Section 301 and 302 Cr. P.C. which provides for a limited authority to the complainant in sessions trial.

Learned counsel for the petitioner, however, cited the decision in the case of ***Sister Mina Lalita Baruwa Vs. State of Orissa, 2014(1) RCR (Criminal) 257*** and submitted that the Apex Court had utilized the bar under Section 311 Cr.P.C. to recall the witness.

I think the said decision would not be applicable since this is not the case of recall of the witness. The order made by the trial Court also cannot be faltered because the trial Court could not have traveled beyond Sections 301 and 302 Cr.P.C. Prima facie, in my opinion, the complainant/victim has the only remedy to approach High Court under its inherent power since Section 482 Cr.P.C. reads thus:

“482. Saving of inherent powers of High Court
- 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 under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

Hence the following question is framed for consideration:

In the absence of any provision in the criminal procedure code enabling the complainant/victim to cross-examine the witness in addition to the public prosecutor whether power under Section 482 Cr.P.C. can be exercised to allow such request in case it is found that there is failure of duty on the part of the concerned public prosecutor or otherwise it is expedient to secure the ends of justice ?

Notice of motion returnable for final disposal be issued for 20.11.2017.

Passing of final order by the trial Court shall remain stayed.”

5. Thereafter, at the time of final hearing of the present petition the learned counsel for the petitioner candidly admitted that the trial Court did not commit any error in holding that it cannot travel beyond the scope of Section 301 and 302 Cr. P.C. in relation to the limited authority given to the counsel for the complainant.

Arguments:

6. Mr. P. S. Ahluwalia, Advocate for the petitioner submitted that the conduct of the Sessions trial in FIR No.91 and the cross-case i.e. DDR No.34A dated 02.07.2012, by one and the same Public Prosecutor

has resulted into the miscarriage of justice to the victim/complainant. As was clear from the fact that this Court found that the application for further examination of PW-11 ASI Gurkirpal Singh-Investigating Officer, was made after two months, when as a matter of fact during the course of recording of evidence of PW-11 immediately he was required to be examined. According to him, the gap of two months for making the application for re-examination under Section 311 Cr. P. C., was unfair to the victim/complainant and at any rate it was essential to have the said witness PW-11 re-examined as he had taken somersault in his cross-examination by favouring the accused persons in the said trial. He submitted that this Court then also called the explanation from the Public Prosecutor vide its order dated 16.08.2017 passed in CRR-4774-2016 and allowed the request for requiring of PW-11 for being examined and re-examined. Learned counsel for the petitioner then contended that the power of this Court under Section 482 Cr. P. C. is being invoked by the petitioner as according to him the Public Prosecutor was acting against the interest of the complainant/victim and that is clear from the reading of the cross-examination of DW-5 Jaspal Singh @ Pal-accused No.3 (respondent No.4 herein). He further submitted that the Public Prosecutor started asking the questions and giving suggestions which would favour the accused persons in the trial FIR No.91, which can be seen from the reading of cross-examination of DW-5 Jaspal Singh @ Pal. He submitted that the Public Prosecutor also started referring to statement of Jaspal Singh recorded under Section 161 in cross case DDR No.34A. It could not have been done at all, at least by the Public Prosecutor, since

the statement under Section 161 Cr. P. C. in the cross-case could not have been utilized by the Public Prosecutor which purportedly favoured the accused persons. Learned counsel for the petitioner submitted that the rights of the victim/complainant having been recognized by the Apex Court over a period of time and if not under Section 301/302 Cr. P. C., the inherent power of the High Court under Section 482 Cr. P. C. is required to be utilized in the peculiar facts of the present case. In support of his submissions learned counsel for the petitioner cited judgment of Hon'ble the Supreme Court in the case of ***Popular Muthiah versus State, 2006(3) RCR (CriminL), 527.***

7. *Per contra*, Mr. D. S. Pheruman, learned counsel for the respondents opposed the petition. He submitted that the order under challenge is an interlocutory order and, therefore, the present revision petition is not maintainable and should be dismissed.

8. On the question of submission regarding interlocutory order learned counsel for both the parties cited several decisions but it is not necessary for me to refer to any of those decisions because the impugned order holding that the Sessions Court/Trial Court did not have power to extend the scope of Section 301 IPC, is legal, correct and proper and held accordingly by me in the order dated 12.10.2017.

9. The next submission made by Mr. Pheruman is that the present petition then will be required to be dismissed as the petitioner has not filed separate petition claiming relief under Section 482 Cr.P.C. for invoking the inherent powers of this Court. At any rate according to him when the remedy of revision is prohibited by virtue of nature of the

interlocutory order, this Court would not be able to exercise the power under Section 482 Cr. P. C. indirectly. That which cannot be done directly cannot be done indirectly. In support of his above submission learned counsel for the respondents cited two judgment of Hon'ble the Supreme Court i.e. ***Krishnan versus Krishnaveni & another, 1997(1) RCR (Criminal) 724; Gian Singh versus State of Punjab & another, 2012 (4) RCR (Criminal) 543*** and one judgment of Hon'ble Kerala High Court i.e. ***Saidevan Thampi versus State of Kerala, 2013(4) Ker L.J., 611.***

10. Learned counsel for the respondents then contended that the scheme of Section 301 relating to the Sessions case is as clear as it can be. In that case no complainant or his counsel can take over sessions trial or the job of the Public Prosecutor and the provisions regarding the right of the Public Prosecutor for the State to open the prosecution case and to conduct the same in accordance with his wisdom, cannot ignored. The only facility given to the complainant/victim is to file written submissions and nothing more. He then submitted that if the complainant/victim has any grievance about the Public Prosecutor in the matter of the cases, this Court is not the forum to say so and he can always seek redressal of his grievance from the law department of the State. Mr. Pheruman, has relied upon several decisions relating to the proposition of law that it is only the Public Prosecutor who has to conduct a State case and none else, including the complainant/victim. None can be allowed to persecute the accused persons. He also referred Section 24 of Cr.P.C. He then cited the paras No.76 and 77 from the

judgment of the Supreme Court in the case of ***Sidharth Vashisth @ Manu Sharma vs State Of Delhi, 2010 (2) RCR (Criminal) 692.***

11. Learned counsel for the respondents finally prayed for dismissal of the present petition.

Consideration

12. At the outset, in the light of the preamble of the present judgment, the only question that is required to be decided is the one framed by this Court on 12.10.2017 is as under:

“In the absence of any provision in the criminal procedure code enabling the complainant/victim to cross-examine the witness in addition to the public prosecutor whether power under Section 482 Cr.P.C. can be exercised to allow such request in case it is found that there is failure of duty on the part of the concerned public prosecutor or otherwise it is expedient to secure the ends of justice ?”

13. The question is modified as under:

Whether the High Court, without filing of a formal separate petition, in its inherent power under Section 482 Cr.P.C., would be entitled to allow a request by the complainant/victim to cross-examine the witness in the trial in addition to the public prosecutor if it is found that the same is expedient in order to meet the ends of justice ?

14. In order to examine the scope of power under Section 482 Cr. P. C., this Court finds that the question is no more *res integra* and has been decided by the Apex Court in some of the judgments. In the case of

Krishnan versus Krishnaveni & another, 1997(1) RCR (Criminal) 724

the Apex Court stated thus in para 14:

“14. In view of the above discussion, we hold that though the revision before the High Court under subsection (1) of Section 397 is prohibited by subsection (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below.”

15. In the case of ***Gian Singh versus State of Punjab & another, 2012 (4) RCR (Criminal) 543*** a three judges' Bench reviewed the entire law and recorded the following proposition of law in respect of the question in following paragraphs:

“48. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.

49. 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.

50. 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.

51. 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.”

16. In the case of *Saidevan Thampi versus State of Kerala, 2013(4) Ker. L. J. 611* upon conspectus of number of judgments a single Judge of Kerela High Court held thus in paragraphs 87 and 88:

“87 It is well settled by now that Section 482 of Cr. P. C. does not confer any new power on the Court. It only declares the power which already existed in the Code. The declaration was necessary to dispel any doubt that apart from the powers enumerated in the Code the Courts enjoyed no other power. Section 482 of the Cr. P. C. in fact only recognizes inherent power in every Court to exercise its powers to do justice. The exercise of power under Section 482 of Cr. P. C. is contemplated under three circumstances. They are,

- (i) to give effect to an order under the Code,
- (ii) to prevent abuse of process of Court,
- (iii) to secure the ends of justice.

Among the above three, (i) and (ii) work in both ways. Those powers are exercised either to prevent injustice being done to a party as well as ensuring that a just cause is not thrown out unjustly and that grievance of a person does not go unredressed.

88. One may now refer the decisions in this regard. In the decision reported in ***(Dinesh Dutt Joshi v. State of Rajasthan (2001) 8 SCC 570)***, it was held as follows:

“4. Section 482 of the Code of Criminal Procedure confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is a well-established principle of law that every court has inherent power to act *ex debito justitiae* — to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court. The principle embodied in section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur id quo resipsa esse non potest* i.e. When the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. Section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible for extraordinary cases.

17. To repeat, this Court has already found that the trial Court did not have any power to grant relief to the petitioner-complainant with reference to its power under Section 301 Cr.P.C. and therefore, the counsel for the petitioner also conceded to that aspect of the matter. Consequently, the revision against the said order has been held to be not maintainable vide interim order dated 12.10.2017 made by this Court cited (supra).

18. The title of the petition however as under :

“Petition under Section 401 read with 482 of the Code of Criminal Procedure for setting aside of the impugned order dated 29.09.2017 passed by the Court of Ld. Additional Sessions Judge, Hoshiarpur, in the trial pertaining to case FIR No.91 dated 28.06.2012 (Annexure P/1) registered at Police Station Mukerian, District Hoshiarpur, under Section 302, 307, 323, 325, 506, 148, 149 of the Indian Penal Code, whereby the counsel for the complainant/victim has been denied the permission to cross-examine a defence witness DW-5 Jaspal Singh (Respondent-accused No.4) appearing as his own witness in defence, in view of the facts and circumstances of the case, in the interest of justice.”

19. Learned counsel for the respondent vehemently opposed exercise of power under Section 482 Cr. P. C. on multiple grounds. He submitted that there cannot be omnibus prayers with omnibus provisions

of law in one petition. The present petition has been filed essentially to challenge the order (Annexure P-1) made by the trial Court holding that it has no power to allow complainant victim to cross-examine the witness. The revision petition must come to an end there only. Since there is no formally filed separate petition under Section 482 Cr. P. C., this petition cannot be treated as the one under Section 482 Cr. P. C. for passing any orders. Mr. Pheruman also submitted that the provisions of Cr. P. C. relating to the role of the Public Prosecutor and his right to conduct the prosecution and examine and cross-examine the witness has been repeatedly upheld by the Apex Court so also by the Gujarat High Court and therefore Court should not ignore the “will” of the parliament and the implementation of law promulgated by the Parliament. Citing the decisions in the case of *Sidharth Vashisth (supra)* and in particular paras 76 and 77 thereof; *Shiv Kumar (supra)* and *Hitendra Vishnu Thakur and others (supra)* he submitted that a Public Prosecutor of the State Government may or may not agree with the reasons given by the Investigating Officer and if a private counsel for complainant/victim is allowed free hand to conduct prosecution he would obviously bring the case to conviction or persecution of the accused persons. That is why this Court should not interfere. Paras 76 and 77 in the case of *Sidharth Vashisth (supra)* read thus:

76. A public prosecutor is appointed under Section 24 of the Code of Criminal Procedure. Thus, Public Prosecutor is a statutory office of high regard. This Court has observed the role of a prosecutor in *Shiv Kumar v. Hukam Chand and Anr. 1999(4) RCR (Criminal) 190 : (1999) 7 SCC 467* as follows:

“13. From the scheme of the Code the legislative intention is manifestly clear that prosecution in a Sessions Court cannot be conducted by any one 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 force and make it available to the accused. Even if the defence counsel overlooked it, 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 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.

This Court has also held that the prosecutor does not represent the investigation agencies, but the State. This Court in ***Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors. 1994 (3) RCR (Criminal) 156 : (1994) 4 SCC 602*** held:

“22. ...A public prosecutor is an important officer of the State Govt. and is appointed by the State under the Criminal Procedure Code. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation.”

Therefore, a public prosecutor has wider set of duties than to merely ensure that the accused is punished, the duties of ensuring fair play in the proceedings, all

relevant facts are brought before the court in order for the determination of truth and justice for all the parties including the victims. It must be noted that these duties do not allow the prosecutor to be lax in any of his duties as against the accused.

77. It is also important to note the active role which is to be played by a court in a criminal trial. The court must ensure that the prosecutor is doing his duties to the utmost level of efficiency and fair play. This Court, in ***Zahira Habibulla H. Sheikh and Anr. v. State of Gujarat and Ors. 2004 (2) RCR (Criminal) 836 :2004(3) Apex Criminal 46 : (2004) 4 SCC 158***, has noted the daunting task of a court in a criminal trial while noting the most pertinent provisions of the law. It is useful to reproduce the passage in full:

“43. The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not

unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

20. It is undoubtedly true that the petitioner has made omnibus prayers taking recourse to both the provisions namely Section 401 and 482 Cr. P. C. in the aforesaid one petition. As earlier stated, the revision petition cannot be entertained for the reasons stated by me above, particularly because even the counsel for the petitioner has conceded absence of power in the trial Court. The question, however, is whether in the absence of a properly framed and properly filed petition under

Section 482 Cr. P. C., without any separate registration thereof, this Court would be entitled to exercise the inherent power. I think the question has been dealt with by the Apex Court in the case of ***Popular Muthiah (supra)*** explicitly and therefore, it will be better to quote the following paragraphs from the said judgment, which read thus:

24. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

25. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that

(i) power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefore.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.

This Court in *Dinesh Dutt Joshi v. State of Rajasthan and Another, [(2001) 8 SCC 570]* while dealing with the inherent powers of the High Court held:

"The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

21. It is clear from the observations made in para 25 (ii) that no formal application is required to be filed under Section 482 Cr. P. C. and this Court would be entitled to act *ex debito justitiae* to do real and substantial justice for which along it exists. I therefore, hold that the objection raised by Mr. Pheruman, learned counsel for the respondent, with due respect cannot be accepted.

22. The next question is that whether in the peculiar facts of the present case, this Court should exercise the power under Section 482 Cr. P. C. ?

23. Looking back to the previous applications and the orders, it is seen from the record that the petitioner-Manjot Singh had applied to the trial Court purportedly under Section 311 Cr. P. C. to summon the witness PW-11 ASI Gurkirpal Singh the IO himself for re-examination. He was IO and supported the prosecution case. But he took a somersault and in the cross-examination by the defence, started supporting the accused persons in FIR No.91. That was obviously to the detriment of the complainant/victim and it was expected of the prosecution to have filed its application immediately for recall of the witness. But nothing happened. The application was filed by the Public Prosecutor after two months. This Court thereafter noted the conduct of the Public Prosecutor as well as the investigating officer ASI Gurkirpal Singh (PW-11), while deciding Criminal Revision No.4774 of 2016 and sought explanation from the Public Prosecutor and also held that PW-11 ASI Gurkirpal Singh was not supposed to evade the test of re-examination/examination if he had decided to work against the interest of the State in a criminal offence. Accordingly, the request for re-examination was allowed. The above background facts cannot be ignored for further events which have occurred.

24. As earlier stated Jaspal Singh-accused No.3 (respondent No.4 herein) in FIR No.91 before the trial Court examined himself by the defence witness as DW-5-Jaspal Singh and deposed as under :

“DW-5 Jaspal Singh, accused, aged 54 years, son of Charan Singh R/o village Mansoorpur, PS Mukerian, District Hoshiarpur on SA.

I am permanent resident of village Mansoorpur. I was earlier tractor driver of Bhupinder Singh, accused. Bhupinder Singh, Baldev Singh, Daljit Singh @ Sethi and Maninder Singh belongs to one party. In my presence, there was nothing of any sought of enmity. Parkash Kaur is paternal aunt of Bhupinder Singh. Parkash Kaur is having a landed property in village Mansoorpur. One person named Kugga used to cultivate the land of Parkash Kaur earlier, thereafter, the land was given on lease to Mahabir singh, Sarpanch and he was in cultivating possession of the same. The said land is about 3 acres. No agreement to sell was scribed in my presence regarding the land of Parkash Kaur. I do not know, about any civil litigation in respect of land of Parkash Kaur. Haqiqat Singh, Gurpreet Singh and Manjot Singh were helping in cultivating the land of Mahabir Singh, Sarpanch.

On 28.06.2012, I was at diary farm of Bhupinder Singh. I came about 9.30 AM at the house of Bhuipinder Singh at that time in his house, Bhupinder Singh, Baldev Singh, Daljit Singh and Maninder Singh were sitting in his house. All the accused person were planning that when the partymen of Mahabir Singh will approach near their house, they will stop them and teach them a lesson. At 9.40 AM, Haqiqat Singh, Shanty and Shelly were going towards the land of Hira Singh. When Haqiqat Singh etc. reached near the house of Bhupinder Singh, then Baldev Singh and Sethi

raised the lalkara. After that, Bhupinder Singh fired gun shot which hit on the head of Shanty. Then Bhupinder Singh, Mannu, Sethi, Baldev Singh and I came inside the house of Bhupinder Singh. I was behind all the persons and somebody hit on the gate and the same hit my head and I do not know what happened after that, as I became unconscious. No other injury was inflicted by any of the person after that. I became conscious after three days of the occurrence at SPS Apollo Hospital Ludhiana.

Xxxx deferred at the request of ld. APP as he wants to go through the both the files before cross-examination of the accused.

RO&AC

(Priya Sood)

ASJ/HSP/08.12.2016

25. DW-5-Jaspal Singh was cross-examined by the Public Prosecutor on 09.12.2016 and 13.12.2016 and the entire cross-examination is quoted below:

Xxxn by Shri Varinder Kumar, APP for the State assisted by Shri MP Singh counsel for complainant.

I was present at the spot at the time of occurrence. I am not a witness of prosecution in the case State Vs Dilpreet Singh which is also pending in this court. I was medico-legally examined because of the injury suffered by me. However, the MLR does not bear my signatures. At the time of my MLR the doctor did not ask me the details of my injuries. I did not give any statement to the police during investigation of case State Vs Dilpreet Singh on 17.07.2012. It is wrong to suggest that on 17.07.2012, I got recorded statement mark PX before police in the case State Vs Dilpreet Singh. It is wrong to suggest that on 17.07.2012 I gave any statement to the police that on 28.06.2012 at about

10.30 AM, I was present in the courtyard of the house of Bhupinder Singh alongwith Baldev Singh, his wife Basant Kaur Rupinder Kaur wife of Bhupinder Singh and his son Mehtab aged about 10 years and mother Mohinder Kaur. It is further wrong to suggest that on 17.07.2012 I gave my statement to the police that in the meantime, Mahabir Singh Sarpanch, Preet Multani @ Pamma.

At this stage, that Ld. Counsel for complainant has requested that the complainant side does not to confront Jaspal Singh with any statement dated 17.07.2012 purported to have been recorded in the case State Vs Dilpreet Singh whereas the ld. APP has requested that he wants to further confront with the said statement. On account of opposing request made by APP and counsel for complainant, the case is adjourned to 12.12.2016 to settle said point.

RO&AC

(Priya Sood)
ASJ/Hsp./09.12.2016

The name of paternal aunt (Tayi) of Bhupinder Singh is Parkash Kaur. Parkash Kaur was having 9 and half kilas of land and now she is having 3 kilas which is situated at village Mansoorpur. Earlier, Ghuga was cultivating the said land. Now, Mahabir Singh Sarpanch is cultivating the 3 kilas of land. The remaining land is cultivated by Baldev Singh. It is correct that Sarpanch Mahabir Singh and Haqiqat Singh are having good relations with each other. I was present at the time of occurrence of this case. It is wrong to suggest that both the parties suffered in this occurrence. Volt. Stated only Haqiqat Singh,

shanty and Manjot Singh received injuries due to five/six bullets injuries. It is wrong to suggest that I was armed with gandasi at the time of occurrence and I caused injuries to Haqiqat Singh with my gandasi which hit on his left elbow. I also received two injuries in the present occurrence, one on my forehead and on my right eye. These injuries were not caused to me by anyone. Volt. I received injuries by hitting the gate. It is wrong to suggest that I have not received that injury as alleged by me by hitting with the gate. It is wrong to suggest that I am giving statement in the court to save myself.

I was working as Driver with Bhuipinder Singh, accused for the last five-six years. I used to assist Bhupinder Singh in agricultural and other domestic work. I have seen the land of Parkash Kaur measuring 23 kanal 13 marlas. I and Bhupinder Singh never cultivating said land. For one year prior to this occurrence the land was be cultivated by Mahabir Singh and prior to him it was cultivated by Ghuga. A motor is installed in the said land. Mahabir Singh was in control and possession of the said motor. I know Baldev Singh, co-accused, who is cousin of Bhupinder Singh. Baldev Singh used to reside with Bhupinder Singh as and when he used to come from abroad. Baldev Singh had come to India two/two and a half months prior to the occurrence. On the day of occurrence, I reached the house of Bhupinder Singh at 10.40 AM again said 9.40 AM. At that time, Baldev Singh and Daljit Singh @ Sethi stated that Haqiqat Singh etc have come outside. On the raising of lalkara by Baldev Singh and Daljit Singh, all of us came out on the road. Haqiqat Singh etc were three persons

i.e. Haqiqat Singh, Shanty and Manjot Singh. All of them received fire arm injuries. I had fallen just outside the gate when my head struck against the gate. I regained full consciousness in Apollo Hospital Ludhiana. However, I have faint idea that I was taken to Dogra Hospital Mukerian also.

At this stage, the Ld. Counsel for complainant Shri MP Singh has requested that he also wants to cross-examine the witness on behalf of complainant. The Ld. Counsel for co-accused has opposed the said request. Both the counsels seeks some time to produce the case law in respect of their respective cases.”

RO&AC

(Priya Sood)
ASJ/Hsp./12.12.2016

26. Perusal of the entire cross-examination made by the Public Prosecutor shows that the story of the accused persons in the present FIR No.91 trial which they had stated in DDR No.34A i.e. the cross case filed by them, was put by the Public Prosecutor to DW-5-Jaspal Singh in the cross-examination. It is also seen that the cross-examination on these line tends to save the accused persons which is clear from the suggestions given by the Public Prosecutor. At the end of the cross-examination by the Public Prosecutor, request of the complainant’s counsel for further cross-examination was declined and hence this petition was filed.

27. In the first place, it is seen that in the cross-case as well as in the main case i.e. FIR No.91 the same Public Prosecutor has been appearing. In the case of ***Balbir vs. State of Haryana, 1999(4) RCR***

(Criminal) 839, the Apex Court has had to say thus in paragraph 16 which I quote hereunder:

“16. We are afraid, in the present case even that much which was directed in Harjinder Singh's case (supra) cannot be permitted, for, both versions here are diametrically divergent without anything in common except that the murdered person was the same. In such cases the most appropriate procedure to be followed by a Sessions Judge should be the same as followed in the present case, i.e., the two trials were separately conducted one after the other by the same court before the same judge and judgments in both cases were separately pronounced on the same day. No. doubt the Sessions Judge should take care that he would confine his judgment in one case only to the evidence adduced in that particular case. We may add, if more than one Public Prosecutor are available at the same station it is advisable that the Public Prosecutor who prosecuted one case should avoid prosecuting the other case.”

28. Also in the case of ***Sudhir vs. State of M.P. 2001(1) RCR (Criminal) 743*** the Apex Court in paras 9, 10 & 11 held thus:

9. It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing

judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter case" by some High Courts and "cross cases" by some other High Courts. Way back in nineteen hundred and twenties a Division Bench of the Madras High Court (Waller, and Cornish, JJ) made a suggestion (In Re Goriparthi Krishtamma - 1929 Madras Weekly Notes 881) that "a case and counter case arising out of the same affair should always, if practicable, be tried by the same court, and each party would represent themselves as having been the innocent victims of the aggression of the other."

10. Close to its heels Jackson, J, made an exhortation to the then legislature to provide a mechanism as a statutory provision for trial of both cases by the same court (vide Krishna Pannadi vs. Emperor AIR 1930 Madras 190). The learned judge said thus:

"There is no clear law as regards the procedure in counter cases, a defect which the legislature ought to remedy. It is a generally recognized rule that such cases should be tried in quick succession by the same Judge, who should not pronounce judgment till the hearing of both cases is finished."

11. We are unable to understand why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in the Code. The practical reasons for adopting a procedure that such cross cases shall be tried by the same court, can be summarised thus: (I) It staves off the danger of an accused being convicted before his whole case

is before the court. (2) It deters conflicting judgments being delivered upon similar facts; and (3) In reality the case and the counter case are, to all intents and purposes, different or conflicting versions of one incident.

29. In the light of the salutary principle set out by the Apex Court as above, I think the Investigating Officer has not been doing his duty correctly regarding prosecution filed by him and therefore, there is a reason to believe that the complainant/victim could be put to prejudice and detriment in the above peculiar background facts. In that view of the matter, this Court is convinced that power under Section 482 Cr. P. C. ex debito justitiae ought to be exercised by this Court to allow the complainant-victim to cross-examine DW-5-Jaspal Singh-respondent No.4 herein after the recording of evidence till 13.12.2016.

30. In the result I make the following order:

ORDER

- (i) CRL. REVISION No.3747 OF 2017 is disposed of.
- (ii) In exercise of power under Section 482 Cr. P. C. this Court allows the petitioner/complainant/victim/counsel for the petitioner to cross-examine the defence witness DW-5 Jaspal Singh after the proceedings of 13.12.2016.
- (iii) The trial Court to proceed accordingly.

2nd FEBRUARY, 2018
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes