

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

% *Judgment reserved on: 27th February, 2013*
Judgment delivered on: 24th May, 2013

+ **CRL.M.C. 2019/2011**

RAMESH THAKUR Petitioner

Through: Mr. Sanjeev Kumar Dubey,
Mr. Manoj Taneja and Ms. Zeenat
Masoodi, Advs.

Versus

STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. R.N. Mittal, Senior Advocate with
Ms. Chanderni Prasad and
Mr. Virender Tarun, Advs. for R2.
Mr. Pawan Sharma, Standing Counsel,
for R1.

AND

+ **CRL.M.C. 3182/2011**

PRAVEEN BHARGAVA Petitioner

Through: Mr. Sanjeev Kumar Dubey,
Mr. Manoj Taneja and Ms. Zeenat
Masoodi, Advs.

Versus

STATE & ANR. Respondents

Through: Mr. R.N. Mittal, Senior Advocate with
Ms. Chanderni Prasad and
Mr. Virender Tarun, Advs. for R2.
Mr. Pawan Sharma, Standing Counsel,
for R1.

AND

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CRL.M.C. 2022/2011

SARAT CHANDER

..... Petitioner

Through: Mr. Prem Kumar and Mr. Rakesh
Kumar, Advs.

Versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Pawan Sharma, Standing Counsel,
for R1.
Mr.R.N.Mittal, Sr. Adv. with
Ms. Chandrani Prasad, Adv. for R2.

AND

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CRL.REV.P. 208/2012

STATE THR. ADDL. DY.COMM. OF POLICE
CRIME, DELHI

..... Petitioner

Through: Mr. Pawan Sharma, Standing Counsel

Versus

SARAT CHANDER & ORS.

..... Respondents

Through: Mr. Prem Kumar and Mr. Rakesh
Kumar, Advs.
Mr. Sanjeev Kumar Dubey,
Mr. Manoj Taneja and Ms. Zeenat
Masoodi, Advs.
Mr.R.N.Mittal, Sr. Adv. with Ms.
Chandrani Prasad, Adv. for R2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. First three petitions amongst the above noted four petitions have been filed under Section 482/483 Cr.P.C. against the impugned order dated 13.05.2011 passed by the learned ACMM, Saket Courts, Delhi, whereby the learned Judge has taken the cognizance of the offence punishable under

Section 376 (g) of the Indian Penal Code, 1860 and summoned the petitioners / accused, namely, Sarat Chander, Praveen Bhargava and Ramesh Thakur under Section 204 Cr.P.C.

2. Vide the above noted petitions, the petitioners are seeking quashing of the order dated 13.05.2011 and FIR No. 610/2007 registered at PS-Malviya Nagar, Delhi.

3. Crl. Revision Petition No. 208/2012 has been filed by the State for quashing the order dated 13.05.2011 passed by the learned ACMM in the complaint case No. 77/2007 filed by the complainant.

4. Since the petitioners are seeking quashing of the impugned order dated 13.05.2011 and FIR No 610/2007 vide all the above noted petitions, therefore, this Court has decided to dispose of all the petitions by a common judgment.

5. The factual matrix of the cases are that the respondent No. 2 / complainant lodged a complaint on 24.05.2007 directly with Commissioner of Police against the petitioners namely Sarat Chander, Praveen Bhargava and Ramesh Thakur for committing gangrape upon her on 08.10.2006. Thereafter respondent no. 2 / complainant filed an application under Section 156 (3) Cr.P.C. on 02.06.2007 before the learned ACMM, Saket Courts, New Delhi.

6. Vide order dated 04.06.2007, Ld. ACMM called for action taken report from DCP concerned and the matter was directed to be listed on 18.06.2007. Meanwhile, FIR No. 610/2007 was registered on 09.06.2007 for the offences

punishable under Sections 376 (g)/354/506/384/34 IPC against all three petitioners noted above.

7. The investigation of the above-noted FIR was undertaken by Special Investigation Team (Crime Branch). After the investigation, which continued for almost 3 years, police filed a final report of cancellation / closure before the court of Ld. ACMM on 02.06.2010.

8. Case of the petitioners is that Id. ACMM has taken the cognizance of the offence punishable under Section 376 (g) IPC and summoned the petitioners / accused under section 204 Cr.P.C. completely ignoring the fact that Special Investigation Team (Crime Branch) has thoroughly investigated into the allegations leveled by the complainant. Moreover, the complainant filed a complaint dated 24.05.2007 belatedly after more than 8 months for an incident which alleged to have taken place on 08.10.2006.

9. Further it is stated that systematic and thorough investigations were carried out by recording statements under Section 161 Cr.P.C of independent persons, conducting medical examination, collecting FSL reports, polygraphs test, DNA profile, collecting and examining call details of the respondent no. 2 / complainant, petitioners and other related persons.

10. Mr. Sanjeev Kr. Dubey, Id. Counsel appearing on behalf of petitioners Praveen Bhargava and Ramesh Thakur, has submitted that Praveen Bhargava is aged about 54 years and is residing at S-177, Greater Kailash, Part-I, New Delhi. He is an Engineer by profession and has been working with Delhi Jal Board since 1983 in various capacities and presently posted as Superintending Engineer (Project) Water-I with Delhi Jal Board .

11. Petitioner Ramesh Thakur, is aged about 52 years and is residing at B-27, Sagar Apartments, Sector-9, Rohini, New Delhi. He is also an Engineer by profession and has been working with Delhi Jal Board since 1989 and presently posted as Superintending Engineer (Northwest Circle) with Delhi Jal board.

12. Third petitioner Sarat Chander is also an Engineer by profession and presently staying at E-14/3, DLF Phase-I, Gurgaon, Haryana and posted as Chief Engineer (Projects) in Delhi Jal Board.

13. Ld. Counsel for the petitioners has submitted that the investigation has revealed that the respondent no. 2 / complainant is an educated working lady and living with her family, i.e., mother, brother etc. at her permanent address at 80/A, Malviya Nagar, New Delhi (as given by her in her complaint). She is an MBA and also pursued a course of CCTV Report Reading and Paper Report Making from UK.

14. On the date of occurrence, i.e., on 08.10.2006, she was in employment with Kaveri Construction Pvt. Ltd. controlled and operated by one Vijay Kataria, a Contractor with Delhi Jal Board where the petitioners are working. This is the **First** introduction and educational background of respondent no. 2 / complainant.

15. Further investigation reveals that on interrogation of Sarat Chander he disclosed that the complainant came to his office and introduced herself as Ms. Shivani, claiming to be a student of Journalism and she wanted to collect data to write a story on Sonia Vihar Treatment Plant Project. This fact reveals that the complainant concealed her original identity and had

introduced and named herself as Shivani and a student of Journalism. This is the **Second** introduction of the complainant.

16. During investigation, on recording the statements of Sh. M.L. Sharma, owner of B-136, IInd Floor, Shivalik, Malviya Nagar, New Delhi, i.e., the alleged site of occurrence and Sh. Sunil Kumar, a property dealer, through whom the said premises were taken on rent by one Ms. Ruby Thakur, another employee of Kaveri Construction Pvt. Ltd. has revealed that Ms. Ruby Thakur had introduced complainant as her sister, who was Doctor and had come to Delhi to complete her internship in Geetanjali Hospital. The complainant was stated to be married and her husband usually live out of town. This is the **Third** introduction of the complainant.

17. Further investigation revealed that complainant, as per the CD / manual transcript prepared in Hindi of the conversation of petitioner Sarat Chander and Mr. Vijay Kataria, Kaveri Construction Pvt. Ltd. (when the complainant was employed) which was also recorded by petitioner Sarat Chander on his mobile phone and filed with the Cancellation Report, revealed that Vijay Kataria informed Sarat Chander that complainant was a model and doing modeling work. This is the **Fourth** introduction of the respondent no. 2 / complainant.

18. Mr. Dubey further submitted that undisputedly, complainant was working with above mentioned M/s. Kaveri Infrastructure Pvt. Ltd. as is evident from the appointment letter dated 20.06.2005 collected during investigation. After serving the said Company, the complainant claims to have resigned from the said company w.e.f 22.05.2007, however her call

details and her repeated dialogue on phones and SMS with Mr. Vijay Kataria on his mobile phones establishes her constant, continuous affinity with him.

19. On 24.05.2007, complainant chooses to submit a complaint before Commissioner of Police, New Delhi for the alleged offence on 08.10.2006 inter alia alleging that on the said date, while she was at her friend's, i.e., Ms. Ruby Thakur's, tenanted premises at B-136, Second Floor, Shivalik, New Delhi for helping her in shifting to this premise. It was visited by one Sarat Chander, accompanied by two persons, whom he introduced as his colleagues / friends namely Praveen Bhargava and Ramesh Thakur (Petitioners herein) all officials working with Delhi Jal Board and said that they would help her in getting a job in Delhi Jal Board.

20. It is further stated that, they were carrying some pastries, which they offered her to eat. After eating the pastries, she felt drowsy. Thereafter, she was physically exploited by all. These persons had sexual intercourse with her one by one without her consent. Thereafter, she regained her consciousness and when her friend Ruby Thakur arrived there, everything was told to her.

21. Ld. Counsel for the petitioners submitted that shockingly, the complainant despite such a serious offence, which she alleges has taken place on 08.10.2006 chooses not to file any complaint of any nature till 24.05.2007 either before the Police or any other law enforcing agency and even no plausible explanation of such an enormous delay of more than 8 months has been furnished in the complaint or even subsequently in her protest petition.

22. He further submitted that although in the complaint dated 24.05.2007 she has made allegations of commission of offences of gang rape, which allegedly took place on 08.10.2006 at Shivalik, Malviya Nagar, New Delhi, whereas she also made complaint of other offences of molestation, extortion, threat etc. which falls under section 354/384/506/34 IPC, which allegedly took place on 09/10.10.2006 at the Office of Delhi Jal Board, Jhandewalan, New Delhi. As per the said complaint, the above said offences were allegedly committed by Senior Officials of Delhi Jal Board, i.e., Ramesh Thakur, Praveen Bhargava, Sarat Chander and B.M. Dhaul.

23. It is pertinent to mention here that in view of the nature of the complaint and repeated allegations, Commissioner of Police marked the said complaint for conducting an enquiry by the Vigilance Department of Delhi Police.

24. During the pendency of the enquiry, on 04.06.2007, complainant filed a Criminal Complaint Case bearing no. 771/2007 before the Id. ACMM, New Delhi for seeking direction to the police for registration of an FIR under Section 156 (3) Cr.P.C. The said Magistrate called for an action taken report from the police and fixed the matter for 16.06.2007. Meanwhile, on 09.06.2007 a case FIR No. 610/2007 under Section 376(g)/354/506/384/34 IPC was registered at Police Station–Malviya Nagar on the basis of the above said complaint dated 24.05.2007.

25. Investigation was undertaken by the Special Investigation Team and was assigned to Ms. Jawant Kaur, Inspector (Crime Branch) who recorded the statement of the complainant under Section 161 and 164 Cr.P.C. and statement of Ms. Ruby Thakur under Section 161 Cr.P.C.

26. Statements of Sh. M.L. Pandey, erstwhile landlord of Ms. Ruby Thakur and owner of premises bearing no. C-34, Malviya Nagar and Sh. M.L. Sharma, owner of the premises bearing no. B-136, Second Floor, Malviya Nagar, New Delhi (the place of alleged incident) which was taken on rent by Ms. Ruby Thakur with effect from 01.10.2006 at a monthly rent of Rs.22,000/-, were recorded. Statement of Sh. Sunil Kumar, property dealer was also recorded.

27. The complainant has claimed that petitioner Sarat Chander had acquaintance with her and called her on 08.10.2006 (on the date of alleged incident) inviting her to come to Tivoli Garden, Mehrauli on the pretext of giving her interview call letter. She had told him that she could not come to the said place as she was helping her friend Ms. Ruby Thakur to shift into B-136, Second floor, Shivalik, New Delhi. Thereafter, petitioner Sarat Chander along with other two petitioners had come to the aforesaid address and raped her.

28. Ld. Counsel further submitted that the call details of the complainant and petitioner Sarat Chander were collected, examined and investigated. The analysis of call details, Cell ID locations, Cell ID Chart reveals that no plausible explanation was furnished by the complainant and it shows some startling facts of the two mobile phone numbers of the complainant and the involvement of one Vijay Kataria.

29. He further submitted that the enquiries and investigations were also made in respect of the presence of petitioners Praveen Bhargava and Ramesh Thakur on the date of incident, i.e., on 08.10.2006. Their call records were obtained and analysed accordingly. The fact of examination of one Smt.

Bindu Sharma, W/o, Late Sh. Arvind Sharma reveals that Praveen Bhargava along with his wife had come to visit her ailing husband at Sunder Lal Jain Hosptial, Ashok Vihar, Delhi. The mobile phone location of the petitioners during the said date / time has also been mentioned in the police report. The conclusions of the police, stated to have found in Para 25 of the cancellation report, are as under:-

“During investigation sufficient evidence came on record to establish that the allegations of Ms. Vani Whig that Sarat Chander along with Ramesh Thakur and Praveen Bhargava raped her at Shivalik on 08.10.2006 evening is not proved. Available evidence indicates that both Praveen Bhargava and Ramesh Thakur were not even close to the place of occurrence at the alleged date and time. This particular finding not only proves that Ms. Vani Whig has made false allegations against Ramesh Thakur and Praveen Bhargava but also points towards a conspiracy to implicate them falsely in a rape case with some ulterior motive.”

30. On 15.06.2007, complainant was also got medically examined at Aruna Asaf Ali Hospital by the IO and the observations / findings of the Doctor is in MLC no. 1247/2007 wherein complainant herself submitted to be *“the patient c/o attempted rape about 8 months back”*. However why she has stated so was not clear. It was observed by the Doctors that *“as the matter was reported late by about 8 months, no corroboration by way of medical examination could come on record.”* Thereafter on 16.06.2007, complainant also handed over her cloths, i.e., trousers, shirt and underwear to the IO which she was stated to be wearing on the date of the incident. On a later date, i.e., on 21.08.2007, after more than 2 months, complainant also handed over one bed sheet to the IO stating that the said bed sheet was used

on the bed on the date of incident, i.e., 08.10.2006. All the seized materials were sent to FSL by the Police.

31. Ld. Counsel for the petitioners submitted that despite the above position of the investigation being in progress, the proceedings of the Complaint Case No. 77/2007 filed by the complainant before Id. ACMM continued and were not even stayed by the Ld. ACMM in terms of the mandatory provisions of Section 210 (1) Cr.P.C. The records would reveal that the proceedings of the said complaint case were continued all through by the Ld. ACMM, New Delhi at the instance of the complainant in gross violation of the said mandatory provisions. Section 210 (1) Cr.P.C. prescribes the procedure to be followed by the court that when there is a complaint case and the police investigation in respect of the same offence, the said provision is mandatory in nature and requires that in such a situation it is made to appear to the Magistrate during the course of enquiry or trial held by him that an investigation by the police is in progress in relation to the offence which is the subject matter of the trial held by him, the Magistrate shall stay the complaint case proceedings of such enquiry or trial and call for a report on the matter from the police officer conducting the investigation.

32. It is further submitted that the records of the complaint case also establishes that complainant had been consistently pressing for the arrest of all the accused which is evident from the order dated 10.08.2007. It is apparent that Id. ACMM vide order dated 10.08.2007 declined a application moved by the complainant seeking direction for arrest of accused observing that *“at this stage, when the investigation is in progress, it is not proper for the court to issue directions for the arrest of accused persons. It is bound*

and duty of the IO to apprehend the accused persons when the material has come against them during the investigation ”

33. Ld. Counsel submits that it is thus quite clear and apparent that the sole aim for making of the complaint and initiation of criminal proceedings at such a belated period of time are and were actuated by the complainant with ulterior motive and sole intent to cause harm to the petitioners by securing their arrest in a totally false and fabricated case FIR knowing fully well that allegations made by her are not only false but at the same time were made under a conspiracy and at the behest of some other persons namely, Vijay Katria etc.

34. He further submitted that right from the starting both the petitioners had cooperated and joined the investigations. They were interrogated, examined and were also asked to submit their blood samples for their DNA profiling. They were also subjected to the polygraphs test (lie detection test). All these persons had been asked to disclose all the information including mobile phone numbers used by them at the relevant time. The FSL was requested to generate DNA profiling from the bed sheet which was seized on 21.08.2007. The FSL vide its report dated 29.02.2008 required the presence of the complainant as also of all suspects for collection of blood samples for matching the DNA profiling generated from the bed sheet. Whereas, as a matter of fact, complainant although had implicated the petitioners and other DJB officials in her complaint / FIR, yet she refused to cooperate with the investigation carried out by the police. She refused to give her blood samples for DNA profiling to match / compare and co-relate with the evidence provided by her, i.e., her clothes and bed sheet despite notice dated

09.03.2008 served upon her. However, on 13.03.2008, all the suspects including the petitioners, gave their blood samples for DNA test.

35. It is important to mention here that instead of rendering cooperation to investigating agency, complainant filed Writ Petition (Crl.) being no. 463/2008 titled as Vani Whig v. State & ors. before this Court and prayed inter-alia:

- “(a) To scrap the entire blood sampling, DNA profiling and comparison process as is being conducted in violation of law.*
- (b) To arrest the accused persons.*
- (c) To complete the investigation as the earliest.*
- (d) Passy any further order or direction as this Hon’ble Court may deem fit and proper.”*

36. On 10.04.2008, this Court while issuing notice to the respondent no. 1 / State directed that the status report be filed within four weeks and by way of interim relief directed that the investigation conducted at this stage will be subject to the outcome of the Writ Petition.

37. Ld. Counsel further submitted that the pursuant to the above directions respondent no. 1 filed two status reports dated 23.05.2008 and 13.08.2008 before this court. The report dated 23.05.2008 reveals as under:

- “(a) The medical examination of respondent no. 2 was conducted on 15.06.2007.*
- (b) The clothes i.e. Trouser, shirt and underwear stated to have been worn by the petitioners on the day of incident were taken into police possession and was sent for examination at FSL. Result was obtained.*

(c) On 21.08.2007 the respondent no. 2 gave one bed sheet having blood stains, claiming the same to be on bed on the day of incident and it was sent to FSL Rohini for examination. Report of FSL was received.

(d) The bed sheet was again sent to FSL Rohini, Delhi for DNA profiling and the report was received. The blood samples of alleged persons namely Sarat Chander, Praveen Bhargava and Ramesh Thakur have been deposited at FSL Rohini for DNA profiling and opinion thereof is still awaited.”

38. Whereas the other Status report dated 13.08.2008 states as under:

“The complainant of the present case was served a notice on 09.03.2008 to join the investigation for providing blood sample for DNA profiling but neither she joined the investigation nor she has replied to the notice due on which the blood sample of the petitioners could not be collected at FSL Rohini for DNA profiling, whereas the Director FSL Rohini has explained his inability to give any opinion without blood sample of the petitioners”

39. On 14.08.2008, this Court while disposing of the said Writ Petition (Crl.) No. 463/2008 passed order as under:-

“Insp. Jaswant Kaur, IO, who is present in the Court, is directed to accompany the petitioners Ms. Vani Whig to the CFSL, CBI, Lodhi Road, CGO Complex, New Delhi on 18th August, 2008 at 11 a.m. where she will give her blood sample. After doing so, necessary test may be got conducted from there by the police.

State is directed to file a final report in the trial court as early as possible.

With the above directions, this petition stands disposed of. Dasti.

40. Ld. Counsel for the petitioners submitted that in spite of the aforesaid order passed by this Court, she did not accompany the IO on 18.08.2008 to appear before CFSL, CBI, New Delhi for giving her blood samples on the pretext of viral fever. The authorities again fixed the next date on 26.08.2008 for the same purpose, but complainant again refused to appear before CFSL on the pretext of her illness. Subsequently, she informed respondent no. 1 that she has obtained a stay from the Hon'ble Supreme Court in SLP (Crl.) No. 6306/2008 against the above referred order passed by this court. However, even the above referred Special Leave Petition was finally dismissed on 16.01.2009 with observations as under:-

“Heard ld. Counsel for the parties.

In the facts and circumstances of the case, we are not inclined to interfere with the impugned order. The Special Leave Petition is accordingly dismissed.”

41. Having no option, complainant on 04.02.2009 provided her blood samples for the DNA Test at AIIMS, Delhi, i.e., almost a year after she first requested on 09.03.2008 by the IO. All the contents discussed above have been stated in the Cancellation Report. On receiving the report from the FSL, the Scientific and Forensic evidence did not support the version of complainant. The blood and semen stained bed sheet provided by the complainant failed the scientific DNA Test to connect the accused persons with the alleged crime. However, the DNA extracted from the blood stains of the bed sheet does not match the DNA profiling. This fact has also been mentioned in cancellation report filed by the police.

42. With regard to the so called CD containing a vital piece of evidence allegedly a video recording of the alleged rape being used to threaten

complainant and played on 09.10.2006 and allegedly seen by one witness Sant Ram as per summoning order and as per the complaint at B.M. Dhaul's Office at Delhi Jal Board, Faiz Road, Delhi. These facts were also thoroughly investigated and examinations of said Sant Ram and B.M. Dhaul are available on CD. Admittedly, this CD was never produced nor submitted, although it is available with Mr. Vijay Kataria (as per audio recording between Sarat Chander and Vijay Kataria). The details of investigation into the issue are also stated in the cancellation report. On the basis of material, the police concluded that Vijay Kataria is involved in a conspiracy with the complainant to implicate the petitioners. The audio version also proves that the CD was in possession of the said Vijay Kataria and not with Sarat Chander and others, as alleged by the complainant.

43. Ld. Counsel further submitted that the investigation has also revealed that complainant and Vijay Kataria were together involved in the conspiracy. The conduct of the complainant on the one hand submitting that she was unconscious and her explanation after the alleged incident that she was traumatized and therefore she did not reveal the incident to anyone does not match. Whereas the call details analysis of her mobile phone no. 9818185579 has revealed that she had received an incoming call from Mobile No. 9910222660 at 8.07 PM on the date of incident, i.e., immediately after the occurrence of the incident and the conversation lasted for 290 seconds with Mr. Vijay Kataria. The examination of call details established that the complainant was in constant touch with Mr. Vijay Kataria on the one hand and also with Mr. Sarat Chander throughout the day of incident i.e. on 08.10.2006 on the other hand. There were 11 calls / SMS's

between them. This fact has also been collected in the Cancellation Report. Findings of investigations reinforces their conclusion that complainant has made false allegations against two petitioners, i.e., Praveen Bhargava and Ramesh Thakur.

44. During investigation and on examination, the complainant has refused to have any knowledge about the above mobile phone no. 9910222660 and also its identity whereas investigations reveals that respondent no. 2 / complainant was working with M/s. Kaveri Infrastructure Pvt. Ltd., a company in which Mr. Vijay Kataria has been a Director. The examination of Mr. Vijay Kataria about use of mobile numbers between September, 2006 till December, 2006 were also obtained. It was found that one mobile instrument bearing IMEI No. 358061003458460 was used to operate all three mobile numbers, i.e., 9910222660, 9810798109 and 9818998187 at different point of time.

45. Ld. Counsel for the petitioners submitted that on the basis of above mentioned pleas, it leaves no iota of doubt that all three numbers were being used by one person having custody of mobile bearing IMEI No. 358061003458460 and both telephone nos. 9810798109 and 9818998187 admittedly belonged to and were used by Mr. Vijay Kataria. This fact has also been mentioned in cancellation report filed by the police.

46. The investigation further reveals that complainant had been using no. 9818185579 on the handset bearing IMEI No. 357926008481870 on 25.10.2006 from 07.06 PM to 07.56 PM and the same handset being IMEI No. 357926008481870 was also used to operate the mysterious telephone no. 9910222660 on 25.10.2006 from 10.17 AM to 06.19 PM. The same

IMEI No. 357926008481870 was used between 01.10.2006 to 31.12.2006 by Mr. Vijay Kataria on his mobile phone no. 9810798109 (except on 25.10.2006) from 10.17 AM to 08.09 PM. This fact has been noted in the cancellation report filed by the police.

47. The police in Para 52 of the Cancellation Report noted as under:-

“All these findings prove that both Ms. Vani Whig and Vijay Kataria were in constant touch with each other and the versions given by both are incorrect when they deny the knowledge of telephone number 9910222660. It also proves that Ms. Vani Whig was in telephonic contact with Vijay Kataria on the alleged day of incident i.e. 08.10.2006 and had called him up immediately after she had sexual intercourse with Sarat Chander at B-136, Shivalik, Delhi. This finding shows that Ms. Vani Whig and Vijay Kataria were together involved in a conspiracy to lure Sarat Chander to B-136, Shivalik, Delhi on a Sunday evening to implicate him in the present case.”

48. It is also stated in the Cancellation Report that relationship between Kataria and the officials of DJB was turning sour, therefore, Mr. Vijay Kataria was making complaint to Lt. Governor against four engineers of DJB.

49. On the issue relating to CD, it is stated in the investigation report that Sant Ram and complainant gave different versions regarding the CD played in the office of Delhi Jal Board. From the finding of the police it is revealed that *ex facie* motive of complainant is to harass the petitioners and said motive does not require any further evidence in view of the fact that on the one hand she has been insisting for arrest of the petitioners before all forums,

on the other hand, she has not been cooperating with the investigation conducted by the officials of respondent no. 1 and monitored by Ld. ACMM.

50. By her own sheer conduct, complainant deliberately and intentionally caused a considerable delay initially by more than 8 months in filing the complaint and thereafter by approximately 10-11 months in providing blood samples and opposing her own DNA profiling which evidence was very crucial and vital to decipher and determine the authenticity, connectivity and relevancy of the various materials such as her clothes, i.e., trouser, undergarments etc. given on 15.06.2007 and then the bed sheet containing the blood stains / semen as an evidence of offence belatedly given on 21.08.2007.

51. Petitioner Ramesh Thakur was also interrogated who disclosed that on 08.10.2006, he was at his residence at Rohini. It was Sunday and he visited Sunder Lal Jain Hospital to meet a sick colleague, who suffered heart attack and later died on the same night. Mobile phone records of petitioner Ramesh Thakur were analysed. The Cell ID analysis revealed that on 08.10.2006 he was present in the area of the Rohini during the day time. During the alleged time of incident, i.e., between 06.30 PM till 8 PM on 08.10.2006 his Cell ID location was Rohini, Delhi. During this period, calls were made by him and received by him on his mobile phone. The persons who had spoken to him over that telephone on that day during this period were examined. All of them confirmed that they spoke to him on his mobile.

52. Counsel for the petitioners submitted that based upon the investigation of oral evidence, systematic scientific analysis of various material, i.e., DNA profiling, polygraphs test, FSL report, CFSL Report, call details analysis

made following observations at Para 83 of the cancellation report, which is as under:

- “a. During the course of investigation it has been found that Vijay Kataria has been connected in various capacities i.e. MD/Business and Financial Advisor with Kaveri Infrastructure and is / was a contractor with Delhi Jal Board.*
- b. Vijay Kataria has strained relations with Praveen Bhargava, Ramesh Thakur, Sarat Chander and B.M. Dhaul. Vijay Kataria had filed complaints against these officers with the office of Hon’ble L.G., Delhi. The Engineers themselves had previously filed complaints at various police stations apprehending implication in false cases by Vijay kataria.*
- c. Ms. Vani Whig was working in Vijay Kataria’s company since 2005.*
- d. Ms. Vani Whig met Sarat Chander under a fake identity of a report named “Shivani”*
- e. Ms. Vani Whig called Sarat Chander seven times on the day of the incident.*
- f. The accommodation B-136, Shivalik, Delhi was hired by another employee of Kaveri Infrastructure named Ms. Ruby Thakur for which she falsely introduced Ms. Vani Whig as her married sister and for which Ms. Ruby Thakur paid Rs.88,000/- as advance rental for four months. As discussed in detail earlier, neither Ms. Vani Whig nor Ms. Ruby Thakur have offered any plausible reason for hiring this relatively expensive accommodation and the source of funds for the same has also not been disclosed.*
- g. On the day of incident, Ms. Vani Whig was using two mobile phones bearing number 9810021490 & 9818185579. She was using 9810021490 to call Sarat Chander while she used 9818185579 to keep in regular touch with Vijay Kataria.*

h. One the day of the incident at 08.17 pm. Ms. Vani Whig received a call from mobile phone number 9910222660 (Vijay Kataria) and this call lasted for 290 seconds. The cell ID location analysis of mobile phone number 9818185579 (Ms. Vani Whig's phone) reveals that this call began at Cell ID 40661 which is Malviya Nagar, Shivalik, Delhi (Place of occurrence) and ended at Cell ID 8941 which is Malviya Nagar, Delhi (Ms. Vani's residence). She also spoke with someone who called her from her Malviya Nagar residence number 011-65634607 (probably her mother) at 07.56 p.m. (incoming call for 15 seconds) i.e. immediately after the incident, but she chose not to disclose this incident as alleged. Even after returning home no family members observed any abnormality in her behavior.

i. During the alleged time of occurrence Ramesh Thakur's Cell ID location was at Rohini. On the alleged day of incident it was Sunday and Praveen Bhargava was at GK-I (his residence) the entire day and was later at Sunderlal Jain Hospital, Ashok Vihar attending to a sick colleague who died at 11.30 PM that day.

j. The allegation of molestation by Sh. B.M. Dhaul at DJB office is not proved. Statements of Sant Ram and Ms. Vani Whig are at variance. Sant Ram and Vijay kataria are close friends and have common criminal cases amongst them

k. The conduct of Vijay Kataria is suspicious and points towards a deep conspiracy to malign the Engineers of DJB. The CD was in Vijay Kataria's possession who showed it to Sh. B.M. Dhaul who in turn reported it to two very senior officers of DJB who have corroborated the same in their statements.

l. Vijay Kataria and Ms. Vani Whig have gone to great lengths to prevent any links between them from surfacing. They have used multiple mobile phone numbers to hoodwink the investigation agency regarding their interaction with each other. However, as discussed in detailed earlier, their inks have been established from the different numbers and handsets they have used over a period of time and them being together at the cell phone based location of Faiz Road, Karol Bagh (Office of DJB).

Further both of them did not disclose true facts during investigation of this case.

m. The DNA tests have proved beyond doubt that the allegations of the complainant in this case are not proved.

The investigations conducted so far reveal that the complainant, Ms. Ruby Thakur, Vijay Kataria, Sant Ram and possibly some others have hatched a deep rooted conspiracy to implicate the alleged accused persons in a false case and hence Cancellation Report is being filed.” The police officials in Para 88 of the Cancellation Report submitted that the invocation of provision U/s 182 Cr.P.C. against complainant would be pressed through an appropriate application before the Hon’ble Court subsequently.”

53. On 02.06.2010, the Ld. ACMM, on receipt of the aforesaid Cancellation Report, ordered that copy of the same be supplied to the complainant for enabling her to file protest petition/objections, if any. Accordingly, on 08.07.2010, the complainant filed her protest petition along with her supporting affidavit, wherein she stated that the report filed by the police may be ignored and the Court should take cognizance of the offence and summon the petitioners. A copy of the said protest petition dated 08.07.2010 is annexed as Annexure-P9.

54. Learned counsel submitted that in the protest petition neither any material nor any independent evidence relating to the commission of offences or disputing the authenticity of the scientific analysis of polygraphs test, DNA profiling test, transcription of audio recording and call details or oral statements of Mr. M.L. Sharma, Mr. M.L. Pandey, Sunil Kumr and other statements were disputed nor any material placed, which could even show involvement of the petitioners therewith. Moreover, she did not seek any

direction for conducting further investigation in the case in terms of Section 173(8) Cr.P.C.

55. Learned ACMM has failed to consider the vital and crucial material and has erroneously accepted the complainant's version as gospel truth.

56. He further submitted that the learned ACMM committed a serious gross mistake of law in considering the alleged statements of the said two witnesses, namely, Sant Ram and Ms. Ruby Thakur as sufficient material to order even arrest of the petitioners when the complainant made an application for their arrest before the learned ACMM. Thereafter, even before this Court, in her above referred Writ Petition and also before the Supreme Court in the above referred SLP. Whereas only these two so-called witnesses have been relied upon by the learned ACMM to take cognizance of offence while not dealing at all with other cogent evidence establishing falsity of allegation against the petitioners. It is further submitted that the impugned order dated 13.05.2011 has resulted into a serious gross abuse of process of law in as much as the reliance placed on Section 114 of the Indian Evidence Act, which is totally inapplicable qua the petitioners as is clearly evident from the bare perusal of the provisions of the Indian Evidence Act.

57. The learned ACMM has completely ignored and overlooked the clinching material placed on record by the officials of respondent No.1, i.e., statements of witnesses Mr.M.L Pandey, Mr.M.L. Sharma, Mr.Sunil Kumar, examination of Smt. Bindu Sharma, the petitioners and other DJB officers read along with all the clinching, cogent and scientific evidences like all the medical examination reports, FSL and CFSL reports, DNA profiling and blood samples of all concerned, Polygraphs Test, Mobile call details etc.,

which had completely belied the oral statements of the complainant and the so called independent witnesses (rather interested) through their extensive and in depth investigations based on which respondent No.1/State has drawn the conclusions for submitting the Cancellation Report in the present case/FIR.

58. The casual and mechanical approach and non-application of mind by the learned Trial Court in dealing with the Cancellation Report and application of law is *ex facie* evident from bare perusal of this report in as much as the same has neither been accepted in toto nor it has been rejected. There has been only piecemeal acceptance of some part of the conclusion drawn by the police. This piecemeal and selective reliance on the contents of the final report cannot be sustained in the eyes of law.

59. Admittedly, the allegations in the complaint/FIR are pertaining to two different incidents at two different places and on two different dates. The complaint/FIR clearly reveals that one incident is with respect to alleged commission of offence under Section 376 (g) IPC at Shivalik, Malviya Nagar on 08.10.2006 (by the petitioners) and the other relates to the alleged commission of offences under Sections 354/384/506/34 IPC at the DJB Office, Jhandewalan on 09/10.10.2006 (by B.M. Dhaul and the above three persons). It is not understandable as to how could both these set of offences be joined and clubbed together by the complainant in one complaint filed by her after a long and unexplained delay of more than eight months, i.e., on 24.05.2007. Nonetheless, if no cognizance was taken in respect of the other alleged offences committed on 9/10.10.2006, which related to the alleged CD, despite no CD being ever recovered/produced and the only hollow

explanation for delay of eight months in filing the complaint was that she did not report the matter under the fear of CD.

60. Learned counsel submitted that the theory of CD has already been rejected by the police as it was founded only on the basis of the statements of the complainant and witness Sant Ram. Cognizance for an offence under Section 376 (g) IPC could not be and cannot be taken on the basis of statements of the said very witnesses, i.e., complainant and Sant Ram.

61. The learned ACMM has made observations in the impugned order dated 13.05.2011 as under:-

"....As far as the presence of other two accused persons are concerned, it was seen by Ms. Ruby Thakur. Further, the presence of other two accused when sexual activity on complainant was going on, as depicted in CD was seen by one independent witness, namely, Shri Sant Ram"

62. Thus, the learned ACMM has discredited the testimony of Sant Ram as well. Both the witnesses, Ms. Ruby Thakur and Mr. Sant Ram are not independent witnesses as is clearly evident from the Cancellation Report. All the four persons, namely, the complainant, Ms. Ruby Thakur, Vijay Kataria and Sant Ram have been and were closely connected and had acted in unison to falsely implicate the petitioners and even all these statements are at variance and are absolutely motivated and without any evidence. The learned ACMM has not taken cognizance of any of the alleged offences dated 09/10.10.2006, which related to the alleged CD as being displayed at the DJB office.

63. Learned counsel submitted that the above observations deserve to be set aside as there is not even an *iota* of material to establish and prove the above findings as admittedly, Ms. Ruby Thakur claimed to have arrived after the alleged incident and then secondly, no CD, as alleged and claimed to have been made by the suspects, was ever recovered in the present case. However, it was revealed that the CD was in possession of Vijay Kataria, Director of Kaveri Infrastructure Pvt. Ltd. The learned ACMM has failed to invite his attention to paragraphs 38 to 44 of the Cancellation Report as the same has not been considered by him. In addition to the above, the observation with regard to the so called CD, as made by the learned ASJ, New Delhi, while passing the order dated 24.06.2011 granting interim anticipatory bail to the petitioners read as under:

“11. There is one other material aspect which cannot be ignored and the same relates to the alleged CD of the offence of gang rape. No such CD had been recovered by the police during the investigation and the interrogation of the above co-accused Sarat Chander had brought the investigating agency to a conclusion that the prosecutrix had introduced herself to the above co-accused with a fake identity of a journalist named “Shivani” and it was in furtherance of the above criminal conspiracy hatched between her and the above Mr. Vijay Kataria that she had subsequently invited the above co-accused Sarat Chander at the above place of commission of the alleged offence and had established physical relations with him. It is also being stated that it is only because of this reason that the above pen set was gifted by the co-accused Sarat Chander to the prosecutrix while writing her name as “Shivani” and the polygraph test conducted during investigation prima facie suggests the correctness of the above stand of the co-accused Sarat Chander in his meeting with the prosecutrix under a fake identity and having established physical relations with her, with the will and consent of the prosecutrix. It is also the stand of the

above co-accused Sarat Chander that subsequent to the above sexual relations between him and the prosecutrix, he was told by the prosecutrix that she had received some calls from some persons while claiming that they had made a CD of their above acts. The call made by the local SHO to the prosecutrix on the subsequent day of the incident is being stated to have been made at the instance of the co-accused Sarat Chander only because he wanted the prosecutrix to seek the help of the police in getting rid of the above extortionists. During investigation the police had also collected some recordings of the conversation between the co-accused Sarat Chander and the above Mr. Vijay Kataria and these conversations point out as if some CD of the physical relations between the prosecutrix and the co-accused Sarat Chander was in the possession of Mr. Vijay Kataria and he wanted certain favours from the accused by black mailing him with the help of the above CD and the extracts of the recordings of the above conversations, the printed version of which is a part of the TCR, further lends credence to the police version that everything above had taken place in a very planned manner and it might be in pursuance of the above criminal conspiracy between the prosecutrix and the above Mr. Vijay Kataria etc. to frame the above accused persons.

12. Thus, when the facts and circumstances of this case are examined in entirety it is found to be a fit case where the discretion vested in the court to grant anticipatory bail to the applicant/accused should be exercised. The identity of the applicant/accused in this case is not disputed and there are also no chances of his fleeing away as he is employed in a very senior position in a government office. The chances of his tempering with the investigation process or influencing the witnesses are also not there as the investigation already stands concluded and even the cancellation report has been filed in the court, which though has been rejected by the Ld. ACMM concerned. As far as the recovery of the alleged CD, as is being much stressed by Ld. Counsels for the complainant/prosecutrix is concerned, the same is also not possible for the simple reason that the investigation has already come to an end and the applicant/accused has already been summoned by the Ld.

ACMM concerned for the above said offence and no further investigation in the case was directed by the Ld. ACMM. Even otherwise, as stated above, the chances of there being any such CD of the incident being in possession of the applicant/accused are not there and the CD, if any, appears to be in possession of the above Mr. Vijay Kataria, as suggested by the above recording of the conversation between the co-accused Sarat Chander and the above Mr. Vijay Kataria. Though Ld. Counsels for the complainant have relied upon an order dated 05.12.2008 in Bail Application No. 2384/2008 titled as Dilip Thakur Vs. State and a judgment/order dated 01.03.1995 in case Sanjay Sharma Vs. State-1995 JCC 303, of our own High Court in support of their contention for rejection of the grant of anticipatory bail to the applicant/accused, but it is observed that there is no similarity between the facts and circumstances of the above case and the present case.”

64. Learned counsel further submitted that the learned ACMM has already disbelieved the prosecutrix and so called independent witness Sant Ram, when no cognizance for any of the alleged offences committed on 09/10.10.2006 was taken by the said Court. Thus, the learned ACMM has completely overlooked the legal position that in cases where the Supreme Court has consistently held that there is no quarrel with the proposition that the prosecutrix is liable to be believed save in exceptional circumstances, but to hold that prosecutrix must be believed in her story irrespective of the improbabilities is an argument that can never be accepted. The test always is as to whether the given story *prima facie* inspires confidence.

65. The learned ACMM has relied upon Section 114 A of the Indian Evidence Act, which is completely erroneous and misconceived and is not applicable against the petitioners. For convenience, Section 114 A of Indian Evidence Act *inter alia* envisages as under:-

"114-A *Presumption as to absence of consent in certain prosecution for rape*

In a prosecution of rape under Clause (9) and Clause (b) and Clause (c) or Clause (d) of sub-section 376 of Indian Penal Code (45 of 1860) where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

66. In the present case, neither the prosecutrix appeared in Court nor made any statement in the Court. Then, neither intercourse with the prosecutrix and the petitioners, namely, Praveen Bhargava and Ramesh Thakur is proved nor this case is of consent between the prosecutrix and the above named persons. Therefore, the impugned order depicts total non application of mind and is a gross abuse of process of law.

67. Learned counsel submitted that even the falsity of conduct of the complainant is *ex facie* evident from the fact that the complainant/ respondent No.2, in her protest petition has made a false statement supported by her affidavit in as much as submitting that petitioner Praveen Bhargava has been using one number, i.e., 9958772222, which is stated to have been in the name of the said petitioner. She submitted that neither the call records of this mobile number have been verified nor the details have been taken during investigation. Whereas, as a matter of fact, the petitioner has annexed the clinching document dated 13.06.2011 received from Nodal Officer of Airtel certifying that the said mobile number was activated on 19.03.2008 and whereas as per respondent No.2, the alleged occurrence took place on 08.10.2006.

68. The learned counsel for the petitioners has relied upon the judgment of ***Vijay Shekhar & Anr. Vs. UOI & Ors. 2004 (2) JCC 1123***, wherein the Supreme Court, while quashing the complaint and the entire proceedings pending before the court of learned MM, in Para 8 has observed as under:-

"8. Be that as it may from the above pleadings and the arguments addressed on behalf of the respective parties before us today, it is clear that the complaint in question is a product of fraud and a total abuse of the process of court. There is also serious doubt whether the procedure required under the Code of Criminal Procedure was really followed by the Magistrate at all while taking cognizance of the offence alleged. In this background of inherent falsehood that could be ex facie noticed from the contents of the complaint and coupled with the fact admitted by the parties to this petition. It is evident that the said complaint is a fraudulent one. Hence, the same is liable to be quashed based on the legal principle that an act in fraud is ab initio void. This principle in our opinion applies to judicial acts also.

Then in Para10, observed as under:

*"10. Similar is the view taken by this Court in the case of **Ram Chander Singh Vs. Savitri Devi and Ors. (2003 8 SCC 319)**, wherein this Court speaking through one of us (Sinha, J.) held thus:*

"Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in

leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata."

11. Thus, it is clear a fraudulent act even in judicial proceedings cannot be allowed to stand.

12. In view of our finding that the complaint filed before the Court of Metropolitan Magistrate, Court No.10 at Ahmedabad in Criminal Case No. 118 of 2004 dated 15.1.2004 is *ex facie* an act of fraud by a fictitious person, and an abuse of the process court, every and any action taken pursuant to the said complaint gets vitiated. Therefore, we think the complaint registered before the Metropolitan Magistrate, Court No. 10 at Ahmedabad in Criminal Case No. 118 of 2004 dated 15.1.2004 and all actions taken thereon including the issuance of non-bailable warrants is liable to be declared *ab initio* void, hence, liable to be set aside."

69. Regarding power and jurisdiction of this Court to entertain the present petition under Section 482 Cr.P.C., the Apex Court in the recent decisions in ***Prashant Bharti v. State of NCT of Delhi 2013 (2) AD (S.C.) 89*** on 23.01.2013 has in a similar and identical case observed *inter alia* as under:-

*"19. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C.") has been dealt with by this Court in **Rajiv Thapar & Ors. vs. Madan La/ Kapoor (Criminal Appeal No..... of 2013, arising out of SLP (Crl.) no.4883 of 2008**, decided on 23.1.2013) wherein this Court inter alia held as under:*

22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of the Cr.P.C., the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges leveled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations leveled by the prosecution/complainant, without the necessity of recording any evidence. For this the

material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

- (i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?*
- (ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.*
- (iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?*
- (iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? If the answer to all the steps*

is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

70. The learned ACMM had taken cognizance and summoned the petitioners / accused to appear to contend that the very issuance of the order taking cognizance is absolutely wrong, erroneous and invalid on the ground that on the basis of the material placed on record, no offence can be said to have been made out at all against the petitioners / accused.

71. Power under Section 482 Cr.P.C. has to be exercised by the High Court sparingly and in the interest of justice. However, allowing the criminal proceedings to continue, as is seen in the present case, even when there is no cogent or *prima facie* material on record to even *prima facie* make out any ingredients of the offence would certainly tantamount to an abuse of process of Court and therefore, as per settled law, there cannot be any dispute that in such cases power under section 482 Cr.P.C. can be and should be exercised by this Court in the interest of justice. The present case is a just fit and proper case for exercise of powers under Section 482 Cr.P.C.

72. In support of arguments on maintainability of the present petition, learned counsel has relied upon the observations made by the Supreme Court in the case of ***M/s Kunstocom Electronics (I) Pvt. Ltd. Vs Gilt Pack Ltd. AIR 2002 SC 739***", wherein the Apex Court did not approve the approach of this Court which disposed of the petition with the observations that accused

shall have right to raise all the grounds at the time of framing of charge. The Hon'ble Supreme Court held that since raising the very same objections at the time of framing of charge would practically be an empty formality as the Trial Court had already taken a definite view in the matter. The Hon'ble Court remitted back the matter to this Court for decision on merits.

73. Further, in addition to the above and in support of his arguments, reliance was also placed on the judgment delivered by this Court in ***Alok Kumar Vs. State & Anr. 2010 (4) JCC 2385***, wherein this Court was dealing with the petition under Section 482 Cr.P.C. for quashing of FIR in a case of a live- in- relationship of the complainant and the petitioners therein and the complainant getting a FIR registered under Section 376 IPC against the petitioners out of malice in order to wreck vengeance on the petitioners because the petitioners refused to live in relationship with the complainant. This Court, after dealing with the facts, at para 8, made the following observations as under:

"8. It is settled law that the Court should refrain from quashing FIR on the ground that allegations made in FIR were false. However, when FIR is lodged with mala fide motives to wreck vengeance, the Courts have interfered as an exceptional matter and quashed the FIRs. In M/s Eicher Tractors Limited & Ors. v. Harihar Singh & Anr. 2009(1) JCC 260, State of Karnataka v. M. Devendrappa 2002 (1) JCC 214, State of Haryana v. Bhajan Lal 1992 SCC (Crl.) 426 and Madhavrao J. Scindhia v. Sambhajirao C. Angre 198 SCC (Crl.) 234, Supreme Court held that where allegations made in an FIR or complaint were so absurd and inherently improbable on the basis of which no prudent person could ever reach a just conclusion, this was sufficient ground for quashing the FIR. The Apex Court also held that where criminal proceeding is manifestly attended with mala fide and where

proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge, the FIR can be quashed ...". [Emphasis provided].

74. All the above quoted observations in all the above referred judgments squarely apply to the facts and circumstances of the present case for enabling this Court to exercise its inherent powers Under Section 482 of the Cr.P.C. in favour of the petitioners.

75. The petitioners' involvement is clearly ruled out in view of the CFSL Report which *inter alia* states as under:-

- “1. No male fraction DNA could be generated from the source of Exhibit 4- bed sheet.
2. The DNA profile generated from the female fraction DNA obtained from the source of Exhibits - 4: Bed sheet (four different area) is not consistent with DNA profile of Ms. Vani Whig (source of Exhibit- 6: Liquid blood sample).
3. No DNA profile could be generated from the source of Exhibits -1 (pants), 2 (Shirts) and 3 (underwear). ”

76. To match DNA profiles with the DNA profile generated from semen stains on the bed sheet in FSL, Rohini, the remnants of respondent's No. 2 blood sample were again sent to FSL, Rohini, for a conclusive report. The FSL, Rohini finalized the report with following observation (same are referred in para 34 of the Cancellation Report):

- “1. The DNA profile generated from the Exhibit-D2 and D3 (cutting taken from the bed sheet) does not match with the DNA profile of Exhibit-5 (blood sample of victim).

2. *The DNA profile generated from the Exhibit-D4 and D5 (cutting taken from the Bed Sheet) does not match with the DNA profile of Exhibit-2 (Blood sample of Mr. Praveen Bhargava) Exhibit-3 (Blood sample of Mr. Ramesh Thakur), Exhibit-4 (Blood sample of Mr. Sarat Chander)."*

77. Learned counsel submitted that during investigation, it was found that the concerned persons were using the following numbers at the relevant period and time:-

- “1. Ms. Vani Whig- 9818185579 and 9810021490
2. Ms. Ruby Thakur- 9818642224
3. Mr. Sarat Chander- 9810024703
4. Mr. Ramesh Thakur- 9811168133
5. Mr. Praveen Bhargava –9818241666
6. Mr.Vijay Kataria-9810798109, 9818998187 and 9810222660.”

78. Above mentioned mobile numbers are extracted from the evidence collected and reference was drawn to the communication **letter No F-DJB I AC(CTB)/Inf/07- 67 dated 25th June 2007** received from office of Delhi Jal Board and also on the basis of a document/chart prepared by the Investigating Agency with the heading "Official no's list given by DJB" and then "Subscriber Detail of phone numbers"(which is at page No. 509 written at bottom of the page with TCR).

79. Learned counsel submitted that it will also be relevant, at this stage, to give some call detail analysis from the mobile phone call records/documents available in the TCR which is re-produced as under:-

“Call Details Analysis of the two phone Nos. used by complainant (w. e. f 01.10.2006 to 31.12.2006).

Sr. No.	Mob No / Name of Subscriber	Instrument - IMEI No.	Call Details Records - TCR Page No. (written at bottom)	Commonality of use of the instrument/IMEI
1.	9818185579 / Vani Whig	358223004914840	511-583	Vani Whig is also using instrument with IMEI no 357926008481870 used by Mr. Vijay Kataria on 25.08.06 from 19:06:45 to 19:56:57 (For this PI see at Page 533 & page 681 TCR) 681 TCR)
2.	9810021490 / Vani Whig	359374000402350	585-595	

”

80. He submitted that the analysis of the call details in respect of mobile phone No. 9818185579 on 08.10.2006, which is part of record, is as under:-

Date	Time	Call Type	Called - Calling	Dur. in sec	Cell 1 / Cell 2 - Location
08.10.06	10:37:00	SMS Out	9910222660 - Vijay Kataria (VK}	1	08941-Malviya Nagar
08.10.06	10:37:08	SMS Out	9910222660- (VK)	1	08941 -Malviya Nagar
08.10.06	11:20:10	Outgoing	9810798109- (VK)	13	08941 I 08941 - Malviya Nagar
08.10.06	11;20:39	Outgoing	9910222660- (VK)	159	08941 I 08941 - Malviya Nagar
08.10.06	14:11:05	Outgoing	9910222660- (VK)	17	08941 - Malviya Nagar I 03042
08.10.06	14:22:49	Incoming	9910222660- (VK)	7	40663 I 40663- B Block, Shivalik
08.10.06	16:31:05	Incoming	9910222660- (VK)	47	40663 I 40663- B Block, Shivalik
08.10.06	16:41:58	Incoming	9910222660- (VK)	23	20781 I 20781 - Main Mkt. Malviya Nagar
08.10.06	19:56:58	Incoming	01165634607 (Resi No of Resp no -2)	11	40663 I 40663- B Block, Shivalik

08.10.06	20:17:38	Incoming	9910222660- (VK)	290	40061 I 08941- Malviya Nagar
08.10.06	20:27:48	SMS Out	9910222660- (VK)	1	08941 I 08941 - Malviya Nagar
08.10.06	21:55:39	SMS Out	9910222660- (VK)	1	08941 I 08941 - Malviya Nagar
08.10.06	22:20:39	SMS In	9910222660- (VK)	1	08941 I 08941 - Malviya Nagar

The above call records' chart shows that the complainant has been in constant touch with Vijay Kataria and she has made calls and received various calls on her above mobile number on 09.10.2006 and 10.10.2006 and thereafter from 9910222660 (used by Vijay Kataria) at short intervals.

81. The analysis of the call details in respect of the second mobile phone No. 9810021490 of complainant on 08.10.2006, which is also part of record, is as under: -

“

Date	Time	Call Type	Called-Calling	Dur in sec	Cell 1/ Cell 2- Location
08.10.06	10:43:45	Outgoing	9810024703 - Sarat Chander	205	08941 I 08941 - Malviya Nagar-11
08.10.06	11:30:34	Outgoing	9810028707	38	08941 I 08941 - Malviya
08.10.06	12:11:58	Incoming	9810028707	13	08941 I 08941 - Malviya Nagar-11
08.10.06	15:51:36	Outgoing	01165664504	23	40663 I 40663 -B Block,
08.10.06	16:36:13	Incoming	41881101	37	20781 - Main Mkt. M Nagar I 03041 - Sagar Ratna, M Nagar
08.10.06	17:51:16	Outgoing	65634607	14	40663 I 40663 -B Block,

08.10.06	17:51:51	Outgoing	9810024703 - Sarat Chander	33	40663 / 40663 – B Block, Shivalik
08.10.06	17:52:40	Outgoing	9810024703 - Sarat Chander	24	40663 / 40663 – B Block, Shivalik
08.10.06	18:04:49	Outgoing	9810024703 - Sarat Chander	64	40663 / 40663 – B Block, Shivalik
08.10.06	18:24:15	Outgoing ,	9810024703 - Sarat Chander	99	40663 / 40663 – B Block, Shivalik
08.10.06	18:28:20	Outgoing	9810024703 - Sarat Chander	61	40663 / 40663 – B Block, Shivalik
08.10.06	18:33:14	Outgoing	9810024703 - Sarat Chander	35	40663 / 40663 – B Block,
08.10.06	20:09:58	Incoming	9810024703 - Sarat Chander	51	40663 / 40663 – B Block, Shivalik
08.10.06	21:43:13	Outgoing	9836303844	154	08941 / 08941 – Malviya Nagar-11

”

82. Learned counsel submitted that the above said call record shows that from this mobile number-9810021490 the complainant (on the date of incident, i.e., 08.10.2006) has made 8 outgoing calls at different points of time to Sarat Chander on his mobile phone No. 9810024703. Perusal of the contents of paragraphs 12 to 18 of the Cancellation Report become very relevant in order to appreciate the conclusions drawn by the Investigating Agency on the basis of mobile phone call records as above referred.

83. He also produced the call details in respect of three mobiles numbers found to be used by Vijay Kataria, i.e., 9810798109, 9818998187 and 9810222660 as under:-

“

Sr. No.	Mob. No. / Name of Subscriber used by	Instrument / IMEI No.	Call Details Records with page No. written at bottom of TCR	Commonality of use of the instrument/ IMEI
1.	9910222660 Kirti Chandwani (Used by Vijay Kataria)	358061003458460	609-667	This mobile No. is also found used of IMEI No. 357926008481870 on 25.10.06 (Sr. No. 2 below) Vijay Kataria mobile No. 9810798109 at page 627 (bottom)
2.	9810798109 Vijay Kataria	357926008481870	681-799	Vijay Kataria is also using the IMEI No. 358061003458460 of Kirti Chandwani (i.e. as at Sr. No. 1 above)
3.	9818998187 Jai Sai Communication (used by Vijay Kataria)	355057000498960 Used on (11.09.06-12.09.06) & 358061003458460 Used on (11.09.06-12.09.06) & 351800016976150 Used on (23.09.06-25.09.06)	669-679	Vijay Kataria is also using the instrument with IMEI No. 355057000498960 & 358061003458460 (as at Sr. No. 1 above) on 12.09.06 at page No. 669 written at bottom of the page in the name of Kirti Chandwani

”

84. Ld. Counsel for the petitioners submitted that during the course of the investigations it has been found that the mobile phone instrument bearing IMEI No. 358061003458460 (i.e. at serial No. 1 of the above chart) was used to operate above said three mobile phone Nos. i.e. 9810798109, 9818998187 and 9810222660 at different points of time between September, 2006 to December, 2006. He submitted that the relevant call details analysis of these

three mobile Nos., viz., 9810798109, 9818998187 and 9810222660 found to be used by Mr. Vijay Kataria on the date of alleged occurrence, i.e., 08.10.2006 and then on 09.10.2006 as under :

- i) In respect of phone No. 9810222660 (in the name of Kirti Chandwani- and found to be used by Vijay Kataria) with relevant details are at page 613 written at bottom of the page with TCR.
- ii) In respect of phone No. 9818998187 (in the name of Jai Sai Communication - and found to be used by Vijay Kataria) with relevant details are at page 669 to 679 written at bottom of the page with TCR. This record is being referred to and given in order to establish the use of the same instrument with IMEI No. 355057000498960 (i.e. at serial No. 3 of the above chart) and 358061003458460 (i.e. at serial No. 1 of the above chart) and also to establish the use of phones by Mr. Vijay Kataria in making various calls to the complainant and other common numbers in September 2006. Between 23.09.06 to 25.09.06, this very mobile number 9818998187 also shows use of another instrument with IMEI No. being 351800016976150.
- (iii) In respect of phone No. 9810798109 (in the name of Vijay Kataria) with relevant details are at page 687 written at bottom of the page with TCR.

85. Learned counsel further submitted that the analysis of the call details of these mobile phones have been stated in paragraphs 12, 13, 14 and 15 of the Cancellation Report (at pages 95 to 96 of the petition). The exact chart prepared on the basis of call details analysis of two telephone numbers used

by respondent No.2 (9818185579 and 9810021490) is at para 16 of the Cancellation Report at page 97-98 of the petition, whereas contents of paragraphs 68-69 shows that both, i.e., the complainant and Vijay Kataria, were found together in the same locality, i.e., Delhi Jal Board office on 09.10.2006. All this clearly shows the prior meetings of mind between the complainant and Vijay Kataria and further becomes very relevant and gives startling facts to establish that:-

- i) The respondent No. 2 was and has been working with M/s Kaveri Infrastructure of which Vijay Kataria was the Financial Advisor (please see Para 47 at page 110 of the petition). Complainant has been in constant touch with Vijay Kataria. This would be clear from the frequency of the calls between her and Mr. Vijay Kataria even at odd hours and even on holidays.
- ii) These call details prove the proximity of respondent No.2 and Vijay Kataria from analysis of call details. The frequency of calls between complainant and Mr. Vijay Kataria even on the date of incident - 08.10.2006 and thereafter undoubtedly shows the close proximity between them and also establishes that for implicating the petitioners- DJB officials, the complainant was working at the behest and on instructions of Vijay Kataria.
- iii) On the date of incident, the complainant has been found using the instrument with IMEI No. 358223004914840 for her mobile No.9818185579. However, on 25.10.2006, she was also found using another instrument with IMEI No. 357926008481870 on her said mobile No. 9818185579. Strangely, the same very instrument with

same IMEI No. 357926008481870 is being used by Mr. Vijay Kataria on his mobile No. 9810798109 between 01.10.2006 to 25.10.2006 and thereafter upto 31.12.2006 (please see page No. 713-714 of the TCR). Besides, Vijay Kataria was also found using another instrument with IMEI No. 358061003458460 for his said very mobile No. 9810798109 on 25.10.2006 (page No. 713-714 of the TCR).

- iv) The propensity of the complainant to tell lies is proved from the fact that during investigations, she denies having any knowledge of telephone No.9910222660 whereas as a matter of fact, she was found to be in constant touch with Vijay Kataria on the alleged date of incident on this very mobile number.
- v) The thorough investigations conducted and conclusions stated in the final report based upon the cogent and clinching material collected not only belies the allegations, but also demolishes the entire stand of the complainant that on the said date she became unconscious after eating the pastries with sedatives. Rather the call record details and the Cancellation Report, conclusively establish that the allegations made by complainant are false. Even if considered to be occurred between 6-8 p.m. as stated during course of arguments, she spoke with someone from her residence at 7.56 p.m, also called Sarat Chander at 8.09 p.m and then was also found to be in constant touch with Vijay Kataria through a call (lasting 290 seconds and also through SMS on the same very mobile number 9910222660) which she denies before the investigating authorities. It is only on the basis of the said

sound digital evidence which cannot be found fault with, the conclusion has been given by the investigating agency

86. Learned counsel for the petitioner submitted that the respondent No. 1 / State has also collected the call detail records/ print outs in respect of call details of the mobile phone Nos. 9818241666 and also 9811195078 of the petitioner both used by petitioner - Praveen Bhargava.

87. The call details in respect of mobile No. 9818241666 is available from page No. 811 to 823 written at bottom of the page with TCR and whereas the call details of the phone No. 9811195078 is available at page No. 825 written at bottom of the page on TCR. The photocopies of the said call details are also being enclosed herewith and are respectively marked as Annexure-Y as at pages 215- 221 & Annexure Z as at page No.222 of the index in vol. 2 filed with the written submissions.

88. A bare perusal of the call details undoubtedly made investigating agency to establish and conclude about the presence of the petitioner at his residence at Greater Kailash-1, New Delhi, on the date of alleged incident, i.e., 08.10.2006 and during the period of the alleged time of occurrence between 6.00 pm to 8.00 pm, as claimed by her during the course of hearing. It is a matter of record that no exact time of the alleged occurrence has been mentioned by her at any stage and all through.

89. Nonetheless the call details of the petitioner Praveen Bhargava in respect of 08.10.2006 (i.e the date of alleged incident) shows that on the said date, total 16 number of incoming and outgoing calls were received and made from the said petitioner's aforesaid number 9818241666. Relevant Call

Details Chart in respect of the petitioner's aforesaid number 9818241666 from page No. 815 written at bottom of page of TCR is reproduced as under:-

“

Date	Time	Call Type	Called -Calling	Dur in sec	Cell 1/ Cell 2- Location
08.10.06	08:34:08	Incoming	9899971630	301	03152103152 -GK I
08.10.06	12:08:50	Outgoing	9868875078	117	06292/ 06292- Sidharth Enclave
08.10.06	12:56:37	Outgoing	9810127695	266	07381-0khla-II I 44392-Jasola Vihar
08.10.06	14:01:49	Outgoing	9818133783 (Ramesh Thakur)	332	08312 Ashram 08351-GK
08.10.06	16:04:26	Incoming	9871643644	52	03152103152 -GK-1
08.10.06	17:01:13	Incoming	9313703393	183	03152/03152 -GK-1
08.10.06	18:09:28	Outgoing	9811355365	203	031521 03152- GK-1
08.10.06	20 32:30	Incoming	9818133783 (Ramesh Thakur)	83	03152103152- GK-1
08.10.06	20:48:01	Outgoing	9810043482	170	031521 03152 -GK-1
08.10.06	21:27:28	Incoming	9818133783 (Ramesh Thakur)	109	01973 Palika Place /00173 Motia Khan
08.10.06	22:22:29	Outgoing	9810043482	59	47853 I 47853 - Ashok Vihar
08.10.06	22:47:27	Incoming	9871049292	201	47853 I 47853 - Ashok Vihar
08.10.06	23:06:07	Outgoing	9810043482	115	47853 I 47853 - Ashok Vihar
08.10.06	Illegible	illegible	illegible		47853 I 47853 - Ashok Vihar
08.10.06	23:27:24	Outgoing	9810570125	67	47853 I 47853 - Ashok Vihar

90. Similarly, the perusal of call details in respect of the other mobile phone No. 9811195078 of petitioner Praveen Bhargava, on the night of alleged incident, i.e., 08.10.2006 shows that he received only two incoming calls on this number 9811195078. One out going call is made from this number on mid night of 09.10.2006. During all these period of calls, the location of the petitioners and his said mobile number is also shown at cell Tower ID No- 23253 (i.e Ashok Vihar), as would be clear from the cell location as is found stated in the last column of the call details/ chart. Relevant call details chart in respect of the petitioner's aforesaid number 9811195078 from page No. 825 written at bottom of page of TCR is reproduced as under:-

Party No	S Date	Slime	DURA	C.ID	CT
09688875078	08.10.06	223325	11	23253 (Ashok Vihar)	INC
09811066593	08.10.06	223629	44	23253 (Ashok Vihar)	INC
09910575802	09.10.06	004823	26	23253 (Ashok Vihar)	OUT

91. At this stage, it is pertinent and worthwhile to submit that the call details of the user/subscriber of the particular mobile number identifies person's location at the time of his receiving incoming call and making an outgoing call. In the present case, it is undoubtedly clear from the mobile phone call record in respect of petitioner Praveen Bhargava's mobile No. 9818241666 that on the date of alleged incident on 08.10.2006 (a Sunday), he has been present at his residence at G.K-1 and had received various calls and

also made some outgoing calls. (The locations of the said petitioner on 08.10.2006 with his said mobile number on all the occasions at different period of time are found stated in the call details chart in respect of petitioner's mobile No. 981824166.

92. The said call records also establish that he received an incoming phone call on 08.10.2006 at 20:32:30 from 9818133783 (used by Ramesh Thakur). At this time the record establishes that he was at his residence at GK-1. The investigations also records and reveals that one Mr. Arvind Sharma, an officer/colleague of Delhi Jal Board was admitted in Sunder Lal Jain Hospital, Ashok Vihar on 08.10.2006. Thereafter, the call record establishes that petitioner- Praveen Bhargava has started proceeding from his residence G.K-1 along with his wife to visit the said ailing colleague at Sunder Lal Jain Hospital and on his way a second call was received by him from 9818133783 (used by Ramesh Thakur) at 21:27:28 hours on 08.10.2006. At that point of time, the location of said petitioner with his mobile phone was found at Palika Place near Panchkuian Road/Motia Khan, while he was on his way to Sunder Lal Jain Hospital, Ashok Vihar. All these call records, when seen and read with submissions made by the investigating agency in paragraphs 22 to 25 of the Cancellation Report at page 100-101 and then also at paragraphs 64 to 66 of the Cancellation Report at page 116-117 of the petition become very relevant in order to establish the factum of petitioners being falsely implicated in the present case. Then, at para 24 of the Cancellation Report there is also a reference to the revelation made by Smt. Bindu Sharma w/o Late Mr. Arvind Sharma that on 08.10.2006 in the late evening the petitioner and his wife had come to visit her late husband at

Sunder Lal Jain Hospital, Ashok Vihar, Delhi. This fact was confirmed by respondent No. 1 by referring the case diary from the police file.

93. Learned counsel also submitted that the analysis of the call details in respect of the mobile phone No.**9811168133** (Vodafone) used by Ramesh Thakur (petitioner in Crl. M.C. No. 2019/2011) on the date of alleged incident, i.e., 08.10.2006 [from instrument bearing IMEI No. 353766006556100]. All call details (made & received) on 08.10.2006 and 09.10.2006 is reproduced as under:-

“

Party No	S Date	S Time	DURA	C.ID	CT
0981065223	08.10.06	08:32:42	27	10783-Rohini	INC
09450579531	08.10.06	09:01:21	309	10783-Rohini	INC
09810024703	08.10.06	09:29:47	27	10783 - Rohini	INC
09450952581	08.10.06	12:42:36	745	10783 - Rohini	INC
09811935982	08.10.06	12:56:03	64	10783-Rohini	INC
09427305502	08.10.06	18:52:18	93	10783 - Rohini	INC
00919427305502	08.10.06	18:54:42	232	10783-Rohini	Out
09415306456	08.10.06	19:04:18	232	10783 - Rohini	INC
00919828021069	08.10.06	20:01:49	1015	10783 - Rohini	Out
09871341516	08.10.06	20:27:08	36	10783 - Rohini	INC
00919871341516	08.10.06	20:49:15	155	23033-Pitam Pura	Out
09868122582	08.10.06	20:58:27	59	18692 -Pitam Pura	INC
09868119999	08.10.06	22:46:36	38	23252 - Ashok Vihar	INC
09810398976	08.10.06	23:07:50	29	23253 - Ashok Vihar	INC

09811165822	08.10.06	23:2"0:41	103	23253 – Ashok Vihar	INC
09868122582	09.10.06	06:53:43	64	10783 - Rohini	INC
09811355365	09.10.06	07:46:24	38	10783 - Rohini	INC
0911126899898	09.10.06	09:03:53	38	10783-Rohini	Out
01123526286	09.10.06	09:26:35	45	10783-Rohini	INC
09811165822	09.10.06	09:31:31	52	10783 - Rohini	INC
09871949287	09.10.06	10:17:51	20	13561-Rohini	INC
09811165822	09.10.06	11:25:39	25	14533 – Nimri Colony	INC
09810074607	09.10.06	12:14:22	53	11421 - Kashmiri Gate	INC
01123341186	09.10.06	13:02:15	19	10113 – Yamuna Baazar	INC
09868502873	09.10.06	15:1"1:30	28	14542 – H Block, Ashok Vihar	INC
01126714513	09.10.06	15:12:45	66	19011 – Keshav Puram	INC
01126714513	09.10.06	15:23:01	35	10781	INC
09868526959	09.10.06	15:56:04	67	10783-Rohini	INC
09811834736	09.10.06	16:13:39	25	10783-Rohini	INC
09811051980	09.10.06	20:48:48	74	14533 – Nimri Colony	INC

”

94. He submitted that the above call records/analysis clearly establish that even this petitioner Ramesh Thakur, too on the date of the alleged incident, i.e., 08.10.2006 (a Sunday) was within the vicinity of area Rohini between 6.00 pm to 9.00 pm. The approximate distance between Shivalik, Malviya Nagar (the alleged place of occurrence) and Rohini - Pitam Pura (place

where Ramesh Thakur is found present) is about 25 - 30 kms by road. As such, this material fact as established from the call detail records/evidence categorically goes to prove that even petitioner Ramesh Thakur was nowhere present near or at the place of the alleged occurrence [i.e. B-136, Shivalik, Malviya Nagar, New Delhi] on the alleged date (08.10.2006) and time of the alleged incident (7-8 pm).

95. Learned counsel submitted that during arguments, as per the respondent No.2, the mobile No.9818133783 in respect of petitioner Ramesh Thakur was not investigated and therefore it was argued that his presence may be presumed at place of occurrence on 08.10.2006 at the time of alleged commission of offence.

96. Mr.Prem Kumar, learned counsel appearing on behalf of the petitioner Sarat Chander has submitted that the respondent No.2 made complaint after about eight months of the incident directly to the Commissioner of Police, Delhi. The said complaint, after inquiry, was marked to DCP (South District) for registration of an FIR, which got registered on 09.06.2007 bearing No. 610/2007. In her complaint, she had alleged that on 08.10.2006 at B-136, 2nd floor, Shivalik, New Delhi, the petitioners had sexual intercourse with her against her will or consent and even made a CD of rape.

97. The alleged motive of making the CD was to force her to file a complaint with the police against the M.D. of her company and also to provide them with confidential documents of the company. The complainant thus sought legal action against the petitioners for committing gang rape on her and on one Mr. B.M. Dhaul for molesting her and also for giving her threats. In the complaint, respondent No. 2 stated that the aforesaid apartment

was of her friend Ruby, who was in the process of shifting from her old place to the new one in Shivalik.

98. Ld. Counsel submitted that the complaint of the prosecutrix was found completely false and motivated and ultimately, Cancellation Report was filed in the Court of learned ACMM, Saket, who did not accept the same and was pleased to summon the petitioner and others vide impugned order dated 13.05.2011. As per the closure report of the police, the present case is of deep rooted conspiracy hatched by Mr. Vijay Kataria, Managing Director of Kaveri Infrastructure/the employer of the complainant involving the complainant, another employee Ms. Ruby Thakur and Mr. Sant Ram, who is facing various criminal cases in the Courts of law. The learned ACMM ignored the fact that thorough investigation has clearly shown that sufficient evidence has come on record to establish that it was the culmination of a well planned conspiracy hatched to implicate the petitioner with the ulterior motive of subjecting him to undue pressure and influence. During investigation it was revealed that Mr. Vijay Kataria had great influence and control over the prosecutrix, which is amply clear from the audio tape recorded conversation between the petitioner Sarat Chander and Mr. Vijay Kataria. The conversation leaves no room for doubt that the prosecutrix has been acting completely at the behest of Mr. Vijay Kataria and has falsely got implicated the petitioner by giving a totally false statement to the police. However, the police itself has exposed the illegal design of the prosecutrix in making out a false case against the petitioner and that is why the police has clearly stated of its intention of lodging proceedings against her U/s 182 IPC.

99. Learned counsel further submitted that the learned ACMM has completely ignored the Cancellation Report, from which the following facts emerge:-

- i. Vijay Kataria has been connected in various capacities M.D./Business and Financial Advisor with Kaveri Infrastructure Private Limited and is/was a contractor with Delhi Jal Board.
- ii. Vijay Kataria had strained relations with Praveen Bhargawa, Ramesh Thakur, Sarat Chander and B.M. Dhaul. Vijay Kataria had filed complaints against these officers with the office of Hon'ble L.G. Delhi. The Engineers themselves had previously filed complaints at various police stations apprehending implication in false cases by Vijay Kataria.
- iii. Complainant was working in Vijay Kataria's company since 2005.
- iv. She met Sarat Chander under a fake identity of a reporter named 'Shivani.'
- v. She called Sarat Chander seven times on the day of the incident.
- vi. The accommodation B-136, Shivalik, Delhi was hired by another employee of Kaveri Infrastructure named Ms. Ruby Thakur for which she falsely introduced complainant as her married sister and for which Ms. Ruby Thakur paid Rs. 88,000/- as advance rental for four months. Neither complainant nor Ms. Ruby Thakur have offered any plausible reason for hiring this relatively expensive accommodation and the source of funds for the same have also not been disclosed.

- vii. On the day of incident, complainant was using two mobile phones bearing Nos. 9810021490 & 9818185579. She was using 9810021490 to call Sarat Chander while she used 9818185579 to keep in regular touch with Vijay Kataria. On the day of incident there were 11 calls/ SMS between Ms. Vani and Mr. Vijay Kataria. The first call began at 10.37 AM and the last call was 10.20 PM in the night.
- viii. On the day of the incident at 08:17 pm complainant received a call from mobile phone No. 9910222660 (Vijay Kataria) and this call lasted for 290 seconds. The Cell ID location analysis of mobile phone number 9818185579 (complainant's phone) reveals that this call began at Cell ID 40661 which is Malviya Nagar, Shivalik, Delhi (place of occurrence) and ended at Cell ID 8941 which is Malviya Nagar, Delhi (complainant's residence). She also spoke with someone who called her from her Malviya Nagar residence number 011-65634607 (probably her mother) at 07.56 PM (incoming call for 15 seconds), i.e., immediately after the incident, but she chose not to disclose this incident as alleged.
- ix. Vijay Kataria and complainant have gone to great lengths to prevent any link between them from surfacing. They have used multiple mobile phone numbers to hoodwink the investigating agency regarding their interaction with each other. However, as discussed in detail earlier, their links have been established from the different numbers and handsets they have used over a period of time and being together at the Cell phone based location of Faiz road, Karol Bagh (office of

DJB)., Further both of them did not disclose true facts during investigation of this case.

- xii. The DNA Tests have proved beyond doubt that the allegations of the complainant in this case are not proved.
- xiii. There was inordinate delay of eight months in not reporting the matter to the police or to any other authority. Neither the complainant nor Ms. Ruby Thakur who are both educated working women have provided any plausible explanation for not bringing the factum of rape to the notice of any authority or to their family members immediately after the alleged incident had taken place. Moreover, there is no logical explanation for the complainant deciding to file this complaint after a lapse of about eight months. The alleged incident took place on 08.10.2006 and the complaint was made for the first time only on 24.5.2007. No cogent or any plausible explanation has been submitted by the complainant in this regard either before the respondent No. 1 or even in the protest petition filed before Ld. ACMM. Whereas the Hon'ble Supreme Court has consistently held that the delay in making the complaint/ lodging of FIR often results in embellishment which is an creature of an afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. The delay in making complaint/ lodging the first information report has not at all been satisfactorily explained, and make the complainant's version incapable of being.

- xiv. Surprisingly complainant has her parental house No. 80-A, Nil Block, Malviya Nagar which is hardly two KMs away from the rented accommodation where only a bed, cooler and settee has been placed and neither the complainant has been able to explain as to why she needed an extra accommodation when her own house was only a couple of KMs away. This finding in the cancellation report again points towards the fact that B-136, Shivalik, Delhi was taken up on expensive rent of Rs. 22,000/- per month for a specific purpose which is different from the reason stated.
- xv. That the CFSL report of the blood sample and the bed sheet does not show any male fraction DNA from the source of bed sheet and even the female fraction DNA was not consistent with the DNA Profile of prosecutrix and further no DNA Profile could be generated from the pant, shirt and the underwear. It is clear that the blood and semen on the bed sheet neither matched with that of the complainant nor with that of the petitioner.

100. Learned counsel further submitted that the learned ACMM considered the following points to take cognizance of the offences despite Cancellation Report filed by the police:-

- i. There was a sexual intercourse between complainant and accused Sarat Chander.
- ii. CD of the sexual intercourse was made as stated by independent witness Sant Ram. The presence of other two accused persons was seen by independent witness Sant Ram on the CD.

- iii. It is not digestible that in the common parlance of dignified Indian woman, prosecutrix/ complainant would offer herself as a prey to some evil designs of her employer.
- iv. As there was sexual intercourse between complainant and Sarat Chander and as complainant and Sant Ram had seen CD where all three accused were doing the alleged activity, the statement of Ms. Ruby showing all the three persons hurriedly leaving the scene of crime and thereafter finding the complainant bleeding and in crying position, it suggests *res gestate*.

101. Learned counsel submitted that the aforesaid grounds are infact no grounds in law to take cognizance of the offences. As regards point Nos. i and ii, it is submitted that the learned ACMM has also ignored the fact that Sant Ram and Ms. Vani gave different versions regarding the CD being played. Sant Ramt stated that when he entered BM Dhaul's office, Ms. Vani has clearly stated that the CD was played only after Sant Ram had left. Hence the question of Sant Ram seeing the CD version does not arise at all.

102. As regards point No. iii, it is submitted that in the tape-recorded conversation between Mr. Vijay Kataria and the petitioner Sarat Chander that took place, it has come from the mouth of Mr. Vijay Kataria that the CD is with him. Later on, Mr. Vijay Kataria stated that he got the CD from the prosecutrix and returned the same to her. The fact remains that the CD is either with the prosecutrix or with Mr. Vijay Kataria and none of them has cared to produce the same to the police during investigation. The said CD would have undoubtedly made the whole position very clear. As the said CD does not show any gang rape as admitted by the witnesses, this falsifies the

allegation of complainant of gang rape; otherwise she would have immediately rushed to the police to show the best evidence available of the alleged incident.

103. He further submitted that even otherwise, the thorough investigation of the police shows that other two alleged accused persons, namely, Ramesh Thakur and Praveen Bhargava were not seen in the CD. This finding also falsifies the allegations of gang rape made by complainant.

104. He further submitted that the place of alleged rape is a rented accommodation @ Rs.22,000/- per month, whereas the salary of the complainant was just Rs. 10,000/- per month with Kaveri Infrastructure. Ms. Ruby Thakur, who is also working with Kaveri Infrastructure was having two accommodations simultaneously with her, namely, C-34, Malviya Nagar, and B-136, Shivalik, Delhi and the Cancellation Report shows that there was some pre-established link and prior understanding between Kaveri Infrastructure, Ruby Thakur and complainant for having taken up the accommodation at B- 136, Shivalik, Delhi on rent for some specific purpose other than the reason stated.

105. Learned counsel further submitted that reliance of the learned ACMM on Section 114A of the Indian Evidence Act is totally misconceived as provisions of the same are applicable only when the prosecutrix states in her evidence before the Court that she did not consent. The stage of raising the said presumption does not arise at this stage at all as no trial has yet commenced.

106. Learned counsel has argued that there was a conspiracy in which the complainant was used as a tool in the hands of the Managing Director of the company, namely, Mr. Vijay Kataria is clear from the constant touch with him, who had falsely denied the knowledge of telephone No. 9910222660. The investigation has disclosed that complainant was in telephonic contact with Vijay Kataria on the alleged day of the incident, i.e., 08.10.2006 and had called him up immediately after she had alleged sexual intercourse with Sarat Chander at B-136, Shivalik, Delhi. This finding shows that she and Vijay Kataria were together involved in a conspiracy to lure Sarat Chander to that apartment on a Sunday evening and implicate him in the present case.

107. Learned counsel further argued that question of commission of offence of gang rape U/s 376 (g) IPC does not arise at all as the various calls on telephones have been thoroughly analyzed during investigation, which go to show that co-accused Mr. Ramesh Thakur on 08.10.2006 (the day of incident) was present at his residence in Rohini, Delhi. It was Sunday. He visited Sunder Lal Jain Hospital, Ashok Vihar to meet a sick colleague, who had suffered a heart attack and had later died the same night. He had stayed with the family in the hospital. In the morning, the next day, he had attended his colleague's funeral at Nigam Bodh Ghat, Delhi. The other accused Praveen Bhargawa remained in the area of Greater Kailash Part-I, i.e., at his residence, throughout the day. However, there were no calls recorded between 6.15 PM till 8.30 PM from this cell phone on 08.10.2006. According to him, late in the evening he had received information about the illness of his colleague, who suffered a heart attack and he left for Sudner Lal Jain Hospital, Ashok Vihar, Delhi, after 8.30 PM on 08.10.2006 to visit him.

108. In view of the above facts, location of co-accused Ramesh Thakur and Praveen Bhargava was nowhere found near the alleged place of incident, i.e., B-136, 2nd Floor, Shivalik, New Delhi, but far away at Sunder Lal Jain Hospital, Ashok Vihar, Delhi, at the alleged time of the offence, therefore, the question of commission of gang rape under Section 376 (g) IPC does not arise at all.

109. To support his submissions, learned counsel has relied upon the case of *State of Punjab Vs. Ramdev Singh AIR 2004 SC 1290*, wherein it has been observed that “the delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, same cannot by itself be a ground for disbelieving and discarding the entire prosecution version as done by the High Court in the present case.”

110. He also relied upon *Narayan Alias Naran Vs. State of Rajasthan (2007) 6 SCC 465*, wherein it has been observed that “the learned counsel for the appellant has taken us through the evidence on record. We have carefully perused the evidence of the prosecutrix/appellant and we find ourselves in agreement with the view of the High Court that the testimony of the prosecutrix is not reliable. Having carefully scrutinized her evidence, we find that her testimony does not inspire confidence and her conduct appears to be highly unnatural. On an overall appreciation of the evidence of the prosecutrix and her conduct, we have come to the conclusion that PW 1 is not

a reliable witness. We, therefore, concur with the view of the High Court that a conviction cannot be safely based upon the evidence of the prosecutrix alone. It is no doubt true that in law the conviction of an accused on the basis of the testimony of the prosecutrix alone is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality, and there is no other evidence on record which may even lend some assurance, short of corroboration that she is making a truthful statement. We, therefore, find no reason to disagree with the finding of the High Court in an appeal against acquittal. The view taken by the High Court is a possible, reasonable view of the evidence on record and, therefore, warrants no interference. This appeal is dismissed.”

111. In the case of ***Meena and Another Vs. State of Haryana (Crl. M.C. No. 1104 of 2008 in High Court of Punjab and Haryana)*** and in ***Lakhwinder Singh Vs. State of Punjab, 2004(4) RCR (Criminal) 104***, it was held in para Nos. 12 and 19 as under:-

"12. The observations made above leave no manner of doubt that the wholesome jurisdiction conferred upon the High Court by Section 482 of Code of Criminal Procedure cannot be narrowed, confined or put in a strait-jacket. This inherent power can always be exercised by the High Court to prevent abuse of the process of Court or to otherwise to secure the ends of justice. The only constraint on the High Court is that since the power under this section is very wide, it should be exercised with great Criminal Misc. No.M- 1104 of 2008 6 care and caution. On the other hand, the court should not shy away from exercising this power when the accused persons are being persecuted in the guise of prosecution. Proceedings initiated

and continued for oblique motives or to wreak vengeance on the other party are liable to be quashed. Proceedings are also liable to be quashed if even on the allegation being accepted in toto, prima facie no offence could be made out.

19. *It, thus, become fairly evident that the court have consistently put an end to criminal proceedings which are an abuse of the process of Court. At the initial stage, at the summoning stage and even after charges have been framed, the High Court has the inherent power to quash proceedings and to pass such orders as are necessary to prevent abuse of the process of any court or otherwise to secure ends of justice. Section 482 of the Code of Criminal Procedure contains a non-obstante clause to the effect that nothing in the Code of Criminal Procedure shall be deemed to limit the powers of the High Court to prevent abuse of the process of Court. Therefore, filing of the charge-sheet in Court does not in any manner affect the amplitude of the wholesome jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure. The only rider being, that greater the power, Criminal Misc. No.M-1104 of 2008 7 greater the care and caution in exercise thereof"*

This Court in para 6 of its judgment in ***Manoj vs. Prem Lal, 2006(3) RCR (Criminal) 941***, held as under:-

"Power under Section 482 Cr.P.C. has to be exercised sparingly and such power was not to be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397 (3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397 (1) of the Code, as it is prohibited under Section 397 (3) Cr.P.C. However, the High Court can entertain a petition under Section 482 of the Code, when there is serious miscarriage of justice and abuse of the process of the Court or when mandatory provision of law are not complied with and when the High Court feels that the inherent

jurisdiction is to be exercised to correct the mistake committed by the revisional Court."

112. Thus, the legal position that emerges is that this Court is not expected to throw out a case on technicalities but is expected to interfere wherever there has been miscarriage of justice or misuse of judicial mechanism or procedure. This Court is not expected to be a mere silent spectator when it is made out that that criminal prosecution is an abuse of process of the Court. This Court, in its discretion, is expected to prevent the abuse of process or criminal miscarriage of justice by exercise of jurisdiction under Section 482 Cr.P.C.

113. In the case of ***Vijayan Vs. State of Kerala 2008 (12) Scale 107***, it is observed that, "the present case wholly depends upon the testimony of the prosecutrix. The incident in the present case took place seven months prior to the date of lodging the complaint. At a realization drawn upon her that she has been subjected to rape by the accused, no complaint for grievance was made either to the police or to the parents prior thereto. The explanation for delay lodging the FIR is that the accused -appellant promised her to marry, therefore, the FIR was not filed. In case, where sole testimony of the prosecutrix is available it is very dangerous to convict the accused, especially when the prosecutrix could venture to wait for seven months for filing the FIR for rape. This leaves the accused totally defenceless. Had the prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix has willingly submitted her to sexual intercourse and waited for seven months for filing the FIR, it will be hazardous to convict on such sole testimony."

114. Mr. Pawan Sharma, learned standing counsel appearing on behalf of the State in Criminal Revision Petition No. 208/2012 submitted that on receipt of the complaint dated 24.05.2007 from the complainant, the same was marked to DCP (Vigilance) and subsequently, after the inquiry, it was sent to DCP (South District) for registration of the case vide letter of Vigilance dated 09.06.2007. Accordingly, FIR bearing No. 610/2007 was registered at P.S. Malviya Nagar. The said complaint was against Mr. Sarat Chander, Chief Engineer, Mr. Praveen Bhargav, Superintending Engineer, Mr. Ramesh Thakur, Superintending Engineer and Mr. B.M. Dhaul, Chief Engineer of Delhi Jal Board. It was alleged in the complaint that complainant in the year 2006 was working with a contracting firm dealing with Delhi Jal Board. As a part of her duties, she came in contact with accused Mr. Sarat Chander at the office of Delhi Jal Board at Jandhewalan in the month of August, 2006. Thereafter, Mr. Sarat Chander became friendly with her and continued to meet her on subsequent dates. It was alleged that accused Mr. Sarat Chander offered to extend his help in getting good job to the complainant in Delhi Jal Board. It was alleged that on this pretext, Mr. Sarat Chander took her mobile number and started calling her on her mobile phone. In the end of September, 2006, Mr. Sarat Chander met her in a restaurant, called Ruby Tuesday at District Centre, Saket. Mr. Sarat Chander gave a gift of pen set to her and also collected her CV for the purpose of arranging an interview for better job.

115. Further alleged, that on 08.10.2006, Mr. Sarat Chander asked the complainant on mobile phone to come at Tivoli Garden for collecting interview letter of Delhi Jal Board. Complainant has alleged that at that time,

she was at her friend's place at B-136, IInd Floor, Shivalik, New Delhi and was busy in helping her friend in shifting the house from old residence. Accordingly, she expressed her inability to come to Tivoli Garden. Upon this Mr. Sarat Chander told her that the matter was urgent, therefore, she should receive this letter by today itself. He offered to come at B-136, IInd Floor, Shivalik, New Delhi for delivering the letter. Thereafter, he alongwith his two colleagues, namely, Mr. Praveen Bhargav and Mr. Ramesh Thakur came at the above mentioned place.

116. It is further alleged that they offered some pastry to complainant, which she consumed and after consuming the same became semi-unconscious. In that condition, all the three persons named above committed rape with her one by one. These persons also prepared a CD of this incident. Thereafter, they all left the place. At that time, she was bleeding and traumatized. It was alleged that when they were coming down from the house, they were seen by her friend Ms. Ruby Thakur.

117. Learned standing counsel further submitted that since the allegations leveled were very serious in nature, where an educated working woman leveled the allegation of gang rape and intimidation against four senior officers of Delhi Jal Board, the matter was thoroughly investigated impartially under the supervision of senior officers of Delhi Police.

118. On 02.06.2007, the complainant also filed a complaint U/s 200 Cr.P.C. in the Court of learned ACMM, Patiala House Court, who vide order dated 04.06.2007, called a status report. Accordingly, the learned ACMM was informed about registration of FIR, which is pending for investigation.

119. He further submitted that after filing the status report, the complaint was kept pending without taking the cognizance. Time to time status reports were filed before the learned ACMM and the investigation was continuously monitored by the said Court very closely.

120. On 02.06.2010, after completion of investigation, report U/s 173 Cr.P.C. in terms of Section 169 Cr.P.C. was filed and the outcome of investigation was concluded in following terms:-

"By the investigation conducted so far, it is quite clear that Ms. Vani Whig, Ruby Thakur, Vijay Kataria, Sant Ram and possibly some others have hatched a deep rooted conspiracy to implicate the alleged accused persons in a false case. Hence a final report in the form of cancellation is being filed."

121. Learned counsel further stated that while submitting the Closure Report, it is also recommended that proceedings U/s 182 IPC against the complainant would be initiated subsequently.

122. After filing the Closure Report, notice was issued to the complainant, who filed the protest petition. After hearing the arguments, vide order dated 13.05.2011, the learned ACMM, Saket took cognizance of the offence U/s 376(2)(g) IPC and summoning order U/s 204 Cr.P.C. was passed.

123. The present revision petition has been preferred before this Court as the petitioner felt aggrieved of the order of taking cognizance despite the fact that the police thoroughly investigated the case and filed the closure report, on the following grounds:-

The learned ACMM has failed to appreciate the fact that U/s 190 Cr.P.C., the Court of MM is empowered to take cognizance:

- (a) Upon receiving a complaint of facts which constitute such offence.
- (b) Upon police report of such facts.
- (c) Upon information received from any person other than police officer or upon his own knowledge that such offence has been committed.

124. Learned standing counsel submitted that at the time of passing of the order of cognizance on 13.05.2011, both police report and the complaint were pending before the learned ACMM and by this order it is not clear as to whether cognizance is taken on the complaint or on police report.

125. He submitted that in the police report none of the allegation of complainant was found to be true or corroborated by facts emerged during the investigation, so there was no occasion of taking the cognizance on police report. Further as per Section 190 Cr.P.C., to take cognizance, it is an important requirement that the police report must contain such facts which constitute such offence.

126. Learned counsel submitted that after taking the cognizance on complaint, the summoning order cannot be passed without examining the complainant or her witnesses. If the case is instituted upon police report, it is an important requirement that there must be sufficient material in the report to form a *prima facie* view that the offence has been committed. In the report submitted by the police, there is no material to form such an opinion so the cognizance taken in the instant case is without any material on record. Moreover, if this cognizance is taken on the complaint filed by the complainant on 02.06.2007, the learned ACMM has committed a grave error, because U/s 200 Cr.P.C., without examining the complainant and her witness, the Court cannot proceed U/s 204 Cr.P.C.

127. Learned counsel further submitted that the learned ACMM has wrongly interpreted the provisions of Section 114A of Indian Evidence Act. The presumption U/s 114 A of Indian Evidence Act is a rule of evidence. Before raising this presumption, proving of intercourse during the trial is an essential requirement. Except the statement of complainant, which was established during investigation to be motivated and false, no evidence came on record to show that on the basis of the evidence available, the prosecution might be able to prove the factum of intercourse between the complainant and the persons named above.

128. He further submitted that the learned ACMM has erred while making the observation that the presence of the other two accused persons was established in the alleged gang rape because it was depicted on a CD and the CD had been seen by an independent person, namely, Sant Ram being run in the office of Mr. B. M. Dhaul. Accordingly, the learned ACMM has relied upon that statement of Sant Ram to pass this observation.

129. In his statement, Sant Ram stated that when he entered in the room of Mr. B. M. Dhaul, one girl was sitting inside and on the screen of the computer inside, a CD was being played, in which, one out of these three was shown committing sexual intercourse with the girl sitting inside the office and remaining two were seen by him standing there in the video recording. The learned ACMM has not considered the fact that during the investigation this statement of Sant Ram was found unreliable because of following facts:-

- (a) The complainant in her complaint has stated that CD was played only when Sant Ram had already been sent out of the room by Mr. B.M. Dhaul. Whereas Sant Ram in his statement has stated that when he

entered in the room of Mr. B.M. Dhaul, the CD was being played. These statements are contradictory to each other and falsify each other.

- (b) By the study of CDRs of mobile phone of complainant, her presence in office of Jal Board was not established on the date and time on which Sant Ram has allegedly seen the complainant and playing of CD in the office of Mr. B.M. Dhaul.
- (c) During the course of investigation, it was found that Sant Ram had remained involved as co-accused in several cases registered against Vijay Kataria, who is the employer of the complainant. The said Kataria has been on inimical terms with all three alleged accused persons in this case.
- (d) During the investigation, it was revealed that the alleged CD, which complainant alleged to be in possession of the alleged accused persons, was in fact seen in possession of Mr. Vijay Kataria. During investigation it was found that Vijay Kataria had discussed the CD and its contents with Mr. Sarat Chander. It was found that Vijay Kataria had discussed the CD and its contents with Mr. Sarat Chander and he even threatened the petitioner with exposure of the contents of the CD.

130. The learned ACMM has erred while observing that statement of Ruby Thakur is also corroborating the version given by the complainant. The falsehood and fabrication of the statement of Ms. Ruby Thakur is evident from the following facts:-

- (a) The complainant and Ruby Thakur were working in Kaveri Infrastructure and are well educated. None of them was able to

explain as to why they did not report such a serious and traumatic incident of gang rape to any authority or their family members immediately after the alleged incident.

- (b) As per the allegations, the incident occurred at B-136, Shivalik. When the matter was investigated it was found that taking of premises No. B-136, Shivalik, on rent was in itself a mysterious circumstance. This premise was taken on rent by Ruby Thakur on 01.10.2006. During her examination, Ruby Thakur has stated that she had taken the premises on rent because the lease of the earlier premises C-34, Malviya Nagar, where she was already residing was expiring soon. During investigation, Mr. M.L. Sharma, owner of said house, B-136, Shivalik and Sunil Kumar, property dealer were examined. They revealed that this premises had not been taken on lease by the employer company of the complainant and Ruby Thakur, i.e., Kaveri Infrastructure, rather this premises was taken on rent by Ruby Thakur on her own and she had deposited Rs.88,000/- as security on her own. This premise had been taken on rent only eight days before the alleged incident took place. Ruby Thakur introduced herself to the landlord as an I.A.S. aspirant and complainant as a medical student, living separately from her husband for the purpose of studies of M.B.B.S. This premises was taken on a monthly rent of Rs.22,000 /-.

Learned standing counsel submitted that the total salary of Ruby Thakur and the complainant was not even sufficient to afford this rent.

131. It is further revealed during investigation that Kaveri Infrastructure paid the rent of C-34, Malviya Nagar to the owner Mr. M.L. Pandey till March, 2007, i.e., for about six months after the alleged rape incident. So by these facts, it is clear that the premises B-136, Shivalik was not taken on rent for the purpose as mentioned in complaint or as deposed by Ruby Thakur in her statement.

132. It is further revealed from the statement of Mr. M.L. Sharma, owner of B-136, Shivalik that this premise was used only by the complainant and he had seen Ruby Thakur only on the day when she had come to take the possession. Further this premise is very close to the parental house of the complainant. So there was no explanation as to why she has chosen to live in this accommodation, when her own house was so close by.

133. He submitted that both the complainant and Ruby Thakur have tried to build up the story that after the incident till the complainant reached her house she remained afraid and perplexed. During the investigation, it was found that complainant, on the date of incident was using two mobile phones, i.e., 9818185579 and 9810021490. When the C.D.R. of these numbers were analyzed, it was found that soon after the incident at about 7.56 PM, complainant received a call from the landline number of her house, thereafter, at about 8.17 PM she had a conversation with a person using mobile No. 9910222660 for about 290 seconds (5 minutes approx.). As per the cell ID chart, these conversations started from Shivalik and ended at Malviya Nagar. Again at about 8.27 PM, 9.55 PM and at 10.20 PM, complainant sent the SMS to this number.

134. He submitted that these facts falsify the story of being afraid and horrified. Ruby Thakur was also having a mobile and on same day at about 12 noon she had a long conversation of about 9 minutes with her employer Vijay Kataria. Meaning thereby that she was in touch with Vijay Kataria, but this alleged horrified incident was even not brought to the notice of her employer who might have reported the same to the police.

135. Learned standing counsel further submitted that during investigation, complainant was reluctant to reveal the identity of telephone No. 9910222660. By in-depth investigation it was established that this number was also being used by Vijay Kataria. These facts clearly indicate that there was some motivation behind lodging of this complaint.

136. Learned counsel submitted that the alleged complaint was filed by the complainant upon motivation of Vijay Kataria, who was willing to settle his score with these officers. He has masterminded this conspiracy to suit his own ends. For this purpose, he used the complainant as a tool and created two witnesses to support her version of rape. Both these witnesses, namely, Ruby Thakur and Sant Ram were associated with Vijay Kataria. Ruby Thakur is his employee and Sant Ram has remained involved as a co-accused in case FIR No.557 /06, PS Malviya Nagar with him. It is pertinent to mention here, that Sant Ram is a witness in a case FIR No. 54/2006 U/s 307 IPC, PS Chandi Nagar, Bagpat UP, which was registered on the complaint of Vijay Kataria.

137. Learned standing counsel has relied upon a case of ***Prashant Bharti (Supra)*** wherein on the similar facts and circumstances, the Supreme Court/ in Para 20 has observed as under:-

“20. The details in respect of each aspect of the matter, arising out of the complaints made by Priya on 16.2.2007 and 21.2.2007 have been examined in extensive detail in the foregoing paragraphs. We shall now determine whether the steps noticed by this Court in the judgment extracted hereinabove can be stated to have been satisfied. In so far as the instant aspect of the matter is concerned, the factual details referred to in the foregoing paragraphs are being summarized hereafter. Firstly, the appellant-accused was in Sector 37, Noida in the State of Uttar Pradesh on 15.2.2007. He was at Noida before 7.55 pm. He, thereafter, remained at different places within Noida and then at Shakarpur, Ghaziabad, Patparganj, Jorbagh etc. From 9.15 pm to 11.30 pm on 15.2.2007, he remained present at a marriage anniversary function celebrated at Rangoli Lawns at Ghaziabad, Uttar Pradesh. An affidavit to the aforesaid effect filed by the appellant-accused was found to be correct by the investigating officer on the basis of his mobile phone call details. The accused was therefore not at the place of occurrence, as alleged in the complaint dated 16.2.2007. Secondly, verification of the mobile phone call details of the complainant/prosecuterix Priya revealed, that on 15.2.2007, no calls were made by the appellant-accused to the complainant/prosecuterix, and that, it was the complainant/prosecuterix who had made calls to him. Thirdly, the complainant/prosecuterix, on and around the time referred to in the complaint dated 16.2.2007, was at different places of New Delhi i.e., in Defence Colony, Greater Kailash, Andrews Ganj and finally at Tughlakabad Extension, as per the verification of the investigating officer on the basis of her mobile phone call details. The complainant was also not at the place of occurrence, as she herself alleged in the complaint dated 16.2.2007. Fourthly, at the time when the complainant/prosecuterix alleged, that the appellant-accused had misbehaved with her and had outraged her modesty on 15.2.2007 (as per her complaint dated 16.2.2007), she was actually in conversation with her friends (as per the verification made by the investigating officer on the basis of her mobile phone call details). Fifthly, even though the

complainant/prosecuterix had merely alleged in her complaint dated 16.2.2007, that the accused had outraged her modesty by touching her breasts, she had subsequently through a supplementary statement (on 21.2.2007), levelled allegations against the accused for offence of rape. Sixthly, even though the complainant/prosecuterix was married to one Manoj Kumar Soni, s/o Seeta Ram Soni (as indicated in an affidavit appended to the Delhi police format for information of tenants and duly verified by the investigating officer, wherein she had described herself as married), in the complaint made to the police (on 16.2.2007 and 21.2.2007), she had suggested that she was unmarried. Seventhly, as per the judgment and decree of the Civil Judge (Senior Division), Kanpur (Rural) dated 23.9.2008, the complainant was married to Lalji Porva on 14.6.2003. The aforesaid marriage subsisted till 23.9.2008. The allegations made by the complainant dated 16.2.2007 and 21.2.2007 pertain to occurrences of 23.12.2006, 25.12.2006, 1.1.2007 and 15.2.2007, i.e., positively during the subsistence of her marriage with Lalji Porwal. Thereafter, the complainant Priya married another man Manoj on 30.9.2008. This is evidenced by a "certificate of marriage" dated 30.9.2008. In view of the aforesaid, it is apparent that the complainant could not have been induced into a physical relationship, based on an assurance of marriage. Eighthly, the physical relationship between the complainant and the accused was admittedly consensual. In her complaints Priya had however asserted, that her consent was based on a false assurance of marriage by the accused. Since the aspect of assurance stands falsified, the acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC. Especially because the complainant was a major on the date of occurrences, which fact emerges from the "certificate of marriage" dated 30.9.2008, indicating her date of birth as 17.7.1986. Ninthly, as per the medical report recorded by the AIIMS dated 16.2.2007, the examination of the complainant did not evidence her having been poisoned. The instant allegation made by the complainant cannot now be established because even in the medical report dated 16.2.2007 it was observed that

blood samples could not be sent for examination because of the intervening delay. For the same reason even the allegations leveled by the accused of having been administered some intoxicant in a cold drink (Pepsi) cannot now be established by cogent evidence. Tenthly, the factual position indicated in the charge-sheet dated 28.6.2007, that despite best efforts made by the investigating officer, the police could not recover the container of the cold drink (Pepsi) or the glass from which the - complainant had consumed the same. The allegations made by the complainant could not be verified even by the police from any direct or scientific evidence, is apparent from a perusal of the charge-sheet dated 28.6.2007. Eleventhly, as per the medical report recorded by the AIIMS dated 21.2.2007 the assertions made by the complainant that the accused had physical relations with her on 23.12.2006, 25.12.2006 and 1.1.2007, cannot likewise be verified as opined in the medical report, on account of delay between the dates of occurrences and her eventual medical examination on 21.2.2007. It was for this reason, that neither the vaginal smear was taken, nor her clothes were sent for forensic examination.”

Accordingly, the chargesheet and framing of charges were quashed by the Supreme Court.

138. Mr. R.N.Mittal, learned senior counsel appearing on behalf of respondent No.2/complainant, submitted that the present case is a curious case of complete lack of transparency in the action of the Police, who deliberately and willfully, in apparent misuse and abuse of their official position, carried out the investigation, in a unilateral manner, only to falsely discredit the complainant/prosecutrix, by giving judgmental findings in favour of the accused persons. The final report filed by the Police completely ignored the overwhelming and clinching material on record, sufficient enough to convict the accused persons.

139. Learned senior counsel further submitted that right from inception of receiving the complaint of the Complainant made to the Commissioner of Police, the needle of suspicion kept pointing towards her. The entire investigation was carried out, treating her to be an accused. The record reveals the influence and the clout, which the accused persons have in high rungs of the Government, be it bureaucracy or the police. Every effort was made, at every level of the Government machinery to scuttle rightful legal action on the complaint of the complainant and when they were forced to register an FIR, since the complainant had already moved to the Court for registration of the same, every attempt was made to save the accused persons by referring to some extraneous material.

140. It is submitted that on 24.05.2007, the respondent No.2/complainant lodged a complaint with Commissioner of Police, against the petitioners for committing rape upon her on 08.10.2006, threatening her of dire consequences and exposing a C.D. made by them during the commission of rape upon her and against Mr.B.M. Dhaul for molesting her. The Commissioner of Police was personally conveyed by the complainant that the DCP (South) is personally involved in the matter as on the day following the incident, the local SHO had called the complainant under instructions of the DCP (South).

141. Learned senior counsel further submitted that no action was taken by the Police on the complaint of the complainant. Rather the complaint was sent to the Vigilance department for inquiry and the Complainant was harassed, humiliated and embarrassed by the male Police officials, who asked indecent questions from the complainant. It is apparent that even

before entertaining her complaint, the police was already briefed. It was later on transpired that the DCP (Vigilance) was in fact wife of DCP (South). Instead of sending the complaint to the concerned Police Station, the same was referred by the Commissioner (Vigilance) to the Vigilance Department, which is an unusual course of action. All this peculiar procedure was adopted as the call details of the accused would show that they were friendly with the DCP (South), whose wife was entrusted with the enquiry. Right from the inception, the conspiracy between the accused and the Police Officials to save them was apparent and glaring.

142. Learned senior counsel further submitted that in these circumstances, the complainant was constrained to file an application under Section 156(3) Cr.P.C. on 02.06.2007. On 04.06.2007, when the case came up for hearing before the learned ACMM, the action taken report was called from the DCP by the said Court for 18.06.2007. Thereafter, FIR in question was registered on 09.06.2007 at PS Malviya Nagar.

143. Learned senior counsel further submitted that the investigation of the said complaint continued almost three years, therefore, the police filed a final report of Cancellation/Closure before the learned ACMM on 02.06.2010, which is based on the allegations that the Police to escape scathing remarks from the learned Court, it was complained by the complainant, broadly, that the three accused persons, namely, Sarat Chander, Praveen Bhargava and Ramesh Thakur committed rape on her, by making her eat some sedative laced pastry, on 08.10.2006. The Complainant was very drowsy and therefore helpless and unable to stop these people from having sexual intercourse with her, which they did one by one, without her will and consent

and forcibly. The next day of the incident, Sarat Chander threatened the Complainant that if she dare open her mouth, her life will be ruined by exposing the C.D., which they had made while committing rape on her. He threatened the Complainant that he and Bhargava know various police officers. After 3-4 days, the Complainant had gone to DJB Office to get back the C.D. The accused B.M. Dhaul misbehaved with her by pressing her breast with his hands, forcibly. Threats were extended of dire consequences by exposing the CD. The Complainant gathered courage and lodged complaint with Commissioner of Police.

144. That after the investigation, which continued for almost three years, the police filed a final report of cancellation/closure report, before the Court of learned A.C.M.M., dated 02.06.2010. The cancellation/closure report was allegedly based on the allegations that the complaint contained extremely serious allegations by a lady victim against persons, who happened to be government servants in responsible positions. There is no logical explanation for the Complainant, deciding to file the complaint after a lapse of about 8 months. There allegedly being some pre-established link between Kaveri Infrastructure, Ruby Thakur and complainant for having taken up accommodation at B-136, Shivalik, Delhi, on rent, for some specific purpose. The complainant could not give any plausible explanation as to why she had made 7 calls to Sarat Chander on the date of incident. She was in constant touch on 08.10.2006, the date of incident, with Sarat Chander and Vijay Kataria. Her call pattern does not co-relate well with the allegation of being gang raped. The location of Ramesh Thakur's phone on 08.10.2006 shows that Ramesh Thakur's phone (9811168133) was either at his residence at

Rohini or at Ashok Vihar. Praveen Bhargava's phone (9818241666) does not show any record between 06:09 p.m. and 08:32 p.m on 08.10.2006. His phone location was at G.K.-1. Available evidence indicate that both Praveen Bhargava and Ramesh Thakur were not even close to the place of occurrence at the alleged date and time. She made false allegations against Ramesh Thakur and Praveen Bhargava in a conspiracy to falsely implicate them in a rape case. The clothes worn by the Complainant were sent to FSL, Rohini and the report mentioned that no semen could be detected on these exhibits, thus, the forensic examination of these clothes remained un-corroborative to support the allegation of rape.

145. According to FSL Report dated 26.09.2007, human blood stains and human semen stains were found on the given bed sheet. FSL was requested to generate DNA profile from the bed sheet. The persistent resistance on the part of complainant to provide her blood sample for DNA analysis was found to be intriguing. The blood samples and the bed sheet were sent to CFSL, Lodhi Colony. The report mentioned that no female fraction DNA could be generated from the source of bed sheets; DNA profile generated from the female fraction DNA obtained from the bed sheet (four different areas) is not consistent with the DNA profile of complainant; the reason why no male DNA fraction was found at CFSL, Lodhi Colony, was because the entire area on the bed sheet containing semen stains had been used up at FSL, Rohini. The blood and semen stained bed sheet provided by the complainant failed in the scientific DNA test, to connect the accused persons with the crime. The factum of bleeding could not be established by the forensic examination of the exhibits provided by complainant herself. The results of DNA tests raise

serious doubts about the authenticity of the exhibits produced by complainant herself, ten months after the incident.

146. Learned counsel further raised doubt on closure report as police alleged the difference in the version of the complainant and Sant Ram erodes the credibility of both the statements. S.M. Dhaul had seen Sarat Chander in a compromising position with a woman in the C.D., however, he did not see anyone else in the C.D. except Sarat Chander and complainant. Sarat Chander had a conversation with Vijay Kataria, which is recorded in his mobile phone; CFSL, Lodhi Colony, has authenticated the voices on the recorded material as those belonging to Sarat Chander and Vijay Kataria; this conversation proves that C.D. was in possession of Vijay Kataria and not with Sarat Chander and others, this also negates the allegation of extortion. During investigation it has been established that the mysterious number 9910222660 was being used by Vijay Kataria. Findings prove that complainant and Vijay Kataria were in constant touch with each other. Complainant and Vijay Kataria were together involved in a conspiracy to lure Sarat Chander to 8-136, Shivalik, Delhi, to implicate him in the case. Relationship between Vijay Kataria and accused persons had turned sour; the accused persons had filed written complaint expressing their apprehension of being implicated by Vijay Kataria in false cases. Investigation shows that C.D. was in possession of Vijay Kataria. Sant Ram and complainant gave different version regarding playing of the C.D. Sarat Chander admitted having sexual intercourse with complainant. Nothing has come on record to show that Sarat Chander had committed rape on complainant. The allegation of complainant that Sarat Chander had called her on her phone, is not

supported by her phone records. She had called Sarat Chander 7 times from her mobile No. 9810021490 between 10:43 a.m. to 06:33 p.m. Sarat Chander was using his mobile phone No.9810024703. In the C.D. played in the office of Mr. B.M. Dhaul, there were only Sarat Chander and complainant in the C.D. The other two accused Ramesh Thakur and Praveen Bhargava were not seen in the CD.

147. Mr. Mittal further submitted that cancellation report in Para 22 mentioned that Ramesh Thakur was only using one mobile number 9811168133. The letter dated 25.06.2007 issued by Delhi Jal Board, which contains the details of the mobile numbers of the accused persons show that Ramesh Thakur was using two mobile numbers, i.e., 9818133783 and 9811168133. According to Cancellation report Para 23 without obtaining the call details and location details of mobile number 9818133783, of accused Ramesh Thakur, the police could not have reached to a conclusion that on the day of incident he was in Rohini.

148. Ld. Counsel further submitted that in para 24 of the Cancellation Report, it is mentioned that on 08.10.2006 at 08:32 p.m. and again at 09:27 p.m., Praveen Bhargava received a call from Ramesh Thakur (Cell No. 9818133783). However, without taking call details of the Ramesh Thakur's Cell No. 9818133783, which has been used at the time of incident, they cannot presume that the accused Ramesh Thakur was in Rohini. These call details have not been obtained by the Investigation Officer, apparently to help the accused persons.

149. Ld. Counsel for the complainant has further submitted that the police have though mentioned about the statement of B.M. Dhaul, recorded by

them, but the same has not been placed on record. Admittedly, B.M. Dhaul had seen the C.D. He would definitely be in possession of C.D. apart from accused persons, which was deliberately not recovered by Police from him. C.D. would have established the factum of rape by three accused persons on Complainant. There is no conclusive material on record that C.D was in possession of Vijay Kataria and even if it was in his possession, nothing prevented the police from recovering the same from him. There was apparent lack of effort and interest on the part of the police to recover and place the C.D on record.

150. He submitted, the closure report totally ignored the statement of Ruby Thakur recorded under Section 161 Cr.P.C. where she had stated that when she was going upstairs to 136, Shivalik, she saw three persons going downstairs; one of the persons collided with her. When she reached the flat, she saw that the door was open; and when she entered the bedroom she saw complainant sitting naked in semi-conscious state; at that time, she was totally naked and was crying badly; when she regained consciousness, then on asking she told Ruby that three persons have committed rape on her and she wants to commit suicide. There is nothing on record to disbelieve such statement of Ruby Thakur.

151. Apart from the statements of prosecutrix and Ms. Ruby Thakur, the significant statement of witness Sant Ram was also totally ignored by the police. Sant Ram has stated in his statement under section 161 Cr.P.C. that around 11-12th October, 2011 at 11:00 -11:30 a.m. when he went to the office of Mr. B.M. Dhaul, Chief Engineer, DJB, he was told by the peon that a meeting is going on, but he still went inside. He saw that a VCD is being run

on the computer, which he watched for 6-7 seconds and he saw some objectionable scenes. On seeing him, Mr. Dhaul switched off the computer and he noticed a girl there, who was crying. The witness stated that he saw that the same girl was in C.D., in unconscious stage, in an objectionable position, with Praveen Bhargava, Sarat Chander and Ramesh Thakur and in the scene Praveen Bhargava was doing the wrong thing and the remaining two were standing.

152. In the entire closure report, there is no mention of statement of complainant recorded under Section 164 Cr.P.C.; wherein she had clearly stated that she was made to eat one pastry, after which she felt drowsy and was not in her senses; she felt that three persons, namely, Sarat Chander, Praveen Bhargava and Ramesh Thakur were raping her, but she could not resist, and was unable to stop them, as she had no control over her senses. This statement of the Complainant was deliberately ignored by the police in its closure report. Minor discrepancy in the version of Complainant and Sant Ram, regarding playing of CD would not discredit their statements and the same cannot be discarded in this manner. It was not appreciated that Sant Ram is an independent witness.

153. Mr. Mittal further submitted that petitioner Parveen Bhargava had contacted various senior police officials and senior officers in Delhi Government to take their favour so that they would be saved from not getting implicated in the present case. Moreover, Forensic report dated 26.09.2007, of FSL, Rohini, confirmed detection of blood and human semen on the bed sheet. The subsequent report of CFSL, Lodhi Colony is that no male fraction DNA could be generated cannot be relied upon or treated as

conclusive evidence for the simple reason that the DNA fraction could not be found because the entire area on the bed sheet containing semen stains had been used up at FSL, Rohini.

154. He further submitted that Sant Ram stated about the VCD being played in the computer, in the office of B.M. Dhaul, which fact was corroborated by B.M. Dhaul himself, but despite such admissions and corroborations, the forensic lab gave the finding that the CD was not played on the computer. This fact shows the height of manipulation by the accused persons, who even manipulated the FSL reports. (Every attempt was made by the accused in ensuring that neither the C.D. is recovered nor the hard disc of the computer has the film)

155. The police has to conduct a comprehensive inquiry and investigation, before filing the final report. The pick and choose policy and only considering the evidence, favorable to the accused persons was itself a ground for not considering the final report. The order of the learned ACMM cannot be assailed at all.

156. Ld. Sr. Counsel further submitted that at the stage of taking cognizance of offence, the Court has only to see whether *prima facie* there are reasons for issuing the process and whether the ingredients of the offence are there on record.[Refer (2008) 2 SCC 492 "**S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Limited & Ors.**"]

157. Court should exercise utmost restraint and caution before interfering with an order of taking cognizance by the Magistrate, otherwise, the holding of a trial will be stalled. Even if the police report is to the effect that no case is made out against the accused, the magistrate can take into account the

statements of the witnesses, examined by the police during the investigation and take cognizance of the offence and order the issue of process to the accused. [Refer (1989) 2 SCC 132 "*M/s India Carat Private Limited Vs. State of Karnataka &Anr.*" and "*Dr. Mrs. Nupur Talwar Vs. CBI, Delhi & Anr.* 2012 (1) ACR 332 (SC).

158. Upon receipt of police report under Section 173(2) Cr.P.C., a magistrate is entitled to take cognizance under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer. [Refer 2009 Crl. L.J. 3430 "*Chittaranjan Mirdha Vs. Dulal Ghosh & Anr.*"]

159. Learned counsel submitted, in the present case there are no malafides, which can be attributed to the Complainant. The Police report in this regard is totally erroneous. Be that as it may, it is the settled law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence, does not become vitiated on account of malafides or political vendetta of the first informant or the Complainant. [Refer 1992 Suppl. (1) SCC 335 "*State of Haryana Vs. Bhajan Lal*".]

160. The malafide of the informant are of secondary importance. At the trial, it is wide open to the accused to cross examine the witnesses and to adduce defence evidence and to test the veracity of the evidence collected during the investigation.[Refer 1992 (Suppl. 1) SCC 222 "*State of Bihar Vs. P.P. Sharma*".)

161. The allegations made in the complaint will be decided at the time of trial. [Refer (1986) 3 SCC 67 "*J.P. Sharma Vs. Vinod Kumar Jain*".] At this stage, the High Court has to be mindful to the fact that it cannot appreciate the evidence, but has to find out whether the facts alleged in the FIR and the chargesheet disclose a prima facie case and raise a strong suspicion of commission of the offence by the accused.

162. Ld. Counsel further submitted that the High Court cannot, on the basis of evidence on record, come to the conclusion that the version given by the Complainant is false or that the same does not make out a case for an offence under Section 376 IPC. Reliance is placed on the judgment rendered by this Court in *Crl. Revision Petition No.272/2007 "Renu Vij Vs. State"*.

163. For the purposes of quashing of the complaint, the complaint has to be examined as a whole, but without examining the merits of the allegation. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of reliability and genuineness of the allegations in the complaint is warranted. [Refer (2006) 6 SCC 736 "*Indian Oil Corpn. Vs. NEPC India Limited*".]

164. The High Court would not be justified in quashing an FIR by appreciating and shifting the materials collected during the investigation. At this stage, the High Court would be entitled to only examine the allegations made in the FIR and would not be entitled to appreciate by way of shifting the materials collected in the course of investigations including the statements recorded under Section 161 Cr.P.C. [Refer *JT 2002 (3) SC 89 "M.L. Bhatt Vs. M.K. Pandita"*.]

165. Mr. Mittal further submitted that Section 114-A enables a Court to raise a presumption that a woman who was the victim of rape had not consented and that the offence was committed against her will. [Refer *AIR 1996 SC922 'Bodhisattwa Gautam Vs. Ms. Subhra Chakraborty'*.]

He submitted that the call records as per Trial Court in FIR No. 610/2007, PS Malviya Nagar are as under:-

CALL FROM	CALL TO	DURATION (IN SECONDS)	TIME PERIOD	DATE
9810024703 (SARAT CHANDER)	9810021490 (VANI)	51	20:19:58	08.10.2006 Page No.299
9818241666 (PRAVEEN BHARGAV)	9810024703 (SARAT CHANDER)	190	11:17:59	09.10.2006 Page No.299
9811168133 (RAMESH THAKUR)	9810024703 (SARAT CHANDER)	27	09:29:47	08.10.2006 Page No.404
9818241666 (PRAVEEN BHARGAV)	9818133783 (RAMESH THAKUR)	332	14:01:49	08.10.2006 Page No.411
9818133783 (RAMESH THAKUR)	9818241666 (PRAVEEN BHARGAV)	85	20:32:30	08.10.2006 Page No.411
9818133783 (RAMESH THAKUR)	9818241666 (PRAVEEN BHARGAV)	109	21:27:28	08.10.2006 Page No.411
9818241666 (PRAVEEN BHARGAV)	9810024703 (SARAT CHANDER)	72	08:13:02	09.10.2006 Page No.412

9818241666 (PRAVEEN BHARGAV)	9818133783 (RAMESH THAKUR)	82	09:01:12	09.10.2006 Page No.412
9818133783 (RAMESH THAKUR)	9818241666 (PRAVEEN BHARGAV)	31	10:17:32	09.10.2006 Page No.412
9818241666 (PRAVEEN BHARGAV)	9810024703 (SARAT CHANDER)	190	11:17:59	09.10.2006 Page No.412
9818133783 (RAMESH THAKUR)	9818241666 (PRAVEEN BHARGAV)	65	11:36:39	09.10.2006 Page No.412
9818241666 (PRAVEEN BHARGAV)	9818133783 (RAMESH THAKUR)	70	15:20:53	09.10.2006 Page No.412
9818241666 (PRAVEEN BHARGAV)	9810024703 (SARAT CHANDER)	2	16:15:35	09.10.2006 Page No.412
9810024703 (SARAT CHANDER)	9818241666 (PRAVEEN BHARGAV)	82	16:56:23	09.10.2006 Page No.412
9810024703 (SARAT CHANDER)	9818241666 (PRAVEEN BHARGAV)	63	17:24:41	09.10.2006 Page No.412
9810024703 (SARAT CHANDER)	9818241666 (PRAVEEN BHARGAV)	10	18:38:55	09.10.2006 Page No.413
9818241666 (PRAVEEN BHARGAV)	9818133783 (RAMESH THAKUR)	35	19:30:54	09.10.2006 Page No.413
9818241666 (PRAVEEN BHARGAV)	9810024703 (SARAT CHANDER)	75	19:50:07	09.10.2006 Page No.413

9818241666 (PRAVEEN BHARGAV)	9810024703 (SARAT CHANDER)	311	21:27:34	09.10.2006 Page No.413
9818241666 (PRAVEEN BHARGAV)	9818133783 (RAMESH THAKUR)	198	10:16:24	10.10.2006 Page No.413
9810024703 (SARAT CHANDER)	9818241666 (PRAVEEN BHARGAV)	24	11:01:07	10.10.2006 Page No.413
9868117860 (SARAT CHANDER)	9818241666 (PRAVEEN BHARGAV)	561	11:52:50	10.10.2006 Page No.413
9818241666 (PRAVEEN BHARGAV)	9810024703 (SARAT CHANDER)	192	12:34:07	10.10.2006 Page No.413
9818241666 (PRAVEEN BHARGAV)	9810024703 (SARAT CHANDER)	44	13:00:17	10.10.2006 Page No.413
9818241666 (PRAVEEN BHARGAV)	9810024703 (SARAT CHANDER)	6	14:10:02	10.10.2006 Page No.413
9810024703 (SARAT CHANDER)	9818241666 (PRAVEEN BHARGAV)	5	18:04:13	10.10.2006 Page No.413
9818133783 (RAMESH THAKUR)	9818241666 (PRAVEEN BHARGAV)	309	18:44:25	10.10.2006 Page No.413

He also submitted that the record of calls made by accused Praveen Bhargava to Higher Ministry and police official is as under:-

CALL FROM	CALL TO	DURATION (IN SECONDS)	TIME PERIOD	DATE
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9818241666 (PRAVEEN BHARGAV)	011- 23386482 (P. N. AGGARWAL)	75	12:19:23	09.10.2006
9818241666 (PRAVEEN BHARGAV)	011- 23392005 (P.K. TRIPATHI)	8 1	12:35:46	09.10.2006
9818241666 (PRAVEEN BHARGAV)	011- 24623025 (DCP, LODHI COLONY)	6 5	14:03:31	10.10.2006
9818241666 (PRAVEEN BHARGAV)	011- 24633291 (DCP, SPECIAL CELL)	51	17:11:45	10.10.2006

166. I have heard the learned counsel for the parties.

167. The present petitions are for quashing the impugned order dated 13.05.2011 passed by the learned ACMM, Saket Courts, Delhi, whereby the learned Judge has taken the cognizance U/s 204 Cr.P.C. for the offence punishable U/s 376 (g) IPC and summoned the petitioners.

168. Admittedly, respondent No.2/complainant filed a complaint for the offence mentioned above on 24.05.2007 belatedly after more than eight months for an incident which is alleged to have taken place on 08.10.2006.

169. Since, the complainant made the complaint for a gang rape belatedly for eight months and that too against Senior Officers of Delhi Jal Board, therefore, the Investigating Authority investigated the case in-depth before taking any legal action on the complaint.

170. During investigations, the police recorded statements U/s 161 Cr.P.C. of independent and material witnesses, conducted medical examination, polygraphs tests, DNA profile and examined call details of the petitioners, complainant and other related persons.

171. Inquiries and investigations were made in respect of presence of petitioners, i.e., Praveen Bhargava and Ramesh Thakur on the date of incident, i.e., 08.10.2006 at the alleged place of offence, i.e., B-136, Second Floor, Shivalik, Malviya Nagar, New Delhi. After the inquiries and investigations, on the basis of available evidence the police came to the conclusion that petitioners, Praveen Bhargava and Ramesh Thakur were not even found close to the place of occurrence on the alleged date, time and place of occurrence. The finding of the police is that the complainant made false allegations against two of the petitioners named above with a conspiracy to implicate them falsely in a gang rape case with some ulterior motive.

172. It is also on record that the doctor, who examined the complainant vide MLC No. 1247/2007 recorded the findings on the submissions of the complainant herself that “the patient c/o attempted rape about eight months back”. Thus, the complainant’s information to the doctor was ‘attempt to rape’.

173. Accordingly, doctor also observed that as the matter was reported later by eight months, no corroboration by way of medical examination could come on record. Thereafter, on 16.06.2007, complainant handed over her clothes, i.e., trouser, shirt and underwear to the IO stated to be wearing on the date of incident. On a later date, i.e., on 21.08.2007, after more than two

months, complainant had handed over one bed sheet to the IO stated to be used on the bed on the date of incident.

174. All the petitioners were interrogated, examined and they also submitted their blood samples for their DNA profiling. They all were also subjected to polygraph tests. Their call details were verified.

175. It is pertinent to mention here that the FSL vide its report dated 29.02.2008 had required the presence of complainant for collecting of blood samples for matching the DNA profile generated from the bed sheet. However, she refused to give her blood sample for DNA profiling to match/compare and co-relate with the evidence provided by her.

176. Rather, in protest, the complainant filed a Writ Petition (Criminal) No. 463/2008 and sought directions from this Court to scrap the entire blood sampling, DNA profiling and comparison process being conducted in violation of law and insisted on the arrest of the accused persons. The aforesaid Writ Petition was disposed of vide order dated 14.08.2008, whereby this Court directed the IO, namely, Inspector Jaswant Kaur to accompany the complainant to the CFSL, CBI, Lodhi Road, CGO Complex, New Delhi on 18.08.2008 at 11.00 am, where she had to give her blood sample. The above named IO was further directed to file a report before the Trial Court as early as possible.

177. The complainant, instead of complying with the directions passed by this Court, filed the SLP (Criminal) No. 6306/2008 against the order dated 14.08.2008 passed by this Court, however, same was dismissed vide order dated 16.01.2009 by the Apex Court.

178. Having no option, complainant, on 04.02.2009 provided her blood samples for the DNA test at AIIMS, New Delhi. On receiving the report from FSL, scientific and forensic evidence did not support the version of the complainant.

179. On the delay of filing the complaint, the case of the respondent No.2/complainant is that while committing the gang rape upon her, the petitioners had prepared a CD and threatened her not to disclose to anyone. Further they insisted to make complaint against Vijay Kataria, i.e., her former employer. It is alleged in the complaint that the said CD was played on 09.10.2006 in B.M. Dhaul's office at Delhi Jal Board, Faiz Road, Delhi, which was seen by one Sant Ram.

180. The police thoroughly investigated on the issue of CD by examining said Sant Ram and B.M. Dhaul. Police has concluded in its final report that although the aforesaid CD was available with Vijay Kataria (as per audio recording between Sarat Chander and Vijay Kataria), however, the said CD was never produced by anyone.

181. On the basis of investigation and material available, the police concluded that Vijay Kataria was involved in a conspiracy with the complainant to implicate the petitioners.

182. The police also examined the call details of mobile phone number 9818185579 of the complainant which revealed that she had received incoming calls from mobile No. 9910222660 at 8.07 pm on the date of alleged incident, immediately after the occurrence of the incident. The conversation on the aforesaid phone lasted for 290 seconds with Mr.Vijay

Kataria. Thus, examination of call details established that the complainant was in constant touch with Mr. Vijay Kataria on the one hand and also with Mr. Sarat Chander throughout the day of incident, i.e., on 08.10.2006 on the other hand. In addition, there were eleven calls/SMS's between them. Therefore, the police concluded that petitioners Praveen Bhargava and Ramesh Thakur were not found even near the alleged place of offence.

183. It is important to note that the complainant was working with M/s Kaveri Infrastructure Private Limited, a company in which Mr. Vijay Kataria has been a Director. The police also examined Mr. Vijay Kataria and his details of mobile numbers between September, 2006 till December, 2006, which found that one mobile instrument bearing IMEI No. 358061003458460 was used to operate all three mobile numbers, i.e., 9910222660, 9810798109 and 9818998187 at different points of time. The police has established that the aforesaid telephone numbers were used by Mr. Vijay Kataria.

184. The investigation further revealed that the complainant had used number 9818185571 on handset bearing IMEI No. 357926008481870 on 25.10.2006 from 07.06 pm to 07.56 pm and the same handset being IMEI No. 357926008481870 was also used to operate the mysterious telephone number 9910222660 on 25.10.2006 from 10.17 am to 06.19 pm. Importantly, the same IMEI number was used between 01.10.2006 to 31.12.2006 by Mr. Vijay Kataria on his mobile No. 9810798109 (except on 25.10.2006) from 10.17 am to 08.09 pm.

185. On the basis of above, in cancellation report the police has established that the complainant and Vijay Kataria were in constant touch with each other. She was in contact on phone with Vijay Kataria on the alleged date of

incident, i.e, on 08.10.2006 and had called him up immediately after the alleged incident. Thus, it is proved that the complainant and Vijay Kataria were together involved in a conspiracy to lure Sarat Chander at the aforesaid place.

186. The cancellation report has also established that the relationship between Vijay Kataria and officials of Delhi Jal Board were not cordial, therefore, Vijay Kataria had been making complaint to Lieutenant Governor against four engineers of Delhi Jal Board.

187. On the issue relating to CD, the investigation has established that Sant Ram and complainant gave different versions regarding CD played in the office of Delhi Jal Board.

188. In addition to the systematic independent scientific analysis such as DNA test, polygraph tests, call details of the complainant and all the alleged persons and some other persons who have bearing on the case, the IO also recorded the oral evidence in the form of statements. The statements of Mr. M.L. Pandey, Ms. Ruby Thakur, Mr. M.L. Sharma and Mr. Sunil Kumar, recorded by the police, as discussed above, were found to be at variance. Therefore, the police has concluded that Vijay Kataria is in conspiracy with the complainant in implicating the petitioners.

189. All the petitioners were examined, interrogated and their call details were verified. The petitioner Parveen Bhargava was at his residence in the evening when he received information on his mobile from Sh. Ramesh Thakur from his mobile who is a resident of Rohini that their office colleague Mr. Arvind Sharma, Executive Engineer aged about 43 years had suffered a

heart attack and was admitted at Sunder Lal Jain Hospital, Ashok Vihar, Delhi. The petitioner Parveen Bhargava left for the said hospital after 8.30 PM. The mobile phone record of the petitioner using Mobile no. 9818241666 revealed that no calls were recorded between 6.15 PM till 8.30 PM. His being at Sunder Lal Jain Hospital has been confirmed by Smt. Bindu Sharma, wife of Late Sh. Arvind Sharma who died on 09.10.2006.

190. The police has recorded its observations in para-83 of the cancellation report after the in-depth investigation that the accommodation B-136, Shivalik, Delhi was hired by another employee of Kaveri Infrastructure named Ms. Ruby Thakur for which she falsely introduced Ms. Vani Whig as her married sister and for which Ms. Ruby Thakur paid Rs.88,000/- as advance rental for four months. As discussed in detail earlier, neither Ms. Vani Whig nor Ms. Ruby Thakur have offered any plausible reason for hiring this relatively expensive accommodation and the source of funds for the same has also not been disclosed. On the day of incident, Ms. Vani Whig was using two mobile phones bearing number 9810021490 & 9818185579. She was using 9810021490 to call Sarat Chander while she used 9818185579 to keep in regular touch with Vijay Kataria. On the day of the incident at 08.17 pm. Ms. Vani Whig received a call from mobile phone number 9910222660 (Vijay Kataria) and this call lasted for 290 seconds. The cell ID location analysis of mobile phone number 9818185579 (Ms. Vani Whig's phone) reveals that this call began at Cell ID 40661 which is Malviya Nagar, Shivalik, Delhi (Place of occurrence) and ended at Cell ID 8941 which is Malviya Nagar, Delhi (Ms. Vani's residence). She also spoke with someone who called her from her Malviya Nagar residence number 011-65634607

(probably her mother) at 07.56 p.m. (incoming call for 15 seconds), i.e., immediately after the incident, but she chose not to disclose this incident as alleged. Even after returning home no family members observed any abnormality in her behaviour.

191. The allegation of molestation by Sh. B.M. Dhaul at DJB office is not proved as statements of Sant Ram and Ms. Vani Whig are at variance. Sant Ram and Vijay Kataria are close friends and have common criminal cases amongst them. Vijay Kataria and Ms. Vani Whig have gone to great lengths to prevent any links between them from surfacing. They have used multiple mobile phone numbers to hoodwink the investigation regarding their interaction with each other. However, as discussed in detailed earlier, their links have been established from the different numbers and handsets, they have used over a period of time and their being together at the cell phone based location of Faiz Road, Karol Bagh (Office of DJB). Further both of them did not disclose true facts during investigation of this case.

192. On receipt of the said closure report, vide order dated 02.06.2010, learned ACMM directed to supply the copy of the same to the complainant for enabling her to file objection, if any. Accordingly, on 08.07.2010, the complainant filed her protest petition, whereby it is stated that police record may be ignored and the court should take cognizance of the offence and summon the petitioners.

193. Though, the investigation has established that the complainant lured petitioner Sarat Chander by making calls. She, under the conspiracy, invited him at the place of occurrence and had sex with him. However, issue before this Court is not whether petitioner Sarat Chander had sex with complainant,

but the issue is as to whether gang rape has been committed by all the petitioners?

194. The learned ACMM relied upon the statements of two witnesses, namely, Sant Ram and Ruby Thakur and upon Section 114A of the Indian Evidence Act, 1872, and accordingly, summoned the petitioners vide order dated 13.05.2011.

195. Thus, the learned ACMM has neither ignored the cancellation report filed by the police nor relied upon the same but issued summons for offence U/s 376(2)(g) IPC.

196. Admittedly, the allegations in the complaint/FIR are pertaining to two different incidents at two different places and on two different dates. As per complaint/FIR, one incident is with respect to alleged commission of offence under Section 376 (g) IPC at Shivalik, Malviya Nagar on 08.10.2006 (by the petitioners) and the other relates to the alleged commission of offences under Sections 354/384/506/34 IPC at the DJB Office, Jhandewalan on 09/10.10.2006 (by B.M. Dhaul and the above three persons). Nonetheless, no cognizance was taken in respect of the other alleged offences committed on 9/10.10.2006, which related to the alleged CD, as no CD was ever recovered/produced and the only hollow explanation for delay of eight months in filing the complaint was that she did not report the matter under the fear of CD.

197. No doubt, at this stage the Magistrate is required to exercise sound judicial discretion and apply his mind to the facts and materials before him. In doing so, the Magistrate is not bound by the opinion of the Investigating

Officer and he is competent to exercise his discretion irrespective of the views expressed by the police in its report and may *prima facie* find out whether an offence has been made out or not. Cognizance means the point in time when a Court or a Magistrate takes judicial notice of an offence with a view to initiate proceedings in respect of such offence which appears to have been committed.

198. The theory of CD has been rejected by the police as it was founded only on the basis of the statements of the complainant and witness Sant Ram. The learned Magistrate has also accepted the same. There is no challenge by the complainant. Therefore, cognizance for an offence under Section 376 (g) IPC could not be and cannot be taken on the basis of statements of the said very witnesses, i.e., complainant and Sant Ram.

199. However, the learned ACMM has made contrary observations in the impugned order as under:-

"....As far as the presence of other two accused persons are concerned, it was seen by Ms. Ruby Thakur. Further, the presence of other two accused when sexual activity on complainant was going on, as depicted in CD was seen by one independent witness, namely, Shri Sant Ram"

200. Moreover, the learned ACMM has wrongly relied upon Section 114A of the Indian Evidence Act, which cannot be relied upon at the stage of summoning the accused. The said provision is applicable for trial.

201. It is pertinent to mention here that the mobile No. 9958772222 owned by petitioner Praveen Bhargava was activated on 19.03.2008, much after the alleged occurrence. Therefore, if the police has not examined call details of

this telephone number, that will not prejudice the allegation of the complainant.

202. Admittedly, complainant has been working with M/s Kaveri Infrastructure of which Mr. Vijay Kataria was the Financial Adviser. The call details examined by the police prove the proximity of the complainant and Vijay Kataria. During investigation, she denied having any knowledge of telephone No. 9910222660, whereas, as a matter of fact, she was found to be in constant touch with Vijay Kataria on the alleged date of incident on this mobile number.

203. It is important to note that the rented accommodation was taken on rent @ Rs.22,000/- per month, whereas the salary of the complainant was just Rs.10,000/- per month with M/s Kaveri Infrastructure. Ms. Ruby Thakur, who was also working with M/s Kaveri Infrastructure, was having two accommodations simultaneously with her, i.e., C-34, Malviya Nagar and B-136, Shivalik, Delhi. Thus, it is established during the investigation that the aforesaid accommodations were taken for some specific purpose other than the reason stated.

204. It is also established during investigation that Sant Ram had remained involved as co-accused in several cases registered against Vijay Kataria, who is the employer of the complainant. The said Kataria has been on inimical terms with all three alleged accused persons in this case. Both the persons, namely, Ruby Thakur and Sant Ram were associated with Vijay Kataria. Ruby Thakur was his employee and Sant Ram has remained involved as co – accused in case FIR No. 557/06, PS Malviya Nagar with him. Sant Ram is a

witness in case FIR No. 54/2006 U/s 307 IPC, PS Chandi Nagar, Bagpat, UP, which was registered on the complaint of Vijay Kataria.

205. The call details of the petitioners with Senior Officers of Delhi Government and Senior Police Officers, which are relied upon by the complainant, reveal that the petitioner had been in touch with the above Officers even before the complaint made by the complainant and after the complaint. The petitioners, being in the senior position in Delhi Jal Board, are answerable to the above noted officers for the any issue arises regarding the supply of water in Delhi. Therefore, it does not establish that any favour has been sought by them by calling to the above officers

206. It is held in case of ***Vijay Shekhar*** (*supra*), that if there is evidence to prove that the complainant is a fraudulent one, the same is liable to be quashed. Even, if anyone make representation which he knows to be false and injury ensues therefrom is always to be viewed seriously. A collusion or conspiracy with a view to cause the damage to the other person amounts to fraud.

207. It is pertinent to mention here that the State has preferred Criminal Revision Petition No. 203/ 2011 titled as ***State through DCP Crime Vs. Sarat Chander & Ors.*** before the Court of learned District Judge-cum-ASJ, South District, Saket Courts, Delhi against the same very impugned order dated 13.05.2011 passed by the learned ACMM, South District, Saket, Delhi. The said proceedings have also been summoned by this Court to avoid multiplication of proceedings, which has been registered as Crl. Revision Petition No.208/2012 and the same has been heard together by this Court and is being disposed of together.

208. The Apex Court has taken a view in the case of **Prashant Bharti** (*supra*) that to invoke its inherent jurisdiction U/s 482 Cr.P.C., the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable and indubitable facts.

209. It is pertinent to mention here that power under Section 482 Cr.P.C. has to be exercised sparingly and in the interest of justice. However, allowing the criminal prosecution proceedings to continue, as is seen in the present case, even when there is no cogent or *prima facie* material on record to even *prima facie* make out any ingredients of the offence would certainly tantamount to an abuse of process of Court and therefore, as per settled law, there cannot be any dispute that in such cases power under Section 482 Cr.P.C. can be and should be exercised by this Court in the interest of justice. The present case is a just fit and proper case for exercise of powers under Section 482 Cr.P.C.

210. On exercise of powers under Section 482 Cr.P.C., this Court in the case of **Ashwani Kumar Batra Vs. CBI, 2011 (3) JCC 2102**, in Para 44 at page 2110 has made the following observations:-

" Additionally, the law relating to using of inherent powers by the Hon 'ble High Court under Section 482 CrPC for quashing of the FIR's and proceedings arising there from is very clear that this power can be used with caution and in exceptional circumstances in the cases where there is no case made out against the accused/petitioners from the FIR, the allegations contained therein, the material on record which is the Charge sheet and other documents. In case, the allegations and material do not fulfill the ingredients of the offences alleged against the petitioners, the High Court should quash

the cases using its inherent powers under Section 482 CrPC. On this issue, the law is also very clear, that miscarriage of justice and abuse of process of law takes place if the trial is continued in these types of cases"

[Emphasis Supplied].

211. In the above referred judgment, this Court while dealing with the scope and exercise of powers under Section 482 Cr.P.C., also took into consideration the well settled position of law as laid down by the Hon'ble Supreme Court and has extensively quoted the said legal position from the landmark judgment titled "***State of Haryana Vs Bhajan Lal & Ors. 1992 (Supp) (1) SCC 335***" (para 102 -103. 105), wherein the Hon'ble Supreme Court in para 102 has categorized all cases where the extraordinary power under Article 226 or the inherent powers U/s 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. The even categories/ guidelines to give an exhaustive list of myriad kind of cases wherein such power should be exercised were also quoted therein.

212. On the basis of the said guidelines, the case of the petitioners squarely fall within the guideline Nos. (3), (5) and (7) of the above referred judgment.

213. At this stage it would also be relevant to place on record the findings and observations made by this Court while quashing the FIR as also the summoning order passed by the learned MM U/s 376 IPC. This Court in case titled ***V.K. Tulsian Vs State- 2000 III AD (Cr) DHC 176***, came to the conclusion that the complaint filed by the complainant under Section 376 IPC was found to be false on investigation. The police filed Final Report under Section 173 Cr.P.C. before the learned Magistrate praying that the case be

cancelled as there was no substance in the allegations contained in the FIR. The learned Magistrate instead of accepting the report opined that an offence under Section 376 IPC was made out and consequently the accused was summoned.

214. The Supreme Court in *State of Karnataka Vs. L. Muniswami & Ors- AIR 1977 SC 1489*, wherein the relevant observations with regard to powers of the High Court to quash the proceedings were explained and it was observed that if the High Court comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of Court or that the ends of justice require that the proceeding ought to be quashed. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

215. In view of the above position, during the course of arguments, the learned counsel relied upon the judgment delivered by the Division Bench of this Court in case titled "*Virender Singh Vs State- 2010 (2) JCC 1350*", wherein this Court considered and dealt with the mobile phone call details between the appellant and the complainant to find out about the truthfulness of the allegations made by the prosecutrix. On the basis of the mobile phone records location was considered and it was found that the appellant was not with the complainant at the time of occurrence of the offence of rape.

216. From the record, it has emerged that complainant was working in Vijay Kataria's company since 2005. She met petitioner Sarat Chander under a fake identity of a reporter named Shivani. She called Sarat Chander seven times on the day of incident. The accommodation, i.e, the place of occurrence, was hired by another employee of M/s Kaveri Infrastructure

named Ms. Ruby Thakur for which she falsely introduced complainant as her married sister. For the said accommodation Ms. Ruby Thakur paid Rs.88,000/- as advance rental for four months. The said expensive rental accommodation was beyond their known sources of income.

217. In view of the above facts, location of co-accused Ramesh Thakur and Praveen Bhargava was found nowhere near the place of alleged incident, i.e., B-136, 2nd Floor, Shivalik, New Delhi, but was found far away at Sunder Lal Jain Hospital, Ashok Vihar, Delhi, at the alleged time of the offence, therefore, the question of commission of gang rape under Section 376 (g) IPC does not arise at all.

218. It is settled law that conviction of an accused on the basis of the testimony of the prosecutrix is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality, and there is no other evidence on record which may even lend some assurance, sort of corroboration that she is making a truthful statement. Proceedings initiated and continued for oblique motives or to take vengeance on the other party are liable to be quashed. Proceedings are also liable to be quashed if even on the allegations being accepted in toto, *prima facie* no offence could be made out. The Courts have consistently put an end to criminal proceedings which are an abuse of process of court. At the initial stage, at the summoning stage and even if charges have been framed, this Court has the inherent powers U/s 482 Cr.P.C. to quash proceedings and to pass such orders as are necessary to prevent abuse of process of any court or otherwise to secure ends of justice.

219. In view of the above legal position, this Court is not expected to throw out a case on technicalities but is expected to interfere wherever there has been failure of justice or misuse of judicial mechanism or procedure. This Court is not expected to be a mere silent spectator when it is made out that the criminal prosecution is an abuse of process of the Court.

220. In view of the above discussion and legal position, I set aside order dated 13.05.2011 passed by the learned ACMM, Saket Courts, New Delhi. Consequently, FIR No. 610/2007, P.S. Malviya Nagar, New Delhi and the proceedings emanating therefrom, if any, are hereby quashed.

221. Accordingly, these petitions are allowed with no order as to costs.

Crl. M.A. 11321/2011 in CRL.M.C. 3182/2011

In view of the above, instant application has become infructuous and disposed of as such.

SURESH KAIT, J.

MAY 24, 2013

jg/sb/Rs