

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40479 of 2011

Arising Out of PS.Case No. -485 Year- 2011 Thana -null District- PATNA

- =====
1. Smt. Meena Sharma, wife of Sri Nirtendra Narayan R/O,Q.No.-100 Road No.-2, S.K.Nagar, P.S.-Budha Colony, Dist.-Patna
 2. Smt. Vandana Singh W/O Sri Niwas Prasad Singh R/O, B-2, Friends Apartment, Montessari School Lane, Boring Road, P.S.-S.K.Puri, Dist.-Patna
 3. Rajesh Kumar, son of Suresh Prasad Rajak, R/O Mohll.-Mamnjee Chak, Digha, P.S.-Bataganj,Dist.-Patna
 4. Dinesh Chandra, Late Krishna Kumar Gupta, R/O-202, Maya Enclave, Road No.-10, Patel Nagar, P.S.-Shastri Nagar, Dist.-Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Md.Mustafa Hussain, son of Md. Manjar Hussain R/O,Mohll.-New Millat Colony,Sector-3, P.S.-Fulwarisharif, Dist.-Patna
3. Manager Brand Protect6ion, Procter and Gamble, P & G, Plaza Cardinal Gracias Road, Andheri, East Mumbai-400099

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Aditya Narain Singh,
Mr. Kundan Kumar Sinha,
Mrs. Rita Verma, Advocates.

For the O.P.No.2 : Mr. Amit Prakash,
Mr. Anjani Kumar Jha,
Mrs. Soni Srivastava, Advocates.

For the State : Mr. A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18.05.2015

Heard the parties.

2. This is an application for quashing the First Information Report arising out of Kotwali P.S. Case No.485 of 2011 for offences under Sections 420 of the Indian Penal Code and Section 63 of the Copyright Act registered on the basis of fardbeyan of Md. Mustafa Hussain, opposite party no.2 on

27.9.2011 before the Patna Police.

3. In the present case one Md. Mustafa Hussain an employee of Kangaroo Agency of Mumbai was authorized on behalf of the Proctor and Gamble (P & G) Company to make inspection and verification in respect of sale of its genuine products by different sales agents of retailed shops. In order to verify the sale of genuine products of Proctor and Gamble Company Md. Mustafa Hussain made inspection of 9 to 9 Shopping Complex at Bander Bagicha on 27.9.2011 at 15 hours. During the survey the informant found that the Company was selling spurious product in the tube and wrapper of the Company. On this information the Officer In-charge along with the police force raided 9 to 9 Shopping Complex, it was found that in the olay packet, batch number of the Company was printed but was not tallying with the batch number mentioned in the tube which is an offence under section 420 of the Indian Penal Code and Section 63 of the Copyright Act.

4. From the First Information Report it appears that police has seized different papers and samples of Olay Cream mentioned in the FIR and seizure list attached with the FIR. In the present case prayer has been made to quash the FIR itself making a ground that no offence is made out under Section 63 of the Copyright



Act as well as Section 420 of the Indian Penal Code, so much so, ground has been taken, 9 to 9 is a chain of general Shopping Complex for the sale of only genuine products of companies including the products of Proctor and Gamble since last 10 years through their authorized distributor M/s. Kalawati Enterprises, Muzaffarpur and same has been recognized as biggest retailer grooming by the Director Sales of Proctor and Gamble Company. It has been stated that question of selling the duplicate cosmetic material does not arise as alleged by the informant. So much so Proctor and Gamble Company is still supplying goods to 9 to 9 chain of shops. Petitioner has further claimed that he has not infringed any provisions of Copyright Act, so much so committed any act constituting offence under Section 420 of the Indian Penal Code.

5. The High Court in exercise of power under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') has jurisdiction, in a proper case in which no case is made out or in the case in which conviction is bleak, or actuated with maladife, in a fit case, has power to quash criminal prosecution in exercise of the inherent jurisdiction to prevent the abuse of the process of the court or otherwise to secure the ends of justice but that power should be exercised very sparingly and with



circumspection. Quashing of the FIR or the complaint is a serious matter and it should be not interfered normally interfered unless there are some compelling circumstances as the statement made in the FIR or in the complaint petition do not disclose commission of offence when un-controverted allegation made in the FIR or in the complaint petition, evidences collected do not disclosed any offence is made out a case against the accused persons. So much so if the allegations made in the FIR are so absurd and inherently improbable on the basis of which no prudent person can arrive to the conclusion will be one of the ground for interference under inherent jurisdiction. Also the Court can interfere where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal grudge. The exercise of inherent power has been debated in large number of cases by the Hon'ble Supreme Court as well as by this Court. One of oldest case that come to the remember of this Court is R. P. Kapur Vs. State of Punjab, reported in AIR 1960 SC 866, there the Hon'ble Supreme Court in paragraph 6 has formulated certain facets and legal grounds for interference by the High Court under the power of inherent

jurisdiction. It will be appropriate to quote paragraph 6 of the aforesaid judgment:

“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.

(1) 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.

(2) 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.

(3) 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 an 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 under S. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

6. The exercise of power of inherent jurisdiction by superior court under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution came for consideration, the Hon’ble Supreme Court in the case of State of Haryana Vs. Bhajan Lal, reported in AIR 1992 SC 604 has held, in order to prevent the abuse of process of court or to secure the ends of justice, the Court would interfere with criminal prosecution

culled out seven categories as guideline by way of illustration are as follows:

“(i) 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.

(ii) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizance offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155 (2) of the Code.

(iii) Where the uncontroverted allegations made in the F.I.R. 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.

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

(v) Where the allegations made in the F.I.R. 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.

(vi) 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

(vii) 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.”

7. Learned counsel for parties have relied on the following judgments: (i) Superintendent of Police, CBI and others V. Tapan Kumar Singh, reported in (2003)6 SCC 175 (ii) State of Karnataka and another Vs. Pastor P. Raju, reported in (2006) 6 SCC 728 (iii) Union of India V. Praksh P. Hinduja and another, reported in AIR 2003 SC 2612 (iv) 2006(3) PLJR 279 (v) Rajib Ranjan and others V. R. Vijay Kumar, reported in (2015) 1 SCC 513 (vi) Shiji alias Pappu and others V. Radhika and another, reported in (2011)10 SCC 705 (vii) G. Sagar Suri V. State of U.P. and others, reported in (2000)2 SCC 636 (viii) (2008)7 SCC 196 (ix) 2007(2) PLJR 724 (x) 2006(2) PLJR 549 (xi) State (NCT of Delhi) V. Sanjay, reported in (2014) 9 SCC 772 (xii) Indian Oil Corporation V. NEPC India Ltd. and others, reported in (2006)6 SCC 736 (xiii) Jagdish Sah Vrs. State of Bihar, reported in 2014(1) PLJR 243 (xiv) State of Bihar and another V. Md. Khalique and another, reported in (2002)1 SCC 652 and (xv) Bashirbhai Mohamedbhai V. The State of Bombay, reported in AIR 1960 SC 979.

8. Learned counsel for the respondent contradicted the argument of the petitioner and submitted that if the person is



selling the duplicate or spurious cosmetic giving a false representation of selling product of P and G will certainly constitute an offence under the Indian Penal Code. So much so it will also constitute the offence under Drugs and Cosmetic Act, Copyright Act and Trade Mark Act and has also submitted that the Court may refuse to quash the FIR and interfere with the investigation by the police at the nascent stage. Selling a duplicate or spurious material on false representation to the customer of product of P and G ultimately cause harm to the business of the Company. As it was found that in the packet the batch number was different then that of in the tube itself shows that the material that was under the packet was not the same. It has also been submitted that the Company itself tested the product in its laboratory was found to be spurious product.

9. In reply learned counsel for the petitioner has submitted that though the police has seized the article but it was never sent for examination to any Government laboratory, in absence of the same it cannot be said that the materials has been sold by the petitioner was a duplicate or spurious cosmetic. As it appears from the report of the police the seized material was not sent for forensic examination. In such view of the matter placing reliance on the report of private laboratory of the Company cannot be



basis for continuation of the criminal case against the petitioner and in the present case, facts are so glaring, there is no supporting material before the police for continuation of the investigation and so much so till date police has not completed the investigation nor submitted any report either in favour of the petitioner or in favour of the Company.

10. In the case of Inder Mohan Goswami V. State of Uttarnchal, reported in (2007)12 SCC 1 the Hon'ble Supreme Court has considered the power of the High Court under Section 482 of the Code and held that every High Court has inherent power to act ex debito justitiae to do real and substantial justice for administration of criminal delivery system to prevent the abuse of the process of the court but in paragraph 25 of the judgment the Court has given certain precaution while exercising the inherent power, the court should take care and caution, the High Court should normally refrain from giving a prima-facie decision in case where all facts are incomplete and hazy, in a situation when evidence has not been collected and produced before the Court and issue involved, whether factual or legal, are of such magnitude that can not be seen in their true perspective without sufficient material. The Hon'ble Supreme Court has considered the issue of exercise the power of inherent

jurisdiction in the case of Rajib Ranjan and others v. R.Vijay Kumar, reported in (2015) 1 SCC 513 the power under Section 482 of the Code. It will be relevant to quote paragraph nos. 24 and 25 of the aforesaid judgment:

“24. Having regard to the circumstances narrated and explained above, we are also of the view that attempt is made by the respondent to convert a case with civil nature into criminal prosecution. In a case like this, High Court would have been justified in quashing the proceedings in exercise of its inherent powers under Section 482 of the Code. It would be of benefit to refer to the judgment in the case of Indian Oil Corpn. v. NEPC India Ltd. and others, (2006) 6 SCC 736, wherein the Court adversely commented upon this very tendency of filing criminal complaints even in cases relating to commercial transaction for which civil remedy is available or has been availed. The Court held that the following observations of the Court in this behalf are taken note of: (SCC pp.748-49, paras 13-14)

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution

should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.*, (2000) 2 SCC 636 this Court observed: (SCCp.643, para 8)

“.....It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

25.. In *Inder Mohan Goswami and another v. State of Uttaranchal and others*, (2007) 12 SCC 1, the Court reiterated the scope and ambit of power of the High Court under Section 482 of the Code in the following words:

“23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has

inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

- (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.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court could be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute. Discussion of decided cases

25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP*, 1 1964 AC 1254 Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys*, 1977 AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process

of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

* * * * *

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

11. The Hon’ble Supreme Court in the case State (NCT of Delhi) V. Sanjay, reported in (2014) 9 SCC 772 has considered if the FIR or the statement made in the complaint petition constitutes offences under different acts there will be no bar to proceed against accused person under both provisions of law. So in such view of the matter if the person can be proceeded under the special Act and if narration of fact also constitute an offence under the Indian Penal Code, he can be prosecuted under the Special Act as well as in the Indian Penal Code.

12. This principle is applicable in the present case as the

petitioner has been made an accused under the Indian Penal Code as well as under the Trade Mark Act. As the allegation has been made that by making false representation in the name of selling Olay Cream of the P & G Company was actually selling the duplicate and spurious cosmetics.

13. So in view of the aforesaid judgment this Court at this stage without adding and subtracting allegation made against him has to examine whether the statement made in the FIR do constitute offences under both acts. Claim has been made by the petitioner that there was no registration under the Trade Mark Act question of violation or provisions of Trade Mark act does not arise, and as such lodging of FIR and its investigation are not sustainable but the question would arise as in the present case where there is allegation of selling the other cosmetics under the wrapper of Olay of Proctor and Gamble, thereby making false representation and to substantiate the allegation, it has been mentioned in the FIR that batch number in the box and tube differed to each other. Ground has been taken that the product was not sent for chemical examination can be a piece of evidence at the time of trial but as on today even the police has not completed investigation, submitted the charge sheet or final form nor the competent court has taken cognizance of the offence, will



it be a proper, to exercise the power under Section 482 of the Code. Non-examination of seized material by the forensic laboratory its effect will be examined by the court while taking cognizance or it will be seen at the time of the trial but certainly it cannot be a compelling factor for this Court to interfere with the investigation of the police. Inherent power is to be exercised very sparingly and with care caution and circumspection, and in a situation, if the Court arrives to a conclusion that the case falls any of illustration mentioned in the Bhajan Lal (supra). During the argument opposite party has produced the chemical examination report of its laboratory showing the material which was being soled by the petitioner was not the original rather duplicate material and customers were purchasing treating the product Olay. In such conflicting situation allegation and counter allegation have been made against each other and it will not be proper that this Court should exercise inherent power under Section 482 of the Code and to quash the FIR itself.

14. Sale of cosmetics making of a false representation will certainly fall under the definition of cheating. It will be relevant to rely upon Bashirbhai Mohamedbhai (supra). It will be relevant to quote paragraph nos.4 and 5 of the aforesaid judgment:

“4. The next point taken was that there had been no attempt to commit the offence of cheating but

only a preparation to commit that offence which was not punishable. It seems to us clear that an attempt to commit the offence had actually been made. A false representation had been made and a sum of Rs.200 had been obtained from Champaklal. These clearly are acts done towards the commission of the offence within the meaning of S.511 of the Indian penal Code. In fact the making of the false representation is one of the ingredients for an offence of cheating under S.420 of the Indian Penal Code. So also the delivery of property is another of such ingredients. Both these ingredients took place in this case and the accused brought them about. Therefore it cannot be said that the accused had only made a preparation and not an attempt to commit the offence.

5. The last point argued was that there was no attempt to cheat because the complainant had not been deceived. It is true that the complainant had not been taken in. He had never believed that the accused could actually duplicate currency notes. He feigned belief only in order to trap the accused. That however clearly makes no difference so far as an attempt to cheat is concerned. The accused had attempted to cheat the complainant. That they had failed in their attempt is irrelevant in considering whether they had committed the offence of attempting to cheat. This view of the matter has been accepted in the High Courts uniformly. In *Government of Bengal V. Umesh Chunder Mitter*, ILR 16 Cal 310 at p.316, it was observed that “A man may attempt to cheat, although the person he attempts to cheat is forewarned, and is therefore not cheated”.

This is clearly the right view.”

15. Reliance can be placed on the following judgments:

(i) *State of Bihar Vs. Md. Khalique*, reported in (2002)

1 SCC 652. The extraordinary power of inherent jurisdiction should sparingly and with

circumspection that too rare case should be exercised and refused to interfere where specific allegation against the accused person has been made.

- 
- (ii) State of Karnataka V. PATOR P Ratu reported in (2006)6 SCC 728 where investigation is still under progress and no police report under Section 173 of the Code of Criminal Procedure submitted to Magistrate, quashing of entire proceeding under Section 482 of the Code of criminal procedure will not be justified.
- (iii) Indian Oil Corporation V. NEPC, reported in (2006)6 SSC 736. The case deals with civil dispute cannot be subject of criminal prosecution.
- (iv) G. Sagar Suri and another V. State of U.P. and others, reported in (2000)2 SCC 636. It will be relevant to quote paragraph 8 of the aforesaid judgment:

“ Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter.

This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

- (v) Learned counsel for the petitioner has relied in the case of reported in (2011)10 SCC 707 is not applicable in the present case.
- (vi) Union of India Vs. Prakash P. Hinduja, reported in AIR 2003 SC 2612, paragraph 9 is relevant for consideration of power to be exercised in inherent jurisdiction. It will be apt to quote paragraph 9 of the aforesaid judgment:

“9. Section 482 CrPC saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. The power can therefore be exercised to quash the criminal proceedings. The grounds on which the prosecution initiated proceedings against an accused can be quashed by the High Court in exercise of power conferred by Section 482 CrPC has been settled by a catena of decisions of this Court rendered in *R.P. Kapur v. State of Punjab*, *Madhu Limaye v. State of Maharashtra*, *Municipal Corpn. of Delhi v. Ram Kishan Rohtagi* and *Raj Kapoor v. State*. The matter was examined in considerable detail in *State of Haryana v. Bhajan Lal* and after review of practically all the earlier decisions, the Court in para 108 of the Report laid down the grounds on which power under Section 482 CrPC can be exercised to quash the criminal



proceedings and basically they are: (1) where the allegations made in the FIR or 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 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, (3) where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection. There are some statutes which create a bar on the power of the court in taking cognizance of an offence in absence of a sanction by the competent authority like Section 6 of the Prevention of Corruption Act, 1947 or Section 19 of the Prevention of Corruption Act, 1988. Similar provision is contained in Section 196 CrPC which mandates that no court shall take cognizance of the offences enumerated in the section except with the previous sanction of the Central Government or of the State Government. Section 197 CrPC also creates an embargo on the power of the court to take cognizance of an offence alleged to have been committed by any person who is or was a Judge or a Magistrate or a public servant not removable from his office save by or with the sanction of the Government. But the proceedings in the present case have not been quashed on any one of the abovementioned grounds. The High Court has not examined the nature of the allegations made in the FIR or the evidence by which the prosecution seeks to establish the charge against the accused during the trial. There is not even a whisper in the impugned order of the High Court that the FIR does not disclose a cognizable offence.



Similarly, there is no reference to any statutory bar like want of valid sanction etc. to the taking of the cognizance of the offence. In fact the respondent Prakash Hinduja is not a public servant and consequently no sanction is required from any authority for his prosecution. The only ground on which the High Court has proceeded and has quashed the cognizance taken by the learned Special Judge and all consequential proceedings is that CBI had filed the charge-sheet without placing the same before CVC and therefore an illegality had been committed in the course of investigation which entitled the High Court to quash the cognizance taken by the Special Judge and all proceedings of the case.”

16. Accordingly this Court does not find merit in the application and as such is dismissed, However, petitioner will be at liberty, if so advised, may raise all the points at the appropriate stage. But before parting with this judgment, this Court feels appropriate to give direction to police to complete investigation within 60 days from the date of receipt/production of this order.

Vinay/-

(Shivaji Pandey, J)

U		T	
---	--	---	--