

Neutral Citation No. - 2023:AHC:237384

Judgement Reserved on 09.10.2023

Judgement Delivered on 15.12.2023

Court No. - 92

Case :- APPLICATION U/S 482 No. - 30119 of 2010

Applicant :- Chhavi Raj Patel And Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- A. Kumar Srivastava

**Counsel for Opposite Party :- Govt.Advocatee,Anil Kumar
Verma,Anil Srivastava,Vijai Prakash Tiwari**

Connected with

Case :- APPLICATION U/S 482 No. - 36859 of 2012

Applicant :- Mangala Patel And Others

Opposite Party :- State of U.P. and Another

**Counsel for Applicant :- Anil Srivastava,Anil Kumar
Verma,Vijai Prakash Tiwari**

**Counsel for Opposite Party :- Govt.Advocate,A. Kumar
Srivastava**

Hon'ble Anish Kumar Gupta,J.

1. Heard Shri A. Kumar Srivastava, learned counsel for the applicants in application no. 30119 of 2010 and (for the opposite party no. 2 in application no. 36859 of 2012), Shri Vijai Prakash Tiwari, learned counsel for the opposite party no. 2 in application no. 30119 of 2010 and (for the applicants in application no. 36859 of 2012), and Shri Prem Prakash Tripathi, learned A.G.A. for the State.

2. Since, both the cases are related to the same incident for which both the parties have filed the cross cases against each others, therefore, both these cases have been heard and are being decided together.

3. The application u/s 482 No. 30119 of 2010 has been filed seeking quashing of the charge-sheet dated 15.07.2010 as well as the cognizance order dated 25.08.2010 and the entire proceedings in Criminal Case No.3154 of 2010, arising out of Case Crime No. 182 of 2010 u/S 323, 504, 506, 452, 427 I.P.C., P.S.- Cholapur, District- Varanasi, pending in the court IInd, learned Additional Chief Judicial Magistrate, Varanasi.

4. The application u/s 482 No. 36859 of 2012 has been filed seeking quashing of the entire proceedings of Case No. 4094 of 2010 (State Vs. Mangala Patel and others) under sections 323 and 504 IP.C. police station Cholapur District Varanasi pending in the court of Ist Additional Chief Judicial Magistrate, Varanasi and also to quash the impugned charge sheet dated 12.8.2010 arising out of Case Crime No. 182-A of 2010 under sections 323, 504, 506 324, 307, 452 I.P.C.

Application U/S 482 No. 30119 of 2010

5. The brief facts of the instant case are that the applicants herein were the owners of the Arazi No. 925, 926 & 930, Village- Marui, Pargna- Kolasla, District- Varanasi and were in possession thereof. Since, there was some dispute with regard to the demarcation of the said land, the applicants alongwith his brother Gullar and Munni Lal applied for demarcation of the land u/S 41 of the U.P. Land Revenue Act on 24.06.2008, for which a report was called and after the spot inspection, the concerned area Lekhpal submitted his report, stating that the boundaries of the aforesaid disputed Arazi No. 925, 926 & 930 are dilapidated, therefore, the demarcation is necessary. He also reported the time

to be taken for demarcation and the amount to be deposited by the applicants for demarcation. In terms of the said report, vide order dated 25.08.2008, the Sub Divisional Magistrate, Varanasi, directed the applicants to deposit the amount of Rs. 400/- by way of Challan in the Treasury. Thereafter, the record was directed to be sent to Tehsil for demarcation. In terms of the said order, the applicant no. 1 deposited the said amount for demarcation on 27.08.2008. Thereafter, the Revenue Inspector and the Lekhpal issued public notice on 12.06.2010, stating categorically that on 20.06.2010 at 1 P.M., the demarcation of the aforesaid Plot Nos. 925, 926 & 930, shall be done by the Revenue Inspector, Harhua. Therefore, in terms of the said notice on 20.06.2010 at 1:00 P.M., in presence of the land owners of the adjoining land, the Revenue Inspector, Harhua, conducted the demarcation and put the demarcation marks on its place. Subsequent to the demarcation, an incident, as alleged in the F.I.R. has taken place on 20.06.2010 at 5:00 P.M. in the evening and according to the F.I.R. it is alleged that the applicant no. 1, is having enmity with the opposite party no. 2, due to the dispute regarding the chak-road. It is further alleged, on 20.06.2010 in the evening at 5:00 P.M., the applicant no. 1 alongwith an unknown person was conducting the measurement of the land with intention to occupy the chak-road, which was objected to by the opposite party no. 2. Thereafter, the applicant no. 1 called his son and all came and assaulted the opposite party no. 2. He went inside his house, thereafter, all the applicants followed the opposite party no. 2 and entered into his house and assaulted his two sons, namely Narender & Bhupender and his brother, namely Dudh Nath and the son of Dudh Nath, namely Arvind Patel as well. The aforesaid incident was reported by the opposite party no. 2 on the same day at 19:10 P.M. The aforesaid F.I.R. was investigated by the Investigation Agency and after recording the statements of opposite party no. 2, his sons, his brother and his nephew and few independent witnesses and the

doctor, being a Primary Health Care Centre, Cholapur, the instant charge-sheet has been filed by the Investigation Agency against the applicants herein. It is also apparent from the record that the sons of the applicant no. 2 has also sustained injuries during the incident.

6. Learned counsel for the applicants submits that the measurement was done by the Revenue Team, in the presence of various villagers whose signatures were also obtained by the Revenue Authorities after demarcation and the entire measurement was conducted in a peaceful atmosphere, which is evident from the signatures of various villagers on the demarcation report prepared by the Revenue Authorities. Since, the opposite party no. 2 was not happy with the demarcation conducted, therefore, he has lodged the instant F.I.R. due to his dissatisfaction and frustration against the applicants herein by concocting a false and fabricated story. The entire measurement was done in the presence of the Revenue Authorities as well as the Police Authorities, therefore, there was no occasion for the applicants to again conduct the measurement alongwith an unknown person as has been alleged in the instant F.I.R. In the statement of the doctor, namely Hakim Mohammed, whose statement has been recorded during investigation, it is not mentioned that he has conducted the medical examination of the opposite party no. 2 or his brother, namely Dudh Nath Patel etc. Therefore, the medical report with regard to the injuries sustained by the opposite party no. 2 are fabricated by the prosecution in collusion with the opposite party no. 2. Therefore, learned counsel for the applicants submits that the instant case has falsely been lodged by the opposite party no. 2 herein, being dissatisfied by the demarcation conducted by the Revenue Authorities in the presence of the Police following the due procedure. Being dissatisfied with the same, the instant criminal prosecution has been lodged by the opposite party no. 2

with mala fide intentions, which is nothing but a malicious prosecution by the opposite party no. 2. Hence, learned counsel for the applicants has prayed for quashing of the entire criminal proceedings against the applicants. Learned counsel for the applicants further submits that after the demarcation conducted by the Revenue Authorities, the opposite party no.2 was also dissatisfied with the said demarcation and started removing the demarcation marks put by the Revenue Authorities, when the same was objected to by the applicants herein, the opposite party no. 2 assaulted the applicants herein in which both the parties have sustained some injuries and the applicant no.1 has sustained a serious injuries including the injury by knife.

7. Learned counsel for the opposite party no. 2 submits various submissions with regard to the demarcation of land as has been raised by the applicants, which are the disputed questions of fact which cannot be determined while exercising the jurisdiction u/S 482 Cr.P.C., for quashing of the criminal prosecution, which has been duly investigated and the charge-sheet has been filed against the applicants herein and at the time of taking cognizance of offence, the accused has no right to produce any material in support of his contentions. The learned counsel for the opposite party no.2 has relied upon the judgements of the Apex Court in ***State of Orissa vs Debendra Nath Padhi : (2005) 1 SCC 568*** and ***R. Kalyani vs Janak C. Mehta : (2009) 1 SCC 516*** and the judgements of this Court in ***Attar Singh vs. State of U.P*** decided on **06.04.2010 (Criminal Revision No. 1896 of 2000)** and ***Ashok Patel vs. State of U.P,*** decided **on 03.10.2023 (Application No. 482 No. 31465 of 2023)**. Relying upon the aforesaid judgements learned counsel for the opposite party no. 2 further submits that the disputed defence of the accused persons cannot be taken into consideration in exercise of power u/s 482 Cr.P.C, to quash the criminal proceedings against the accused persons.

8. Learned counsel for the State has also supported the submissions made by learned counsel for the opposite party no. 2 and submits that since there are prima facie allegations made against the applicants herein, which were duly investigated by the Investigation Agency and the learned Magistrate, having found on the basis of material available before him, the prima facie case against the applicants herein, therefore, cognizance has been taken by the learned Magistrate in the instant case. Therefore, there is no illegality either in the charge-sheet or in the cognizance taken by learned Magistrate. It is further submitted that the learned Magistrate, on the basis of the materials available before him has rightly taken cognizance and no interference is called for by this court in the instant case.

9. To enunciate the principles of law with regard to quashing of the criminal proceedings by the High Courts in exercise of inherent powers u/S 482 Cr.P.C, it is necessary to take note of some remarkable decisions of the Apex Court. In the case of **R.P. Kapoor vs. State of Punjab : AIR 1960 SUPREME COURT 866**, the Apex Court while considering the powers of the High Court u/ S 561 (A) of the Cr.P.C. (1898), '*the old Code*' which are akin to the provisions of Section 482 Cr.P.C., 1973, the Apex Court in para '6' of the judgement has observed as under:

"6. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code....."

.....It is well-established that 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. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the

view that **the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice.** If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that **there is a legal bar against the institution or continuance of the said proceeding** the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise **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.** In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the **allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or 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 u/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."**

10. Similarly, in the case of **State of Haryana and other vs. Bhajan Lal and Others : 1992 Supp (1) Supreme Court Cases 335 : 1992 Supreme Court Cases (Cri) 426**, the Apex Court has laid down the following principles in exercise of extraordinary powers under Article 226 of the Constitution of India as well inherent power of High Court u/S 482 Cr.P.C., 1973, as under:

"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 u/S 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 u/S 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 u/S 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."

11. In case of *Kurukshetra University vs. State of Haryana : (1977) 4 SCC 451*, the Apex Court held "that the inherent powers u/S 482 Cr.P.C., do not confer any arbitrary jurisdiction on the High Court to act accordingly to whim or caprice; that statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases."

12. In case of **State of Andhra Pradesh vs. Golconda Linga Swamy : (2004) 6 SCC 522**, the Apex Court observed as under:

"5. Exercise of power u/S 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely : (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, conceditur et id sine quo res ipsa esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. **Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.** It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authorities of the court exist for advancement of justice and if any attempt is made to abuse that Authorities so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. **In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact.** When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction u/S 482 of the Code, the **High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether**

on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....

8. As noted above, the powers possessed by the High Court u/S 482 of the **Code are very wide and the very plenitude of the power requires great caution in its exercise.** Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See *Janata Dal v. H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : (1992) 4 SCC 305 : AIR 1993 SC 892] and *Raghubir Saran (Dr.) v. State of Bihar* [AIR 1964 SC 1 : (1964) 1 Cri LJ 1].] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/S 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the

informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."

13. In the case of **Zandu Pharmaceutical Works Ltd. vs. Mohd.**

Saraful Haque : (2005) 1 SCC 122, the Apex Court has observed as under:

*"11. ... the powers possessed by the High Court u/S 482 of the Code are very wide and the **very plenitude of the power requires great caution in its exercise**. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See Janta Dal V. H.S. Chowdhary (1992) 4SCC305). **It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premise arrive at a conclusion that the proceedings are to be quashed**. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/S 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."*

14. In the case of **Sanapareddy Maheedhar Seshagiri vs. State of Andhra Pradesh : (2007) 13 SCC 165**, this Court has held as under:

*"31. A careful reading of the abovenoted judgments makes it clear that the High Court should be **extremely cautious and slow to interfere with the investigation and/or trial of criminal cases** and should not stall the investigation and/or prosecution **except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court.** In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent Authorities from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. **The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant.** The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, **if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power u/S 482 CrPC.**"*

15. In the case of **State of Maharashtra vs. Arun Gulab Gawali : (2010) 9 SCC 701**, the Apex Court has as under:

"13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an

arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it "soft-pedal the course of justice" at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "CrPC") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide *State of W.B. v. Swapan Kumar Guha* [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : (1982) 1 SCC 561 : AIR 1982 SC 949], *Pepsi Foods Ltd. v. Special Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400], *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : (2000) 2 SCC 636 : AIR 2000 SC 754] and *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])

xxxxxxxxx

27. The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Session is empowered to discharge an accused u/S 227 CrPC even before initiating the trial. The accused can, therefore, move the trial court itself for such a relief and the trial court would be in a better position to analyse and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction u/S 482 CrPC for the quashing of a prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial. The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion.

28. A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police. If the prosecution is quashed, then neither the trial court nor the investigating agency has any opportunity to go into this question, which may require consideration. The State is the prosecutor and all prosecution is the social and legal responsibility of the State. An offence committed is a crime against society and not against the victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.

29. Thus, while exercising such power the Court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. It should be a case where no other view is possible nor any investigation or inquiry is further required. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit and the facts warranting exercise of such power. More so, it was not a case of civil nature where there could be a possibility of compromise or involving an offence which may be compoundable u/S 320 CrPC, where the Court could apply the ratio of *Madhavrao Jiwajirao Scindia* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234 : (1988) 1 SCC 692 : AIR 1988 SC 709]."

16. In the case of *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others* : 2021 SCC OnLine SC 315, the Apex Court, taking note of the aforesaid judgments has concluded as under:

"80. 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 u/S 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 u/S 173 Cr. P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers u/S 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 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 u/S 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 u/S 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 u/S 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 u/S 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 u/S 173 Cr. P.C., while dismissing/disposing of the quashing petition u/S 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 u/S 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."*

17. In a very recent judgement of the Apex Court in ***Veena Mittal vs. State of U.P.; 2022 LiveLaw (SC) 110***, decided on 24.01.2022, relying upon the aforesaid judgement of ***Neeharika Infrastructure (supra)***, the Apex Court has held that it is well settled that at the stage when the High Court considers the petition for quashing of the criminal proceedings u/S 482 Cr.P.C., the allegations in the F.I.R. must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the court may be justified in exercising its jurisdiction to quash the criminal proceedings.

18. In the cases of ***Debendra Nath Padhi (Supra)*** and ***Attar Singh (Supra)***, which have been relied upon by the applicants, are with regard to stage of framing of charges which are not relevant at this stage.

19. In the case of ***R. Kalyani Chopra (supra)***, the Apex Court has held as under:

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

20. From the aforesaid judgements, the principles as emerged are that if in the considered opinion of the court the prosecution is found to be false and malicious prosecution instituted by the parties with an ulterior motive for racking vengeance on the accused persons due to some private and personal grudge, such prosecution can be quashed in exercise of the powers u/S 482

Cr.PC. So far as the the judgement of this Court in ***Ashok Patel (Supra)*** is concerned, which holds that disputed defence of accused cannot be considered while exercising the powers u/S 482 Cr.P.C. However, in the considered opinion of this Court, in the present case the documents which have been annexed by the applicants alongwith the instant application with regard to the application for demarcation deposit receipts, for the purpose of demarcation and the report of the Lekhpal and the report of demarcation prepared by the Revenue Authorities are the public documents, which have to be presumed to be true. Therefore, the revenue documents which are presumed to be true being a public document, it is apparent that the demarcation was conducted in the presence of the Revenue Authorities and the Police Authorities as well. Therefore, there is no occasion for the applicants herein for further measurement as has been alleged by the opposite party no. 2, in the F.I.R., which was objected to by the opposite party no. 2. The measurement and demarcation was already conducted by the Revenue Authorities prior to the time of incident as has been alleged in the instant F.I.R. The revenue document being a public document cannot be said to be a disputed defence since they being the public document are presumed to be true and the opposite party no.2, in his counter affidavit, admits that since the measurement not being done in a proper manner, hence, he has raised the objection. In para '9' of the counter affidavit opposite party no. 2 has admitted that he has objected to the demarcation and measurement. Therefore, it is apparent that he was not satisfied with the demarcation done by the Revenue Authorities as per the procedure prescribed. Therefore, it was objected by the opposite party no. 2, which was resisted by the applicants herein and both the parties have sustained injuries for which the applicants have also lodged a cross case against the opposite party no. 2. Therefore, the instant case has been registered by the opposite party no. 2, with an ulterior motive.

21. Therefore, in view of the aforesaid and in view of the law laid down by the Supreme Court, the court is of the opinion that the criminal proceedings of the instant case has been initiated by the opposite party no. 2 with an ulterior motive against the appellants herein which cannot be sustained. Therefore, the proceedings of Criminal Case No.3154 of 2010, arising out of Case Crime No. 182 of 2010 u/S 323, 504, 506, 452, 427 I.P.C., P.S.- Cholapur, District- Varanasi, pending in the court IInd, learned Additional Chief Judicial Magistrate, Varanasi and the charge-sheet dated 15.07.2010 as well as the cognizance order dated 25.08.2010 are hereby **quashed**. The Application No. 30119 of 2010 is **allowed**.

Application U/S 482 No. 36859 of 2012

22. The facts of the instant case in brief are that the opposite party no. 2 Chhavi Raj Patel has lodged a complaint under section 156 (3) Cr.P.C. alleging therein that on 20.6.2010 on the direction of A.D.M. demarcation was done by Lekhpal and Kanoongo of his Chak No. 930, 925, 926 and fixed *Khoota* after demarcation at about 1.00 P.M. It is further alleged that the applicants herein were not satisfied with the said demarcation proceedings and being annoyed on the same very day at about 5.00 P.M. in the evening Mangala Patel alongwith his sons Vinod, Narendra and Satendra armed with Lathi, Danda and knife reached on his chak and started removing the *Khoota* fixed by the Revenue Team. When his son Sanjay objected to the removal of the *Khoota*, they all started hurling abuses and assaulted him. Sanjay in order to escape himself ran from there and entered into the room of pumpset. The accused persons also entered into the said room and Vinod has assaulted Sanjay on his face by knife due to which he fell down. Hearing the noises of his son Sanjay the informant alongwith Ramashanker and other villagers rushed there and anyhow saved Sanjay. All the accused persons left the place after threatening that in case they report the incident to the police they

all will be killed. Further it is alleged in the F.I.R. that due to fear of the accused persons they did not went to the police station on the same day and started treatment of his son Sanjay at the home itself and next day they went to Pandit Deen Dayal Upadhyay Government Hospital, Varanasi for the treatment of Sanjay, where doctors have examined Sanjay and X-ray was also conducted. The informant went to the police station alongwith the medical papers of Sanjay but the police has not registered his report. Therefore on 22.6.2010 he has sent a written report to the D.I.G. Police, Varanasi but no report was registered. Subsequently on the orders of Magistrate, the FIR was registered and after investigation, charge sheet was filed.

23. Learned counsel for the appellants submits that the applicants were beaten by the opposite party no. 2 on 20.6.2010 and a F.I.R. was also lodged by the applicant no. 1 which was registered as Case Crime No. 182 of 2010 under sections 323, 504, 506, 452, 427 I.P. at police station Cholapur District Varanasi and escape the criminal proceedings and with malafide intention the opposite party no. 2 has filed an application under section 156(3) Cr.P.C alleging false allegations against the appellants herein and on the direction of the Magistrate the F.I.R. has been registered against the appellants herein being Case Crime No. 182 A of 2010 under sections 323, 504, 506, 324, 307 and 452 I.P.C. at the same police station.

24. On the other, learned counsel for the opposite party no. 2 submits that the measurement was done by the Revenue Team, in the presence of various villagers whose signatures were also obtained by the Revenue Authorities after demarcation and the entire measurement was conducted in a peaceful atmosphere, which is evident from the signatures of various villagers on the demarcation report prepared by the Revenue Authorities. Since, the applicants herein were not happy with the demarcation

conducted, therefore, he has lodged the F.I.R. due to his dissatisfaction and frustration against the opposite party no. 2 herein by concocting a false and fabricated story. The entire measurement was done in the presence of the Revenue Authorities as well as the Police Authorities. Learned counsel for the opposite party no. 2 further submits that after the demarcation conducted by the Revenue Authorities, the applicants, herein were also dissatisfied with the said demarcation and started removing the demarcation marks put by the Revenue Authorities, when the same was objected to by the son of the opposite party no. 2, the applicants herein assaulted his son in which son of opposite party no. 2 had sustained injuries.

25. The court has already dealt with the incident in question in detail in the earlier part of this judgement. Admittedly, the opposite party no. 2 was the owner of Chak No. 930, 925 and 926 and the documents have been annexed by the opposite party no. 2 alongwith the application no. 30119 of 2010 with regard to the application for demarcation deposit receipts, for the purpose of demarcation and the report of the Lekhpal and the report of demarcation prepared by the Revenue Authorities, which are the public documents and have to be presumed to be true. It is apparent that the demarcation was conducted in the presence of the Revenue Authorities and the Police Authorities as well. Therefore, there is no occasion for the opposite party no. 2 for further measurement as has been alleged by the appellants herein in their F.I.R. The Court is of the considered opinion that the opposite party no. 2 has adopted legal procedure for demarcation of his chaks which has annoyed the applicants herein. There was no occasion for the opposite party no. 2 to involve in a criminal act as has been alleged by the appellants in their F.I.R. and it is the applicants herein who were annoyed with the demarcation proceedings and therefore, they have started removing the

Khootas fixed by the Revenue Team after demarcation, as has been alleged by the opposite party no. 2. There is specific allegations in the F.I.R. lodged by the opposite party no. 2 that appellant Vinod has reached on the spot and started removing the *Khootas* fixed by the Revenue Team, which was objected by Sanjay, son of the opposite party no. 2, and therefore appellant Vinod has assaulted him by knife on his face.

26. It is also to be noted that the opposite party no. 2 has adopted legal procedure for demarcation of his chaks and there was no reason for the opposite party no. 2 to remeasure his chaks once the Revenue Team has properly demarcated the chaks and also fixed *khoota* in the presence of the villagers and police authorities. There appears some reason for the appellants to involve in criminal act since they were not satisfied with the demarcation proceeding, which has been got executed by the opposite party no. 2 following the legal procedure.

27. For the aforesaid reason the court is of the considered opinion that no good ground has been made out by the applicants herein for interference in the matter, therefore, the application u/s 482 no. 36859 of 2012 is devoid of merit and is accordingly ***dismissed***.

Order Date :- 15.12.2023

Shubham Arya