

GAHC040012682023

2024:GAU-AP:867



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Petn./172/2023

Miss Tendy Lamo and Anr.

D/o Lt. K. Tseten, R/o Ganga Village, Itanagar, P.O and P.S Itanagar, Papum Pare District, Arunachal Pradesh. Mobile No. 9612593339, Email Nil

2: Michung Khamba

Age:

Occupation :

S/o Temphi Khamba

R/o Tuting

P.O and P.S Tuting

Upper Siang District

Arunachal Pradesh. Mobile No. 8132079417

Email Ni

VERSUS

The State of AP and 2 Others
through the Public Prosecutor

2:Asin Libang

Age: 0

Occupation :

S/o Sh. Dumten Libang

President of Simong and Himong Community Youth Association

R/o Simong village

P.O and P.S Yingkiong

district Upper Siang

Arunachal Pradesh.

3:Rajiv Kombo

Age: 0

Occupation :

S/o Tashi Kombo

Secretary

Himong Community youth Association
R/o Simong village
P.O and P.S Yingkiong
district Upper Siang
Arunachal Pradesh

Advocate for the Petitioner : Rajesh Sonar, M Basar,R Taku

Advocate for the Respondent : P P of AP, Rubu Tani,K Chotten,Honi Tana Tara,P Siga,Oken
Duggong,Nikita Danggen

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

JUDGMENT AND ORDER (ORAL)

Date: 18.09.2024

Heard Mr. R. Sonar, learned counsel for the petitioners. Also heard Ms. L. Hage, learned APP appearing for the State; and Ms. N. Danggen, learned counsel appearing for the respondent nos. 2 and 3.

2. By filing this criminal petition under Section 482 Cr.P.C., the petitioners have prayed for quashing of the FIR dated 03.08.2022, registered as Yingkiong Police Station Case No. 29/2022, under sections 120B/153A/295A/34 of the Indian Penal Code.

3. At the outset, the learned counsel for petitioners has submitted that during the pendency of this criminal petition, the competent authority, i.e. the Joint Secretary (Home), Government of Arunachal Pradesh, by a letter dated 27.12.2023, granted prosecution sanction only in respect of the petitioner no. 1, namely, Ms. Tendy Lamo, and not against the petitioner no. 2, namely, Shri Michung Khamba. Consequently, the I.O. of Yingkiong P.S. Case No. 29/2022 had forwarded a charge-sheet bearing no. 1/2024, dated 08.02.2024, against

the petitioner no. 1 and two others, but not against the petitioner no.2. This fact is admitted by the learned APP.

4. By referring to the decision of the Supreme Court of India in the case of *Iqbal @ Bala & Ors. v. State of Uttar Pradesh & Anr., (2023) 8 SCC 734*, it is submitted that in a case where frivolous and vexatious proceedings are brought to the notice of the Court, in exercise of jurisdiction under Section 482 Cr.P.C., the High Court need not restrict itself only to the "stage" of a case, but is empowered to take into account the overall circumstances leading to the initiation or registration of the case as well as materials collected in course of investigation. On the strength of the said decision, it is submitted that the place where the incident took place is claimed by the petitioners as their community land. It is submitted that the area is a mountainous area and till date, no person has been granted Land Possession Certification ("LPC" for short). The petitioners admit having constructed a Monastery at a particular site claiming it to be a site of religious importance for them where they had also installed a statue of Lord Buddha, popularly known as *Avaloketeshvara (The Buddha of Compassion)*.

5. The learned counsel for the petitioners has referred to a notice dated 05.09.2021, issued by *Gaonbura* of 8 (eight) villages in the adjoining area, collectively known as Simong Village to project that the said *Gaonburas* had asked the addressee, i.e. Shri Michung Khamba, petitioner no.2, as President of Cheme Yangchang Welfare Society, Tuting, to remove all erected structures from Eko Dombing area by 30.09.2021 and the petitioner no.2 was put to notice that in the event of refusal or failure to comply with the notice, the structure will be removed by the people of Simong community and that apart, necessary action shall be initiated against him as deem fit and proper.

6. To give the background of the *inter-se* dispute between two

communities, it is also submitted that on 04.10.2021, the Deputy Commissioner of Upper Siang District declared ownership of the land in favour of Simong community and accordingly, the said order was put to challenge by filing WP(C) 374(AP)/2021 and this Court by order dated 09.06.2022, on the jurisdictional point, held that the Deputy Commissioner was not vested with the power and jurisdiction to make any finding on the title of the land and accordingly, the order dated 04.10.2021 was set aside by giving liberty to the parties to approach the appropriate forum for resolution of the dispute.

7. In the meanwhile, a Kebang decision was made in favour of the Simong community, which the learned counsel for the petitioner claims to be an *ex parte* decision, against which an appeal has been preferred and it is submitted that the said appeal is pending before the competent Civil Court.

8. It is submitted by the learned counsel for the petitioners that in between 16th to 24th October, 2021, the Monastery and structures built by the people from Memba Khamba community was burned and destroyed and in the process the idol of Lord Buddha that was installed in the Monastery was vandalized and destroyed. It is also stated that in connection with the FIR which was lodged on 28.10.2021, a Final Report was submitted by the I.O. on the ground that the perpetrators of crime could not be found, against which protest petition was filed, and when the matter was sent back for fresh investigation, once again, a Final Report was submitted by projecting that the perpetrators of the crime was not found. It is submitted that in the order dated 04.10.2021, which is referred hereinbefore, the Deputy Commissioner of the Upper Siang District, while observing that the land belongs to Simong community, had also directed the parties to maintain *status quo* and peaceful coexistence as existed before the incident.

9. The learned counsel for the petitioners has submitted that at the site where the Monastery was burnt and destroyed on 03.08.2022, the petitioner no.1 along with few others had constructed a temporary wooden log cabin and kitchen and on such construction being made, an FIR was lodged by the respondent nos.2 and 3, which was registered as Yingkiong P.S. Case No. 29/2022. It is submitted by the learned counsel for the petitioners that *prima facie* the FIR does not disclose commission of any cognizable offence. It is also submitted that reconstruction of the place of worship with a temporary structure, which is disclosed in the documents appended to the charge sheet, cannot be interpreted to have promoted enmity between different groups on the ground of religion, race, place of birth, residence, language, etc., or that such construction is prejudicial to the maintenance of harmony or that the petitioners had committed any act, which can be said to be deliberate and malicious, intending to outrage religious beliefs of any class by insulting its religion or religious beliefs. Accordingly, the learned counsel for the petitioners has prayed for quashing of the FIR.

10. To support his submissions, apart from earlier referred decision, the learned counsel for the petitioners has also placed reliance on a decision of this Court in the case of *Apurba Kr. Choudhury & Anr. v. State of Assam & Anr., 2022 (3) GLT 782*.

11. The learned APP has referred to the contents of the charge-sheet, which is annexed to the additional affidavit filed by the petitioner on 15.06.2024 and it is submitted that the petitioners had stealthily intruded into the disputed land with a group of persons and erected structures, which amounts to promoting enmity between two communities. It was submitted that the petitioner no.1 and her entourage had not taken any permission from the

authorities to visit the disputed site. It is also submitted that the photographs appended to the charge-sheet also discloses erection of structures. Accordingly, it is submitted that this is not a fit and proper case for quashing of the FIR and that the petitioners should be subjected to the completion of the trial. It is also submitted that the competent authority has also granted sanction for prosecution against the petitioner. Accordingly, it is also submitted that there is a *prima facie* case against the petitioners.

12. Per contra, the learned counsel for the respondent nos. 2 and 3 has submitted that as the learned counsel for the petitioners has referred to the past projections of certain religious beliefs of the petitioners, which led to the erection of structures at the disputed site. However, the Simong community of the respondent nos.2 and 3 also exercise their rights since antiquity over the disputed land and their tribe also performs certain rites at the site where the Monastery and other structures had been constructed. It is also submitted that as the Deputy Commissioner, Upper Siang District had passed a prohibitory order, it was incumbent on part of the petitioners to take permission from the Deputy Commissioner or from the the people of Simong community to enter into the disputed land and take the permission of their community before making such construction. Accordingly, it is submitted that as the petitioners have admitted erection of the structure at the disputed site, no case is made out for quashing of the FIR. It is also submitted that in reply to the notice issued by the 8 (eight) *Gaonburas* to Shri Michung Khamba, petitioner no. 2, the *Gaonbura* of 4 (four) villages along with the petitioner number 2 and three others had not controverted or disputed that the land belongs to the people of Simong community, but they have sought to justify the construction of a log cabin, hut and kitchen at the disputed site for performing religious and pilgrimage.

Accordingly, it is submitted that the petitioners have admitted the ownership of the land by the people of Simong community.

13. At this stage, it must be stated that with a thought that perhaps with negotiation, the two communities can settle the dispute outside the Court, after partly dictating the order in open Court upto this, the Court had informed the learned counsel for the parties that in the event the parties express their readiness and willingness to shake hands so as to open a dialogue between two communities, and inform the Court, mediation could still be ordered with consent of the parties and their respective counsel. However, the learned counsel for the petitioners and the respondent nos. 2 and 3 had submitted that in connection with the dispute, the community members would have to assemble and then take a decision, which is likely to consume time, the Court had proceeded to dictate the remaining part of this order.

14. Perused the materials on record and considered the submissions made at the bar.

15. As it is a well settled principle of law that while deciding an application for quashing of the FIR under Section 482 Cr.P.C., the main thrust of the Court would be to examine the FIR and to find out whether any cognizable offence has been made out for trial. It is not permissible for the Court to shift through the materials so as to determine whether the evidence collected so far would lead to acquittal.

16. Coming to the contents of the FIR, it would be appropriate to extract the contents of the FIR:

*“To
The Officer-in-Charge
Police Station Yingkiong*

Upper Siang District

Date: 3rd August 2022

Sub: FIR against Shri Michung Khampa, Mrs. Tendy Lamo, Shri Laida Wangsu, Shri Ananta Narayan Mishra (State General Secretary (Org) BJP Arunachal Pradesh) and others for insulting and hurting the religious feelings, promoting enmity between communities and creating communal disharmony etc.

Sir,

This Complaint is made against the above named persons on the following grounds.

- 1. The Chime Yangsang Society under the leadership of Shri Michung Khampa had in the year 2019 secretly constructed some structures at Eko Dumbing area which the Simong Community believes to be a part and parcel of the Simong land and a very scared place.*
- 2. The Simong Community strongly objected to such construction by the Chime Yangsang Society done without consulting the Simong Community. Due to this a dispute arose between the Simong Community and the Memba Khamba Community.*
- 3. When the matter escalated the District Administration intervened and passed an order on 4/10/2021 to maintain status quo along with other orders.*

A copy of the order is enclosed.

- 4. Further the Chief Minister's Office also intervened and had sent a peace Committee to try solving the issue.*

Furthermore, a meeting was also called by the Chief Minister himself on 7th January 2022 wherein the Deputy Commissioner of Upper Siang District was advice to visit the place with stakeholders and finalize a site for construction of a Guest House, after consultation and taking the view of Simong Community.

A copy of the meeting minutes is enclosed.

- 5. While the both the communities were maintaining pace and the matter was at rest all these months suddenly on 30th July 2022 it was learned that the Memba Khamba Community under the leadership of Michung Khampa, Laida Wangsu, Tendy Lamo (President of Pemako Youth Association), accompanied by one Shri Ananta Narayan Mishra who is the General Secretary (Org) BJP Arunachal Pradesh and others have true secretly visited and constructed some structures once again at the land of dispute. It was later on confirmed through the photographs posted in the social media account of Tendy Lamo.*

Photographs enclosed.

6. Apart from being the part and parcel of Simong area the Eko Dumbing is a scared place for the people of Simong community having religious values. All the customary rituals and religious offering of the community is attached to it. The structures erected by them are exactly at the place where the offerings are made and from where the plants and herbs that are used during the offering is collected. These facts are well-known by the Memba Khamba people.

The act of the above named people have annoyed and provoked and enraged the whole Simong community of Upper Siang District. They have also aggravated the dispute. By constructing such structures deliberately at the place which is considered scared by the people of Simong community they have insulted and hurt the religious feeling of the Simong Community which is an Offence mentioned in section 295 and 295A of IPC.

Further being aware of the disputes and controversies between the two communities and knowing that their activities in the disputed area may break peace their act of secretly intruding into the disputed land and erecting structures is promoting enmity between the two communities and creating communal disharmony. They have committed an act which is prejudicial to maintenance of harmony between different religion and community and which is likely to disturb peace which is an offence mentioned in section 153A of IPC. They are also provoking with intention of causing riot by doing such act.

We therefore would like to request you to register our FIR and investigate into the matter at the earliest and book the culprits as per the provisions of law.

Yours Sincerely

*Asin Libang
President
Himong Community Youth Association*

*Rajiv Kombo
Secretary
Himong Community Youth Association"*

17. On perusal of the FIR, the allegation against the petitioners is that they had secretly constructed some structures at Eko Doming area, which the Simong community "believes" to be a part and parcel of the Simong land and a

very sacred place. Therefore, the said statement shows that the complainants do not assert their title over the disputed land, but they only claim that their community “believes” the said area to be a part of Simong community. The charge-sheet which contains the description of the investigation does not disclose that the Investigating Officer of the case could trace out any document which declares the Simong community to be the owner of the disputed land.

18. In the said FIR, it is claimed that the Simong community had strongly objected to such construction. Therefore, if the complainants could raise their protest when the construction was going on, it is unbelievable that the petitioners had entered into the land stealthily to carry out the construction.

19. In the charge-sheet, the I.O. has not arrived at a definite finding that permission from the Simong community was a prior requirement, without which no construction could be carried out in the area in question. Though in the FIR, there is a reference that when the matter escalated, the district administration had intervened and an order was passed on 04.10.2021. However, this Court by an order dated 09.06.2022, passed in WP(C) 374(AP)/2021, had held that the Deputy Commissioner had exceeded his jurisdiction in passing the order dated 04.10.2021, by which the ownership and title over the plot of land has been decided and accordingly, the parties were relegated to approach the appropriate forum for resolution of the dispute. After that the said order was passed on 09.06.2022, the legal interpretation of the order dated 04.10.2021 would be that the prohibitory order in favour of the respondent nos.2 and 3 or any other member of their community, prohibiting entry into the disputed area was also quashed and set aside. Therefore, in light of the said order dated 04.10.2021, passed by this Court, there was no prohibition operating against the petitioners for entering into the area.

20. As per the FIR, the complainants came to know on 30.07.2022 that the members Memba Khamba community under the leadership of petitioner nos.1 and 2, accompanied by some other persons, had visited and constructed some structures once again. By implications, the said statement would mean that there existed a structure on which a fresh structure was created. The photographs appended to the chart-sheet discloses existence of an old structure, which the learned counsel for the petitioners claims to be the part of the burnt Monastery and where the statue of Lord Buddha was consecrated.

21. In the charge-sheet, the Investigating Officer has mentioned that no permission was taken to go to the area. It is in this context that the Court has specifically asked the learned APP to seek instructions as to whether there exists any law in the State of Arunachal Pradesh or any other executive order or notification which requires a resident within the State of Arunachal Pradesh to seek permission to go to another place in the State. Except for the Inner Line Permit, which is applicable for non-resident of the State of Arunachal Pradesh visitors, it has been submitted that there is no such requirement of law requiring a prior approval or permission from any authorities to visit any site for ordinary residents of the State of Arunachal Pradesh. The charge-sheet does not disclose that there is any order by the District Administration that one has to take permission from any particular Tribe or community to visit that area.

22. In the aforesaid context, there are two ways to look at the issue. (a) Both sides claim that they perform some religious rites at the place, and (b) both sides claim that they have been doing so from antiquity.

23. On a query of the Court, both sides have submitted that the practices being followed by their respective communities is not documented in any government or historical record. With the aforesaid two aspects, as the

investigation carried out so far reflects from the photograph that there existed a place of worship of the petitioners, on which the petitioner no.1 admits making construction. Therefore, unless a recreation of a burnt structure is shown to be an illegal act under any law for the time being in force, no case for prosecuting the petitioners is *prima facie* discloses in the FIR.

24. The allegation in the FIR is that the structures made by the petitioners are exactly at the place where the offerings are made by the people of Simong community and it is also projected that plants and herbs, which are used during the offering, is collected from the said place. We fail to understand from the contents of the FIR that how a construction at the place where there are evidences of a burnt Monastery would create disharmony between two communities. It could only give rise to a civil dispute with regard to ownership of the land.

25. There is no attribution of any act or deeds by the petitioners which promotes enmity between two different groups on the ground of religion, race, place of birth, residence, language, etc. or such act is prejudicial to maintenance of harmony, which are essential ingredients of an offence under Section 153 A of the IPC. It is not the case of the petitioners that by the construction of a Monastery, the petitioners or others have insulted the Simong community in any manner. It is not a case that the petitioners had differentiated with the respondent nos.2 and 3 on the ground of religion, race, place of birth, residence, language, etc. It is not the conclusion of the I.O in the charge-sheet that in this State there is a law that when a particular religion is practiced by one community, no other religious structures of other communities are allowed to exist.

26. Therefore, it would be relevant to quote the provisions of Section 153A

IPC:

“Section 153A: Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both

(2) Offence committed in place of worship, etc.—Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

27. From the text of the provisions of Section 153A IPC, none of the ingredients of clause-(a), (b) and (c) of Sub-Section (1) of Section 153A IPC is found to be attracted even by implication. It is not the claim in the FIR that the religious structure or kitchen etc. were constructed for carrying out any activity to use it for training or for use of criminal force or violence against any religious,

language, racial group or caste.

28. The FIR also discloses that only on 30.07.2022, the respondents came to know about the structure and it is claimed that the petitioners had stealthily entered into the land for making religious construction. This is also indicative of the fact that the area is very sparsely populated. Had the area been populated, the community would have come to know about the entry of petitioners into their community land. The photograph appended to the charge-sheet does not disclose any other habitation in the area of focus of the photograph. This is relevant because if there is no habitation, there is no way that when construction was being made, any person was insulted as no one is an eye witness to such construction being carried out.

29. It is also noted that it is not the case of the complainants of the FIR that any act within the meaning of Section 153A IPC was committed in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies. Therefore, the Court is constrained to note that no ingredient of offence under Section 153A IPC could be read in the FIR sought to be quashed.

30. In context with the offences under Section 295A IPC, the said provision is quoted below:

“Section 295A: Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

31. From the text of the FIR, which is already extracted above, the Court is

unable to find that the informants could demonstrate in the FIR that the act of construction of a place of worship with kitchen etc., was with deliberate and malicious intention of outraging the religious feeling of any class of citizen. There is no allegation that any words either spoken or written or any signs visible by the presentation or otherwise was made by any of the petitioners to insult the religious group of the complainants or to insult the religious beliefs of that class. The fact which is relevant that the temporary construction is at the same site where previously structure of burnt down Monastery had stood. Under the circumstances, the Court is inclined to hold that no offence has been made out under Section 295A IPC on a plain hearing of the FIR.

32. It is not the case of the complainants that while they were performing any religious acts, they were disturbed by the petitioners in performance of their religious rites or their essential community rites. Therefore, if the earlier construction stood in the place where temporary construction of wooden logs was made, it is a pure civil dispute between the parties, which has been given a criminal colour.

33. Now it is required to be seen as to whether any offence within the meaning of Section 120B IPC can be culled out on a plain reading of the FIR. To understand the purpose of Section 120A of the IPC, the said provision is quoted below:

“Section 120A : Definition of criminal conspiracy.- When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or

more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

34. Therefore, from the above, to attract the act of the petitioners towards criminal conspiracy, it is required that the FIR should disclose that two or more persons had agreed to do or was to be done an illegal act. In this regard, the State has not been able to produce any law for the time being in force which includes acts, rules, notifications or other directives issued by the competent authority declaring that the act of making a temporary construction of wooden logs for a place of worship over a burnt down Monastery is an illegal act in respect of the situs where such construction is made. The other ingredient of attracting Section 120A of the IPC is that even when such an act is not illegal by illegal means, such an agreement is designated a criminal conspiracy in terms of the proviso appended to clause-2. We are unable to agree with the submission made by the learned counsel for the respondent nos.2 and 3 that the construction so made by the petitioners is an illegal act or that the agreement between the parties to make such construction can be construed to be a part of criminal conspiracy or that there was any criminal intent for carrying out the construction of temporary religious structure. Therefore, under the facts and circumstances as narrated in the FIR, no offence under Section 120A IPC has been made out.

35. The aforesaid observation of the Court would also apply in respect of the offence under Section 34 IPC, for which the petitioners are charged in the FIR.

36. In this regard, the provision of 34 IPC is quoted below:

“Section 34: Acts done by several persons in furtherance of common intention.

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

37. The essential ingredients to attract the offence of Section 34 IPC are that criminal act should have been done by several persons in furtherance of their common intention. In this regard, it is seen that in the charge-sheet, the Investigation Officer has not recorded that such construction was made by the petitioners by insulting the complainants in any manner or by preventing the complainants or members of their community to perform their rituals. Therefore, in the absence of finding that the complainants or their community had title over the disputed land, a construction by the petitioners only discloses existence of a purely civil dispute concerning a part of land and nothing more. Hence, the construction of a temporary log- structure cannot be held to be in furtherance of any criminal common intention of the parties.

38. Therefore, when this Court had passed an order dated 06.09.2022 in WP(C) 374(AP)/2021, by which the Deputy Commissioner's order dated 04.10.2021 was quashed and parties were granted liberty to approach the appropriate forum for resolution of their dispute, and resolution of dispute, if it results in declaration of title of the complainants over the land in question, it is at that point of time they can exercise their right to have the structures created on the said plot of land removed. Till then, it cannot be said that the structures, which are created in the land in question, which is still a disputed property, is illegal by any means.

39. It is not the case of the State that there is a requirement of obtaining prior permission from the district administration in the Upper Siang District for setting up a Monastery in a place which is neither an urban nor a rural inhabited area, when there is no Civic Body or a Panchayat. Therefore, in the absence of

any law to regulate such construction, the State administration cannot just identify a religious structure to be an offending structure.

40. The charge-sheet submitted in this case does not disclose that construction of religious structures is banned in the Upper Siang District or for that purpose any construction without permission is banned. Therefore, the construction so made by the petitioners cannot be held to be illegal in any account. Then the FIR does not disclose offence involving Section 34 of the IPC. The construction in question cannot be said to be unlawful or part of criminal conspiracy, which attracts criminal prosecution.

41. Therefore, this is a case where a purely civil dispute is sought to be given a cloak of criminal colour to the act of the respondent no.1 in leading a group of persons to build a wooden log cabin, kitchen etc. in the site of their burnt down Monastery by maliciously projecting as if the petitioners were promoting enmity between different groups on ground of religion, etc. or had done anything prejudicial to maintenance of harmony or that they have done deliberate and malicious act intended to outrage religion feelings of any class by insulting its religion or religious beliefs. This appears to be a case where by virtue of clever drafting, a purely land dispute is projected to be an offence within the meaning of Section 153A and Section 295A of the IPC. In the absence of any ingredients of Sections 153A and 295A IPC, the FIR in question cannot be said to disclose any ingredient of offence under Sections 120B and 34 IPC.

42. Section 482 of the Cr.P.C. provides as follows:

“Section 482: Procedure where Court considers that case should not be dealt with under section 480

(1) If the Court in any case considers that a person accused of any of the offences

referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided."

43. In the case of *Monica Kumar (Dr.) v. State of Uttar Pradesh, (2008) 8 SCC 761*, the Supreme Court of India has held that inherent jurisdiction under Section 482 of the Cr.P.C. has to be exercise sparingly, carefully and with caution and only when such exercise is justified as per the tests specifically laid down in the section itself. In the case of *Daxaben v. State of Gujarat, (2022) 13 SCR 295: (2022) 0 Supreme (SC) 633*, the Supreme Court of India has held that even though, the inherent power of the High Court under Section 482 Cr.P.C. to interfere with criminal proceedings is right, such power has to be exercised with circumspection and in exceptional cases. It was further held that jurisdiction under Section 482 of the Cr.P.C. is not to be exercised for the asking. In the case of *Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460*, the Supreme Court of India has laid down the following guiding principles for exercise of jurisdiction under Section 397 Cr.P.C. or Section 482 Cr.P.C.:

"19. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or

Section 482 of the Code or together, as the case may be:

(1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

(2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

(3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

(4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

(5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

(6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

(7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

(8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

(9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will

constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

(10) It is neither necessary nor is the court called upon to hold a full- fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

(11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

(12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

(13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

(14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

(15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist."

44. In the case of *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, 2021 SCC OnLine SC 315, after analyzing several cases including the case of *State of Haryana v. Ch. Bhajan Lal & Ors.*, 1992 Supp. (1) SCC 335, the conclusion of the Supreme Court of India in paragraph-80 is as follows:

"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 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 XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the*

investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 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."

45. In light of the said parameters and limitations on power of the Court to quash an FIR, when the FIR in the case in hand has been examined, it is seen that notwithstanding that both sides claim the land which they treat as sacred, the dispute is essentially a civil dispute. In the discussions above, the Court has considered no material other than the FIR and the charge-sheet submitted in the case. On a plain reading of the FIR, it does not disclose any ingredient of commission of offence under Sections 120B/153A/295A/34 of the IPC. Rather, the photographs appended to the charge-sheet clearly disclose the remains of a demolished structure over which the construction is purportedly made.

46. We also take note of the decision of the Supreme Court of India in the case of *Anand Kumar Mohatta & Anr. v. State (Govt. of NCT of Delhi) & Anr.*, (2019) 11 SCC 706: (2018) 0 Supreme SC 1133 where it has been held that there is nothing in the words of Section 482 of the Cr.P.C. which restricts the exercise of the power of the Court to prevent the abuse of process of Court or miscarriage of justice only to the stage of FIR. In the case of *Joseph Salvaraj A. v. State of Gujarat*, (2011) 7 SCC 59, it was held to the effect that even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were

prima facie made out from the complaint's, FIR, charge-sheet, documents etc. or not.

47. In cases where the criminal proceedings are found to be frivolous and/or vexatious, the Supreme Court of India in the case of *Iqbal @ Bala & Ors. (supra)*, it has been held that the Court while exercising its jurisdiction under Section 482 Cr.P.C. need not restrict itself only to the stage of a case, but is empowered to take into account the overall circumstances leading to the initiation/registration of a case as well as the materials collected in course of investigation. Therefore, for the purpose of quashing of an FIR, the said decision empowers the Court to take notice of the materials which are available in the charge-sheet.

48. In view of the discussions above, the Court is inclined to hold that the plain reading of the FIR does not disclose that any offence whatsoever has been committed by the petitioners, which can be punishable under Sections 120B/153A/295A read with Section 34 IPC. The Court is further inclined to hold that no cognizable offence of any kind is disclosed in the FIR. It is also held that a purely civil / land dispute is sought to be converted into a prosecution of the petitioner no.1 as if she is propagating enmity between two religious groups by insulting religious practices or beliefs of the community of the complainant.

49. The present case is squarely covered by paragraph 102(1), 102(3) and 102(7) of the case of *Bhajan Lal (supra)*. The said paragraphs are quoted below:-

“102(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.

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102(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.

* * *

102(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."

50. Resultantly, the said FIR which is registered as Yingkiong Police Station Case No. 29/2022, under Sections 120B/153A/ 295A/34 IPC, in which the I.O. has submitted charge-sheet no. 1/2024 dated 16.02.2024 has been submitted, is hereby quashed.

51. The observations made in this order shall not prejudice any parties if they approach an appropriate forum for resolution of dispute as per order dated 04.10.2021, passed by this Court in WP(C) 374(AP)/2021.

52. This criminal petition stands disposed of.

53. The petitioners shall submit a certified copy of this order before the concerned Court where the charge-sheeted case is pending for trial.

JUDGE

Comparing Assistant