

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision:19.11.2018

CRM-M-33778-2015

Naresh Kumar and otherspetitioners

Versus

State of Haryanarespondent

CRM-M-33063-2016

Tejpal and otherspetitioners

Versus

State of Haryanarespondent

CRM-M-37480-2016

Hari Om and otherspetitioners

Versus

State of Haryanarespondent

CRM-M-37905-2016

Suman and anotherpetitioners

Versus

State of Haryanarespondent

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Abhimanyu Singh, Advocate
for the petitioners (in CRM-M-33778-2015)

Mr. Abhinav Sood, Advocate
for the petitioners (in CRM-M-33063, 37480-2016).

Mr. Manoj Tanwar, Advocate
for the petitioner (in CRM-M-37905-2016).

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. :

Prayer in these petitions is for quashing of FIR No.38 dated 17.03.2012, under Sections 409 of Indian Penal Code (for short, 'IPC'), registered at Police Station Bhondsi, District Gurgaon (Annexure P1) and the supplementary challan (Annexure P6) submitted under Section 173(8) of the Code of Criminal Procedure (for short, 'Cr.P.C.').

Since the common question of law and facts are involved in all these four petitions, whereby the total number of 20 persons were arrayed as additional accused while submitting the report under Section 173(8) Cr.P.C., these petitions were heard together. However, for the sake of convenience the facts are being extracted from CRM-M-33778-2015.

Brief facts of the case are that the impugned FIR was registered on a written complaint given by the then Block Development and Panchayat Officer, Sohna, District Gurgaon. For ready reference, the FIR reads as under:

*“To The Station House Office, Bhondsi. No.529 dated 15.03.2012. **Subject: For initiating criminal and recovery proceedings against Ex-Sarpanch Shri Ajay Raghav, Gram Panchayat, Bhondsi-regarding. With reference to the letter No.517/ Panchayat dated 06.03.2012 of the office of Deputy Commissioner, Gurgaon.** You are hereby informed vide letter under reference that an enquiry was got conducted through the Additional Deputy Commissioner, Gurgaon, with respect to the irregularities committed during the tenure of Sh.Ajay Raghav, Ex-Sarpanch, Bhondsi, and on its basis, an amount of Rs.63.09 lacs is liable to be recovered from him and orders for effecting this recovery had been passed. Vide this office letter No.499 dated 29.02.2012, a final notice in relation with the recovery was issued but*

this amount has not been deposited in the Panchayat funds till date. You are, therefore, instructed to initiate necessary criminal proceedings by registration of an FIR against Sh.Ajay Raghav, Ex-Sarpanch, for effecting recovery and for committing irregularities. Sd/- Sh.Pardeep Ahlawat, Block Development & Panchayat Officer, Sohna, District Gurgaon.

Thereafter, the police investigated the matter and submitted a report under Section 173(2) Cr.P.C.against Ex-Sarpanch Ajay Raghav alone. None of the petitioner was named in the FIR nor in the First report submitted under Section 173(2) Cr.P.C.

In the meantime, some of the inhabitants filed CWP No.17011 of 2011, titled “Ranvir Singh and others vs. State of Haryana and others”, praying for a direction to the official respondents to take legal and disciplinary action against two persons i.e. Naresh Kumar and Vinod Kumar (petitioners No.1 and 2 in Criminal Misc.No.33778 of 2015), who were working as Gram Sachivs and they were arrayed as respondent No.6 and 7 in the said petition. The said petition was disposed of on 02.07.2012 by passing the following order:

“The petitioners who are residents of Village Bhondsi Tehsil Sohna District Gurgaon have filed this writ petition stating that respondents No.6 and 7, who are the former and the present Sarpanch respectively of the village, have committed irregularities of the Panchayat funds. In the said petition following primary relief has been sought:-

“Issue a writ in the nature of mandamus with a prayer to direct the respondents No.1 to 5 to take appropriate legal and disciplinary action against respondents No.6 and 7 who formed the Panchayat records, prepared false and fabricated documents and embezzled lacs of rupees of Gram Panchayat fund, without valid resolutions and authority.”

It is further stated that after conducting enquiry if it is found that irregularities has been committed, criminal cases be registered against respondents No.6 and 7 for forging and fabricating the Panchayat records, vouchers and other documents etc.

Notice of motion was issued on 19.09.2011. The respondents put in appearance thereafter and on 20.12.2011 enquiry report alleged to have been conducted against respondents No.6 and 7 was put on record.

Vide order dated 28.02.2012, as per the findings given in the enquiry report, Deputy Commissioner, Gurgaon was directed to take necessary action. In response to the said order an affidavit of Sh P.C.Meena Deputy Commissioner, Gurgaon has been filed wherein it is stated that an FIR dated 17.3.2012 has been registered against Ajay Raghav respondent No.6 for misappropriation of funds to the tune of 63.09 lakhs It is further stated that proceedings have been initiated against Manoj Kumar and Naresh Kumar Gram Sachivs, Block Sohna. It is also averred that departmental action against Habib Ahmad, Junior Engineer, Block Sohna, is under consideration. It is also stated that nothing has been found against respondent No.7. However, he has been put under suspension for incurring expenditure beyond the permissible limit.

At this stage, it is contended by the counsel for the petitioners that some Panches and other government officials are also involved in the irregularities committed by respondent No.6 and illegalities committed by respondent No.7. Be that as it may, the process to take action, in the matter has already been started and the authorities are dealing with the matter.

Under the circumstances we dispose of this writ petition by issuing directions to Divisional Commissioner, Gurgaon, to conduct further enquiry within six months to pin point any other culprit as per facts of the case. After enquiry,

if somebody is found guilty, appropriate action be taken in accordance with law.

The Divisional Commissioner Gurgaon shall give an opportunity of hearing to the parties at the time of conducting enquiry.

Liberty shall remain with the petitioners to avail any other remedy available to them under the law.

Registry is directed to send a copy of this order to the official concerned.

In pursuance thereof, the Additional Deputy Commissioner, Gurgaon, conducted an inquiry and during the inquiry, he made four points for enquiry i.e.

1. Misuse of money for lifting garbage within Gram Panchayat, Bhondsi
2. Misuse of money for produce of construction material
3. Misuse of 10.50 lakhs for the purchase of electric lights, poles and other electric material
4. Loss caused to Panchayat in the absence of laying down the pipeline with planning for water supply in the village.

The Additional Deputy Commissioner, Gurgaon, in its final report dated 14.11.2014, recorded the following finding:

“Undoubtedly, the payments which the Gram Panchayat has made, the expenditure is got approved from the Gram Sabha by the Gram Panchayat after passing a resolution and the payments are also made through crossed cheques. But, as per details given above against different issues, Rs.41.51 lacs have been incurred by Gram Panchayat Bhondsi on different counts, which are found to be recoverable:-

<i>Description</i>	<i>Amount recoverable being spent in excess (in lacs)</i>
<i>1.Garbage</i>	<i>09.12</i>
<i>2.Construction material</i>	<i>02.49</i>
<i>3.Electricity material</i>	<i>10.50</i>
<i>4.Pipe line</i>	<i>19.40</i>

<i>Total</i>	<i>41.51</i>

This is being forwarded to you for kind information and necessary action, pl.

Thus, it was recorded that the Gram Panchayat has incurred an excess amount of Rs.41.50 lakhs on different accounts. However, in its report, nothing was mentioned about any illegal act conducted by all the petitioners herein (four petitions).

Learned counsel for the petitioners further submits that in the meantime the Ex-Sarpanch Ajay Raghav who was the principal accused in the impugned FIR and remained the Sarpanch from 2005 to 2010 had deposited the aforesaid amount of Rs.41,51,000/- in the Gram Panchayat Fund. The said Ex-Sarpanch Ajay Raghav initially filed a Revision No.54 of 2012 before the Appellate Authority under Section 53(3) of the Haryana Panchayati Raj, Act, 1994 (for short, 'the Act'), challenging the order of recovery and he was granted the permission to deposit 50% of the amount during the pendency of the said petition and later on, he has deposited the balance 50%. Learned counsel for the petitioners submits that after the Ex-Sarpanch had deposited the entire amount, he was granted anticipatory bail vide order dated 07.04.2015 passed in CRM-M- 7894 of 2015, noticing the facts that in pursuance to the recovery notice, the said accused/Sarpanch had filed a statutory appeal and during the pendency he was granted permission to deposit 50% of the amount of the assessed loss and thereafter, he

deposited the remaining amount against receipts dated 11.01.2013 and 09.01.2015 (Annexures P8 and P9).

Learned counsel for the petitioners further submits that in the meantime, on the basis of some another complaint given against the said Ex-Sarpanch, the matter was transferred to Crime Branch and further investigation was carried out. On 05.06.2015, the Block Development and Panchayat Officer, Sohna, gave certain information to SHO, State Crime Branch, Gurgaon that petitioner Habib Ahmed, worked as Junior Engineer in the Block Office, Sohna from 2005 to 2010 and petitioner Vinod Kumar worked from 2005 to 2008 and petitioner Naresh Kumar worked from August 2008 to November 2009 and petitioner Shyambir worked from December 2009 to June 2010 and similarly other petitioners who were the Panches worked from 2005 to 2010, the details whereof was also given. In this letter, the Block Development and Panchayat Officer, further stated that the Gram Sachivs worked for the Panchayat under the orders of Block Development and Panchayat Officer. Thereafter, on the basis of the further investigation, carried out by Gram Panchayat, the police submitted a supplementary challan under Section 173(8) Cr.P.C.(Annexure P6).

Learned counsel for the petitioners submits that a perusal of this supplementary challan shows that after mentioning the details of the first report under Section 173(2) Cr.P.C. submitted against Ajay Raghav (Ex-Sarpanch), the details of the inquiry conducted by the Deputy Commissioner, in which the aforesaid four points were considered, is reproduced and thereafter it was stated that on the basis of the said inquiry, the petitioners were also found involved in the present FIR/offence along with Ajay Raghav. It is also noticed in this report that the amount of

Rs.41.50 lakhs has already been deposited in the account of Gram Panchayat, Bhondsi.

The operative part of the challan reads as under:

“xx xx xx xx

Thereafter, the investigation of the case, under the orders of higher officers, was carried out by State Crime Branch, Gurgaon. During investigation, spot inspection was done and the secret and open enquiries relating to the development works conducted in the village, were conducted and the details of Junior Engineer and Gram Sachivs (govt.employees) and members of Panchayat of Gram Panchayat Bhondsi during 2005-2010 were obtained from the Block Development Panchayat Officer, Gurgaon. During investigation, Sarpanch, members of Gram Panchayat Bhondsi who worked from 2005 to 2010 and concerned J.E.as also Gram Sachivs of Gram Panchayat Bhondsi who worked from 2005 to 2010 with Gram Panchayat Bhondsi were also joined in the investigation and they were interrogated deeply. All the available proofs collected in this case, i.e., statements of bank accounts of Gram Panchayat Bhondsi, resolutions passed by the Gram Panchayat in connection with development works, from the enquiry report of Additional Deputy Commissioner, Gurgaon, relating to development works got done by Gram Panchayat Bhondsi from 2005 to 2010, and the reports of Enquiry committees formed by the Deputy Commissioner for holding enquiry were looked into. During enquiry, it revealed that according to the enquiry of Additional Deputy Commissioner, from 2005 to 2010, while carrying out the development works of Gram Panchayat, Bhondsi, (1) misuse of money by Gram Panchayat, Bhondsi for lifting garbage in Panchayat areas (2) misuse of money for purchase of building material for development in the village (3) misuse of money for the purchase of electricity lights and other

electricity material in the village (4) misuse of money in laying down the pipe line for water supply in the village. An amount of Rs.41 lacs 51 thousands has been misused in the development works got done by the Gram Panchayat, Bhondsi.

On the basis of the proofs available on the police file, the then members Panchayat, concerned Gram Sachivs and J.E.of Gram Panchayat Bhondsi were joined in investigation and were interrogated. Enquiries were made secretly and openly from the respectable persons of the village. In investigation, it revealed that according to the relevant records relating to the development works done from 2005 to 2010 in the village by the Gram Panchayat Bhondsi and as per reports of the Enquiry Committees constituted by the Additional Deputy Commissioner and the resolutions, which were passed by the Gram Panchayat Bhondsi in connection with development works from 2005 to 2010, those are duly signed by the Gram Panchayat members and according to the bank account statements of the Gram Panchayat, the Panchayat members have made the payments to the members Panchayat contrary to the instructions by way of cheques out of the Panchayat account. From 2005 to 2010, the Gram Sachivs posted with Gram Panchayat Bhondsi have made entries in the records of the Panchayat and cheques have been issued in favour of the Panchayat members and the concerned firms in connection with development works for making payments. On those cheques, Gram Sachivs have also signed along with Sarpanch and J.E.has prepared the estimate development works relating to constructions and measurement book has been prepared relating to the construction works. The following persons are also found to be involved, in the above case and offence, along with the arrested accused Ajay Rahav, Ex-Sarpanch of Gram Panchayat, Bhondsi;1.Sh.Habib Ahmed son of Islai Khan,

J.E.Panchayat Department, Haryana, resident of village Rani Ka, P.S.Nagina, District Mewat, presently resident of H.N.568, Gali No.9, Madanpuri, Gurgaon; 2. Vinod Kumar son of Sh.Ranjit Singh, Gram Sachiv, Panchayat Department, Haryana, resident of village Fazilpur, District Gurgaon; 3. Naresh Kumar son of Keshav Ram, Gram Sachiv, Panchayat Department, Haryana, resident of Kharkhari, P.S.Loharu, District Bhiwani; 4. Shayambir Singh son of Tek Chand, Ex-Gram Sachiv, Panchayat Department, Haryana, resident of village Badshapur, P.S.Badshahpur, District Gurgaon; 5. Rajan son of Om Pal Singh, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon, 6. Azad son of Jagmal Sharma, Ex.Member Panchayat, resident of village Bhondsi, 7. Smt.Baby alias Babli wife of Surender Singh Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon, 8. Rakesh son of Lallu Ram, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon; 9. Tejpal son of Krishan Pal, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon; 10. Smt.Suman wife of Omkar Singh, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon; 11.Smt.Krishna, wife of Gulshan Kumar, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon; 12.Hari Om son of Gaze Singh, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon; 13. Tej Pal son of Raj Pal, Caste Rajput, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon; 14. Mukesh son of Bhaggu Ram, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon; 15. (illegible), 16. Chet Ram son of Tirkha ram, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon; 17. Daal Chand son of Inaami Ram, Ex-Member Panchayat, resident of village Bhondsi,

P.S.Bhondsi, District Gurgaon; 18. Chhotey Lal son of Rameshwar, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon; 19. Smt.Bala Devi wife of Prahlad, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon; 20.Smt.Sunana @ Sursana wife of Yogender Singh, Ex-Member Panchayat, resident of village Bhondsi, P.S.Bhondsi, District Gurgaon.

It has been found during investigation, that the amount of Rs.41 lacs 51 thousand which was misused in carrying out development works during the years 2005 to 2010, has already been deposited in the bank account of Gram Panchayat Bhondsi. No recovery is to be effected from the co-accused. There is no necessity of arrest of the above co-accused, therefore, without their arrest having been made the challan under Section 173(8) Cr.P.C.is presented before the Hon'ble Court. A letter has been written for according necessary permission for presentation of challan against 1.Sh.Habib Ahmed son of Islai Khan, J.E.Panchayat Department, Haryana, 2. Vinod Kumar son of Sh.Ranjit Singh, Gram Sachiv, Panchayat Department, Haryana, 3. Naresh Kumar son of Keshav Ram, Gram Sachiv, Panchayat Department, Haryana, to Head of the Department concerned, the permission on being received would be produced before the Hon'ble court. The witnesses and the accused be called by way of issuing summons and trial be commenced.”

Learned counsel for the petitioners further submit that it is an admitted case of the prosecution that before conducting further investigation, no permission from the Illaqa Magistrate under Section 173 (8) of Cr.P.C. was taken as per the affidavit of Assistant Commissioner of Police, Sohna, District Gurgaon, dated 06.10.2018.

Learned counsel for the petitioners have referred to Section 53

of the Act, regarding fixing of liability of a Sarpanch/Panch which reads as

under:

53. Liability of Sarpanch or Panch

(1) *Every Sarpanch [* * * * *] or a Panch of a Gram Panchayat shall be liable for the loss, waste or mis-application of Gram Fund or property belonging to that Gram Panchayat if such loss, waste or mis-application is a consequence of his neglect or misconduct while working as Sarpanch, UP Sarpanch or a Panch, as the case may be.*

(2) *The Block Development and Panchayat Officer concerned may, on the application of a Gram Panchayat or otherwise, for loss, waste or mis-application of Gram Fund or property belonging to that Gram Panchayat and after giving adequate opportunity to Sarpanch 1[* * * * *] or Panch, as the case may be, to explain, assess by order in writing the amount due from him on account of such loss, waste or mis-application of such Gram Fund or property and take necessary steps for its recovery.*

(3) *Any person aggrieved by an order under sub-section (2) may, within one month of the date of such order apply to the Director to have it set aside and the Director may suspend, vary or rescind such order upon such terms as to costs, payment into court or otherwise, as he thinks fit, but subject to the result of such application, if any, the order shall be conclusive proof of the amount due.*

(4) *Notwithstanding anything contained in sub-section (3) the Government may, either on its own motion at any time or an application received in this behalf within a period of sixty days from the date of the order, call for the records of any proceedings in which the Director has passed an order under sub-section (3) for the purpose of satisfying itself as to the legality or propriety of such order and may pass such order in relation thereto as it thinks fit :*

Provided that the Government shall not pass an order under this sub-section prejudicial to any person without giving him a reasonable opportunity of being heard.

(5) Notwithstanding anything contained in this section no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of six years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a Sarpanch [* * * *] or Panch, as the case may be, whichever is earlier.*

(6) The amount assessed as due from Sarpanch [* * * *] or Panch, as the case may be, may after his death be recovered from his legal heirs to the extent of property inherited by them.”*

It is submitted that certain safeguards have been provided to an Ex-Sarpanch or a Panch that while assessing the loss, waste or misapplication of Gram Panchayat Fund or property the competent authority i.e. Block Development and Panchayat Officer can assess such loss, waste or misapplication of Gram Panchayat Fund or property after giving adequate opportunity to the Panch or Sarpanch as the case may be. It is further submitted that the concerned person is further given a right of appeal under Section 53(4) of the Act before the Government and therefore until and unless the concerned person has availed his right of appeal, no criminal liability can be fastened on an Ex Sarpanch.

Learned counsel for the petitioners further submitted that as per Section 204 of the Act, it is provided as under:

“Bar of action: *(1) No suit or other legal proceedings in a civil or criminal Court shall lie against any Panch, (...) Sarpanch, Member, Chairman, Vice Chairman, President and Vice-President, as the case may be in respect*

of any act done in good faith under this Act.

It is thus submitted that instead of fixing the liability of the petitioners, who are the then Gram Sachivs, or Junior Engineers or the Ex-Panches, it is the liability of the concerned Sarpanch who is assigned power, functions and duties as per Section 19 of the Act and has the general responsibility of financial administration of the Gram Panchayat and the administrative supervision and control over the business of the Gram Panchayat, therefore, no criminal liability can be fastened on the petitioners.

Learned counsel for the petitioners has submitted that in the present case, the FIR was registered immediately against the Sarpanch alone, after assessment was made against him by the concerned Block Development Officer under Section 53 of the Act and it is admitted case of the parties that Ajay Raghav Ex-Sarpanch has challenged the order dated 29.02.2012 (vide which he was given a notice of recovery), before the appellate authority i.e. the government in exercise of his statutory right of appeal under Section 53(4) of the Act.

Learned counsel further argued that is also admitted case of the parties that during the pendency of the said appeal, the appellate authority directed the Ex-Sarpanch to deposit 50% of the amount as interim relief and the appeal remained pending and after its final disposal, the Ex-Sarpanch deposited the balance amount on 09.01.2015 and therefore, the registration of the FIR against accused Ajay Raghav Ex-Sarpanch during the pendency of his statutory appeal was not maintainable, in terms of Section 204 of the Act as he was availing his legal remedy.

Learned counsel has further submitted that a bare perusal of the FIR shows that the Block Development and Panchayat Officer had directed

the SHO, Police Station Bhondsi to initiate recovery proceedings against Ex-Sarpanch, based on the notice dated 29.02.2012 and therefore, on the face of it, the offence under Section 409 IPC is not made out as the Sarpanch was availing his remedy of statutory appeal.

Learned counsel for the petitioners have further submitted that even the first report under Section 173(2) of Cr.P.C. was submitted only against Ajay Raghav, Ex-Sarpanch, without raising any suspicion against the present petitioners and it is only when the inquiry was transferred to Crime Branch, an information was sought from the Block Development and Panchayat Officer about the persons who remained posted during the tenure of the Ex-sarpanch, as Gram Sarpanch, Junior Engineer or were elected as the Panches of the Gram Panchayat and they all were made accused, while submitting the supplementary report under Section 173(8) of Cr.P.C. without there being evidence or any inquiry indicating their role in the commission of offence under Section 409 IPC.

Learned counsel have referred to the impugned report under Section 173(8) Cr.P.C., wherein the only allegations against the petitioners are that while working as Gram Sachivs, they have signed the cheques for releasing the payment of development works or were working as junior engineers at that time or were the Panches of the Gram Panchayats who had passed the resolutions.

Learned counsel for the petitioners has placed reliance on an office order dated 18.06.2018 vide which the departmental proceedings initiated against the petitioner Naresh Kumar and Vinod Kumar, the then Gram Sachivs, who worked with the co-accused Ajay Raghav were exonerated and the proceedings pending against them under Rule 8 of the

Haryana Civil Services (Punishment and Appeal) Rules, 1987, were dropped on 18.06.2018, holding that they have not committed any illegality or irregularity in any manner.

Learned counsel for the petitioners have lastly argued that in the original complaint/FIR, the Block Development and Panchayat Officer has requested the police for effecting the recovery from the Ex-Sarpanch for committing irregularities and it is nowhere stated that any illegality has been committed.

Learned counsel for the petitioners have relied upon **1997(2) PLR 163, State of Punjab vs. Mohinder Partap**, wherein the Hon'ble Division Bench of this Court has held as under:

9. *Further, as observed by the trial court in the impugned judgment, the respondent has deposited the entire amount in the account of Gram Panchayat. This proves the bonafides of the respondent that he did not have any intention of misappropriating any amount.*

10. *The net result of above discussion is that the prosecution could not prove that any money was entrusted to the respondent or that he had embezzled that amount. Rather, it is the prosecution case itself that the respondent had deposited the entire amount in the account of the Gram Panchayat. Resultantly, there is no force in these appeals and the same are dismissed.”*

Learned counsel for the petitioners have relied upon **1985 R.R.R.69, “Anant Ram vs. The State of Haryana,”** wherein this Court has held as under:

“2. *The case of the petitioner in a nutshell is that in terms of sub-section (1) of Section 105 a member of the Gram Panchayat can be held liable for the loss, waste or misapplication of any money or property belonging to the*

Panchayat if such loss, waste or misapplication is a consequence of his neglect or misconduct as a member of the Panchayat and according to the learned counsel for the petitioner there is no such finding recorded by the said Block Development and Panchayat Officer that the money sought to be recovered was either misapplied, lost or wasted as a consequence of the neglect or misconduct of the petitioner.

3. *The case of the respondent authorities on the other hand, is that the petitioner along with other members of the Panchayat approved the utilisation or spending of a sum of Rs.3448.50 which according to the authorities was either not spent or improperly spent and by approving this expense he made himself proportionately liable for the said amount. Even, if this position is accepted it is nowhere shown or held by the Block Development and Panchayat Officer as to how that money has been misapplied or misspent. Merely because the petitioner is a party to certain resolution approving the spending of that amount does not amount to as having caused the loss, waste or misapplication of the money. If the money has actually been lost, wasted or misapplied then that has happened prior to the passing of the resolution. Concurring or approving of that expense cannot possibly amount to having caused that loss or expense. For this short reasons alone, this petition deserves to succeed and is allowed. I, therefore, quash the impugned order Annexure 'D' and its affirmance by the Appellate Authority (Annexure 'E') on November 11, 1971. I, however, pass no order as to costs.*

Petition allowed.”

Learned counsel have further relied upon **2017(2) Bom.C.R. (Cri.) 627, Sau.Sukamal Dhondiram Sakhare vs. State of Maharashtra through Police Inspector**, wherein the Hon'ble Division Bench of Bombay High Court has held as under:

“17. *In the above premises, we have no hesitation to*

exercise the inherent powers under [Section 482](#) of the Cr.P.C. in favour of petitioner. We are of the considered opinion that the impugned FIR is an abuse of process of law as same is filed with mala fide intention to harass the petitioner as well as with ulterior motive to vent wrath owing to criminal action already initiated against respondent No.2. It is expedient in the interest of justice not to allow prosecution to continue against the petitioner. There was an in-built mechanism available for sanction & disbursement of the funds for implementation of the scheme in the rural area. It seems that initially the impugned FIR is filed against the office bearers of the Gram Panchayat and technical service provider only, but, lateron, I.O. arraigned the concerned Deputy Engineer and Sectional Engineer of the Rural Water Supply, Sub Division, Beed as accused in this case. But, we find that the petitioner cannot be made scapegoat for the allegation of misappropriation of funds after a colossal period since year 2008. The penal action initiated against the petitioner appears to be unsustainable and misconceived one. Therefore, the impugned FIR deserves to be quashed and set aside to the extent of petitioner in this case. In case, higher authority of the Government found that there was some mischief played pertaining to public fund or infirmity in the quality of the work, and the petitioner is responsible for the same, the civil action for recovery of the amount, if any, could have been undertaken against the delinquent petitioner. At this juncture, the circumstances on record demonstrates that impugned penal action is not sustainable and maintainable against the petitioner within the purview of law. Hence, we find no impediment to allow the petition and quash and set aside the impugned FIR to the extent of petitioner - Smt. Sukamal Dhondiram Sakhare. We make it clear that the observations made hereinabove, are prima-facie in nature and considered only to the extent of role of the petitioner in this crime and confined to the present petitioner only. Needless to state that

the other co-accused in this crime are not entitled to derive any sort of benefit from the observations made hereinabove.

18. For the aforesaid reasons, writ petition stands allowed. Rule is made absolute in terms of prayer clause (B). The impugned FIR is quashed and set aside. Writ petition stands disposed of accordingly.

Learned counsel for the petitioners have further relied upon **2015(23) RCR (Criminal) 230, Dayanand Kumar vs. State of Jharkhand**, wherein the Hon'ble Jharkhand High Court, has held as under:

4. Heard. Perused the annexures of the F.I.R. It is evident that the co-accused Pradeep Kumar Mehta, Panchayat Sevak, had filed the application addressed to the Block Development Officer for sanctioning an advance of Rs.2,00,000/- on the said application there is endorsement by this petitioner whereby he forwarded the application for needful action to the Block Development Officer, who sanctioned the advance of Rs.2,00,000/-. On perusal of the F.I.R, it is amply clear that the entire allegation is against the Panchayat Sevak, i.e., co-accused Pradeep Kumar Mehta and one Junior Engineer, Ashok Kumar, who was entrusted to supervise that the work was to be executed by the Panchayat Sevak in accordance to the lay-out prepared by him. There is no allegation that the money was entrusted to the petitioner or he had dominion over the said amount. That in the case of C. K. Jaffer Sharief (Supra) cited by the learned counsel for the petitioner it has been held that to make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively.

5. Apparently from the materials on record the

complicity or even strong suspicion regarding the complicity of petitioner in the alleged crime is not made out. As noticed there was no entrustment of money to the petitioner neither was he the sanctioning authority. The trial court has not discussed any material available on record neither assigned any reason for recording its satisfaction that the ingredients for framing charge under Section 409 I.P.C read with Section 34 I.P.C is made out against the petitioner. On the contrary the papers attached with the F.I.R and the application has not been controverted by the learned A.P.P. It is abundantly clear that there is no material on record to reasonably connect the petitioner with the crime. Thus in the facts and facts and circumstances, the petitioner is discharged for the offence under Section 409 read with Section 34 of the Indian Penal Code. The impugned order dated 17.03.2015 is hereby,quashed so far the petitioner, Dayanad Kumar, is concerned.

Learned counsel for the petitioners has further relied upon a Division Bench judgment of this Court in **1997(3) RCR (Civil) 236, Anguri Devi vs. State of Haryana**, wherein, while upholding the vires of Section 175 of the Act, it is held as under:

14. In order to appreciate the controversy between the parties, it would be useful to refer to the relevant provisions of the Act, which are reproduced below :--

xx xx xx

"Section 175. Disqualifications.-- (1) No person shall be a Sarpanch, Up-Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who-

xx xx xx xx xx xx

(i) fails to pay arrears of any kind due by him to the Gram Panchayat, Panchayat Samiti or Zila Parishad or any Gram

Panchayat, Panchayat Samiti or Zila Parishad subordinate thereto or any sum recoverable from him in accordance with the Chapters and provisions of this Act, within three months after a special notice in accordance with the rules made in this behalf has been served upon him;

xx xx xx xx xx

16. Section 175(1)(i) provides that no person shall be a Sarpanch or continue as such who fails to pay "arrears of any kind due" by him to the Gram Panchayat or fails to pay "any sum recoverable from him in accordance with the Chapters and Provisions of this Act "which three months after a special notice in accordance with the rules made in this behalf has been served upon him. Legislature has used two expressions; "arrears of any kind due" or "any sum recoverable from him in accordance with the Chapters and provisions of this Act". "Arrears" or the "sum recoverable" has not been defined in the Act. Rules on this aspect have not been framed. "Arrears of any kind due" would mean any money which he owes to the Panchayat in his capacity as a member of the Gram Sabha. Arrears may be of tax, fee or any penalty for not depositing the tax or fee or any other amount due under Sections. 27 and 40 of the Act whereas "any sum recoverable from him in accordance with the Chapters and Provisions of this Act" would mean the sum which is payable by him under Sections 53 and 54 of the Act for causing loss, waste or mis-application of Gram Fund or property belonging to that Gram Panchayat if such loss, waste or misapplication is a consequence of his neglect or misconduct while working as Sarpanch, Up-Sarpanch or a Panch, as the case may be. The amount due can be determined by issuing notice, providing due opportunity and holding of an inquiry.

17. Under Section 53(5) of the Act no person can be called upon to explain requiring him to make good any loss, after the expiry of six years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his

ceasing to be a Sarpanch, Up-Sarpanch or Panch as the case may be, whichever is earlier. Admittedly, no inquiry against Jagpal Singh Ex-Sarpanch, had been held. "Arrears of any kind due" or "any sum recoverable from him" had not been determined in accordance with the Chapters and [Provisions of the Act](#). Rules in this regard have not been framed so far. As the amount due from Jagpal Singh had not been determined in accordance with the Chapters and [Provisions of the Act](#), he could not be called upon to deposit the amount on the basis of an audit objection. In any case, he could not incur disqualification under Clause (i) to [Section 175\(1\)](#) of the Act until and unless the arrears or the sum recoverable had been determined in accordance with the Chapters and [Provisions of the Act](#). Jagpal Singh, therefore, had not incurred the disqualification provided under Clause (i) of [Section 175\(1\)](#) of the Act.

18. Under Clause (5) of [Section 53](#) of the Act, no person could be called upon to explain why he should not be required to make good any loss, after the expiry of six years from the occurrence of the loss, waste or mis-application or after the expiry of two years from his ceasing to be the Sarpanch. Jagpal Singh remained Sarpanch during the plan year 1985-86. Audit objection pertained to the said period. He could be called upon to make good the loss in case the notice had been issued to him within six years of the occurrence of the loss or within two years from his ceasing to be the Sarpanch, whichever is earlier. Notice issued to Jagpal Singh in September/October, 1994, would be beyond the period of six years front the causing of the loss, if any or after the expiry of two years from his ceasing to be the Sarpanch. Therefore, on this court as well, petitioner must succeed. Although, respondents have alleged that earlier also notices had been issued to Jagpal Singh on the basis of the audit objection to which there was no response from him, they have failed to place any such notice on the record. As

the said notices have not been placed on the record, their nature, contents and liability of Jagpal Singh cannot be determined. It is held that the notice issued to Jagpal Singh was beyond the period of six years from the causing of the loss, if any, or after the expiry of two years from his ceasing to be the Sarpanch and, therefore, the same was not valid and any action taken on the basis of that notice is bad.

It is, thus, submitted on behalf of the petitioners that no offence against the petitioners is made out as they were not entrusted with any property of the Gram Panchayat and even against the Sarpanch no offence is made out as in pursuance to the provisions of Section 53 of the Act, he has deposited the amount and therefore, even he was entitled to protection under Section 204 of the Act.

In reply, learned State counsel, on instructions from the Investigating Officer and on the basis of the affidavit dated 12.01.2017, filed by Assistant Commissioner of Police (Sohna) Gurgaon, filed in CRM-M-37480-2016, has stated that after the challan was presented against accused Ajay Raghav, charges were framed and the case was fixed for prosecution evidence. It is further stated that subsequently, Inspector Ramesh Chand, Crime Branch, Gurgaon, conducted further investigation on the directions of the higher officials and came to a conclusion that the Gram Sachivs posted with Gram Panchayat from 2005 to 2010 have made entries in the record of Panchayat and cheques have been issued in favour of the members of Panchayat and concerned firm with regard to the development work. Since the Panches have also signed the cheques so they have also committed the offence under Section 409 IPC. **However, it is submitted in**

this affidavit that no recovery was to be effected from the petitioners as the amount has already been deposited by Ex-Sarpanch Ajay Raghav in favour of Gram Panchayat Bhondsi. Therefore, without arresting the petitioners, supplementary challan was presented.

In the subsequent affidavit dated 06.10.2018, filed in CRM-M-33778-2015, it was admitted that the investigation was transferred under the orders of Director General of Police, State Crime, dated 12.03.2015 to carry out further investigation. Inspector Ramesh Chand (since retired) conducted the further investigation. However, he had not obtained any prior permission from the Illaqa Magistrate under Section 173(8) Cr.P.C and ASI Rajender Singh by name was appointed as the investigating officer.

Learned counsel for the respondent-State has relied upon **2008 (2) RCR (Criminal) 584, Sona Devi vs. State of Haryana** of this Court, wherein it has been held as under:

4. *Arguments heard. Record perused.*
5. *The main contentions, over which, the petitioner banks upon, for quashing the, FIR, are that the provisions of Sections 53 and 204 are applicable in the instant case, therefore, no prosecution against the petitioner could be launched, but only recovery could be effected from him by having recourse to the other provisions of law.*
6. *It is not in dispute that the petitioner was a Sarpanch, during the period the defalcations took place and the acts regarding embezzlement occurred. It is also not in dispute that Block Development and Panchayat Officer, vide his letter, pointed out the embezzlement to the Deputy Commissioner and the Deputy Commissioner approved the registration of the case, against the petitioner, after giving notice and getting explanation of the petitioner regarding embezzlement. Admittedly, a notice was issued to the*

petitioner on 17.05.2006. There is no evidence on the record to establish if the petitioner submitted explanation to the notice or deposited the said amount, allegedly, misappropriated by her. Now, it would be appropriate to reproduce Section 53 of the Act which reads as under:

xxx xxx xx xxx xxx(reproduced above)

7. Section deals with the loss caused by any Panch or Sarpanch on account of misapplication of Gram Panchayat fund or property belonging to the Gram Panchayat caused on account of neglect or misconduct but the Section can not be applied to the cases, where the Panch or Sarpanch of the Gram Panchayat with an intention to cause benefit to himself or cause loss to the Gram Panchayat misappropriates funds belonging to Gram Panchayat. Sum on account of the loss, waste or misapplication in consequence of his neglect or misconduct of the member or Sarpanch of the Panchayat, could be recovered, as per provisions mentioned in the Act but in any case this provision does not, in any way, create a hurdle in the business of the State to fasten criminal liability upon him for misappropriating the funds. The present act of the petitioner can not be termed as a loss, waste or misconduct. The neglect and misconduct are not para-materia with the words intentionally and fraudulently used in [the Indian Penal Code](#). The words neglect or misconduct, referred in this provision of the Act could be the neglect short of any intention done in the ordinary course of his duties. The word misconduct is a relative term and has to be construed with reference to the subject matter and the context wherein the term occurs having regard to the scope of the Act or Statute which is being construed. Misconduct literally means wrong conduct or improper conduct. The word misconduct as it figures in the aforesaid sections, is also found in 237(b)(ii) of the [Companies Act, Section 237\(b\)\(ii\)](#) of the Companies Act, reads as under:

237 Investigations of company's affairs in other cases:

(a)... ..

(b)... ..

(ii) that persons concerned in the formation of the Company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or....

While interpreting the aforesaid Section the Apex Court in case Barium Chemicals Ltd. and Anr. v. Company Law Board and Ors., AIR 1967 Supreme Court 295 observed as under:

“...the terms defraud and fraudulent purpose connote actual dishonesty involving, according to current notions of fair trading amongst commercial men, real moral blame. However, much the Court may disapprove of a person conduct it must consider whether he has been guilt of dishonesty. Misfeasance results from an act or conduct in the nature of a breach of trust or an act resulting in loss to the company. Misconduct of promoters or directors as understood in the Companies Act means not misconduct or every kind but such as has produced pecuniary loss to the company by misapplication of its assets or other act.

8. The word misappropriation literally means a wrong or incorrect application and there can be a perfectly innocent application (Companies Act 1956 Section 543).

9. In any case, Section 53 of the Act defines only a procedure for effecting the recovery of the amount of loss caused by the Panch or Sarpanch, but it does not put an embargo on the State to initiate criminal action in case of misappropriation of the Panchayat fund. The object of the Section 53 appears to be to provide the members of Gram Panchayat an opportunity to make good the loss and in case of failure to do so then it could not be treated as a

hurdle for fastening criminal liability upon him/her. It is also well settled that both the criminal and civil liabilities could run parallel. Thus, I would not hasten to hold that [Section 53](#) of the Act is not attracted in the case of misappropriation of the funds by any Member or Sarpanch of the Gram Panchayat.

10. Now coming to [Section 204](#) of the Act, which is reproduced as under:

No suit or other legal proceedings in a civil or criminal Court shall lie against any Panch, Up-Sarpanch, Sarpanch, Member, Chairman, Vice-Chairman, President and Vice-President, as the case may be in respect of any act done in good faith under this Act.

No Civil suit or proceedings shall lie against any Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be, in respect of any act done in the discharge of any of its functions and duties imposed under this Act.

On bare reading of the aforesaid provision, it could be observed that legal action has been barred in respect of any Act, done in good faith under this Act. The act of embezzlement can not, in any way, be termed as an "act done in good faith or the act done under this Act", as such, it would be suffice to say that no bar has been created by [Section 204](#) of the Act, for registration of the case, against the petitioner, who intentionally and fraudulently, in order to cause benefit to herself by causing loss to the Government, embezzled an amount of Rs. 2,19,958/-.

11. Lastly, it may be observed that while sitting to quash the criminal proceedings, initiated by the State, the Court can invoke the provisions only in rare cases, where, from the very facts on the face of it, no case for prosecution is made out. The present case also does not fall within the said parameters as laid down by the Apex Court in judgment delivered [State of Haryana and others v. Chaudhary Bhajan Lal and others](#) 1991 (1) R.C.R. (Crl.)

383 (S.C.).

Consequently, I do not find any merit in the petition and the same is hereby dismissed.

Petition dismissed.”

It is thus submitted that the petitions may be dismissed.

After hearing learned counsel for the parties, I find merit in all these petitions for the following reasons:

(i) At the very outset, it is worth noticing that the facts of the present case are distinguishable from *Sona Devi's case(supra)* relied upon by the learned State counsel. In the said case, the Sarpanch, who was given a notice by the BDPO to deposit some amount regarding misappropriation of the Panchayat fund, failed to do so, and, therefore, the FIR was registered. It was held by this Court that it was a case of misappropriation and despite giving notice, the concerned Sarpanch has neither replied to the notice nor deposited the said amount, therefore, the amount was misappropriated and thus the protection under Section 204 of the Act cannot be granted, as it cannot be termed that the act done was in good faith. It was also held that as per the provisions of Section 53 of the Act, since the amount recoverable from the said Sarpanch was on account of the intentional fraud, therefore, there was no ground to quash the FIR.

Further, in *Sona Devi's case (supra)*, the definition of 'misconduct' is taken with reference to fraud and misfeasance as per Section 237 of the Companies Act, whereas, in the Act, it is defined with reference to loss, waste and misapplication.

It is worth noticing here that the Haryana Panchayati Raj Act 1994, was enacted after the amendment in Article 243 of the Constitution of India, in which certain provisions relating to Panchayats have been

incorporated. Article 243-F reads as under:

243F. Disqualifications for membership.-(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat-

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Thus, while dealing with disqualifications, emphasis is laid on the decision of such authority and in such manner as legislature of a State may, by law provide.

Even in the Punjab Panchayati Raj Act, 1994 (for short, the Punjab Act), similar provisions are provided and Section 53 and Section 204 of the Act, are similar with the provisions of Section 216 and 218 of the Punjab Act.

Even Hon'ble the Supreme Court in the case [*Barium Chemicals Ltd. and Anr. v. Company Law Board and Ors.*](#) relied upon in Sona Devi's case (supra) has held that misconduct does not mean misconduct of every kind and literally means wrong or incorrect application which can be innocent application. Hence, the interpretation of 'misconduct' committed by

a Sarpanch or a Panch is to be seen strictly as per provisions of the Act.

In *Sona Devi's case (supra)*, this Court has also not considered the relevant provisions of Section 175(1)(i) of the Act, as interpreted by Division Bench of this Court in *Anguri Devi's case(supra)* providing disqualification of the Sarpanch, wherein it is provided that if a Panch or Sarpanch fails to pay any sum recoverable in accordance with the Chapters and Provisions of the Act, which includes an order under Section 53 of the Act, within a period of three months of assessment of loss, after a special notice of recovery in accordance with the rules, is served upon him, he can be disqualified.

Therefore, a conjoint reading of Section 53, 175(1)(i) and Section 204 of the Act show that a Sarpanch is entitled to protection against civil and criminal liability in respect of an act done in good faith under the Act if:

- (a) By way of an order of assessment in writing, passed by the competent authority under Section 53(2) or by the Appellate Authority under Section 53(4) of the Act, holding that the concerned Panch or Sarpanch is liable to pay the assessed amount due on account of loss, waste or misapplication of Gram Fund after affording an adequate opportunity of hearing and thereafter steps for recovery are taken and;
- (b) The Sarpanch or Panch, in pursuance to the recovery notice has deposited the amount due.
- (c) The competent/ Appellate Authority has passed an order under Section 53 of the Act holding that the liability so assessed is a consequence of his neglect causing loss, waste or misapplication of Gram Fund which may not amount to misconduct and may be termed as misapplication of

Gram Fund as per Section 52(3) of the Act as every such act may not amount to misconduct.

(d) As per Section 175(1)(i) if a Sarpanch or a Panch fails to pay any sum recoverable from him in accordance with Chapter and Provisions of the Act [including an order under Section 53 of the Act as per Anguri Devi's case (supra)], within a period of three months, after a special notice in accordance with law is served upon him and if the amount is paid, there cannot be a disqualification. Therefore, in the light of the same, if a Sarpanch/Panch deposits the amount in pursuance to the special notice, it cannot be termed as a misconduct unless it is so held specifically by the competent/Appellate Authority.

(f) On both counts (b) and (d), giving of a notice for recovery is mandatory and it is only after the service of the notice if the amount due is not deposited within a stipulated time given in notice, it would be termed as misconduct as per Section 204 of the Act for which an FIR may also be registered.

However, in the instant case, a bare perusal of the FIR, which is registered on the complaint of BDPO, shows that the police was directed to recover the amount for the irregularities and not for illegality or misconduct committed by Ajay Raghav Sarpanch.

(ii) A perusal of the FIR further shows that no allegations were levelled against any of the present petitioners and it is only stated that it has come in the report of Additional Deputy Commissioner, Gurgaon, dated 14.11.2014 that the Sarpanch has committed irregularities and a sum of Rs.41.51 lakhs is recoverable from him. Therefore, it is the own case of the prosecution that on account of committing irregularities the recovery was

ordered as per the provisions of Section 53 of the Act and while giving notice, the police was requested to recover the amount. Therefore, in the absence of any allegation of illegality, misappropriation or mis-utilisation of the Gram Panchayat fund, it cannot be held that the same was recoverable from the Sarpanch, on account of a misconduct, while working as Sarpanch, under Section 53(1) of the Act.

(iii) Undisputedly, against the notice, the Sarpanch has filed a statutory appeal and therefore the impugned FIR which was registered in a haste for recovering the amount from him, is not sustainable as again, it is undisputed that during the appeal, the appellate authority/Government has directed him to deposit 50% of the amount by granting him interim relief and after the final decision he has deposited the balance amount and thus had paid the total amount of Rs.41.50 lakhs as assessed in the inquiry report dated 14.11.2014. Even otherwise, there are no allegations against the petitioners who are Gram Sachivs or Junior Engineers or the Ex-Panches, and therefore, no mens rea is proved against them on record. While performing their duties they have signed the cheques/resolution of the Gram Panchayat and the amount due as found in the enquiry was against the Sarpanch alone, who has deposited the same. In view of the judgments in *Mohinder Partap's case(supra)* and *Dayanand Kumar's case (supra)*, in the absence of any evidence against the petitioners, that they had any role, not being the sanctioning authorities or a person with whom any money was entrusted, the impugned FIR and the supplementary challan submitted against them are liable to be quashed.

(iv) In view of the fact that the supplementary challan was presented against the petitioners in separate proceedings initiated by the

Crime Branch, without obtaining prior permission of the Court and without collecting any fresh evidence against them to show their involvement or any entrustment to commit offence under Section 409 IPC, their prosecution otherwise is not maintainable.

(v) That even as per the office order dated 18.06.2018, the complainant BDPO had given a report that petitioner Naresh Kumar and Vinod Kumar the two Gram Sachivs, who are the signatories to the cheque with co-accused Ajay Raghav, Ex-Sarpanch are exonerated and the departmental proceedings against them were dropped, prosecution of the petitioners is not justified.

(vi) Moreover, as it has been held in *Sau.Sukamal Dhondiram Sakhare's case (supra)* that in such circumstances, if there is an irregularity, it is a liability for civil action for recovery of the amount and it already stands recovered from the Sarpanch.

(vii) On the face of it, no offence is made out from the perusal of the FIR and the supplementary report under Section 173 (8) Cr.P.C. against the petitioners, in view of the judgment of Hon'ble Supreme Court in ***State of Haryana and others vs. Ch.Bhajan Lal and others, 1991(1) RCR (Criminal) 383***, wherein it has been held as under:

107. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following*

categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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 F.I.R. 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 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 Section 155(2) of the Code.

5. 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.

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.

Therefore, present petitions are allowed. The impugned FIR No.38 dated 17.03.2012, under Section 409 IPC, registered at Police Station Bhondsi, District Gurgaon as well as the supplementary report filed under Section 173 (8) Cr.P.C. against the petitioners(in CRM-M-33778-2015, CRM-M-33063, 37480 and 37905- 2016) are quashed, qua the petitioners.

**(ARVIND SINGH SANGWAN)
JUDGE**

19.11.2018
neenu

Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No