IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF OCTOBER, 2022

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 1133 OF 2019

BETWEEN:

PRATHAP KUMAR.G
S/O YELE GOVINDAPPA
AGED ABOUT 21 YEARS
83, 4TH CROSS, 2ND MAIN
KHBS LAYOUT, KURUBARAHALLI
BENGALURU – 560086

...PETITIONER

(BY SRI. M. SHASHIDHARA, ADVOCATE)

AND:

1. STATE OF KARNATAKA
   BY VIJAYANAGAR TRAFFIC P.S.
   REPRESENTED BY SPP
   HIGH COURT OF KARNATAKA
   BENGALURU – 560001

2. DHIRAJ RAKHEJA
   S/O SUBHASH RAKHEJA
   AGED ABOUT 40 YEARS
   R/AT NO 2, 3RD MAIN
   1ST STAGE, K.H.B.S. LAYOUT
   NEAR PIPELINE ROAD
   KURUBARAHALLI LAND MARK
   RAJKUMAR STATUE
   BENGALURU - 560086

... RESPONDENTS

(BY SRI. MAHESH SHETTY, HCGP FOR R1;
SMT. P. ANU CHENGAPPA, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C, PRAYING TO QUASH THE PROCEEDINGS IN CR.NO.21/2018 OF RESPONDENT VIJAYANAGAR POLICE REGISTERED ON THE BASIS

OF OFFENCES PUNISHABLE UNDER SECTION 134(A & B) AND 187 OF MOTOR VEHICLES ACT AND SECTION 279, 428 AND 429 OF IPC, WHICH IS PENDING ON THE FILE OF HON'BLE METROPOLITAN MAGISTRATE TRAFFIC COURT-II, AT BENGALURU IN C.C.NO.5016/2018.

THIS CRIMINAL PETITION COMING ON FOR HEARING AND HAVING BEEN RESERVED FOR ORDERS ON 22.08.2022, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

> *"Wherefore, the above named petitioner most respectfully prays this Hon'ble court be pleased to quash the proceedings in Crime No.21/2018 of respondent Vijayanagar Police registered on the basis of offences punishable under section 134(A & B) and 187 of Motor Vehicles Act and Section 279, 428 and 429 of IPC, which is pending on the file of Hon'ble Metropolitan Magistrate Traffic Court-II, at Bengaluru in c.c.no.5016/2018, in the ends of justice".*

2. On 24.02.2018, when the complainant's mother had taken her pets for a walk as per her routine, a Fortuner SUV vehicle hit one of the pet dogs. The complainant's brother-in-law and sister took the pet dog - Memphi to a Veterinary Clinic. But the pet dog was declared dead. The incident having occurred between 8.15 to 9.00 p.m. on 24th February 2018,

the complainant upon hearing the same from his mother, had called the police helpline who sent two policemen to the spot who verified what had happened and thereafter the complainant registered a complaint with the Vijayanagara Police Station in Crime No.21/2018 against the driver of the Fortuner car bearing Registration No.KA-02-MJ-5669 for offences punishable under Section 134(A & B) and 187 of Motor Vehicles Act, 1988 (for short, M.V.Act) and Sections 279, 428, 429 of IPC.

3. The investigating officer conducted the investigation and filed a charge sheet against the petitioner for offences under Section 134(A & B) and 187 of M.V.Act, and Sections 279, 428, 429 of IPC. It is aggrieved by the same that the petitioner is before this Court seeking for the aforesaid reliefs.

4. The learned counsel for the petitioner would submit that:

4.1. The petitioner is innocent of any criminal offence. There is no *mens rea* on part of the petitioner to cause injury or harm to the pet dog. The said dog being on the road while the petitioner was driving has resulted in the accident.

4.2. The offence under Section 429 of IPC could be made out only in those cases where there is a deliberate attempt by an accused committing mischief which requires an animus to do something. In the present case, the petitioner having no intention or animus of either killing, maiming or rendering useless the pet dog, no offence under Section 429 of IPC can be said to be made out.

4.3. the petitioner and owner of the pet are not known to each other. The petitioner and the pet dog were not known to each other. Therefore, there was no enmity or any reason for the

petitioner to have caused harm to the said pet dog.

4.4. The accident has taken place in a public road. The complainant has not averred or alleged any particular grudge on part of the petitioner with the owner of the dog. Hence, Section 428A of IPC would also not be applicable.

4.5. As regards, the offence under Section 279 of IPC, he submits that the same would apply only in the case of an accident involving a human being and does not apply to an accident involving any animal, including a pet dog. As such, no offence under Section 279 of IPC is made out.

4.6. Similar is the submission in respect of the offence under Section 134 of the Motor Vehicles Act, which is not applicable to an animal. As such, the charge sheet laid as regards the

offences under the aforesaid provisions is contrary to the applicable law.

4.7. In this regard, he relies upon the decision of Allahabad High Court in the case of ***Pawan Kumar Sharma vs. State of U.P***[1] more particularly Para 11 which is reproduced hereunder for easy reference:

> ***11.*** *On a reading of the impugned judgment and the other documents on record it is apparent that it was only accidental that the truck of the applicant hit the bullock cart of the deceased as a result of which the buffalo and the driver of the bullock cart died. Another person, Pooran Singh, who was sitting in the bullock cart also sustained injuries. It was not the allegation in the first information report that the accused had grudge against him and that he intended to cause wrongful loss or damage or likely to cause them to the deceased or any person and there was no such allegation either in the charge-sheet or was this ingredient brought out in the statements of the persons examined as eye-witnesses. The conviction of the applicant for an offence under Section 429 IPC cannot be sustained. The courts below have committed manifest error of law in convicting and sentencing the applicant under Section 429 IPC for accident where the mens rea of causing the loss is absent. Therefore, the conviction of the applicant under Section 429 IPC*

[1] *1996 Crl.L.J 369*

is not sustainable in the eye of law and is hereby set aside.

4.8. Another decision of the Hon'ble Allahabad High Court in the case of ***Majid Ali vs. State***[2] more particularly Para 6, which is reproduced hereunder for easy reference:

> ***6.*** *Section 429 will only apply in those cases where there is a deliberate attempt on behalf of the accused to commit a* ***mischief****. Commission of a* ***mischief*** *involves an animus to do something. Here the applicant had no intention of either killing, poisoning, maiming or rendering useless the mule. Therefore Sec. 429 either will not apply.*

4.9. The decision of Rajasthan High Court in the case of ***State of Rajasthan vs. Nauratan Mal***[3] More particularly Paras 13 and 14 thereof which are reproduced hereunder for easy reference:

> ***13.*** *So far as offence under Section 429, I.P.C. is concerned, the intention is gist of the offence. Section 429 will only apply in those cases where there is deliberate attempt on behalf of the accused to commit* ***mischief****. The commission of*

[2] *Laws (All) 1956 1234*
[3] *2002 Crl.L.J. 348*

mischief involves animus to do something. Where the accused has no intention of either killing or poisoning maiming or rendering useless any of the animus mentioned in that section, this section will not apply.

14. *Since it is* ***accident*** *case and there is nothing on record that the accused respondent had any enmity with P.W. 1 Dagla Ram and if the* ***accident*** *has taken place then it cannot be said that any* ***mischief*** *was committed by the accused respondent. It may further be stated here that merely an* ***accident*** *has taken place on public highway would not be sufficient to prove the charge for offence under Section 429, I.P.C. unless the evidence has been led that the accused driving the vehicle had any grudge against the complainant or had required intention or knowledge in causing the accident. Since it is a simple case of* ***accident****, therefore, mens rea of causing the* ***accident*** *is absent and in these circumstances, the findings of acquittal for offence under Section 429, I.P.C. recorded by the learned trial Magistrate are liable to be confirmed one. For the reasons mentioned above, the present State appeal is dismissed after confirming the judgment and order dated 29-10-85 passed by the learned Civil Judge and Addl. Chief Judicial Magistrate, Parbatsar in Cr. Case No. 285/1985. Appeal dismissed.*

4.10. The decision of Hon'ble Saurashtra High Court in the case of ***Bhagwan Rana vs. State***[4] more particularly Para 2, which is reproduced hereunder for easy reference:

[4] *1953 Crl.L.J. 1350*

2. *The offence of mischief under Section 429 is committed if the offender commits mischief by killing, poisoning, maiming or rendering useless any buffalo etc. Under Section 425, I.P.C. a person is said to commit mischief with intent to cause, or knowing that he is likely to cause, wrongful loss to a person causes the destruction of any A property. The existence of the requisite intention or knowledge is therefore an essential ingredient to the offence and the accused cannot be convicted under Section 429, I.P.C. unless it is shown that the act of killing etc., was with the requisite intention or knowledge.*

In this case, the buffalo was actually in the applicant's field when he threw the stone at it. It is true that his daughter was driving it away and it would have been better if he had allowed her to do so. But the applicant had a right to assist his daughter and in throwing the stone at the buffalo his intention was to protect hi3 property from trespass rather than to cause any harm to the animal. The stone which hit the buffalo has not been produced and it is therefore impossible to say that the applicant selected a particularly heavy stone out of all proportion to the needs of the occasion from which an inference of guilty intent or knowledge can be made.

The learned Magistrate has quoted from the decision in - Mahadeo v. Emperor AIR 1916 Nag 14 (A), in support of his order. The quotation shows that the accused in that case had thrown a stone at a cow maiming it 'after' he had driven it out of his master's field. The learned Sessions Judge has pointed out that in this case the buffalo was actually in the field when the applicant threw the stone and this fact distinguishes it from the decision relied upon by the learned Magistrate. We do not mean to say

> *that a person can intentionally kill or maim an animal trespassing upon his property. But he has a right to use reasonable force to protect his property against trespass so long as the trespass continues, and it is not proved in this case that the applicant used force in excess of the needs of the occasion. We regret the unfortunate loss of the buffalo but we agree with the learned Sessions Judge's opinion that the offence under Section 429 has not been established against the applicant. The reference is therefore accepted and the applicant's conviction is set aside. The fine, if paid, is ordered to be refunded to the applicant.*

4.11. The decision of Rajastan High Court in the case of ***Johri vs. State***[5] more particularly Paras 4 and 5, which are reproduced hereunder for easy reference:

> ***4.*** *Section 429, I. P. C., necessitates three things: (1) intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person, (2) causing the destruction of some property or any change in it or in its situation, and (3) such change must destroy or diminish the property mentioned in the section itself. In this case, evidence shows that the calf died as a result of the stone falling upon it accidentally. The question remains whether it should be inferred from the circumstances of the case that the accused had had the intention or knowledge of likelihood of causing wrongful loss*

[5] *AIR 1970 RAJ 203*

or damage to the public or to any person. There is not an iota of evidence on the record from which such an intention or knowledge can be gathered. The only evidence is that the accused wanted to throw stone towards Ratna and not towards the calf with a view to cause wrongful loss or damage to Ratna. Since the first and the most important ingredient of the offence under Section 429, I.P.C., is totally absent, the Court below went wrong in holding that Section 429, I.P.C., was applicable to this case.

5. *In Arjun Singh v. The State.* ***1957 Raj LW 642 = (AIR 1958 Raj 347),*** *it has been observed by this Court:*

"In order to prove an offence of mischief, it is necessary for the prosecution to establish that the accused had an intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person."

It has further been observed in this case that if an animal is killed accidentally, whatever may be the responsibility of the accused to compensate its owner for the loss of property caused to him in a Civil Court, it cannot be said with any justification that he committed a criminal offence under Section 429, I. P. C. A Division Bench of the Saurashtra High Court consisting of Shah, C. J. and Baxi, J., reported as Bhagwan v. State, AIR 1953 Sau 158, has held that the offence of mischief under Section 429, I. P. C., is committed if the offender commits mischief by killing, poisoning, maiming or rendering useless any buffalo, etc. Under Section 425, I. P. C., a person is said to commit mischief with intent to cause or knowing that he is likely to cause wrongful loss to a person causes the destruction of any property. The existence of the requisite

intention or knowledge is, therefore, an essential -ingredient to the offence and the accused cannot be convicted under Section 429, I.P.C., unless it is established that the act of killing, etc., was with the requisite intention or knowledge.

There is another relevant citation found in Criminal Revision Case No. 434 of 1901 = 1 Weir 502, in the matter of Obammal, accused. In that case the accused Obammal was convicted under Section 429, I.P.C., and sentenced to pay a fine of Rs. 20 or, in default, to undergo rigorous imprisonment for 20 days. The mischief consisted in throwing a stone at a young buffalo and thereby causing its death. The stone was thrown to drive the animal out of the backyard and the animal after running some distance fell down and died. The prosecution witnesses stated that the accused threw a brick at the buffalo and caused its death. There was, however, nothing to show that the accused had in throwing the stone, any intention to cause injury to the animal or reasonable cause to suppose that loss or damage was likely to be caused. The Madras High Court held that in these circumstances the conviction was wrong.

5. Per contra, Smt.Anu Chengappa, learned counsel for the respondent would submit that:

5.1. The petitioner ought to know that the action would have resulted in an accident which could have grave consequence since the petitioner

has driven the vehicle in a rash and negligent manner.

5.2. The accident took place in a residential area where it is a normal practice for people to go for a walk along with their pets and if anyone were driving a vehicle, they should be cautious and careful and maintain a minimum speed so as to be able to apply the brakes on the vehicle if necessary. The petitioner ought to know that in residential areas senior citizens would go for a walk in the evening. They have slow reflexes, no person should drive a vehicle at a fast speed.

5.3. The mother of the complainant was aged 60 years at the time of the incident and was walking with two dogs on the left side of the road. The road being 30 feet wide, the petitioner drove the vehicle at 60 kmph beyond the stipulated speed limit, which resulted in the

accident. If the petitioner was driving within the speed limit and not over speeding, the accident could have been avoided. The very fact that the petitioner was driving beyond the permissible speed limit would reflect the animus of the petitioner to cause offence under Section 429 of IPC.

5.4. The petitioner's mother narrowly escaped being hit by the vehicle. The pet dog by name Memphi was not just a pet dog but was a member of the complainant's family and a constant companion and gave a lot of solace to the mother of the complainant. She being like a parent to the pet, merely because the deceased was a pet, the rule should not be different. If at all, it was a human being who was hit by the vehicle, which was over speeding, the Court would take it differently.

5.5. She submits that even animals have rights and as such, the petitioner who has killed the pet ought to be punished.

5.6. The investigation has taken into account the statement of the witnesses and as such, the same cannot be stated to be tainted. The charge sheet having been laid, the petitioner is required to stand trial. In this regard, she relies upon the following decisions:

5.7. ***Animal Welfare Board of India v. A. Nagaraja***[6] more particularly Paras 55, 66, 68 and 72 which are reproduced hereunder for easy reference:

> ***55.*** *As early as 1500-600 BC in Isha-Upanishads, it is professed as follows:*
>
> *"The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."*

[6] *(2014) 7 SCC 547*

In our view, this is the culture and tradition of the country, particularly the States of Tamil Nadu and Maharashtra.

66. *Rights guaranteed to the animals under Sections 3, 11, etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under Sections 3 and 11 have to be read along with Articles 51-A(g) and (h) of the Constitution, which is the magna carta of animal rights.*

Humanism

68. *Article 51-A(h) says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to the expression "humanism" which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, to understand benevolence, compassion, mercy, etc. Citizens should, therefore, develop a spirit of compassion and humanism which is reflected in the Preamble of the PCA Act as well as in Sections 3 and 11 of the Act. To look after the welfare and well-being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in Article 51-A(h). Both Articles 51-A(g) and (h) have to be read into the PCA Act, especially into Section 3 and Section 11 of the PCA Act and be applied and enforced.*

Right to life

72. *Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which*

includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51-A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, overloaded is also a right recognised by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.

5.8. ***State of Punjab v. Balwinder Singh***[7]***,*** more particularly Paras 11, 12, 13 and 14 which are reproduced hereunder for easy reference:

> ***11.*** *Even a decade ago, considering the galloping trend in road accidents in India and its devastating consequences, this Court in Dalbir Singh v. State of Haryana [(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] held that, while considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver should not take a chance thinking that even if he is convicted, he would be dealt with leniently by the court.*
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> ***12.*** *The following principles laid down in that decision are very relevant: (Dalbir Singh case [(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] , SCC pp. 84-85 & 87, paras 1 & 13)*
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> *"1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.*
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> ***

[7] *(2012) 2 SCC 182*

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

The same principles have been reiterated in B. Nagabhushanam v. State of Karnataka [(2008) 5 SCC 730 : (2008) 3 SCC (Cri) 61] .

***13.** It is settled law that sentencing must have a policy of correction. If anyone has to become a good driver, must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they*

cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in Dalbir Singh [(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] .

14. *While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. The persons driving motor vehicles cannot and should not take a chance thinking that even if he is convicted he would be dealt with leniently by the court.*

5.9. ***Ravi Kapur v. State of Rajasthan[8],*** more particularly Paras 12, 13, 14, 15, 20 and 21 which are reproduced hereunder for easy reference:

(A) Rash and negligent driving

12. *Rash and negligent driving has to be examined in the light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to "rash and negligent driving" within the meaning of the language of Section 279 IPC. That is why the*

[8] *(2012) 9 SCC 284*

legislature in its wisdom has used the words "manner so rash or negligent as to endanger human life". The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.

13. *"Negligence" means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the court. In a given case, even not doing what one was ought to do can constitute negligence.*

14. *The court has to adopt another parameter i.e. "reasonable care" in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrians happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.*

15. *The other principle that is pressed in aid by the courts in such cases is the doctrine of res ipsa loquitur. This doctrine serves two purposes — one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is prima facie evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The courts have also applied the principle of res ipsa loquitur in cases where no direct evidence was brought on record. The Act itself contains a provision which concerns with the consequences of driving dangerously alike the provision in IPC that the vehicle is driven in a manner dangerous to public life. Where a person does such an offence he is punished as per the provisions of Section 184 of the Act. The courts have also taken the concept of "culpable rashness" and "culpable negligence" into consideration in cases of road accidents. "Culpable rashness" is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite consciousness (luxuria). "Culpable negligence" is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a case the mere fact of accident is prima facie evidence of such negligence. This maxim suggests that on the circumstances of a given case the res speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person's negligent conduct. [Ref. Justice Rajesh Tandon's An Exhaustive*

Commentary on Motor Vehicles Act, 1988 (1st Edn., 2010).]

(B) Attendant circumstances and inference of rash and negligent driving

20 [Ed.: Para 20 corrected vide Official Corrigendum No. F.3/Ed.B.J./53/2012 dated 5-9-2012.] . *In light of the above, now we have to examine if negligence in the case of an accident can be gathered from the attendant circumstances. We have already held that the doctrine of res ipsa loquitur is equally applicable to the cases of accident and not merely to the civil jurisprudence. Thus, these principles can equally be extended to criminal cases provided the attendant circumstances and basic facts are proved. It may also be noticed that either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. This doctrine comes to aid at a subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. The factum of accident having been established, the court with the aid of proper evidence may take assistance of the attendant circumstances and apply the doctrine of res ipsa loquitur. The mere fact of occurrence of an accident does not necessarily imply that it must be owed to someone's negligence. In cases where negligence is the primary cause, it may not always be that direct evidence to prove it exists. In such cases, the circumstantial evidence may be adduced to prove negligence. Circumstantial evidence consists of facts that necessarily point to negligence as a logical conclusion rather than providing an outright demonstration thereof. Elements of this doctrine may be stated as:*

- *The event would not have occurred but for someone's negligence.*

- *The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.*

- *The accused was negligent and owed a duty of care towards the victim.*

> ***21.*** *In Thakur Singh v. State of Punjab [(2003) 9 SCC 208 : 2004 SCC (Cri) 1183] the petitioner drove a bus rashly and negligently with 41 passengers and while crossing a bridge, the bus fell into the nearby canal resulting in death of all the passengers. The Court applied the doctrine of res ipsa loquitur since admittedly the petitioner was driving the bus at the relevant time and it was going over the bridge when it fell down. The Court held as under: (SCC p. 209, para 4)*
>
> *"4. It is admitted that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that bus was driven over a bridge and then it fell into canal. In such a situation the doctrine of res ipsa loquitur comes into play and the burden shifts on to the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. He did not succeed in showing that the accident happened due to causes other than negligence on his part."*

5.10. ***Prafulla Kumar Rout v. State of Orissa[9],*** more particularly Para 7, which is reproduced hereunder for easy reference:

> ***7.*** *High speed is a relative term. A vehicle which is driven in a congested road even at a speed of 30 k.ms., may constitute high speed, but driving a vehicle at a speed higher than 30 k.ms. in on open road may not be considered driving at high speed. It would depend upon nature and situation of road, concentration of pedestrians and vehicular traffic on it and many such other relevant factors. In the case at hand, vehicle which was being driven on the National Highway,*

[9] *1995 CRI. L.J. 1277*

caused accident in front of a school. It is expected for a driver to be cautious and slow down the vehicle, when nearing on educational institution. Unshaken evidence of eye witnesses shows that the vehicle was driven at a high speed though no exact speed was indicated by them. A responsible Revenue Officer (p.w. 13) is supposed to know what is high speed compared to normal speed. On consideration of evidence, courts below have held that the vehicle was being driven at very high speed. Added to the above, reappraisal of evidence while exercising revisional power is uncalled for, unless conclusions of the courts below are perverse, unreasonable or of such nature that no reasonable person can reach such conclusion That does not appear to be the case here. The courts below have rightly found the accused guilty.

5.11. ***Shiv Dani Singh v. State of Bihar[10],*** more particularly Para 7, which is reproduced hereunder for easy reference:

7. *Apparently. PW-1, FW-2 and PW-6 are the eye-witnesses and they are consistent in deposing that the appellant assaulted Subodhan Hembrom (de ceased) with lathi who was driving the cart only because he could not stopped the cart on the order of the appellant and then the deceased fell down from the cart at that time. Post mortem report clearly goes to indicate that the deceased Subodhan Hembrom sustained serious injuries on the right chest causing fracture of 4th and 5th ribs with rupture on right lung. Even if Subodhan Hembrom fell down and came under the wheel of the said cart, which was carrying rice, that was because of the assaulted by the appellant.*

[10] *2004 Cri LJ 338*

5.12. ***Mohd. Aynuddin alias Miyam vs. State of A.P[11].,*** more particularly Paras 9 and 10, which are reproduced hereunder for easy reference:

> ***9.*** *The principle of res ipsa loquitur is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.*
>
> ***10.*** *A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution.*

5.13. ***State of Karnataka v. M. Devendrappa[12],*** more particularly Paras 6, 8 and 9 which are reproduced hereunder for easy reference:

> ***6.*** *Exercise of power under Section 482 of the Code in a case of this nature is the exception and*

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[11] *2000 CRI.L.J 3508*
[12] *(2002) 3 SCC 89*

not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that

initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

8. *In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The*

illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. *As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See : Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] , and Raghubir Saran (Dr) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .) It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the*

High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See : Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142 : AIR 1990 SC 494] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and Rajesh Bajaj v. State NCT

5.14. ***Minu Kumari v. State of Bihar***[13] more particularly Paras 19 and 20 which are reproduced hereunder for easy reference:

[13] *(2006) 4 SCC 359*

19. *The section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that*

initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

20. *As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Raghubir Saran (Dr.) v. State of Bihar [(1964) 2 SCR 336 : AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .]*

5.15. ***State of A.P. v. Golconda Linga Swamy[14],*** more particularly Paras 5, 8 and 10 which are reproduced hereunder for easy reference:

5. *Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three*

[14] *(2004) 6 SCC 522*

circumstances under which the inherent jurisdiction may be exercised, namely : (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alique concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the

complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

8. *As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the*

High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding. [See Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142 : AIR 1990 SC 494] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401 : AIR 1999 SC 1216] and State of Karnataka v. M. Devendrappa [(2002) 3 SCC 89 : 2002 SCC (Cri) 539] .]

10. *In all these cases there were either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in existence or to be collected during*

investigation would be sufficient for holding the accused persons concerned guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the FIR is to be in very exceptional circumstances as held in R.P. Kapur [AIR 1960 SC 866 : 1960 Cri LJ 1239] and Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] cases.

5.16. ***Mary Angel v. State of T.N***[15] more particularly Paras 11 and 12 which are reproduced hereunder for easy reference:

11. *Next, we would refer to the decision in Raghubir Saran (Dr) v. State of Bihar [AIR 1964 SC 1 : (1964) 2 SCR 336] wherein this Court considered the power of the High Court to expunge remarks made against a medical practitioner who submitted his opinion on the health of the accused pending the proceedings before the Magistrate. While considering the scope of inherent powers under Section 561-A of the Code, the Court succinctly analysed the jurisdiction which could be exercised by the High Court in the following words:*

"When we speak of the inherent powers of the High Court of a State we mean the powers which must, by reason of its being the highest court in the State having general jurisdiction over civil and criminal courts in the States, inhere in that

[15] *AIR 1999 SCC 2245*

court. The powers in a sense are an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. When we speak of ends of justice we do not use the expression to comprise within it any vague or nebulous concept of justice, nor even justice in the philosophical sense but justice according to law, the statute law and the common law. Again, this power is not exercisable every time the High Court finds that there has been a miscarriage of justice. For, the procedural laws of the State provide for correction of most of the errors of subordinate courts which may have resulted in miscarriage of justice. These errors can be corrected only by resorting to the procedure prescribed by law and not otherwise. Inherent powers are in the nature of extraordinary powers available only where no express power is available to the High Court to do a particular thing and where its express powers do not negative the existence of such inherent power. The further condition for its exercise, insofar as cases arising out of the exercise by the subordinate courts of their criminal jurisdiction are concerned, is that it must be necessary to resort to it for giving effect to an order under the Code of Criminal Procedure or for preventing an abuse of the process of the court or for otherwise securing the ends of justice.

The power to expunge remarks is no doubt an extraordinary power but nevertheless it does exist for redressing a kind of grievance for which the statute provides no remedy in express terms. The fact that the statute recognizes that the High Courts are not confined to the exercise of powers expressly conferred by it and may continue to exercise their inherent powers makes three things clear. One, that extraordinary situations may call for the exercise of extraordinary powers. Second, that the High Courts have inherent power to secure the ends of justice. Third, that the express provisions of the Code do not affect that power.

The precise powers which inhere in the High Court are deliberately not defined by Section 561-A for good reason. It is obviously not possible to attempt to define the variety of circumstances which will call for their exercise. No doubt, this section confers no new power but it does recognize the general power to do that which is 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'. But then, the statute does not say that the inherent power recognized is only such as has been exercised in the past either. What it says is that the High Courts always had such inherent power and that this power has not been taken away. Whenever in a criminal matter a question arises for consideration whether in particular circumstances the High Court has power to make a particular kind of order in the absence of express provision in the Code or other statute the test to be applied would be whether it is necessary to do so to give effect to an order under the Code or to prevent the abuse of the process of the court or otherwise to secure the ends of justice."

(emphasis added)

12. *From the aforesaid decisions, it is apparent that if there is an express provision governing the particular subject-matter then there is no scope for invoking or exercising the inherent powers of the Court because the Court is required to apply, in the manner and mode prescribed, the provisions of the statute which are made to govern the particular subject-matter. But the highest court in the State could exercise inherent powers for doing justice according to law where no express power is available to do a particular thing and express powers do not negative the existence of such power. It is true that under the Criminal Procedure Code, specific provisions for awarding costs are only those as stated above. At the same time, there is no specific bar that in no other case, costs could be awarded. Further, in non-cognizable cases, Section 359 empowers the*

courts including the appellate court or the High Court or the Court of Session while exercising its powers of revision to order the convicted accused to pay to the complainant, in whole or in part, the cost incurred by him in the prosecution including the expenses incurred in respect of process fees, witnesses and pleaders' fees which the Court may consider reasonable. Hence, it may be inferred that in a cognizable case and in an appeal or revision arising therefrom, the High Court cannot exercise its inherent power for awarding costs dehors the said provisions. But such an inference is not possible in cases where the Court is exercising powers under Section 482. It is to be stated that in cognizable cases also under Section 357 while awarding compensation out of the fine imposed on the accused, inter alia, the Court is required to take into consideration expenses properly incurred in the prosecution. Hence, exercise of such power would, on the contrary, be in conformity and not in conflict with the powers conferred under Sections 148(3), 342 and 357 or 359 of the CrPC. In appropriate cases, where it is necessary to pass such an order, the Court may award costs for the purposes, namely, (i) to give effect to any order passed under the Court, (ii) to prevent abuse of the process of any court, and (iii) to secure the ends of justice as there is no (a) negative provision for exercise of "such power", and (b) inconsistency with the other provisions.

Further, awarding of costs, as stated above, can be for two purposes, one for meeting the litigation expenses and, secondly, for preventing the abuse of the process of court or to do justice in a matter and in such circumstances, costs can be exemplary. It is true that this jurisdiction is to be exercised sparingly for the aforesaid purposes in most appropriate cases and is not limitless but is to be exercised judiciously.

5.17. ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque***[16]***,*** more particularly Paras 8, 10 and 11 which are reproduced hereunder for easy reference:

> ***8.*** *Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to*

[16] *(2005) 1 SCC 122*

be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

10. *In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the*

same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

11. *The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)*

"102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 2 SCR 336 : (1964) 1

Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304 : AIR 1999 SC 1044] , State of U.P. v. O.P. Sharma

[(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503 : AIR 1999 SC 3596] and Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]

6. Sri.Mahesh Shetty, learned HCGP would submit that the charge sheet having been laid and the petitioner being implicated in the matter, the petitioner would have to stand trial and it should be left to the trial Court to decide whether the petitioner is guilty of the offences or not.

7. Heard Sri.M.Shashidhara, learned counsel for the petitioner, Sri.Mahesh Shetty, learned HCGP for respondent No.1 and Ms.Anu Chengappa, learned counsel for respondent No.2 and perused papers.

8. The points that would arise for determination are as under:-

1) Whether an offence under Section 134 (A & B) of the Motor Vehicles Act, 1988 would get attracted in the event of an accident involving a pet animal?

2) Whether an offence under Section 187 of the Motor Vehicles Act, 1988 would get attracted in the event of an accident involving a pet animal?

3) Whether an offence under Section 279 of Indian Penal Code, 1860 can be alleged if an injury is caused to an animal while driving the vehicle?

4) For an offence to be alleged under Sections 428 and 429 of Indian Penal Code, 1860, there is an animus and/or intention which is required to be established?

5) Whether there is a requirement of this Court to exercise its powers under Section 482 of Code of Criminal Procedure to quash the proceedings?

6) What order?

9. I answer the above points as under:-

10. **<u>Answer to Point No.1:</u> Whether an offence under Section 134 (A & B) of the Motor Vehicles Act, 1988 would get attracted in the event of an accident involving a pet animal?**

10.1. Section 134 (a) and (b) of Motor Vehicles Act, 1988 is reproduced hereunder for easy reference:

134. Duty of driver in case of accident and injury to a person.—*When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—*

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, [3][by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities], unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;

[1][(c) give the following information in writing to the insurer, who has issued the certificates

of insurance, about the occurrence of the accident, namely:—

(i) insurance policy number and period of its validity;

(ii) date, time and place of accident;

(iii) particulars of the persons injured or killed in the accident;

(iv) name of the driver and the particulars of his driving licence.

Explanation.—For the purposes of this section the expression "driver" includes the owner of the vehicle.]

10.2. The heading indicates that the 'duty of a driver in case of an accident and injury to a person' and the Section deals with when any person is injured or driver of the vehicle causing the accident or any person incharge of the vehicle is required to secure the medical attention to the injured person as also to give on demand by a police officer

any information required including the circumstances if any for not taking any reasonable steps for medical assistance.

10.3. Section 134 of M.V.Act deals with a situation when any person is injured or any property of a third party is damaged. But Section 134 (a) and (b) of M.V.Act do not make any provision for a property being damaged. Section 134 (a) and (b) of M.V.Act only speak of securing medical attention for the injured person. In the present case, if the pet/animal is regarded to be a property of a third party, there is no offence as such made out in terms of Section 134 (a) or (b) of M.V.Act as regards the damage to such property of a third party. In view of the above, I am of the considered opinion that the said provision relates only to injury to a person, a dog/animal not being a person

would not come within the ambit of Section 134 (a) and (b) of M.V.Act.

10.4. Hence, I answer point No.1 by holding that the provision of Section 134 (a) or (b) of M.V.Act would not get attracted in the event of an accident involving a pet/animal.

11. **Answer to Point No.2: Whether an offence under Section 187 of the Motor Vehicles Act, 1988 would get attracted in the event of an accident involving a pet animal?**

11.1. Section 187 of the Motor Vehicles Act, 1988 reads as under:-

> ***187. Punishment for offences relating to accident.—****Whoever fails to comply with the provisions of clause (c) of sub-section (1) of section 132 or of section 133 or section 134 shall be punishable with imprisonment for a term which may extend to [1][six months], or with fine [2][of five thousand rupees], or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to [3][one year], or with fine [4][of ten thousand rupees], or with both.*

11.2. As could be seen Section 187 of M.V.Act refers to non-compliance with provisions of Clause (a) of sub-section (1) of Section 132 or of Section 133 or Section 134.

11.3. Clause (a) of sub-section (1) of Section 132 of Motor Vehicles Act, 1988 is reproduced hereunder for easy reference:-

> *[1][(a) when required to do so by any police officer not below the rank of a Sub-Inspector in uniform, in the event of the vehicle being involved in the occurrence of an accident to a person, animal or vehicle or of damage to property, or]*

11.4. In terms of Clause (a) of sub-section (1) of Section 132, when a vehicle is involved in the occurrence of the accident, the driver of the motor vehicle would require to keep the said vehicle stationary, if required to be so done by any police officer not below the rank of Sub-Inspector in uniform. In the present case, there is no allegation as regards any

such request made by a police officer not below the rank of Sub-Inspector in uniform or any violation thereof. Hence, Clause (a) of sub-section (1) of Section 132 of M.V.Act is not attracted.

11.5. Section 133 of Motor Vehicles Act, 1988 reads as under:-

> ***133. Duty of owner of motor vehicle to give information.—****The owner of a motor vehicle, the driver or conductor of which is accused of any offence under this Act shall, on the demand of any police officer authorised in this behalf by the State Government, give all information regarding the name and address of, and the licence held by, the driver or conductor which is in his possession or could by reasonable diligence be ascertained by him.*

11.6. An offence under Section 133 of M.V.Act is made out if a driver does not provide information on demand by any police officer authorized in this behalf by the State Government.

11.7. A perusal of the complaint does not indicate any demand made by any police officer and/or refusal by the petitioner to give such information. Thus, I am of the considered opinion that the provision of Section 133 of M.V.Act is also not attracted to the given facts situation.

11.8. Section 134 of Motor Vehicles Act, 1988 reads as under:-

> ***134. Duty of driver in case of accident and injury to a person.—****When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—*
>
> *(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, [3][by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities], unless the injured person*

or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;

[2][(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:—

(i) insurance policy number and period of its validity;

(ii) date, time and place of accident;

(iii) particulars of the persons injured or killed in the accident;

(iv) name of the driver and the particulars of his driving licence.

Explanation.—For the purposes of this section the expression "driver" includes the owner of the vehicle.]

11.9. The aspect of Section 134 (a) and (b) of M.V.Act has been dealt with in answer to point No.1 above.

11.10. In view of the above discussion and analysis, I am of the considered opinion that it cannot be said that there is any non-compliance with the provision of Clause (a) of Sub-Section (1) of Section 132 or Section 133 or Section 134 requiring the applicability of Section 187 of the M.V.Act.

11.11. Hence, I answer Point No.2 by holding that in the event of an accident involving a pet/animal, Section 187 of M.V.Act would not get attracted.

12. **<u>Answer to Point No.3:</u> Whether an offence under Section 279 of Indian Penal Code, 1860 could be said to have occurred if the accident involved a pet dog and not a human being?**

12.1. Section 279 of Indian Penal Code, 1860 reads as under:-

> ***279. Rash driving or riding on a public way.—****Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description*

for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

12.2. A perusal of the above provision would indicate that the driver of the vehicle is to endanger human life or likely to cause hurt or injury to any other person. Though the heading of the Section is rash driving or riding on a public way, the same is only a heading. What is required to be seen is the contents of the provision. The above provision does not recognize and/or make an offence any injury caused otherwise than to human being. Thus, insofar as the injury or death caused to the pet or animal is concerned, the same would not amount to an offence in terms of Section 279 of IPC.

12.3. Ms.Anu Chengappa, learned counsel for respondent No.2 has contended by relying upon the decision in **A.Nagaraja's**[6] case

that no creature is superior to any human beings and animals are to be treated equally and that even the animals have a right to life. The observation of the Hon'ble Apex Court in the said case was with reference to Sections 3 and 11 of the Prevention of Cruelty to Animals Act. The said observation, in my considered opinion, cannot be made applicable to Section 279 of IPC since an offence being penal in nature involving punishment unless the provision makes a particular act an offence, an interpretation cannot be rendered so as to make an act which is not an offence to be an offence under the said provision. So long as Section 279 of IPC stands as it is, the same cannot be extended to any injury or death caused to an animal. If the submission of Ms.Anu Chengappa is accepted and the word person is interpreted to include an animal,

then in the event of a death of a pet or animal, the offence under Section 302 of IPC would also be attracted which would not be the purport and intent of the IPC.

12.4. In the present circumstances, the penal provision of Section 279 of IPC if read and understood in its literal sense which is the interpretation required to be given to all penal provisions, endangering a pet or causing hurt or injury to a pet/animal would not be one, which is punishable under Section 279 of IPC.

12.5. Hence, I answer Point No.3 by holding that an accident involving a pet dog would not attract an offence under Section 279 of IPC.

13. **<u>Answer to Point No.4:</u> For an offence to be alleged under Section 428 and 429 of Indian Penal Code, 1860, there is an animus and/or intention which is required to be established?**

13.1. The provision of Section 428 and 429 of IPC are found mentioned under Chapter XVII relating to "Offences against the property" and come under sub-heading relating to "mischief".

13.2. Section 425 of IPC defines mischief and reads as under:-

> ***425. Mischief.—****Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".*
>
> *Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.*
>
> *Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.*

13.3. For Section 425 of IPC to be applicable, there has to be an intent to cause or knowledge that it is likely to cause wrongful loss or damage to public or to any person due to destruction of any property, change in any property, which results in destruction and diminution of the value or utility.

13.4. Section 428 of IPC reads as under:-

> ***428. Mischief by killing or maiming animal of the value of ten rupees.***—*Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

13.5. For an offence under Section 428 of IPC, a person is to commit mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards. Thus, destruction or diminution in value or utility is to be caused by killing,

poisoning, maiming or rendering useless any animal.

13.6. Section 429 of IPC reads as under:-

> ***429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.***—*Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.*

13.7. An offence under Section 429 of IPC results when a person commits mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow or ox whatever may be the value thereof or any other animal of the value of fifty rupees or upwards.

13.8. Thus, depending on the value of the animal killed, two separate offences are made out.

Under Section 428 of IPC, the value to be Rs.10 or upwards and under Section 429 of IPC, the value to be Rs.50 or upwards or be any of the specified animals viz., elephant, camel, horse, mule, buffalo, bull, cow or ox. Thus, apart from the said animals, if any other animal has a value of more than Rs.50, then it is Section 429 of IPC, which would be applicable and not Section 428 of IPC.

13.9. The contention of Sri.M.Shashidhara, learned counsel for the petitioner is that for an offence under Section 428 or 429 of IPC said to be caused, there has to be a deliberate attempt by an accused of committing the act dealt with Section 428 or 429 of IPC requiring an animus on part of the offender. In this regard, he relied upon the decisions referred to above in support of his contentions.

13.10. Per contra Ms.Anu Chengappa, learned counsel for respondent No.2 relying upon the decisions referred to above submitted that there are growing number of accidents across the country. Whenever such an accident occurs, an offence is committed either by injury or killing any person including an animal, strict action is required to be taken and the offender should be punished. The punishment should act as a deterrent from anyone else committing such an offence. There being negligent driving, the same has to be strictly dealt with.

13.11. A perusal of the decisions relied upon by Ms.Anu Chengappa, learned counsel for respondent No.2 would indicate that all those matters are those which are related to human beings. None of those citations dealt with any injury or death caused to a

pet/animal nor do they deal with Section 428 or Section 429 of IPC. Hence, I am of the considered opinion that those decisions would not be applicable to the present case and be applicable only when an injury or death of a human being/person occurs.

13.12. By relying on ***A. Nagaraja***'s case[6], Ms.Anu Chengappa contended that both human beings and animals are required to be equally protected and equally considered and as such, the offences under the Indian Penal Code and Motor Vehicles Act would be equally applicable if an injury or death of an animal is caused.

13.13. There can be no two opinions as regards the decision of the Hon'ble Apex Court in ***A.Nagaraja***'s case[6]. However, that was a decision rendered relating to Section 3 and Section 11 of the Prevention of Cruelty to

Animals act, 1960. Even if the said decisions were to be applied to an offence under Section 428 or Section 429 of IPC, which deals with mischief to property more so animals, there is no provision similar to Section 304A of IPC available under Chapter XVII more so under the sub-chapter Mischief relating to causing death of an animal by negligence. In the absence of such a classification and/or such an offence being categorized, I am of the considered opinion that it is the general principles of criminal law which would be applicable for any offence under IPC and for an offence under Section 428 or Section 429 of IPC to be committed there must be a *mens rea* which is required to be established. Without such *means rea* or when animus to commit an offence is absent, it cannot be said that an

offence under Section 428 or Section 429 of IPC has occurred.

13.14. Though Ms.Anu Chengappa, learned counsel for respondent No.2 has contended that the mother of the complainant could also have been injured, the fact remains that the FIR is not registered for any offence of injury to the mother of the complainant and as such, the provision relating thereto would not get attracted. An offender can be punished for an offence which he commits and not for an offence which could possibly have been committed.

13.15. In the present case, the only offence if at all is attributed is likely under Section 428 or Section 429 of IPC. It is required that there must be *mens rea* or animus for the accused to have committed such an offence. Admittedly, the petitioner is not known to

the complainant and/or his family members nor that the petitioner has any enmity with the deceased pet dog Memphi. Hence, there cannot be any animus said to be existence in the petitioner to cause the death of the said pet Memphi.

13.16. I am of the considered opinion that mere knowing that there is likely to cause an accident is not sufficient. There has to be an intent to cause wrongful loss or damage. The same not having been established *exfacie,* I am of the considered opinion that no offence under Section 428 and Section 429 of IPC can be said to be made out.

13.17. The interpretation to the said provisions is required to be given as it exists and not on the basis of the submission made by Ms.Anu Chengappa that even as regards animus, the

test of likely to cause wrongful loss or damage cannot be applied.

13.18. Hence, I answer Point No.4 by holding that for an offence under Section 428 or Section 429 of IPC, it is required that a *mens rea,* animus or intention is required to be established.

14. **<u>Answer to Point No.5:</u> Whether there is a requirement of this Court to exercise its powers under Section 482 of Code of Criminal Procedure to quash the proceedings?**

14.1. Section 482 of Code of Criminal Procedure reads as under:-

> ***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.*

14.2. The contention of Ms.Anu Chengappa by relying upon the decision in

Devendrappa's[12] case, ***Minu Kumari's***[13] case, ***Golconda Linga Swamy's***[14] case, ***Mary Angel's***[15] case and ***Zandu Pharmaceutical Works Ltd.***[16] case is that this Court ought not to quash the proceedings. This Court ought to permit the trial to go on for the ascertainment of the truth, this Court can not appreciate the evidence on record and as such, she submits that the powers under Section 482 of Cr.P.C. ought not to be exercised by this Court in the present circumstances.

14.3. The inherent powers under Section 482 of Cr.P.C. are required to be exercised by this Court in circumstances which require such power to be exercised and not in all cases. Once such circumstances exists, that is if no offence is made out, the criminal proceedings would have to be quashed, since

the continuation of criminal prosecution would amount to travesty of justice.

14.4. Having come to a conclusion that there is no offence made out under Section 134 (a) and (b) of M.V.Act, Section 187 of M.V.Act, Section 279 of IPC as also under Section 428 and 429 of IPC, I am of the considered opinion that the continuation of the criminal proceedings would only be an abuse of process of Court and would cause injustice to the petitioner to suffer the ignominy of a criminal trial. Hence, I am of the considered opinion that this is a fit and proper case for exercise of powers under Section 482 of Cr.P.C.

15. **<u>Answer to Point No.6:</u> What order?**

15.1. In view of the findings to the above questions, I pass the following:

ORDER

i. The Criminal Petition is allowed.

ii. The proceedings in Crime No.21/2018 registered by Vijayanagar Police Station, for the offences punishable under Sections 134(a) and (b) and 187 of Motor Vehicles Act, 1988 and Sections 279, 428, 429 of Indian Penal Code pending on the file of Metropolitan Magistrate Traffic Court-II, Bengaluru in C.C.No.5016/2018 and all orders passed therein are hereby quashed.

Sd/-
JUDGE

Prs*