

IN THE HIGH COURT OF DELHI AT NEW DELHI
Crl. M.C. No. 6274/2006

Judgment reserved on :09 November, 2009
Judgment delivered on: 23rd December, 2009

B.S. Negi

.....Petitioners

Through: Mr. Deepak Dhingra, Advocate

versus

State

&

Barsati Lal

..... Respondents

Through: Mr. Sanjay Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

1. By this petition filed under Section 482 Cr.P.C. the petitioner seeks quashing of summoning order dated 25.4.2004 and complaint

case No. 266/2004 titled Shri Barsati Lal vs. Shri Raju & Ors. pending before the concerned court of M.M. Karkardooma Courts, Delhi.

2. Brief facts germane to the controversy and as set out by the petitioner are as under:-

3. The respondent no.2 was a labourer working with the employer of the petitioner i.e. M/s Dharampal Satyapal Ltd. at Noida and resigned from there where he was entitled to a total sum of Rs. 83,713 and was given a cheque bearing no.100824 dated 3rd April, 2004 for Rs. 79,024 and also paid to him in cash was Rs.4, 689 towards full and final settlement of all his dues. The said cheque was duly encashed by the respondent no.2. There after a legal notice dated 1st April, 2003 was served on the petitioner leveling allegations of non-payment of his provident fund and other alleged dues and that his services had been illegally terminated. Thereafter the respondent no.2 raised an industrial dispute against the management of the company, M/s Dharampal Satyapal Ltd. wherein an order of reference dated 24th March, 2004 was made by the concerned authority and by order dated 18.2.2006 the said reference was dismissed. Thereafter a complaint was filed by respondent no.2 u/s 323/506/452/120 B and section 34 IPC, against the petitioner in May, 2004 during the pendency of the

said alleged industrial dispute. The learned ACMM vide order dated 25.4.2006 summoned all the accused persons including the petitioner and feeling aggrieved with the same, the present petition has been filed.

4. Mr. Deepak Dhingra counsel appearing for the petitioner submitted that the respondent/complainant deliberately and mischievously did not disclose the exact status and position being occupied by various respondents in M/s Dharam Pal Satyapal Limited under which the respondent/complainant was working in his capacity as a labourer. Counsel further submitted that the accused No.1 impleaded by the complainant called by the name of "Shri Raju" is in fact the Managing Director of the said company, M/s Dharampal Satyapal Limited and the accused No. 2 "Shri Negi" was working as a "Unit Head" of the company and after his retirement he is acting as an independent consultant. Similarly, Shri Jailendra accused No.3 was working in the capacity of "Production Head (machines)" while accused No. 4 Shri R.K. Chaudhary was employed as "Personnel Head" with the said company. Shri Tyagi who has been impleaded as accused No.5 in the said complainant in fact was a practicing advocate and in that capacity was appointed as a Labour Consultant (retainer) of the said

company, while Shri Chander Mohan accused No.6 was employed as a “Production Head (manual)”. The contention of the counsel for the petitioner was that the complainant/respondent No.2 had filed the said complaint out of grudge and vindictiveness after having lost his case in the labour court. Counsel further submitted that not only that he failed to disclose the designations of the accused persons in the complaint but also suppressed from the court that he himself had resigned from his job and on his resignation he was paid an amount of Rs. 79,024/- vide cheque bearing No. 100824 dated 3.4.2004 drawn on State Bank of India besides payment of Rs.4, 689/- in cash towards his bonus in full and final settlement of all his dues. Counsel further submitted that the said cheque given by the company was duly presented by the respondent No.2 in his account and the amount was duly debited to his account immediately thereafter. That after a gap of about one year the respondent No.2 through legal notice dated 1.4.2003 called upon the said company to explain the reasons for withholding his payment towards GPF and the reasons for stopping ESI Facilities in the said legal notice. The complainant also mentioned that his signatures were obtained on blank papers by the company in the presence of Shri Negi, Shri Jailendra, Shri R.K. Chaudhary, Shri Tyagi and Shri Tek Chand

Mohan on the false assurance that he would be given employment at some other place by the company. The contention of the counsel for the petitioner was that all the important functionaries of the company were named in the said legal notice and some names were repeated by him in his complaint dated 20.4.2004 and also in the complaint under challenge before this court. Counsel for the petitioner also drew attention of this court to the allegations leveled by the complainant against all the accused persons which, as per the counsel for the petitioner would clearly expose his utter falsehood and malafides in his said complaint dated 11.5.2004. In the complaint, respondent No.2 has alleged that on 21.3.2004 at about 10.00 p.m. all the accused persons together came to his house and the accused Raju (Managing Director) of the company had pointed out a revolver at the complainant by brandishing the same. The accused, Negi "Unit Head" and Jailendra "Production Head (Machines)" had caught hold of the complainant and the accused R.K. Chaudhary "Personnel Head" and Shri Tyagi "Labour Consultant (retainer)" caught hold of the wife of the complainant and accused Chander Mohan "Production Head (manual)" and Satyapal had given beating to the complainant with fist and kick blows repeatedly and the same very persons again on 28.3.2004 at

11:00 p.m. and yet again on 19.4.2004 at 10.00 p.m. visited the house of the respondent/complainant with the threats to kill him and his family members and also to set his Jhuggi on fire and also to get his children killed or kidnapped if the complainant dared to lodge any complaint to the police against them. Counsel for the petitioner vehemently urged that such stereotyped allegations against the important functionaries of the company including its Managing Director would clearly show that the allegations leveled by the complainant are not only absurd but rather highly improbable and unrealistic. Counsel further submitted that no such incident was reported by the complainant to the police except before the alleged complaint dated 20.4.2004 was sent to the Police Commissioner, Delhi. It is also submitted that there is no medical record that the complainant was given any alleged merciless beatings by the accused persons. Counsel further submitted that same allegations have been leveled by the complainant in his complaint filed before the concerned Magistrate and also in the pre-summoning evidence adduced by the complainant, his wife and one labourer Sh. Pradeep Dass who is a resident of nearby Jhuggi of the complainant. Another surprising factor as per the counsel for the petitioner is that even the said labourer Pradeep Dass also

named the said functionaries of the company in his evidence as if he had personally known them. Based on the above submissions counsel for the petitioner submitted that the Id. M.M. has committed a grave illegality in directing summoning of the accused based on such absurd and improbable allegations. The Id. M.M. has directed summoning of the petitioner and other accused persons without applying his judicial mind and in a very casual and careless manner. Counsel thus submitted that the criminal proceedings were initiated by the complainant with ulterior motives out of grudge and personal vendetta. By roping in all the important functionaries of the company, the Id. M.M. instead of dismissing such an absurd complaint directed summoning of all the accused persons, which on the part of the concerned Magistrate is a clear case of non-application of mind on his part. In support of his arguments Id. Counsel for the petitioner placed reliance on the following judgments:-

- i) Alpica Finance Ltd. Vs. P. Sadasivan and Anr. MANU/SC/0106/2001
- ii) Sunil Kumar Vs. M/s Escorts Yamaha Motors Ltd. & Ors. MANU/SC/0682/1999
- iii) Hridaya Ranjan Pd. Verma & Ors. Vs. State of Bihar and Another MANU/SC/0223/2000
- iv) State of Karnataka Vs. Muniswamy and Others 1977 SCC (Cri) 404

- v) Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors.
MANU/SC/1990/1998
- vi) Ashok Chaturvedi and others Vs. Shitul H. Chanchani and
Another (1998) 7 SCC 698
- vii) G. Sagar Suri and Another Vs. State of U.P. and others (2000)2
SCC 636
- viii) Kunstocom Electronics (I) Pvt. Ltd. Vs. Gilt Pack Ltd. and Anr.
MANU/SC/0046/2002
- ix) Zandu Pharmaceutical Works Ltd. and others Vs. Mohd.
Sharaful Haque and Another (2005) 1 SCC 122
- x) Rajinder Kumamr Chhibar Vs. Aseem Bakshi
MANU/PH/0236/2006
- xi) Lekhraj vs. State of U.P. MANU/UP/0151/2008 (Allahabad HC)
- xii) Ramanand Sah vs. State of Jharkhand & Anr. 2004 (1) JCR 682
(Jhr)
- xiii) State of Haryana and others Vs. Ch. Bhajan Lal and others
MANU/SC/0115/1992

5. Refuting the said submissions of the counsel for the petitioner, Mr. Sanjay Sharma, counsel for the respondent submitted that while exercising power under Section 482 Cr.P.C. this court will not interfere at the stage of summoning of the accused persons unless taking a prima facie view of the allegations leveled in the complaint no offence is made out against the accused persons. The contention of the counsel for the respondent was that once the allegations leveled in the complaint sufficiently disclose that a particular criminal offence

was committed by the accused persons and based on the allegations leveled by the complainant and the pre-summoning evidence led in support thereof, the Magistrate comes to the conclusion of summoning the accused persons, then this court under Section 482 Cr.P.C. will not re-appreciate the decision of the Id. Magistrate. Counsel for the respondent further submitted that the petitioner and the other accused persons will have ample opportunity to cross-examine the complainant and the other witnesses at the stage of pre-charge evidence and thereafter argue their case at the time of framing of the charges but in any case at this preliminary stage this court will not come to the aid of the petitioner to quash the said summoning order and the complaint filed by the respondent No.2. In support of his arguments, counsel for the respondent placed reliance on the following judgments:-

- i) Adalat Prasad Vs. Roop Lal Jindal (2004) 7 SCC 338
- ii) State of Haryana Vs. Bhajan Lal AIR 1992 SC (Cri.) 426
- iii) T. Vengama Naidu Vs. T. Dora Swamy naidu 2007(3) SCALE 537
- iv) Dr. Monika Kumar & Anr. Vs. State of U.P. & Ors. 2008(9) SCALE 166

I have heard counsel for the parties at great length.

6. In ***Pepsi Foods Ltd. Vs. Special Judicial Magistrate & Ors.(1998)5 SCC 749*** ,the Apex Court has held that summoning of an

accused in a criminal case is a serious matter and machinery of criminal law cannot be set into motion as a matter of course. It would be pertinent to reproduce the relevant para of the said judgment :-

"27. Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

7. It is also settled legal position that the powers under Section 482 Cr.P.C. have to be exercised by the High Court with great care and circumspection. The Apex Court in the celebrated judgment of ***State of Haryana and others Vs. Ch. Bhajan Lal and others 1992 Supp(1)SCC335*** examined the extraordinary powers under Article 226 of the Constitution of India and also its inherent powers under Section 482 Cr.P.C. The Apex Court also laid down certain guidelines under which this court can exercise jurisdiction under Section 482

Cr.P.C. but with a caution that such guidelines could not be inflexible or right formula to be followed by the courts. It would be useful to reproduce the said guidelines laid down by the Apex Court :-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 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 F.I.R. 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 F.I.R. 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 concerned Act (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 concerned Act, 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."*

8. In **Sunil Kumar Vs. Escorts Yamaha Ltd.1999(6)SCALE633**, while dealing with the scope of Section 482

Cr.P.C., the Apex Court held as under :-

"5. Bearing in mind the law laid down by this Court in the cases referred to earlier and the contentions raised by the learned Counsel appearing for the parties and on examining the allegations made in the FIR, we are persuaded to accept the submission of Mr. H.N. Salve and Mr. Arun Jaitley, appearing for the respondents that necessary ingredients of the offence of cheating or criminal breach of trust have not been made out and on the other hand the attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal complaint against the informant under Section 138 of the Negotiable Instruments Act. The High Court, therefore, was well within its power in quashing the FIR as otherwise it would tantamount to an abuse of process of Court. We, therefore, see no justification for our interference with the impugned decision of the High Court in exercise of power under Article 136 of the Constitution."

9. In **State of Karnataka Vs. L.Muniswamy &Or., 1977 SCC (Crl) 404** the Supreme Court held as under

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

10. In **G. Sagar Suri Vs. State of U.P. & Ors.,(2000)2SCC 636** the Apex Court took a view that before issuing a process criminal court has to exercise a great deal of caution. Relevant para of the said judgment is referred as under:

“8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

11. In **Kunstocom Electronics (I) Pvt. Ltd. Vs. Gilt Pack Ltd. & Anr., 2002 CriLJ 1012** the Apex Court again reiterated its view that allowing the criminal proceeding to continue even where the allegation in the complaint petition do not make out any offence would tantamount to abuse of the process of the court. It held that:-

"There is no hard and fast rule that the objection as to cognizability of offence and maintainability of the complaint should be allowed to be raised only at the time of framing the charge. Such was not the intention of the High Court in passing the order dated 15.5.1996. In any case, we have the authority of the judgment of this Court in the case of Ashok Chaturvedi and others v. Shitul H. Chanchani and another MANU/SC/0511/1998 : 1998CriLJ4091 to hold that the determination of the question as regards the propriety of the order of the Magistrate taking cognizance and issuing process need not necessarily wait till the stage of framing the charge, G.B. Pattanaik, J. speaking for the Court observed thus:-

"This argument, however, does not appeal to us in as much as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest (sic earlier) point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised."

12. In **Zandu Pharmaceutical Works Ltd. & Ors. Vs. Mohd. Sharaful Haque & Anr. (2005) 1 SCC 122**, the Apex Court held

that where it appears to the High Court that where there is no material to show that the complaint is mala fide or vexatious the proceedings cannot be quashed but where it appears to the contrary, the interference by the High Court would be justified. It was further held that the High court should not assume the role of a trial court and embark upon an enquiry as to reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence. Yet no hard and fast rule can be laid down for exercise of this extraordinary jurisdiction.

13. ***Dr. Monica Kumar Vs. State of U.P. & Ors. 2008 (9)SCALE 166*** on which reliance was placed by the counsel for the respondent reiterated its earlier view that if ingredients which establish the commission of the offence or misconduct are clearly disclosed in the complaint then the prosecution cannot fail merely because there was an animus of the complaint or of the prosecution against the accused. The allegations of mala fides would be relevant only during the course of the evidence and the mere fact that the complainant is guilty of mala fides would be no ground for quashing the proceedings. The relevant paras of the said judgment are reproduced as under:

*“30. We may reiterate and emphasise that the powers possessed by the High Court under Section 482 Cr.P.C. 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 jurisdiction of quashing the proceeding at any stage. [See **Janata Dal v. H.S. Chowdhury** : 1993CriLJ600 ; **Raghubir Saran Dr. v. State of Bihar** : 1964CriLJ1 ; **Kurukshetra University v. State of Haryana** : 1977CriLJ1900 ; and **Zhandu Pharmaceuticals Works Limited and Ors. v. Mohd. Sharaful Haque and Anr.** : 2005CriLJ92].*

*31. In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and offence has been committed which will have to be established in a court of law, it is of no significance that the complainant is a person who is inimical or that he is guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the proceedings. [See **State of Maharashtra v. Ishwar Piraji Kalpatri** : 1996CriLJ1127 ; **Zhandu Pharmaceuticals Works Limited and Ors. v. Mohd. Sharaful Haque and Anr.** : 2005CriLJ92 ; **State of Bihar and Anr. v. J.A.C. Saldanah** 1980CriLJ98 ; **State of Orissa v. Saroj Kumar Sahoo** (2005)13SCC540]. There may be some exceptions to the said rule but we are not concerned with such a case.”*

14 . Similarly, in **T. Vengama Naidu Vs. T.Dora Swamy Naidu 2007(3) SCALE 537**, the Apex Court held as under:

“It was not for the learned Judge at the stage of investigation to examine the nature of the transaction and further

to examine as to whether any offence was actually committed by the accused persons or not. At that stage the only inquiry which could have been made was as to whether the complaint or the FIR did contain allegations of any offence. Whether those offences were made out, even prima facie, could not have been examined at that stage as the investigation was pending then. We, therefore, do not agree with the learned Single Judge that the FIR was liable to be quashed. We also do not agree with the learned Judge that there are no ingredients of the offences complained of in the FIR and this was a civil dispute. However, we do not wish to go deeper into that question. Our prima facie examination satisfies us that there were ingredients of offences complained of and, therefore, at that stage the High Court could not have quashed the FIR as well as the investigation. The appeal, therefore, has to be allowed, setting aside the order of the learned Single Judge."

15 . Again in another recent judgment of 2009, **Central Bureau of Investigation vs. A.Ravishankar Prasad & Ors.**, the Supreme Court clearly held that 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 the same may be quashed in exercise of its powers under Section 482 Cr.P.C. Relevant para of the said judgment is referred as under:

"40.Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of the each case. The object incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice.

41. Both English and the Indian courts have consistently taken the view that the inherent powers can be exercised in those exceptional cases where the allegations made in the first information report or the complaint, even if are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused."

16. As would be seen from the ratio of the various judgments of the Apex Court, the consistent view is that the inherent powers of the High Court are meant to act ex debito justitiae to do real and substantial justice. The Apex Court also held that the powers under Section 482 Cr.P.C. should be exercised by the Court sparingly and with great care and caution and such a power cannot be exercised to stifle a legitimate prosecution.

17. The Supreme Court again has been uniform in its approach taking a view that at the time of taking cognizance of the offence the court cannot look into the aspect of mala fides or on merits of the complainant if the materials placed on record by the complainant prima facie disclose commission of the offence on the part of the accused at any time. The Apex Court has also been consistent in its approach in taking a view that the criminal prosecution is a serious matter and the courts have to be very careful to see that the issuance

of process is not allowed to become an instrument of oppression to cause needless harassment to the alleged accused persons.

18. Taking of cognizance is not a ritualistic process but is a serious job and that it must reflect application of judicial mind on the part of the court. It is thus not a mere formality as before taking cognizance the Magistrate has to prima facie see that the case deserves issuance of process or not. Although, the Magistrate is not required to pass a detailed order but in any case the order must reflect that there is an application of judicial mind by the court based on which the process has been issued. In the given facts of a case the Magistrate is not powerless to derive complete satisfaction even by putting certain questions to the complainant at the time of pre-summoning evidence, so as to see that the court does not become a means or instrument of oppression in allowing the complainant to achieve his mala fide and sinister designs. Undoubtedly, if the facts disclosed in the complaint and the material placed on record prime facie disclose commission of offence/offences on the part of the accused then no option is left to the court but to summon the accused or in the given fact situation before issuing the process the court can direct investigation under Section 156(3) Cr.P.C or to hold an enquiry

itself but at the time of issuing process, the court has to prima facie satisfy itself ,that a particular complaint case deserves issuance of the process against the alleged accused persons and at that point of time the court has to adopt a cautious approach so that the innocent persons are not put to face the criminal prosecution unnecessarily.

19. I do not find myself in agreement with the contention of the counsel for the respondent that while exercising powers under Section 482 Cr.P.C. the High Court cannot direct quashing of the complaint or an FIR once the complaint or the FIR filed by the complainant discloses commission of an offence and based on which the cognizance stands taken by the criminal court. Such an argument taken by the counsel for the respondent is absolutely fallacious as the powers of the High Court under section 482 Cr.P.C. are very wide so as to do complete justice between the parties or for securing the ends of justice. The High Court while exercising powers under Section 482 Cr.P.C. cannot be blindfolded to the injustice being perpetrated on the alleged accused persons on a complaint case or an FIR based on the allegations which are not only absurd but are highly improbable. Undoubtedly, no hard and fast rule can be laid down as facts of each

case would be relevant to invoke the power under Section 482 Cr.P.C. As far as the facts of the present case are concerned, it is quite apparent that the respondent complainant deliberately did not disclose the exact status of the petitioners in the company M/s Dharampal Satyapal Ltd. where the respondent was employed as a labourer. The respondent further did not disclose in the complaint that he had received an amount of Rs.79, 024/- by way of cheque and an amount of Rs.4, 689/- in cash, in full and final settlement of all his dues from his employer. The respondent in his complaint dated 11.05.2004 in para 5 of the complaint castigated all the petitioners who allegedly put him under threat and instigation in obtaining his signatures on the blank papers. Similarly, in para 8 of the complaint, the complainant has involved all the petitioners by assigning them typecast role at the time of their alleged visit to the house of the complainant. That Mr. Raju, the Managing Director of the Company, had pointed out revolver at the complainant, Mr. Negi, "Unit Head" of the company and Mr. Jailendra, "Production Head (machines)" had caught hold of the complainant and R.K. Chaudhary, "Personnel Head" and Sh. Tyagi, practicing advocate & "Labour Consultant (retainer)", had caught hold

of the wife of the complainant and Chander Mohan, "Production Head (manual)" and Satyapal gave beatings to the complainant with fists and blows repeatedly. Not only that all these officers were alleged to have visited the complainant on 21.3.2004 at 10.00 p.m and on 28.3.2004 at about 11.00 p.m. and yet again on 19.4.2004 at 10:00 p.m. with the threats to kill the complainant/respondent and also put his Jhuggi on fire and also to get his children kidnapped or killed. All these allegations have been reiterated by the complainant in his pre-summoning evidence adduced by him as CW 2 Barsati Lal and by his wife CW 3 Guno Devi. It is amazing to find that CW 1 Pradeep Das who is the alleged neighbour of the respondent/complainant also supported the version of the respondent almost verbatim, who otherwise might not have any occasion or chance to know the present petitioners by their names and status. It would be thus quite apparent that the allegations leveled by the complainant are so absurd and inherently improbable on the basis of which no prudent person can reach a conclusion that there is sufficient ground for proceeding against the accused persons.

20. In the light of the above discussion, I am of the considered view that the complaint filed by the respondent is false, frivolous and vexatious on the very face of it and the allegations leveled by the complainant are highly improbable, more particularly, when the complainant even did not disclose the exact status of the petitioners who are highly placed officers in the company i.e. M/s Dharampal Satyapal Ltd. where the petitioner was employed as a labourer and therefore the summoning order dated 25.04.2004 and the complaint case No. 266/2004 filed by the complainant is hereby quashed.

December 23, 2009
pkv

KAILASH GAMBHIR,J