

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) no. 32/2022
CrIM no. 136/2022

Pronounced on: 30.04.2025

Abdul Qayoom Sheikh

...Appellant(s)/Petitioner(s)

Through: None

Vs.

UT of JK through P/S Achabal and another

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy. AG with Ms. Nowbahar Khan, AC

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

JUDGEMENT

1. Petitioner is seeking quashing of FIR no.08/2021 registered with Police Station Achabal, Anantnag, for offences punishable under Section 354, 354-A, 451, 506, 376 and 511 IPC as well as the charge sheet filed and pending before the court of Additional Sessions Judge, Anantnag. The aforesaid relief is being sought by the petitioner precisely on the grounds:

- a) Petitioner has been involved in a false and frivolous FIR.
- b) Bail granted vide order dated 16.10.2021 was dismissed on 29.12.2021.
- c) Allegations made against applicant/accused are false, frivolous and vexatious and lack in material substance.
- d) FIR does not disclose the commission of offence.
- e) There is no corroboration with regard to FIR and statement under Section 164 Cr.P.C.

f) FIR lodged against petitioner is totally bad in law and cannot stand the test of reasonability and law by virtue of the glaring contradiction and in absence of corroboration the offence of 376 IPC is not made out.

2. On 09.10.2021, prosecutrix lodged a written report before Police Station Achabal, alleging therein that petitioner abused her and that when she was coming back to her home after fetching bread, petitioner abused her and used foul language. On the next day also, petitioner wrongfully restrained her and threatened to kill her. On the basis of this report, police registered FIR No.108/2021 for offences under Section 341, 306 IPC and started investigation of the case. The statement of prosecutrix under Section 161 Cr.P.C. was recorded. Given prosecutrix's statement offences under Section 354, 354-A and 451 IPC were added to the case.

3. It is stated that statement of prosecutrix was also recorded under Section 164 Cr.P.C. before the Judicial Magistrate, 1st Class, Shangus. In her statement, she deposed that on 08.10.2021 at about 9.30 AM, when she was all alone in her house, petitioner entered her house and told her that he had something to tell her. She further stated that petitioner caught hold of her hand and when she raised an alarm, petitioner gagged her mouth and touched private parts of her body. She further stated that she was laid on the ground by petitioner who sat on top of her and touched private parts of her body and tried to commit rape upon her. The prosecutrix went on to state that she hit petitioner with a broom and escaped from his clutches. She called her sister and when she came on spot, petitioner offered her Rs.10,000/- and

apologized to her but she refused to take the money; whereafter petitioner gave a beating to her on her shoulder with a broom. She further stated that she went to hospital and also submitted an application with police but the same was not entertained by police. On next day also, when prosecutrix went out of her house to fetch bread, petitioner wrongfully restrained her and used foul language against her. Further petitioner threatened to kidnap her. The prosecutrix further alleged that petitioner is a political worker and he wants to get her ration card cancelled.

4. After investigation of the case, offences under Section 354, 354-A, 451, 506, 376, 511 IPC were found established against petitioner and, accordingly, charge sheet was laid before learned Trial court. It appears that Trial court vide its order dated 29.12.2021, has rejected bail application of petitioner by observing that offences alleged to have been committed by petitioner is against the society and is having far reaching consequences.
5. Heard and considered. I have gone through record on the file.
6. Instant petition has been filed under Section 482 Cr.P.C. to quash FIR as well as charge-sheet. Section 482 Cr.P.C. provides that nothing in the Code of Criminal Procedure limits or affects inherent powers of the high Court to make such orders as may be necessary to give effect to any order under the Code of Criminal Procedure, or to prevent abuse of the process of any Court or otherwise to secure ends of justice.
7. The Supreme Court in *State of Orissa v. Suraj Kumar Sahoo*, (2005) 13 SCC 540, has sounded a note of caution about the powers of High Court to be exercised in terms of Section 561-A Cr.P.C., corresponding

to Section 482 of Central Code. Their lordships enunciated that 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, being of magnitude and cannot be seen in their true perspective without sufficient material before the Court. While exercising inherent jurisdiction as observed by their Lordships, it is not permissible for the Court to act as if it was a Trial Court. It would be none of the duties of the High Court to appreciate the evidence to conclude whether the material produced are sufficient or not for holding the accused guilty.

8. It would also be proper to refer to judgment of the Supreme Court in ***Janta Dal v. H. S. Chowdhary*, AIR 1993 SC 892**, while summarizing the principles in the light of which inherent powers can be exercised, has observed:

“132. The criminal Courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the Courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

133. The Judicial Committee in (1) *Emperor v. Nazir Ahmad* and (2) *Lala Jai Ram Das v. Emperor* has taken the view that Section 561-A of the old Code gave no new powers but only provided that those which the Court already inherently possessed should be preserved. This view holds the field till date.

134. This Court in *Dr Raghubir Sharon v. The State of Bihar* had an occasion to examine the extent of inherent power of the High Court and its jurisdiction when to be exercised. Mudholkar, J speaking for himself and Raghubar Dayal, J after referring a series of decisions of the Privy Council and of the various High Courts held thus:

...every High Court as the highest court exercising criminal jurisdiction in a State has inherent power to make any order for the

purpose of securing the ends of justice.... Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate Court to its powers....

135. See *Talab Hazi Hussain v. Madhukar Purshottam Mondkar and Anr.*, [1958] SCR 1226 and *Pampapathy v. State of Mysore* [1966] (Supp.) SCR 477.

136. Thus, the inherent power under this Section can be exercised by the High Court (1) to give effect to any order passed under the Code; or (2) to prevent abuse of the process of any Court; or (3) otherwise to secure the ends of justice. In relation to exercise of inherent powers of the High Court, it has been observed in *Madhu Limaye v. State of Maharashtra* that the power is not to be resorted to if there is a specific provision in the Code for the redress of grievance of the aggrieved party and that it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice and that it should not be exercised as against the express bar of law engrafted in any other provision of the Code. Vide (1) *Talab Hazi Hussain v. Madhukar Purshotam*; (2) *Khushi Ram v. Hashim and Ors.* AIR 1959 SC 542; and (3) *State of Orissa v. Ram Chander Agarwala*.

137. This inherent power conferred by Section 482 of the Code 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 premature decision in a case wherein the entire facts are extremely 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 great 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 the cases in which the High Court will exercise its extraordinary jurisdiction to quashing the proceedings at any stage. This Court in *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors* [1990] 3 Supp. SCR 256 to which both of us were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings. We do not, therefore, think it necessary in the present case to extensively deal with the import and intendment of the powers under Sections 397, 401 and 482 of the Code.

9. The Supreme Court in *Satvinder Kaur v. State*, AIR 1999 SC 3597, has held that appreciation of evidence is the function of the Court when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion (in the said case about the jurisdiction of the police station). It was also observed that for the purpose of exercising its power under Section 482 Cr. PC, to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegation made in the complaint or the documents accompanying the same per se, it has no

jurisdiction to examine the correctness of otherwise of the allegations.

10. In the light of settled legal position, it requires to be underscored that the inherent jurisdiction under Section 561-A Cr.P.C. has to be exercised sparingly, carefully and with caution.
11. Since there is sufficient material on record regarding prima facie involvement of petitioner in the case and police having conducted investigation concluded that the offences against accused are proved.
12. Having regard to allegations and report of investigation, it cannot be said that the petitioner is being prosecuted falsely or the investigation of trial would amount to abuse of process of law.
13. The Supreme Court in another case of ***State of Andhra Pradesh v. Golconda Linga Swamy***, reported in (2004) 6 SCC 522, while dealing with inherent powers of the High Court under Section 482 Cr. P.C., has observed and held as under:

“5. Exercise of power under Section 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 recognizes 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 aliqne 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. Authority of the court exists

for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercises 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.

xxxxxxx

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 under Section 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. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* (1992 Supp (1) SCC 335).....

xxxxxxx

8 As noted above, the powers possessed by the High Court under Section 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 : *The Janata Dal etc. v. H.S. Chowdhary and others*, etc. (AIR 1993 SC 892), *Dr. Raghubir Saran v. State of Bihar* and another (AIR 1964 SC 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 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 under Section 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/F.I.R. 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 F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. 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 itself be the basis for quashing the proceeding.”

14. Even the Supreme Court in the case of *State of Maharashtra v. Arun*

Gulab Gawali, (2010) 9 SCC 701, set-aside the order passed by the

High Court of Judicature at Bombay, by which criminal complaint/FIR

was quashed on prayer made by complainant himself. While quashing

and setting-aside the order passed by the High Court, the Supreme

Court in paras 13 and 27 to 29 has observed and held 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 F.I.R./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 it can ‘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 ‘Cr.P.C.’) 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 esteem 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 : 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 : AIR 2000 SC 754] and *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])

xxx xxxx xxxx

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 Sessions is empowered to discharge an accused under Section 227 Cr.P.C. 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 under Section 482 Cr.P.C. 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 a society and not against a 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 under Section 320 Cr.P.C., where the Court could apply the ratio of the case in *Madhavrao Jiwaji Rao Scindia* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234 : AIR 1988 SC 709].”

15. The Supreme Court in *Arun Gulab Gawali* (supra) observed that the High Court in the said case proceeded on the perception that since complainant therein had not supported the complaint, he would not support the case of prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. The Supreme Court held that quashing of FIR/complaint on such a ground cannot be held to be justified in law. It was said by the Supreme Court that ordinarily, the court of Sessions was empowered to discharge an

accused under Section 227 Cr.P.C. even before initiating the trial. The accused could, 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 was, therefore, unnecessary to invoke jurisdiction under Section 482 Cr.P.C. to quash 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 and the presumption that an accused would never be convicted on the material available was too risky. The Supreme Court further elaborated that a claim founded on a denial by complainant even before trial commences coupled with an allegation that police had compelled lodging of a false FIR, was a matter that required further investigation. If prosecution was quashed, then neither Trial Court nor Investigating Agency had any opportunity to go into that question, which might have required consideration. The State was the prosecutor and all prosecution was social and legal responsibility of the State. The Supreme Court also went to say that an offence committed is a crime against a society and not against a 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.

16. Power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court cannot be justified in embarking upon an enquiry about reliability or genuineness or otherwise of allegations made in the

F.I.R./Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion.

17. The judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of the powers vested in it under Section 482 Cr.P.C., if answer to all the steps, as enumerated herein after, is in affirmative, has been so said by the Supreme Court in ***Rajiv***

Thapar v Madan Lal Kapoor, 2013 (3) SCC 330:-

“Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

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

18. The Supreme Court in ***State of Telangana v. Habib Abdullah Jeelani, reported in 2017 (2) SCC 779***, has held that the powers under Section 482 Cr.P.C. or under Article 226 of the Constitution of India to quash the FIR, are to be exercised in a very sparing manner as is not to be used to choke or smother the prosecution that is legitimate. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. Such power has to be

exercised sparingly, with circumspection and in the rarest of rare cases. The inherent powers in a matter of quashing FIR have to be exercised sparingly and with caution and only when such exercise is justifying by the test specifically laid down in the provision itself. The power under Section 482 Cr.P.C. is a very wide but conferment of the wide power requires the Court to be more conscious. It casts an onerous and more diligent duty on the Court.

19. It cannot be said that a complaint does not disclose commission of offence. Whether or not allegations in a complaint are true is to be decided on the basis of evidence to be led at the trial in the complaint case. It certainly is not a case in which criminal trial should be cut short inasmuch as quashing of complaint would result in grave miscarriage of justice. After saying this, the Supreme Court in *Nagpur Steel & Alloys (P) Ltd v. P. Radhakrishna*, 1997 SCC (Cri) 1073, restored the complaint and directed the Magistrate to proceed with the complaint.
20. The above settled position of law has also been reiterated by the Supreme Court in *Priti Saraf & anr v. State of NCT of Delhi & anr*, (2021) 16 SCC 142, and it has been said that inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize a complaint/FIR/charge-sheet in deciding whether the case is the rarest of rare cases, to scuttle the prosecution at its inception. It has also been held by the Supreme Court whether allegations in the complaint are otherwise correct or not has to be decided on the basis of evidence to be led during the course of trial.

21. The Supreme Court in *State of M.P. v. Laxmi Narayan*, (2019) 5 SCC

588, has held that whether an FIR is quashable or not would depend upon the facts and circumstances of each case and while considering that question, the Court has to apply its mind to (i) whether the crime is one against the society or against an individual alone, nature of the dispute, (ii) seriousness and how the crime was committed (iii) whether offence(s) is one under a special statute (iv) stage of proceedings and how the accused managed to compromise with the complainant.

22. Viewing the matter in the above backdrop, I am of the opinion that this Court would not be justified in embarking upon an enquiry as sought for by petitioner herein regarding his stand about the prosecution story or for returning any finding as to the nature of allegations levelled in impugned FIR. The facts as projected by the petitioner before this Court are half backed and it is not deemed apposite, at this stage, to conclude that the allegations levelled against petitioner are vexatious in nature and so there is abuse of process of Court. Therefore, the petition entails dismissal and is, accordingly, **dismissed**.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
30.04.2025
"Imtiyaz"

Whether approved for reporting? Yes/No