

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (CRL) NO. 1666 OF 2023

Anoop Aggarwal & another Petitioners.

Versus

State of Uttarakhand & others Respondents.

Counsel for the Petitioners : Mr. D.S. Patni, learned Senior Counsel assisted by Mr. Dharmendra Barthwal, learned counsel.

Counsel for the Respondent Nos.1 & 2 : Mr. Amit Bhatt, learned Deputy Advocate General.

Counsel for the Respondent No.3 : Mr. Arvind Vashisth, learned Senior Counsel assisted by Mr. Bhuwan Bhatt, learned counsel.

Judgment Reserved on: 15.12.2023

Judgment Delivered on: 21.12.2023

The Court made the following:

JUDGMENT:(per Hon'ble Sri Rakesh Thapliyal)

By the instant writ petition, preferred under Article 226 of the Constitution of India, the petitioners are challenging the First Information Report, lodged at P.S. Kashipur, District Udham Singh Nagar, on 26.10.2023, bearing FIR No.0551 of 2023, whereby the petitioners including three other named persons alongwith one known person were implicated for the offences punishable under Sections 147, 148, 149, 307, 323, 384, 504 & 506 IPC. The reliefs, as sought in the present writ petition, are being extracted here-in-below:-

"i) Issue a writ order or direction in the nature of certiorari quashing the impugned first information report dated 26-10-2023 being FIR No.0551 of 2023, for the

*offences punishable under section 147, 148, 149, 307, 323, 384, 504 & 506 of IPC, Police Station Kashipur, District Udham Singh Nagar (contained as **Annexure no.1** to this writ petition).*

*ii) Issue a writ order or direction in the nature of mandamus commanding and directing the respondent no.2 not to arrest the petitioners in connection with impugned first information report dated 26-10-2023 being FIR No.0551 of 2023, for the offences punishable under section 147, 148, 149, 307, 323, 384, 504 & 506 of IPC, Police Station Kashipur, District Udham Singh Nagar (contained as **Annexure no.1** to this writ petition)".*

2. Brief facts of the case are that the complainant- Prateek Aggarwal (respondent no.3 *herein*) lodged a First Information Report with the allegations that in a '*bhog ceremony*' of a known person, the complainant met with petitioner no.1- Mr. Anoop Aggarwal, where petitioner no.1 demanded a sum of Rs.20.00 lakhs, but the complainant refused for the same, and on such refusal, petitioner no.1 threatened respondent no.3- complainant. It is further alleged in the FIR, that in a second incident, which was happened in 11.10.2023 at Kashipur, when the festival of *Ram Leela* was inaugurated, and petitioner no.1 shown him a morphed video clip to respondent no.3, and after showing the video clip, petitioner no.1 threatened to defame the complainant, and demanded a sum of Rs.40.00 lakhs. The First Information Report further gives a reference of the third incident was happened on 22.10.2023 at around 10:00 PM, when respondent no.3- complainant was eating snack while

standing near his car along with his friends, both the petitioners accompanied with 10-15 persons, reached there in car and motorcycles, carrying guns, armed with sticks and other weapons, and upon seeing this that so many persons, including the petitioners, rushed to the complainant, the complainant tried to sit in his car, and thereafter, petitioner no.2, who is the son of petitioner no.1, pointed his gun towards the complainant, and all other persons surrounded the complainant and his friends, and started beating the complainant and his friends, and thereafter, petitioner no.1 stopped everyone and came near to the complainant, and fired a bullet, which missed the complainant.

3. Learned Senior Counsel for the petitioners submits that the investigating agency are in hand in glove with the complainant- respondent no.3, who lodged the FIR with the false allegations against the petitioners, and this is nothing, but a clear high handedness of the police personnel with the complainant, which is in utter disregard to the rights of the petitioners guaranteed under Article 21 of the Constitution of India. Learned Senior Counsel further submits that there is no material and reliable evidence to prove the allegations levelled against the petitioners, and hence, the impugned FIR is based on false allegations, and is an abuse of process of law.

4. Learned Senior Counsel further submits that, though the allegations in the complaint are that the complainant was beaten up, however, in the present case, there is no medical examination of the complainant to corroborate the incident, and as such, the FIR in question, is nothing but a figment of imagination of the complainant. Learned Senior Counsel further submits that, in fact, the complainant is a person of criminal antecedents where there is a recovery pending against his company of around Rs.5.00 crores, and there are also proceedings pending against his wife under Section 138 of Negotiable Instruments Act, and moreover, the father of the complainant is also facing criminal prosecution, as he has forged excise *challan*.

5. Learned Senior Counsel further submits that apprehending their arrest in connection with the FIR, the petitioners moved anticipatory bail application before the Court of Session Judge, Udham Singh Nagar, under Section 438 of Cr.P.C., which was subsequently transferred to the Court of First Additional Session Judge, Kashipur, District Udham Singh Nagar, wherein it was categorically stated that on the date of alleged incident, petitioner no.1 was at his residence which is apparent from CCTV footage, and therefore, it could not be said that the petitioners ever threatened, or committed any offence. It is further submitted by learned Senior Counsel that after lodging of the FIR, the

investigating officer had never called the petitioners. Learned Senior Counsel submit that, thereafter, the petitioners preferred anticipatory bail application before this Court, which came up for hearing on 09.11.2023, and the State Counsel sought time till 02.12.2023 for filing the objection on the anticipatory bail application, however, instead of filing the objection on the anticipatory bail application, the Investigating Officer proceeded under Section 82 of Cr.P.C. against the petitioners. Learned Senior Counsel submits that continuation of investigation against the petitioners on the basis of false and fabricated allegations is nothing, but the implication with *malafide* intention with ulterior motive, and it amounts to a gross abuse of process of law, and as such, the impugned FIR is not sustainable in the eyes of law, and is liable to be quashed.

6. Learned Senior Counsel for the petitioners further submits that all the allegations, as alleged in the impugned FIR, are vague and baseless, and there is great apprehension of arrest of the petitioners, and therefore, directions be issued to the Investigating Agency not to arrest the petitioners, and he undertakes that the petitioners will cooperate with the Investigating Agency. Learned Senior Counsel further submits that in the pending anticipatory bail application, which the petitioners have preferred before this Court, response has been filed, but in the response, there is

no answer to the averments made by the petitioners in the anticipatory bail application, wherein a specific averment has been made that at the place of occurrence, i.e. in *Ram Leela* ground, police personnel were deployed, and if the alleged incident would have taken place, the same would have been reported.

7. Mr. Amit Bhatt, learned Deputy Advocate General for the State, has vehemently argued, and submits that the present writ petitioners have not approached this Court with clean hands, since in Paragraph No.32 of the writ petition, the petitioners deliberately given a false statement that the petitioners have no previous criminal history. Learned Deputy Advocate General submits that since the petitioners have deliberately misled this Court by giving a wrong impression that the petitioners have no criminal history, though as a matter of fact, this writ petition was filed with an affidavit, which was sworn on 13.12.2023, whereas there was another FIR lodged against petitioner no.1 at P.S. Kashipur, District Udham Singh Nagar, on 26.11.2023 by one Ms. Neha Aggarwal for the offences punishable under Sections 384, 504 and 506 IPC which has not been disclosed. Learned Deputy Advocate General submits that the petitioners were fully aware with regard to this subsequent FIR, bearing FIR No.0589 of 2023, which was lodged in the same police station on 26.11.2023, wherein the impugned FIR has been lodged,

and this fact petitioners have deliberately suppressed from this Court, and therefore, the petitioners are not entitled to get any relief.

8. Mr. Amit Bhatt, learned Deputy Advocate General further submits that the petitioners have also deliberately not placed on record the order dated 03.11.2023, passed by the First Additional Session Judge, Kashipur, District Udham Singh Nagar, whereby the First Anticipatory Bail Application No.09 of 2023, preferred by the petitioners was rejected by a detailed order.

9. Mr. Bhatt, learned Deputy Advocate General placed before this Court the order dated 03.11.2023, and it appears from the order dated 03.11.2023, that two FIRs', i.e. FIR No.601 of 2022 and FIR No.152 of 2019, were also registered against petitioner no.1 at P.S. Kashipur. Paragraph No.10 of the order dated 03.11.2023, passed by the First Additional Session Judge, Kashipur, in First Anticipatory Bail Application No.09 of 2023, being extracted here-in-below:-

"10. पुलिस आख्या से विदित है कि अभियुक्त अनूप अग्रवाल के विरुद्ध थाना-काशीपुर में मुकदमा एफ.आई.आर संख्या-601/2022, अन्तर्गत धारा- 420, 467, 468, 471 भारतीय दण्ड संहिता व थाना-काशीपुर में मुकदमा एफ.आई.आर संख्या-152/2019, अन्तर्गत धारा-147, 188, 323, 353, 504, 506 भा.दं.सं. पंजीकृत है। अभियुक्त अनूप अग्रवाल का पूर्व आपराधिक इतिहास भी है तथा अभियोग पंजीकृत किए जाने के दिन से वह फरार है और उसके द्वारा विवेचना में कोई सहयोग नहीं किया जा रहा है। चूंकि अपराध गम्भीर प्रकृति का है। लिहाजा इस स्तर पर मामले के गुण-दोष पर कोई टिप्पणी किए बिना यह न्यायालय अभियुक्तगण अनूप अग्रवाल पुत्र केशव सारण अग्रवाल एवं अनमोल अग्रवाल उर्फ अमोल अग्रवाल पुत्र अनूप अग्रवाल का अग्रिम जमानत प्रार्थनापत्र स्वीकार किये जाने योग्य नहीं पाता है।"

10. Mr. Amit Bhatt, learned Deputy Advocate General submits that the learned First Additional Session Judge, Kashipur, while rejecting the anticipatory bail application of the petitioners also took cognizance of the fact that petitioner no.1- Mr. Anoop Aggarwal has a criminal history, despite this, a wrong statement has been given in Paragraph No.32 of the writ petition that the petitioners have no criminal history, and on this ground alone, and the writ petition should be dismissed, since the petitioners have not approached to this Court with clean hands, and suppressed the facts.

11. Mr. Amit Bhatt, learned Deputy Advocate General further submits that, in fact, since the lodging of the impugned First Information Report, the petitioners are not cooperating with the investigation, and in the pending anticipatory bail application, i.e. ABA No.1030 of 2023, a short counter-affidavit has been filed wherein in Paragraph No.5, it is pleaded that the petitioners are not cooperating with the investigation, consequently, the Non-Bailable Warrant have been issued, and also the proceedings under Section 82 of Cr.P.C have been initiated and, since the petitioners are absconding, therefore, they are not entitled to get the benefit of anticipatory bail.

12. Short counter-affidavit filed in the Anticipatory Bail Application No.1030 of 2023, is annexed by the petitioners as

Annexure No.3 to this writ petition, and the statement, as given in the short counter-affidavit, particularly, in Paragraph No.5, are being extracted here-in-below:-

*"5. That it is most respectfully state before this Hon'ble Court that a NBW was issued against the applicants on 31.10.2023 and thereafter proceedings u/s 82 Cr.P.C. was initiated against them on 17.11.2023 and notice have been affixed on the house and rice mill of both the accused/ applicants and they were failed to produce themselves before the Court concerned. True/ correct version of the copy of the NBW, proceedings u/s 82 Cr.P.C. and report of the deponent dated 23.11.2023 are being annexed herewith and marked as **Annexure No.SCA-5, 6 and 7** to this affidavit.*

It is to mention here that as per the latest judgment of Hon'ble Apex Court in which the Hon'ble Apex Court held that "when a person against whom a warrant has been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to relief of anticipatory bail."

It is further respectfully submitted that it is settled law that an anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. However in the present case Investigating Officer on the basis of oral as well as documentary evidence found cogent and credible evidence against both accused/ applicants and both the accused/ applicants are continuously absconding. It is further submitted that the accused/ applicant no.1 is having criminal history i.e. FIR No.601 of 2022, U/s 420, 467, 468, 471 of IPC, P.S. Kashipur, District Udham Singh Nagar and FIR No.152 of 2019, U/s 147, 188, 323, 353, 504, 506 of IPC, P.S. Kashipur, Udham Singh Nagar".

13. Learned Deputy Advocate General further submits that from the contents of the FIR, *prima facie*, commission of

cognizable offence are made out against the petitioners, and therefore, this is not a case in which the FIR should be quashed. He further submits that even on the perusal of the entire contents of the petition, the petitioners have failed to establish that from the contents of the FIR, *prima facie*, no offence is made out, and therefore, the petitioners could not make out a case of quashing the FIR, and as such, the petitioners are not entitled to get any protection from this Court. He further submits that the anticipatory bail application of the petitioners is still pending, wherein they prayed for anticipatory bail, and in the said anticipatory bail application, a detailed response has been filed, but with an intention to get some interim protection by way of this writ petition, this petition has been preferred by giving wrong statement of facts that the petitioners have no criminal history, which in fact, is not correct, which is nothing, but a misleading attempt, and hence, the instant writ petition is liable to be dismissed with costs.

14. Mr. Arvind Vashisth, learned Senior Counsel appearing for respondent no.3- complainant adopted the arguments of the learned Deputy Advocate General, and in addition to this, he submits that the law is very well settled in respect of quashing the FIR, and if, *prima facie*, offence are made out from the contents of the FIR, then there is no scope of interference with the investigation. He further submits that

the petitioners have given wrong statement of facts in the writ petition that they have no criminal history, though as a matter of fact, their criminal history is evident from the order dated 03.11.2023, passed by the learned First Additional Session Judge, Kashipur, in First Anticipatory Bail Application No.09 of 2023, preferred by the petitioners, which the petitioners have not placed on record.

15. At this juncture, since by way of present writ petition, the petitioners are invoking the jurisdiction of this Court under Article 226 of the Constitution of India, for the purposes of quashing of the FIR, it is necessary to examine the rights and duties of the police to investigate into the cognizable offence. The powers of investigation into cognizable offences are contained in Chapter XII of the Code of Criminal Procedure, and the entire chapter deals with information to the police and their powers to investigate. Section 154 deals with information in cognizable offences, and Section 156 deals with investigation into such offences, and under these sections, the police have the statutory right to investigate into the circumstances of any alleged cognizable offence.

16. The Privy Council in the case of ***King Emperor vs. Khwaja Nazir Ahmad, AIR 1945 PC 18***, observed that in India, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime

without requiring any authority from the judicial authorities. It is further observed that "it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. It is further observed in the said case that the functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function.

17. Recently, the Hon'ble Supreme Court, in the case of ***M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra & others, AIR 2021 SC 1918***, dealt with the issues wherein the interim orders were passed by different High Courts, in the matter, in which, the relief for quashing the FIR was sought. In this case, the Division Bench of the High Court of Judicature at Bombay, on an application filed by the accused under Article 226 of the Constitution read with Section 482 of Cr.P.C, sought prayer for quashing of the criminal proceedings, being FIR No.367 of 2019 dated 19.09.2019, wherein the High Court directed that "*no coercive measures shall be adopted*", against the original accused.

18. In ***M/s Neeharika Infrastructure Pvt. Ltd.*** (supra), the Hon'ble Supreme Court examined the issue with regard to when the High Court could be justified in interfering

with the investigation by the police, while exercising the inherent powers under Section 482 of Cr.P.C, and/ or under Article 226 of the Constitution of India, and while examining this issue, previous decision were noticed by the Hon'ble Supreme Court. The first judgment noticed by the Hon'ble Supreme Court is in the case of ***State of Bihar vs. J.A.C. Saldanha, (1980) 1 SCC 554***, wherein the Supreme Court, after referring to the precedents, including the decision of the Privy Council in the case of ***Khwaja Nazir Ahmad*** (supra), has observed in Paragraph Nos.25 and 26 as under:-

*"25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounded duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the court, and to award adequate punishment according to law for the offence proved to the satisfaction of the court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognised way back in **King Emperor v. Khwaja Nazir Ahmad [AIR 1944 PC 18 : (1943-44) 71 IA 203, 213]** where the Privy Council observed as under:*

"In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent

jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then."

26. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary."

19. Another case, which was discussed by the Hon'ble Supreme Court, is in the case of ***Union of India vs. Prakash P. Hinduja, (2003) 6 SCC 195***, and in Paragraph No.20, the Hon'ble Supreme Court observed and held as under:-

"20. Thus the legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the police station in court under Section 173(2) CrPC, this field being exclusively reserved for the investigating agency."

20. In the case of ***State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335***, it is observed and held by the Hon'ble Supreme Court that 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 the investigation of offence. It is further observed that in a routine case where information of an offence or

offences has been lodged, investigation commenced, search and seizure followed and suspects arrested, the resort to the unusual procedure of oral applications and oral appeals and interim stay order thereon would have the effect of interfering and staying the investigation of offences by the investigating officer performing statutory duty under Cr. P.C.

21. In the case of ***State of Orissa vs. Ujjal Kumar Burdhan, (2012) 4 SCC 547***, it is observed and held by the Hon'ble Supreme Court that unless case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at early/premature stage of investigation.

22. In the case of ***Satvinder Kaur vs. State (Govt. of NCT of Delhi), (1999) 8 SCC 728***, in Paragraph Nos.14 to 16, it is observed and held by the Hon'ble Supreme Court as under:-

"14. Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. [State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561 : 1982 SCC (Cri) 283] It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the

complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations. [Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370, 395 : 1985 SCC (Cri) 180]

15. Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(c) of the Criminal Procedure Code, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction.

16. Lastly, it is required to be reiterated that while exercising the jurisdiction under Section 482 of the Criminal Procedure Code of quashing an investigation, the court should bear in mind what has been observed in the **State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304 : JT (1999) 1 SC 486]** to the following effect : **(SCC pp. 654-55, para 6)**

"Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very

*sparingly 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. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage, it is not possible for the court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of **State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497 : JT (1996) 2 SC 488]** a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. The same view was reiterated by yet another three-Judge Bench of this Court in the case of **Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415 : JT (1996) 11 SC 175]** where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against society as a whole."*

23. In the case of **Supdt. of Police, CBI vs. Tapan Kumar Singh, (2003) 6 SCC 175** and in the case of **State of U.P. vs. Naresh, (2011) 4 SCC 324**, it is observed and held by the Hon'ble Supreme Court that FIR is not an *encyclopaedia*, which must disclose all facts and details relating to the offence reported. In paragraph 20 in the case of **Tapan Kumar Singh** (supra), it is observed and held as under:

20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the

consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

24. Similar view was also taken by the Hon'ble Supreme Court in the case of ***P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24***, wherein it is observed that the investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds.

25. In the recent decision of the Hon'ble Supreme Court in the case of ***Skoda Auto Volkswagen India Private Limited vs. State of Uttar Pradesh, 2020 SCC OnLine SC 958***, it is observed in Paragraph No.40 as under:-

*"40. It is needless to point out that ever since the decision of the Privy Council in **King Emperor v. Khwaja Nazir Ahmed AIR 1945 PC 18**, the law is well settled that Courts would not thwart any investigation. 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. As cautioned by this Court in **State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335**, the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the 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 or in the complaint. In **S.M. Datta v. State of Gujarat (2001) 7 SCC 659** this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In **S.M. Datta** (supra), this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law 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."*

26. Mr. D.S. Patni, learned Senior Counsel for the petitioners, after arguing at length, and after the arguments, as advanced by learned counsel for the respondents, submits that let the investigation may go on, but the petitioners shall not be arrested, and they will cooperate with the investigation.

27. This argument, as advanced by Mr. Patni, is not acceptable in view of the judgment passed by the Hon'ble Supreme Court in the case of **M/s Neeharika Infrastructure Pvt. Ltd.** (supra), wherein this aspect has been dealt with and the conclusions, as drawn in the said judgment, are as under:-

"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 Cr. P.C. 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 Cr. P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr. P.C. 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 XII 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 Cr. P.C. 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 Cr. P.C., 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 Cr.P.C. 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 Cr. P.C. 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 Cr. P.C., while dismissing/disposing of the quashing petition under Section 482 Cr. P.C. 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 Cr. P.C. 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."

28. After drawing the conclusions by the Hon'ble Supreme Court in the case of ***M/s Neeharika Infrastructure Pvt. Ltd.*** (supra), the interim order passed by the Bombay High Court, dated 28.09.2020, whereby the High Court has directed that "*no coercive measures to be adopted*" against the original accused, was quashed and set-aside. In the aforesaid case of ***M/s Neeharika Infrastructure Pvt. Ltd.*** (supra), the Hon'ble Supreme Court, after concluding the judgment, also took note of the fact that some High Courts have continued to pass such interim orders, the Registry was directed to forward a copy of the judgment passed in ***M/s Neeharika Infrastructure Pvt. Ltd.*** (supra) to all the High Courts, to be placed before Hon'ble the Chief Justice to circulate to all the Judges of the High Courts.

29. After hearing the arguments of learned counsel for the parties, and after taking into consideration the content of the impugned FIR, *prima facie*, discloses the commission of offence, and therefore, at this stage, the investigating agency cannot be restrained from investigating the FIR. Law is very well settled on this, and once from the contents of the FIR, *prima facie*, if it discloses the commission of cognizable offence, then the investigating agency should carry on with the investigation, and there is no scope of any interference in any manner. The investigating agency has the statutory right to investigate into the circumstances of allegations, as alleged in the FIR.

30. Apart from this, it is very well-settled in catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.

31. Furthermore, apart from this, this Court also take serious note of this fact that the petitioners have deliberately not disclosed about criminal history, which appears to be a misleading statement, and hence, this Court is not inclined to interfere with the First Information Report, in question, and accordingly, the writ petition is *devoid* of merit and is liable to be dismissed.

32. With the aforesaid observations, the writ petition is dismissed.

33. Pending application, if any, also stands disposed of.

(RAKESH THAPLIYAL, J.)

Dated: 21st December, 2023

NISHANT