

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Cril. Petition No.44 of 2022

Khumukcham Joykisan Singh, aged about 57 years, S/O (L) Kh.

Ingocha Singh, a resident of Khoyathong Polem Leikai, P.O. &

P.S. Lamphelpat, Imphal West District, Manipur.

..... *Petitioner/s*

– Versus –

1. The State of Manipur, represented by the Secretary (Home), Government of Manipur, Old Secretariat, Imphal West, Manipur - 795001;
2. The Director General of Police, Imphal West, Manipur - 795001;
3. The Superintendent of Police, Imphal West, Manipur - 795001; &
4. The Officer-in-Charge, Imphal Police Station, Imphal, Manipur - 795001.

..... *Respondent/s*

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner	:	Mr. Th. Jugindro, Advocate Mr. M. Birendrajit, Advocate
For the Respondents	:	Mr. Athouba Khaidem, PP

Date of Hearing : 26.07.2023

Date of Judgment & Order : **11.12.2023**

JUDGMENT & ORDER
(CAV)

[1] Heard Mr. Th. Jugindro, learned counsel and Mr. M. Birendrajit, learned counsel for the petitioner and Mr. Athouba Khaidem, learned PP for the State Respondents.

[2] The present petition is filed by the petitioner under Section 482 Cr.P.C. for quashing and setting aside the FIR being FIR No.7 (1) 1996 registered on the file of Imphal Police Station under Sections 121, 121-A of IPC and Section 13 of Unlawful Activities (Prevention) Act, 1967 or discharge him from the proceeding of the FIR.

[3] The case of the petitioner is the FIR was lodged by one K. Budhichandra Singh, SI of RAPF Commander X Ray 22 before the officer-in-charge, Imphal Police Station, Imphal 03-01-1996 alleging inter-alia amongst others that on 03-01-1996 on receipt of a specific information, and then along with police party of RAPF carried out a raid at the house of one Laimayum Nabakishwar Sharma of Mahabali, Imphal East. In that, the petitioner and four other persons were arrested by using reasonable forces.

The name of those persons are (1) Ningombam Nabachandra Singh @ Nabamacha @ Yaiphaba, 35 yrs, S/O N. Iboyaima Singh of Thangmeiband Lourung Purel Leikai, S/S Secretary (Home) and i/c of Finance of the so called outlaw organisation PREPAK, (2) Khumukcham Kisan @ Joykisan Singh @ Theko, 32 yrs. S/O Kh. Ingocha Singh of Khoyathong Polem Leikai, (3) Laimayum Indrajit Sharma, 26 yrs. S/O L. Imo Sharma of Loklaobung and (4) Laimayum Nabakishwor Sharma, 27 yrs. S/O L. Nodia Sharma of Mahabali Mamang Leikai.

[3.1] During body search of N. Nabachandra Singh, some important documents relating to PREPAK, a sum of Rs.3000/- (Rupees three thousand), three numbers of round rubber stamp (seal), one line seal with one red ink stamp pad i.e. two round seal of PREPAK and one round seal of Addl. D.C. Noklak, Tuensang Dist., Nagaland and the line seal for Addl. D.C. Noklak, Tuensang Dist., Nagaland, three numbers of colour photographs of PREPAK and two nos. of typed demand letter books (101 pages in each) of PREPAK in the name of Secry. Finance were recovered and seized from his possession under a formal seizure memo.

[3.2] On the body search of Kh. Kisan Singh, one typed demand letter book in the name of Secry., Finance (101 pages) of PREPAK and one N.V.

Scooter bearing Regn. No.MN0B-6222 Cairo dust in colour were recovered and seized from his possession under a formal seizure memo. On spot interrogation, arrested accused. N. Nabachandra Singh disclosed that he was Secry. (Home) i/c Secry., Finance of PREPAK organisation. Other arrested associates were working under him as hard-core activists of the said PREPAK organisation. It was also disclosed that they were responsible in collection of huge amounts of money from different firms, association and from general public, etc. for their party fund. The activities of the said hard core PREPAK activist amounted to wage war against Govt. of India and to over-owe to the general public with cool calculation and malevolent design. Then, on received of the said report, the OC/Imphal – PS registered regular case under FIR. No.7 (1) 1996 IPS U/S 121/121-A, 13 U A (P) Act against the petitioner and others on 3-1-1996 and directed one SI H. Rameshwor Sharma to investigate the case. On 31st January, 2022, the Superintendent of Police, Imphal West District, Manipur furnished the required report, required documents and submitted present case status and certified copies of FIRs addressed to Shri A. Gautam Sharma, Advocate. In the said letter in Sl. No.1 shown the FIR No.7(1) 1996 IPS reflected present status of the case by showing as submitted under Draft CS Vide M/No.7/12SP-IW/02.

[4] Mr. Th. Jugindro, learned counsel for the petitioner has submitted that the petitioner did not commit any offence as alleged in the FIR of Imphal P.S. under FIR No.7 (1) 1996 IPS U/S 121/121-A read with Section 13 of the Unlawful Activities (Prevention) Act 1967 and that even if the contents of the FIR are taken at their face value and accepted as correct, then also no offence under Sections 121/121-A read with Section 13 of UA (P) Act, made out against the petitioner. He has further submitted that the petitioner did not commit any offence as alleged in the impugned FIR dated 03-01-1996 and that the allegation made in the FIR in respect of the alleged incriminating articles such as one typed demand letter book in the name of Secretary, Finance (101 pages) of PREPAK and one N.V. Scooter bearing Regd. No. MN0B-6222 Cairo dust in colour were recovered, even if taken at their face value, do not constitute any cognizable offence against the petitioner and therefore, it is prayed to quash and set aside the said impugned FIR No.7 (1) 1996 IPS U/S 121/121-A, 13 U A (P) Act.

[5] Mr. Th. Jugindro, learned counsel for the petitioner has further reiterated that at the relevant points of time, the petitioner was well known social worker and social activist particularly in his Thangmeiband Assembly Constituency and the petitioner is an Indian Politician and member of the Manipur Legislative Assembly and he is an elected member of

MLA/(Manipur Legislative Assembly) from Thangmeiband Assembly Constituency, Imphal West District, Manipur in 2022 Manipur Legislature Assembly Election. Since 2012, he is an elected Member of the Manipur Legislative Assembly and that he did not commit any offence as alleged in the FIR of Imphal Police Station under FIR No.7 (1) 1996 IPS U/S 121/121-A IPC read with Section 13 of the Unlawful Activities (Prevention) Act 1967, and that even if the contents of the FIR has taken at their face value and accepted as correct then also no offence U/S 121/121-A IPC, read with Section 13 of the Unlawful Activities (Prevention) Act 1967, made out against the petitioner.

[5.1] Mr. Th. Jugindro, learned counsel for the petitioner has submitted that after the registration of the said FIR and in the investigation done so far till date, the I.O. could not collect sufficient materials in support of the accusation made in the FIR and that a bare perusal of the FIR does not reveal a cognizable offence against the petitioner and as such the impugned FIR be quashed.

[5.2] Learned counsel for the petitioner has pointed out that the petitioner is not a member of the so called unlawful organization Prepak and he never associated or worked under the other accused person namely

N. Nabachandra Singh (Accused No.1 in the said impugned FIR) as hard core activist. He has further submitted that, till date, the respondent authority did not find out even a single iota of evidence against the petitioner. It is pertinent to mention that if the prosecution has enough evidence against the petitioner in connection with the said impugned FIR, it should have filed a report or charge sheet under section 173 of Cr.P.C. before the concerned Court. In fact, the authority could not file a charge sheet U/S 173 of Cr.P.C. against the petitioner before the concerned Court till date even after 26 years of lodging the said FIR.

[6] Mr. Th. Jugindro, learned counsel for the petitioner has submitted that the petitioner is now elected member of Manipur Legislature Assembly from the Thangmeiband Assembly Constituency for three times consecutively. However, the prosecution could not file the charge-sheet or either submit a final report against the petitioner. This is a politically motivated case. In fact, due to above mentioned FIR, the image of the petitioner is affected in a negative way in the society. Learned counsel for the petitioner has submitted that the petitioner always follows the process of law and gives full cooperation in the investigation. In spite of this, the prosecution could not find out any single prima facie material against the petitioner in order to file the charge sheet U/S 173 of Cr.P.C. before the

concerned Court against the petitioner. Thus, the said impugned FIR is liable to be quashed and set aside.

[7] Mr. Athouba Khaidem, learned PP for the State relies on the affidavit dated 10.11.2022 filed on behalf of respondent Nos.2, 3 and 4. It is submitted that that an FIR No. 7(1)1996 IPS U/S 121/121-A IPC & 13 UA (P) Act has been registered by the Officer in Charge, Imphal PS on receiving of a written report from one K. Budhichandra Singh, SI of Rapid Action Police Force, against the present petitioner and the other three persons arrested on the charge of being hard core PREPAK Activists. It is submitted that there is prima facie case made out against the petitioner in the investigation. It is submitted that it was a fact that during the body search of the petitioner on 0301-1996 by the police officer (the complainant of the FIR case No. 7(1)1996 IPS U/S 121/121-A,IPC and 13 UA (P) Act, one demand letter book (typed) in the name of Secretary, Finance (101 pages) of PREPAK (a banned organization) and one NV Scooter bearing Regn. No. MNOB-6222 Cario dust in colour were recovered and seized from his possession by preparing a seizure memo. The seizure of the incriminating documents from his possession connects the petitioner in the crime. Para 11 and 12 of the counter affidavit dated 10.11.2022 filed on behalf of respondent Nos.2, 3 and 4 read as under:

11. That, with reference to Para No. 10 of the Petition, the deponent humbly submits that there is prima facie evidence against the four persons including the petitioner for prosecution U/S 121/121-A IPC & 13 UA(P) Act, a draft charge sheet was submitted to the SP/CID(CB) with case records for taking prosecution sanction from the concerned authority on 25-6-2002 vide SP/IW memo No. 7/12/SP-IW/2002 dated 25-6-2002. The SP/CID(CB) forwarded the case record to Special Secretary, Home, Government of Manipur for prosecution sanction vide memo No. 14/3(9)2002(CB) dated 14-10-2002.

12. That, with reference to Para No. 11 of the Petition, the deponent humbly submits that the case was submitted to the SP/CID(CB) with a draft Charge Sheet for taking prosecution sanction from the concerned authority to prosecute the petitioner and the 3 arrested persons by submitting charge sheet u/s 173 CrPC. But, despite vigorous searches in the Home Department of the Government of Manipur, the case records could not be traced out till date. But, still efforts have been taken up to find the case record from the Home Department.

[8] Ad directed in order dated 03-02-2023, an additional affidavit dated 13-03-2023 on behalf of respondent No.3 wherein was filed explaining the status of missing case record. It is stated that that on 24-06-2002, the Officer-in-Charge, Imphal PS submitted the entire case records of

the FIR Case No. 7(1)1996 IPS u/s 121/121-A IPC & UA(P) Act following the prima facie established against the 4(four) accused persons (as submitted by the I. O. Th. Manglem Singh) to the Superintendent of Police, Imphal West for taking prosecution sanction of the accused persons from the competent authority under section 10/13/UA(P) Act. The Superintendent of Police, Imphal West forwarded the entire case records to the Superintendent of Police, CID(Crime Branch), Manipur under M/No. 7/12/SP-IW/2002 dated 25-06-2002. The Superintendent of Police, CID (Crime Branch), Manipur forwarded the same records to the Special Secretary (Home), Govt. of Manipur under M/No. 14/3(9)2002(CB) dated 14-10-2002 for the same purpose. The entire case records including a proposed charge sheet, original FIR with OE, seized original demand letters of PREPAK (101 pages), the entire case diaries including carbon copies, original seizure memo with carbon copies, statement of the PWs examined, interrogation statements of the accused persons, prayer report to the concerned 'Magistrate for remanding to police custody and for remanding to judicial custody were sent to the Home Dept., Govt. of Manipur. Hence, no documents except the FIR copy in the book is available for the re-investigation. Para 3 of the additional affidavit dated 13.03.2023 filed on behalf of respondent No.3 reads as under:

3. That, the concerned Courts were also approached many times for finding out the correspondence letters of the police and judicial remand but no document could be found. In the absence of the original seizure record, seized PREPAK demand letters (exhibit), case diaries, court correspondence for taking police and judicial custody, signatures and statements of the persons who signed on the seizure memo, interrogation reports of the accused persons and the signature of the accused person on the seizure record, it would be not impossible to re-construct the case and re-submit the proposal for prosecution sanction against the accused persons. It would be possible only when the case record forwarded to the Home Department are traced out.

[9] Mr. Th. Jugindro, learned counsel for the petitioner has relied on the cases of: (1) **Vakil Prasad Singh Vs. State of Bihar: AIR 2009 SC 1822** [delay in investigation and no progress for 17 years]; (2) **J. Lalthangsei Vs. State of Manipur: 2019 Legal Eagle (Manipur) 230** [even after 18 years from the registration of FIR, no chargesheet filed]; (3) **Lokesh Kumar Jain Vs. State of Rajasthan: (2013) 11 SCC 130** [delay of 13 years and loss of original documents]; (4) **Pankaj Kumar Vs. State of Maharashtra: AIR 2008 SC 3077** [delay of 8 years in investigation]; and (5) **Oinam Lukhoi Singh Vs. State of Manipur: 2022 Legal Eagle (Manipur) 23** [no evidence against accused found in the investigation]. In all these cited cases, the criminal proceedings were

quashed exercising the inherent power under Section 482 CrPC. It is prayed that the FIR be quashed on the grounds of- (a) delay in investigation, (b) no materials against the petitioner, and (c) loss of case records including draft chargesheet and other original documents.

[10] Mr. Kh. Athouba, learned PP draws the attention of this Court to the different heads of offences as mentioned in the FIR and has stated that the allegations against the accused and others are very serious one such as waging war against the nation and indulging in unlawful activities. While considering an application for quashing of an FIR or a criminal proceeding involving threat to national unity, the court ought to take extra care and to treat such case different from ordinary criminal case. It is pointed out that in the present case, the petitioner and others were arrested in possession of incriminating materials and they all belonged to a banned outfit. The only difficulty for the prosecution is the missing original records. The FIR and the proceedings should not be quashed on this ground alone and the prosecution should be given more time to trace the missing record. Learned PP reiterates that the present case is not covered by any of the seven conditions laid down in the case of **State of Haryana v. Bhajan Lal: 1992 Supp (1) SCC 335**. It is also stated that the petitioner has become an MLA much after the registration of the FIR and subsequent

election to State Assembly has no bearing in the criminal case pending against him. It is prayed that the petition be rejected.

[11] This Court has considered the rival submissions at bar, the materials on record and the relevant law in this regard. It will be fruitful to discuss the settled proposition of law with respect to quashing of criminal proceedings in exercise of inherent power conferred by Section 482 CrPC.

[12] In the celebrated case of **R.P. Kapur v. State of Punjab: AIR 1960 SC 866**, a 3 Judge Bench of the Hon'ble Supreme Court, for the first time, discussed and summarized the principles of quashing of FIR by a High Court. The relevant para 6 is reproduced below:

The inherent power of High Court under S. 561A, Criminal P. C. cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are:

(i) Where it manifestly appears that **there is a legal bar against the institution or continuance of the criminal proceeding** in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) **Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged;** in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but **there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge.** In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

[13] In the famous case of **State of Haryana v. Bhajan Lal: 1992 Supp (1) SCC 335 @ Para 102 & 103**, a 2 Judge Bench of the Hon'ble Supreme Court, relying on the principles laid down in the **RP Kapur case (supra)**, illustrated circumstances under which criminal proceedings could be quashed exercising inherent power under Section 482 CrPC of extraordinary power under Article 226 of the Constitution of India.

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to

the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

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

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

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

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

providing efficacious redress for the grievance of the aggrieved party.

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

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

[14] In the case of **Lokesh Kumar Jain v. State of Rajasthan: (2013) 11 SCC 130 Para 27 &28**, Hon'ble Supreme Court held that since the materials documents could not be produced during the investigation without any valid reasons, pending of the case for a long time and no possibility of producing the materials documents, the FIR was quashed. Para 27 & 28 are reproduced below:

27. During the investigation in spite of several requests made by the investigating agency (police), the records in respect of the allegation were not produced. No evidence came against the appellant Lokesh Kumar Jain, from the file of the Education Department. As the case was pending since long and there was no possibility of availability of record in the near future, FR No. 67 of 2000 against the appellant was filed before the CJM, Dausa. The CJM, Dausa by his order dated 18-11-2000 on perusal of the final report, in exercise of the power conferred under Section 156(3) CrPC directed the SHO, Dausa to re-investigate the case with the assistance of the complainant and to procure the original records. In spite of the order dated 18-11-

2000, for nine years, records were not made available, as is apparent from the inquiry report dated 15-12-2008.

28. There is nothing on the record, even by way of counter-affidavit filed before this Court to show that record has now been traced to make it available to the investigating agency. There is no probability of finding out original documents or evidence mentioned in the counter-affidavit. Though, delay has been alleged on the part of the appellant, there is nothing on the record to suggest that the appellant caused delay in the matter of investigation. On the other hand, the silence on the part of the respondent regarding availability of the original record or other evidence before the investigating agency shows that the delay was caused due to the inaction on the part of the respondent. Therefore, in our view, keeping investigation pending for further period will be futile as the respondent including the Directorate for the State Literacy Programme is not sure whether the original records can be procured for investigation and to bring home the charges. Considering the fact that delay in the present case is caused by the respondent, the constitutional guarantee of a speedy investigation and trial under Article 21 of the Constitution is thereby violated and as the appellant has already been exonerated in the departmental proceedings for identical charges, keeping the case pending against the appellant for investigation, is unwarranted, the FIR deserves to be quashed.

[15] In the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors.: MANU/SC/0272/2021: AIR 2021 SC 1918**, a 3 Judge Bench of the Hon'ble Supreme Court laid down the principles of quashing of FIR/complaint relying upon a catena of cases including the leading cases of **RP Kapur (supra)** and **Bhajan Lal (supra)**. The relevant para are reproduced below:

Conclusions:

23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High

Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the Accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed Under Section 173 Code of Criminal Procedure, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
- xiii) The power Under Section 482 Code of Criminal Procedure is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;
- xv) When a prayer for quashing the FIR is made by the alleged Accused and the court when it exercises the power Under Section 482 Code of Criminal Procedure, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;
- xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be

passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the Accused should be relegated to apply for anticipatory bail Under Section 438 Code of Criminal Procedure before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed Under Section 173 Code of Criminal Procedure, while dismissing/disposing of the quashing petition Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

[16] From the above reproduced case laws, it is clear that the High Court, in exercise of its inherent extra ordinary jurisdiction as conferred by Section 482 CrPC, can quash an FIR/complaint and criminal proceedings if- (a) the complaint on the face value of it does not disclose a cognizable offence; (b) the same is an abuse of process of law; (c) it is barred by law; (d) there is

no legal evidence; (d) unexplained delay in investigation; and so on. The rule laid down in **RP Kapur case (supra)** is consistently followed by Hon'ble Supreme Court in a catena of cases including the cases reported as **(2005) 13 SCC 540, (2006) 6 SCC 669** and **(2005) 13 SCC 705**. It is the settled principle of law that an FIR and criminal case can be quashed if it does not disclose a cognizable offence; it is an abuse of process of law; it is barred by law; or its continuation will be harassment to the accused. However, this extraordinary power is to be exercised in exceptional cases which warrant resorting to the same in the peculiar facts and circumstance of a particular case. The rule laid down in **RP Kapur (supra)** and **Bhajan Lal (supra)** cases holds the field and is followed consistently.

[17] The fact of the present case has to be analyzed in terms of the ratio propounded in **RP Kapur (supra)** and **Bhajan Lal (supra)** cases.

[18] In the present case, at the time of the arrest of the petitioner and others, a large number of incriminating documents were seized from their possession. Such materials were sufficient to press charge of waging war against the nation and taking part in unlawful activities to the detrimental to nation's unity. None of the seven conditions of **Bhajan Lal (supra)** is satisfied. However, the difficulty in continuing with the FIR is that the same cannot be proceeded further due to non-availability of the draft chargesheet

along with all the original documents, such as, original seizure records, material exhibits, case diaries, statements of the accused and witnesses, etc. as reflected in the affidavit filed by the respondents before this Court. In absence of these original documents, trial cannot be proceeded and that too in absence of any prosecution sanction. It is stated in the affidavit that the submission of chargesheet will be possible only when the record is traced out.

[19] It is seen that the present case does not fall within any of the seven conditions laid down in **Bhajan Lal (supra)** case. However, on the other hand, it satisfies condition (iii) as prescribed in **RP Kapur (supra)**, ie, no legal evidence to pursue the case further. The case in hand is also similar to the facts of **Lokesh Kumar Jain (supra)** where FIR was quashed for non-production of original documents due to untraceable and delay in investigation for 13 years. In the present case also, all the original documents and records are missing and there is a delay of 27 years without any explanation. The records are missing since 2002. In such circumstances, this Court is of considered opinion that keeping the FIR further will be nothing a harassment to the petitioner. Since the complete case record is missing for more than 11 long years without any possibility of being traced, the FIR No. 07(01)1996 IPS under Sections 121/121-A IPC and Section 13 UAP Act and all incidental proceedings are quashed against the petitioner and other co-accused persons. The FIR is also quashed against the co-accused who are non-applicants in the

present petition due to the peculiar fact of the missing original records. The proceedings against the co-accused will also face the same fate as the petitioner herein. No cost.

JUDGE

FR/NFR

-Larson

KH.
JOSHUA
MARING

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by KH. JOSHUA
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