THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10008 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in Crime No.164 of 2017 on the file of I Town Police Station, Kakinada, East Godavari District, for the offences punishable under Section 420 r/w 34 IPC and Section 156(3) Cr.P.C, on the basis of recording of complaint by the Magistrate, exercising power under Section 156(2) Cr.P.C.

The first respondent filed a private complaint before the III Additional Judicial First Class Magistrate Court, Kakinada, for the offences punishable under Section 420 r/w 34 IPC, alleging that the petitioners developed acquaintance with the accused family since long time. Taking advantage of the same, on 16.08.2015 all the accused represented to the complainant that the first accused owned landed properties at Yerampeta Village, Koyyalagudem Mandal, West Godavari District and as the accused were in dire need of money, they offered to sell Ac.3.28 cents out of the land owned by the first accused and also represented that the above said land i.e. Ac.3.28 cents is free from all encumbrances and there were no mortgages, sale agreements etc, against the said land.

Believing the words of the petitioners, the first respondent started negotiations with them and entered into an agreement to purchase the property @ Rs.15,00,000/- per acre and the same was reduced into writing. Thus, the total consideration payable for

Ac.3.28 cents was Rs.49,20,000/-. Out of the said amount, the first respondent paid an amount of Rs.9,20,000/- to the accused towards advance, as they were in dire need of money. On the demand made by the first respondent, the accused agreed to execute registered agreement of sale in Kakinada Sub-Registrar Officer by online registration.

The accused also represented that there is a tenant in the land and the said tenant raised sugar cane crop and therefore, all the accused agreed to deliver possession of the land to the first respondent on or before 20.2.2017 by evicting the tenant therein and execute register sale deed after receiving balance sale consideration. Believing the representation made by the petitioners, the first respondent paid an amount of Rs.9,20,000/- in cash and insisted for execution of registered agreement of sale. But, the petitioners/accused represented that they have income tax problem, therefore requested the first respondent to obtain registered agreement of sale from the first accused. Believing the inconvenience expressed by the petitioners/accused obtained unregistered agreement of sale dated 20.08.2015 from the first accused and handed over Photostat copies of title deeds which stood in her name and Photostat copies of pattadar passbook and title deed to the complainant.

Despite, demands made by the first respondent, the petitioners did not get the tenant evicted and also did not come forward to execute registered sale deed in favour of the complainant after receiving balance sale consideration and postponed the same for one reason or the other. Thereupon, some disputes arose between the petitioners and the first respondent.

On enquiry, the first respondent came to know that the land which is agreed to be sold to the first respondent by the petitioners was already mortgaged on 14.08.2015 to the third parties and the original documents, pattedar passbook and original title deed passbooks are deposited with the third party towards security, for discharge of debt. Thus, the petitioners got mortgaged the land by depositing the title deeds and the petitioners also issued cheques to third parties to discharge the debt due and the said cheques were bounced. Further, on 10.03.2017, all the above said facts were published in Enadu newspaper district edition. After coming to know the said fact, immediately the first respondent/ complainant approached the accused and questioned them as to why they made such representation by suppressing the said fact and made him to part with an amount of Rs.9,20,000/-. But, they expressed their ignorance about the mortgage. Therefore, they are not under obligation to execute registered sale deed in favour of the first respondent and threatened the first respondent with dire consequences, if the first respondent questioned them again while directing the first respondent to take action as he likes and that they would take away the life of the first respondent/complainant.

Thus, the petitioners with dishonest intention to cause wrongful loss to the first respondent falsely, represented that the land of an extent of Ac.3.28 cents is free from all encumbrances and received Rs.9,20,000/- even if they are aware about the encumbrances and thus, cheated the first respondent.

Since the police did not take any action on the complaint dated 20.05.2017 given by the first respondent, while marking a copy to the Superintendent of Police, Kakinada, though receipt of the same was acknowledged and the same got marked to the Superintendent of Police, no action was taken. Therefore, the first respondent filed a private complaint before the Additional Judicial First Class Magistrate at Kakinada. The Magistrate by exercising power under Section 156(3) Cr.P.C, referred the complaint to the police and on receipt of the reference, the police registered Crime No.164 of 2017 on the file of I Town Police Station, Kakinada, East Godavari District, for the offences punishable under Section 420 r/w 34 IPC and Section 156(3) Cr.P.C and issued F.I.R.

The proceedings in crime was challenged in this criminal petition on various grounds, mainly on the grounds that the transaction between the petitioners and the first respondent is purely civil in nature and when a civil litigation is given cloak of criminal offence, the Court is bound to quash the proceedings. The petitioners are innocent of any offences and in the absence of any allegation that the petitioners/accused with an intention to cheat the first respondent, made a representation with dishonest intention to part with Rs.9,20,000/- on 20.08.2015, under unregistered agreement of sale. Therefore, the complaint lodged by the first respondent did not make out any specific case to constitute an offence punishable under Section 420 IPC. The first respondent deliberately foisted a false case against all the family members including a student who is prosecuting his studies (MBA) and family members, as an arm twisting method to recover the amount that the first respondent allegedly paid under the agreement of sale and prayed to quash the proceedings in Crime No.164 of 2017 on the file of I Town Police Station, Kaikinada, East Godavari District, for the offences punishable under Section 420 r/w 34 IPC and Section 156(3) Cr.P.C.

During hearing, learned counsel for the petitioners Sri T. Pradyumna Kumar Reddy reiterated the contentions urged in the petition, while urging this Court to grant stay of all further proceedings, as the first respondent lodged complaint with malafide intention, as an arm twisting method, giving cloak of criminal offence to civil litigation, which is purely contractual and prayed to grant stay of investigation, pending disposal of the case.

Learned counsel for the petitioners placed reliance on the judgment of the Apex Court in **Vineet Kumar and others v. State of U.P. and another**[1], **Rini Johar and another v. State of Madhya Pradesh and others**[2], **Manoj Kumar Sharma and others v. State of Chhattisgarh and another**[3], **State of Haryana and others v. Bhajan Lal and others**[4].

In **Vineet Kumar**[1] case, the Supreme Court held that the inherent power given to the High Court under Section 482 Cr.P.C

1 2017 (2) ALT (Crl.) 302 (SC)
2 (2016) 11 Supreme Court Cases 703
3 (2016) 9 Supreme Court Cases 1
4 1992 Supp (1) Supreme Court Cases 335

is with the purpose and object of advancement of justice and in case, solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by the Apex Court in **Bhajan Lal**[4] case. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of oppression or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with *malafide* and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C to quash the proceedings.

Similarly, in **Rini Johar**[2] case, the Supreme Court highlighted the powers of the police to arrest the accused under Section 41 Cr.P.C. The Apex Court was of the view that the guidelines given in **D.K. Basu v. State of West Bengal**[5] are to be followed in cases of arrest and detention and held in paragraphs 28 & 29 as follows:

> "28. The controversy does not end here. Mr. Fernandes, learned Amicus Curiae would urge that it was a case for discharge but the trial court failed to appreciate the factual matrix in proper perspective. As the matter remained pending in this Court for some time, and we had dealt with other aspects, we thought it apt to hear the learned Counsel for the aspect of continuance of the criminal prosecution. We have narrated the facts at the beginning. The learned Magistrate by order dated 19.2.2015 has found existence of prima facie case for the offences punishable Under Section 420 Indian Penal Code and Section 66A(b) of I.T. Act, 2000 read with Section 34 Indian Penal Code. It is submitted by Mr. Fernandes that Section 66A of the I.T.

[5] (1997) 1 SCC 416

> Act, 2000 is not applicable. The submission need not detain us any further, for Section 66A of the I.T. Act, 2000 has been struck down in its entirety being violative of Article 19(1)(a) and not saved Under Article 19(2) in Shreya Singhal v. Union of India (2015) 5 SCC 1. The only offence, therefore, that remains is Section 420 Indian Penal Code. The learned Magistrate has recorded a finding that there has been no impersonation. However, he has opined that there are some material to show that the Petitioners had intention to cheat. On a perusal of the FIR, it is clear to us that the dispute is purely of a civil nature, but a maladroit effort has been made to give it a criminal colour. In Devendra v. State of U.P. (2009) 7 SCC 495, it has been held thus:
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> > " ...it is now well settled that the High Court ordinarily would exercise its jurisdiction Under Section 482 of the Code of Criminal Procedure if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.
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> 29. In the present case, it can be stated with certitude that no ingredient of Section 420 Indian Penal Code is remotely attracted. Even if it is a wrong, the complainant has to take recourse to civil action. The case in hand does not fall in the categories where cognizance of the offence can be taken by the court and the accused can be asked to face trial. In our considered opinion, the entire case projects a civil dispute and nothing else. Therefore, invoking the principle laid down in **State of Haryana v. Bhajan Lal** 1992 Supp. (1) SCC 335, we quash the proceedings initiated at the instance of the 8th Respondent and set aside the order negativing the prayer for discharge of the accused persons. The prosecution initiated against the Petitioners stands quashed."

In **Devendra v. State of U.P**[6], the Supreme Court held that the High Court ordinarily would exercise its jurisdiction Under Section 482 of the Code of Criminal Procedure if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the

[6] (2009) 7 SCC 495

ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.

The principle laid down by the Apex Court in **Devendra[6]** case is similar to the law declared by the Apex Court in **Bhajan Lal[4]** case.

In **Manoj Kumar Sharma[3]** case, the Apex Court held that, whether an offence has been disclosed or not, must necessarily depends on the facts and circumstances of each case. If on consideration of the relevant materials, the Court is satisfied that an offence is disclosed, it will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed in order to collect materials for proving the offence. The Apex Court concluded that allegations made in the FIR are inherently improbable and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the Appellants herein. Further, to invoke inherent jurisdiction Under Section 482 of the Code, the High Court must be fully satisfied that the material produced on record is based on sound, justifiable and reasonable facts.

The law laid down by the Apex Court in various judgments referred supra, including **Bhajan Lal[4]** case, is consistent. But, the question whether this Court can grant stay of all further investigation or not, is a question to be decided.

In **Mehmood Nayyar Azam v. State of Chhattisgarh and others[7],** the Supreme Court highlighted the custodial interrogation and harassment of an accused on the pretext of registration of crime against the accused and in paragraph 48 of the judgment, held as follows:

> "On a reflection of the facts of the case, it is luculent that the Appellant had undergone mental torture at the hands of insensible police officials. He might have agitated to ameliorate the cause of the poor and the downtrodden, but, the social humiliation that has been meted to him is quite capable of destroying the heart of his philosophy. It has been said that philosophy has the power to sustain a man's courage. But courage is based on self-respect and when self-respect is dented, it is difficult even for a very strong minded person to maintain that courage. The initial invincible mind paves the path of corrosion. As is perceptible, the mindset of the protectors of law appears to cause torment and insult and tyrannize the man who is helpless in custody. There can be no trace of doubt that he is bound to develop stress disorder and anxiety which destroy the brightness and strength of the will power. It has been said that anxiety and stress are slow poisons. When torment is added, it creates commotion in the mind and the slow poisons get activated. The inhuman treatment can be well visualized when the Appellant came out from custody and witnessed his photograph being circulated with the self-condemning words written on it. This withers away the very essence of life as enshrined under Article 21 of the Constitution. Regard being had to the various aspects which we have analysed and taking note of the totality of facts and circumstances, we are disposed to think that a sum of Rs. 5.00 lacs (Rupees five lacs only) should be granted towards compensation to the Appellant and, accordingly, we so direct. The said amount shall be paid by the Respondent State within a period of six weeks and be realized from the erring officers in equal proportions from their salary as thought appropriate by the competent authority of the State."

In view of the issue involved in this petition, it is relevant to refer the law declared by the Apex Court in various judgments.

In **Jehan Singh v. Delhi Administration**[8] it was held that where at the date of filing the petition under Section 561-A (old Code equivalent to Section 482 of the Code), no charge sheet has

[7] (2012) 8 Supreme Court Cases 1
[8] AIR 1974 SC 1146

been laid and the matter is only at the stage of investigation by police, the court cannot, in exercise of its inherent jurisdiction under Section 561-A interfere with the statutory powers of the police to investigate into the alleged offence and quash the proceedings, Even assuming that the allegations in the F.I.R are correct and constitute an offence so as to remove the legal bar to institute proceedings the court cannot at that stage appraise the evidence collected by the police in their investigation. So any petition under Section 561-A at such a stage is premature and incompetent.

Earlier to the judgment rendered in "**Jehan Singh v. Delhi Administration**" (referred supra), in "**King Emperor v. Nazir Ahmad**[9]" "**State of West Bengal v. S.N. Basak**[10]" similar view was expressed.

Relying on the principles laid down by the Privy Council in the above said judgment, the Apex Court in "**State of Bihar v. J.A.C. Saldanha**[11]" held that there is a clear cut and well demarcated sphere of activity in the field of crime detection and punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence once that is completed and the investigating officer submits report to

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[9] AIR 1945 PC 18 : 58 L.W. 57
[10] AIR 1963 SC 447
[11] 1980 Cri. L. J. 98 (S.C)

the court requesting the court to take cognizance of the offence under S. 190 of the Code, its duty comes to an end. On cognizance of the offence being taken by the court there commences the adjudicatory function of the judiciary to determine whether an offence has been committed.

Similarly in "**V.K. Murugan v. State**[12]" the Madras High Court while dealing with identical case held as follows:

> "This petition under S. 482 of Crl. P.C. contains a very curious prayer that I should quash, by invoking S. 482, Crl. P.C, the F.I.R. which has been registered by the respondent who is the Inspector of Police, Virudhunagar. The decision in Kurukshetra University, v. State of Haryana will apply to the facts of the case now before me. In the case now before me only an F.I.R. has been lodged. It is for the police to investigate into it. At this stage the petitioner cannot ask for the F.I R to be quashed. This petition is therefore dismissed."

The High Court in exercise of its inherent powers under Section 482 Cr.P.C. cannot quash the F I.R., more so when the police had not even commenced the investigation and no proceeding at all is pending in pursuance of the said F.I.R. as held in "**Durai Raj v. State Represented by the Sub-Inspector of Police**[13]".

As per the principles culled out from the law declared by various Courts referred above, there is direct interdict on the powers of this Court to interfere with the investigation by exercising power under Section 482 of Cr.P.C.

In "**State of Bihar v. J.A.C. Saldanha**" (referred supra) the Apex Court held that adjudicatory functions of the judiciary to

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[12] 1980 T.N.L.J. 158
[13] 1980 L.W. Cri. 36

determine whether an offence has been committed, commences only on cognizance of the offence being taken by the court. Now at this stage to exercise the powers vested with this Court under Section 482 Cr.P.C. cannot be resorted to especially when the matter is being actually investigated into and that it is also the case of the respondent that a prima facie case has been made out with respect to the petitioner herein. Under these circumstances, bearing in mind the principles laid down by the Supreme Court in the above decisions, this Court has to exercise its power sparingly in exceptional circumstances to quash the proceedings.

In "**Eastern Spinning Mills and Virendra Kumar Sharda v. Rajiv Poddar**[14]" the Apex Court expressed displeasure for granting injunction. Few facts of the judgment are relevant at this stage. The High Court in the proceedings before it filed by the accused, an injunction order was passed by the High Court by which investigating police officers are restrained from taking any step or any action or conducting investigation in pursuance of two F.I.Rs lodged by the complainant therein. The Apex Court while deciding legality of such order held that the order had the effect of interfering and staying investigation of offences by investigating officer performing statutory duty under the Cr.P.C. It is absolutely unnecessary to make reference to the decision of the Court and they are legion which have laid down that save in exceptional case where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of

[14] AIR 1985 SC 1668

investigation of offences. And frankly such is not the case. This is a routine case where information of an offence or offences has been lodged, investigation commenced, search and seizure followed and the suspects arrested.

The High Court of Madras also expressed similar view in "**Munuswamy vs. Sub Inspector of Police, Peralam Police Station, East Thanjamr District**[15]" and held that such power cannot be exercised to quash the proceedings since it amounts to interference with the investigation.

The Apex Court in "**State of H.P. v. Pirthi Chand**[16]" and "**State of Orissa v. Saroj Kumar Sahoo"** (referred supra) while deciding the powers of the High Court under Section 482 of Cr.P.C. the Division Bench of the Apex Court discussed about the powers of the High Court by referring the principles laid down in "**State of Haryana v. Bhajan Lal**[17]" and "**Mrs.Rupan Deol Bajaj v. Kanwar Pal Singh Gill**[18]" held that in deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered the FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and

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[15] 1982 – LW (Crl) 149
[16] (1996)2 SCC 37
[17] 1992 Supp (1) SCC 335
[18] 1996 Crl.L.J.381

cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance, process of criminal is availed of in laying a report or FIR itself does not disclose at all any cognizable offence - the court may embark upon the consideration thereof and exercise the power.

It was further held that when investigating officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short-circuited by resorting to exercise of inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destabilize the economy and causes grave incursion on the economic planning of the State. When the legislature entrusts the power to the police officer to prevent organized commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection, care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk.

In "**Babubhai Jamnadas Patel v. State of Gujarat**[19]" the Apex Court while referring to the principles laid down in "**M.C.Abraham v. State of Maharashtra**[20]" held that that while investigation is in progress, the Court cannot direct the Investigating Agency to submit a report in accord with the Court's own view. In the facts and circumstances of the said case, Apex Court observed that it was open to the Magistrate, to whom the report is submitted by the Investigating Agency after full and complete investigation, to either accept the same or to order a further inquiry. As far as the High Court is concerned, it could give directions for prompt investigation, but it could not direct the Investigating Agency to submit a report that is in accord with its views and that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the Investigating Agency.

The Apex Court in "**State of Haryana v. Bhajan Lal**" (referred supra) considered the scope of both Sections 154 and 156 of Cr.P.C. and the powers of the Court to interdict the investigation

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[19] 2009 (3) ACR 3033 (SC)
[20] (2003) 2 SCC 649

and laid down certain guidelines to be followed by the Courts and in fact the said judgment is being followed by all the Courts till date. Even according to the principles laid down in the above said judgment, the core of the Sections namely 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

Police have Under Section 154(1) of the Code a statutory duty to register a cognizable offence and thereafter Under Section 156(1) a statutory right to investigate any cognizable case without requiring sanction of a Magistrate. However, the said statutory right to investigate a cognizable offence is subject to the fulfillment of a prerequisite condition, contemplated in Section 157(1). The condition is that the officer in-charge of a police station before proceeding to investigate the facts and circumstances of the case should have "reason to suspect" the commission of an offence which he is empowered Under Section 156 to investigate. What is the meaning of “reason to suspect” is not analyzed anywhere. But in “**State of Haryana v Bhajan Lal**” (referred supra) the Apex Court held in paragraph Nos.42 to 46 analyzed the word “reason to suspect” based on the dictionary meanings. With reference to language used in Section 41 (a) and (g) of the Code the words “reason to suspect” are apparently clear, plain and unambiguous. Considering the context and the object of the procedural provision in question, the Apex Court is of the view that only the plain meaning rule is to be adopted so as to avoid any hardship or absurdity resulting therefrom and the words are used and also to be understood only in common parlance.

Thus, the Apex Court concluded that the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the First Information Report as well in the Annexure, if any, enclosed and any attending circumstances which may not amount to proof. In other words, the meaning of the expression "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise. If that principle is applied to the present facts of the case as laid down in "**State of Haryana v Bhajan Lal"** (referred supra), the Investigating agency is not required to look into genuineness of the allegations made in the report and the annexure needs no consideration. If the investigating officer, based on the allegations made in the report satisfied that there is reason to suspect commission of offence, the investigating agency can proceed with the investigation and collect entire evidence, but the powers of the Court are limited and only when the investigating agency is not proceeding with the investigation as per the procedure, the Magistrate may issue necessary directions as referred above. Thus, it mean that the Court has no jurisdiction to interdict the investigation taken up by the police, by exercising power under Section 482 of Cr.P.C. if the police are proceeding to investigate in accordance with the power conferred on them by the statute but keeping in mind the personal liberty of a citizen. Therefore, while investigating into the offence the investigating agency is incompetent to exercise unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom.

In view of the law declared by the Apex Court, the Code conferred limited power on this Court to interfere with the investigation taken up by the investigating agency i.e. if the investigating agency is not proceeding in the lines of power conferred on it by Code, but not otherwise. In such case, it is improper to exercise power under Section 482 of Cr.P.C. to interdict the investigation.

In view of the law declared by the Apex Court in various judgments referred supra, the Court cannot exercise its unfettered power to quash the F.I.R. at its inception and more particularly when no investigation is commenced. Therefore, it is difficult for me to exercise power under Section 482 of Cr.P.C. to quash the proceedings at this stage.

Learned counsel for the petitioner contended that the F.I.R. does not disclose commission of any cognizable offence and police ought not to have proceeded against the petitioner for the offences referred supra, the dispute is purely civil in nature, but converted into criminal, in such case the Court can exercise inherent jurisdiction to quash.

The complaint is only an intimation to the police about the commission of cognizable offence to set the criminal law into motion, the complaint need not contain minute particulars since it is not an encyclopedia of facts. Merely because the allegations in the complaint are not sufficient to constitute offence, the proceedings cannot be quashed as it is only information to the police about the commission of cognizable offence, making false and dishonest representation to the respondent and making him to part with huge amount, threatening to kill would *prima facie* constitute offences punishable under Sections 420 & 506 IPC. I am sure, if the investigating agency finds that the petitioners did not commit any cognizable offence, will file negative final report under Section 173(2) Cr.P.C

As per the Judgment rendered in **"Lalita Kumari v. Government of Uttar Pradesh[21]"** when a report was lodged with the police, the police are bound to register the crime and bound to proceed further if the allegations made in the report disclosed commission of cognizable offence.

Earlier to **"Lalita Kumari v. Government of Uttar Pradesh"** (refereed supra) in "**State of Haryana v. Bhajan Lal"** (referred supra) also made it clear that when an information is received by police about commission of cognizable offence, the Station House Officer is bound to register the case and proceed to investigate into the offence. Even the question of malafide on the part of the complainant is not a ground since it is premature. In the same judgment, the Apex Court expressed its view in clear terms that the question of malafides on the part of the complainant with a view to wreck vengeance on the accused and with a view to spite him due to private and personal grudge and the complainant dishonestly making such allegations are liable to be proceeded under Sections 182, 211 and 500 I.P.C. and also liable for damages. But malafides attributed to the complainant alone cannot form a ground to interdict the investigation. Since arriving at such conclusion before commencement of investigation is only a pre-mature stage. The evidence has to be gathered after thorough investigation and place before the Court, on the basis of which alone the Court can come to the conclusion one way or the other on the plea of malafides. If the allegations are bereft of truth and

[21] (2014) 2 SCC 1

made maliciously, sure, the investigation will say so. At this stage, when there are only allegations and recriminations but no evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available and the Apex Court rejected the contention of the counsel therein for quashing the proceedings at the stage of investigation. If those principles are applied to the present facts of the case, even according to the learned counsel for the petitioners, investigation is not completed.

In view of the law declared by various Courts referred supra, I find no ground to quash the proceedings and if the petitioners are apprehending that they are likely to be arrested in connection with cognizable offence, they may approach the appropriate Court for grant of pre-arrest bail, but this Court, now, under Section 482 of Cr.P.c. cannot exercise power under Section 438 of Cr.P.C. granting pre-arrest bail, indirectly. Thus, there is nothing wrong in registration of crime based on the allegations made in the report lodged by the complainant and it is not an abuse of process of law.

In all the judgments referred supra, the Supreme Court made it clear that, when the allegations made in the complaint or the report lodged with the police discloses commission of an offence *prima facie*, the Court cannot grant stay of further investigation, in pursuance of registration of F.I.R. In the present facts of the case, entering into agreement of sale, failure to execute registered sale deed, receiving balance of sale consideration may be civil in nature. But, threatening with dire consequences, more particularly, threatening to take away life of the first respondent by the petitioners/accused is not civil in nature, but is a matter of serious concern. If, no action is taken against the petitioners who openly threatened to take away the life of the first respondent or to kill him, while threatening with dire consequences, if no action is taken, the petitioners may transmit the proclamation into an action. In such case, it would cause serious damage to the family of the first respondent. The allegations in paragraph 10 of the complaint are relevant for the purpose of deciding whether the petitioners committed any *prima facie* offence, which reads as follows:

> "The complainant submits that recently he came to know that the land which was agreed to sell to the complainant (Ac.3.23 cents) was already mortgaged on 14-08-2015 to the 3rd parties and the original documents, Pattadhar pass book and title deed pass books (originals) are deposited with the 3rd party towards security mortgage for debt and for which the accused 1, 3 and 4 also issued cheques to the 3rd party and the above said cheques were also bounced. On 10-03-2017 all the above said facts were published in Enadu news paper District Edition. After coming to know the said fact, immediately the complainant approached the accused and questioned them why they cheated the complainant by representing that when the above said Ac.3.28 cents is under mortgage and by suppressing the above said fact obtained Rs.9,20,000/- from the complainant. The complainant further questioned that why the accused are dragging the matter without getting the said land registered in favour of the complainant. For which, all the accused replied that they even do not know who the complainant is? And therefore there is no obligation for them to execute registered sale deed in favour of the complainant and if the complainant again question the accused they threatened with dire consequences and they would taken away the life of the complainant. All the accused with dishonest intention to get wrongful gain to themselves and to wrongful loss to the complainant, falsely represented that the property of 1st Accused (3.25 cents) is free from encumbrances and received an amount of Rs.9,20,000/- even though, by the time of execution of agreement of sale the above said property is under mortgage to 3rd parties. Thus, all the accused committed cheating against the complainant."

The allegations mentioned in paragraph 10 of the complaint would also constitute offence punishable under Section 506 IPC, but the police, the reasons best known to them, have registered offence only under Section 420 r/w 34 IPC. However, it is for the police to investigate into the matter and find out exactly what offence the petitioners committed. Unless, the crime is investigated into and material is collected during investigation, it is difficult to conclude at this stage whether the petitioners committed any offences or not.

In view of my foregoing discussion, I find no substance in the contentions of the learned counsel for the petitioner. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. However, if the investigating agency finds that there is material to attract the commission of any cognizable offence punishable with imprisonment for less than 7 years, follow the procedure laid down under Section 41-A of Cr.P.C and guidelines formulated by the Apex Court in **"Arnesh Kumar v. State of Bihar and another[22]".** No costs.

Consequently, miscellaneous petitions pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:06.12.2017

SP

[22] (2014) 8 SCC 273