

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.271 of 2016**

Dharmendra Patel, son of Shri Lal Bahadur Patel, Caste Kurmi, aged about 28 years, at preset Police Station Baikunthpur, District Korla, Chhattisgarh

---- Appellant**versus**

1. State of Chhattisgarh through the Secretary, Home Department (Police), Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. Superintendent of Police, District Korla, Chhattisgarh
3. Station House Officer, Police Station Chirimiri, District Korla, Chhattisgarh

---- Respondents

For Appellant	:	Ms. Hamida Siddiqui, Advocate
For State/Respondents	:	Shri Y.S. Thakur, Deputy Advocate General

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgment on Board****Per Deepak Gupta, Chief Justice****21.7.2016**

1. The question which arises for consideration in this writ appeal is whether the First Information Report (FIR) filed against the Petitioner/Appellant herein should be quashed as prayed for by him.

2. The undisputed facts are that a police party was constituted to search the premises of one Deepak Kumar, husband of Complainant Smt. Kajal Manikpuri. The house of Deepak Kumar was raided by the police party comprising of a number of personnel on 9.2.2015. It is not disputed that Petitioner/Appellant Dharmendra Patel was a member of the said raiding party. On the basis of the material collected during the raid and investigation, the husband of the Complainant was arrested for having committed an offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the NDPS Act').

3. On 13.2.2015, Complainant Kajal, wife of Deepak Kumar filed a

written complaint with the Superintendent of Police, District Korla. In this complaint, it is alleged that the Complainant is aged about 21 years and, according to her, on 6.2.2015, she got married to Deepak Kumar despite the opposition of her family members. She further states in the complaint that family members of Deepak Kumar had arranged to get a formal wedding performed according to Hindu rituals on 10.2.2015. Her submission is that on 9.2.2015, when her husband was sitting in his shop, some police officials entered the shop and some police officials came to their house, entered the house and started a search in the house. They started throwing around the household goods. Her allegation against Petitioner/Appellant Dharmendra Patel is that he threatened her mother-in-law and sister-in-law and he also outraged the modesty of both the ladies after pushing them in the kitchen of the house. He also told the Complainant that if she does engage in physical relations with him, he would ensure that her husband is sent to jail. In the complaint, it is also mentioned that the Petitioner/Appellant used to trouble her earlier also while she was going to college. She alleges that the Petitioner/Appellant is a friend of her brother and he used to come to her house under the guise of meeting her brother. Since he was a policeman, she never reported the matter regarding him having teased her on any earlier occasion. On the basis of this complaint, First Information Report (Crime) No.118 of 2015 was lodged against the Petitioner/Appellant under Section 354 of the Indian Penal Code (I.P.C.). The police investigated into the matter and after the investigation, filed its final report under Section 173 of the Code of Criminal Procedure (Cr.P.C.) in which it is alleged that the Petitioner/Appellant had committed the aforesaid offence punishable under Section 354 I.P.C.

4. The Petitioner/Appellant filed a writ petition, being Writ Petition (Criminal) No.59 of 2016 on various grounds praying that the First Information Report lodged against him be quashed. This writ petition was

dismissed and hence this writ appeal.

5. The main grounds on which reliance is placed while praying for quashing of the FIR is that prior to the complaint made on 13.2.2015, Complainant Kajal had also made a complaint to the police on 11.2.2015 and that complaint has been annexed to the writ petition as Annexure P-3. In this complaint, she has stated that she got married to Deepak Kumar on 2.2.2015 against wishes of her family members and, therefore, her family members used to threaten her husband that they would kill him and set his house on fire. They also threatened her husband to implicate him in a false case. The case of the Complainant is that her husband was implicated in a false case of being in possession of Brown Sugar. According to the Complainant, the Petitioner/Appellant along with other police officials and her family members was guilty of conspiring to implicate her husband Deepak Kumar in a totally false case and with this intention, they raided the shop of her husband and some police officials entered her house and searched the entire house. In this complaint, it is stated that her husband and his other family members were beaten-up. According to the Complainant, an entirely false case has been lodged against her husband, who was thereafter taken to the police station. Reliance is placed on Annexure P-4, which is a written complaint dated 11.2.2015 alleged to have been written to the Superintendent of Police, District Korla by Ashok Kumar, who is father of Deepak Kumar and father-in-law of the Complainant. In this complaint the allegations are that Deepak Kumar has been falsely implicated in the case of drugs. It is also alleged that the family members of Deepak Kumar were beaten-up and threatened.

6. It is urged by Ms. Hamida Siddiqui, Learned Counsel appearing for the Appellant that in both the complaints made by the Complainant and her father-in-law on 11.2.2015, there is no allegation about the

molestation of the Complainant by the Petitioner/Appellant. She also contends that both the complaints are available with the police and investigation agency has not been fair in its investigation and has withheld these documents/complaints from being made part of the charge-sheet filed. On these basis, it is alleged that the investigation is totally unfair and biased and also the investigation agency has not placed the material documents on record. It is prayed that therefore the FIR registered against the Petitioner/Appellant may be quashed. In the alternative, it is argued that the police be directed to look into the documents/complaints and file them before the Court.

7. Learned Counsel appearing for the State/Respondents, supporting the impugned order, submitted that the impugned order passed by the Learned Single Bench dismissing the writ petition is impeccable and does not warrant any interference.

8. We have heard Learned Counsel appearing for the parties and have perused the documents available on record of the writ appeal and the writ petition with utmost circumspection.

9. As far as quashing of the FIR is concerned, the law in this regard has been settled as far back as in the year 1992 in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**. This case is *locus classicus* on the subject. The Apex Court held that the High Court in exercise of its extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code of Criminal Procedure would normally not interfere or quash the FIRs or interfere in the investigation and the Apex Court gave seven examples where the Court could interfere. The said seven examples read thus:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie

constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

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

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

illustration and the guidelines were flexible but the Courts should be guided by the guidelines. The law laid down by the Apex Court in **Bhajan Lal case** (supra) has not been diluted till date. To put it in a nutshell, the High Court can exercise its extraordinary power when the allegations made in the FIR, even when taken to be the gospel truth, do not *prima facie* indicate commission of any offence; the Court can also interfere where the allegations in the FIR and other materials placed on record along with the FIR do not disclose any cognizable offence; where after going through the FIR or the complaint as well as the documents attached therewith, the Court cannot come to a conclusion that any case of commission of an offence is made out. However, the Court cannot start going into the correctness of the material or cannot start an investigation as to whether the material is truthful or not. The Court can only interfere where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is a sufficient ground for proceeding against the accused. The Court can also interfere where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure 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 of Criminal Procedure or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

11. In **Vinay Tyagi v. Irshad Ali alias Deepak, (2013) 5 SCC 762**, the Apex Court dealing with this issue held that “initial investigation” is one which the empowered officer within the meaning of the Code of Criminal Procedure is to conduct and this investigation leads to filing of final report within the meaning of Section 173(2) of the Code of Criminal Procedure.

“21. The “initial investigation” is the one which the empowered police officer shall conduct in furtherance of

registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.”

12. The Apex Court dealt with the powers of a Magistrate to order “further investigation” in terms of Section 173(8) of the Code of Criminal Procedure, which reads as follows:

“173. Report of police officer on completion of investigation.—(1) xxxxx xxxxx xxxxx

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

13. The Apex Court held that “further investigation” itself implies that it is not a “fresh investigation” and not a “new investigation”. The material collected earlier cannot be ignored and further investigation only means that if some fresh facts are discovered at a subsequent stage to the primary investigation then a supplementary report is filed. Further investigation is in the nature of continuance of previous investigation. It cannot be understood to mean reinvestigation, fresh investigation or *de novo* investigation. The Court held that the investigating agency or the Magistrate does not have the power to conduct fresh investigation and that power only lies in the superior Courts either in the exercise of

extraordinary jurisdiction under Article 226 of the Constitution of India or under the inherent power under Section 482 of the Code of Criminal Procedure. It was held that fresh investigation, i.e., new investigation or *de novo* investigation can be ordered only by the superior Court and this fresh investigation should only be ordered in the rarest of rare cases. It was held that such direction should be issued in very few cases and the Court could resort to ordering fresh or *de novo* only if it is shown that the investigation is *ex facie* unfair, tainted, mala fide and smacks of foul play.

14. In **Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330**, the law laid down in **Vinay Tyagi case** (supra) was reiterated. The Court, after dealing with Section 482 of the Code of Criminal Procedure and the earlier judgments, observed as follows:

“27. Recently, this Court again had an occasion to examine the ambit and scope of Section 482 CrPC in *Rukmini Narvekar v. Vijaya Satardekar*, (2008) 14 SCC 1 wherein in the main order it was observed that the width of the powers of the High Court under Section 482 CrPC and under Article 226 of the Constitution of India, was unlimited. In the said judgment, this Court held that the High Court could make such orders as may be necessary to prevent abuse of the process of any court, or otherwise to secure the ends of justice. In a concurring separate order passed in the same case, it was additionally observed that under Section 482 CrPC, the High Court was free to consider even material that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained. The aforesaid parameters shall be kept in mind while we examine whether the High Court ought to have exercised its inherent jurisdiction under Section 482 CrPC in the facts and circumstances of this case.

28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or

otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, *prima facie* evidencing the truthfulness of the allegations levelled, trial must be held.”

The Apex Court further held that the power under Section 482 of the Code of Criminal Procedure could be exercised after determining the following steps:

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

30.1. *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?

30.2. *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?

30.3. *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?

30.4. *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?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

15. The issue is whether the case of the Petitioner/Appellant falls within the ambit of these judgments or not? We are clearly of the view that at this stage, we cannot decide whether the allegations made in the complaint dated 13.2.2015 of Complainant Kajal are correct or not. Reliance has also been placed on the complaint made by the Complainant's father-in-law dated 11.2.2015. We do agree that *prima facie* it appears that the allegations of outraging the modesty were not made on 11.2.2015. However, we do not think that this can lead to an irresistible conclusion that the allegations made on 13.2.2015 are totally false. This Court can interfere only when it, on the very face of the documents, comes to a conclusion that no offence is made out against the Appellant. This Court cannot at this stage go into the question whether the document/complaint dated 13.2.2015 is correct or not.

In this regard, we make a reference to the judgments of the Apex Court in **Vinod Raghuvanshi v. Ajay Arora, (2013) 10 SCC 581** and in **N. Soundaram v. P.K. Pounraj, (2014) 10 SCC 616**. In **Vinod Raghuvanshi case** (supra), the Apex Court held as follows:

“30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage.”

In **N. Soundaram case** (supra), the Apex Court held as follows:

“13. It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. [See *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335.] The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or

subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. [See *MCD v. Ram Kishan Rohtagi*, (1983) 1 SCC 1.] An investigation should not be shut out at the threshold if the allegations have some substance. [See *Vinod Raghuvanshi v. Ajay Arora*, (2013) 10 SCC 581.]”

(emphasis supplied)

16. This matter is still at the initial stage. Even charge has not been framed by the Court. The appropriate remedy for the Petitioner/Appellant is not to approach this Court, but in fact to approach the Magistrate concerned for getting further investigation conducted into the matter. The Petitioner/Appellant is at liberty to bring the complaint dated 11.2.2015 to the notice of the Magistrate, who can then direct the investigating agency to submit whether these documents/complaints are part of the record and why they have not taken care of while filing charge-sheet under Section 173 of the Code of Criminal Procedure. We are, therefore, giving liberty to the Petitioner/Appellant to approach the Trial Court in this regard. But, at this stage, we cannot come to a conclusion as to what is the truth. We agree with the submission of Ms. Hamida Siddiqui, Learned Counsel appearing for the Appellant to the limited extent that the investigation has not been totally fair. When the investigating agency investigates into a matter, it is duty bound to bring on record all the relevant material whether it favours the accused or goes against him. While filing a report under Section 173 of the Code of Criminal Procedure, the police is not bound to file a report that the accused has to be tried. In many cases, the report is filed that no offence is made out. The investigation has to be fair. We are not going into the question as to what is believable or what is not believable. This is not for us to decide because that has to be done in the trial. However, if the complaints dated 11.2.2015 are on the record of the police, then it is the duty of the police to ensure that this document be made part of the charge-sheet and, thereafter,

the Magistrate must consider the impact of these documents.

17. With the aforesaid observations, the writ appeal is disposed of.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE