

AFR

HIGH COURT of CHHATTISGARH, BILASPUR

WPCR No. 461 of 2018

Brajbhushan Yadav S/o Ghanshyam Yadav Aged About 31 Years R/o Abhishek Vihar, Phase-2, Mangla, Quarter No. 30 Police Station Civil Line, Tahsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, Mantralaya, Mahanadi Bhawan, New Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Station House Officer Police Station Civil Line, Bilaspur, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
3. SC/ST Police Station Through Station House Office, Police Station Civil Linen, Bilaspur, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Smt. Shinki Meshram W/o Brijbhushan Yadav Aged About 30 Years D/o Ram Lal Meshram, R/o Magarapara Chowk, Sukhchain Badi, Bilaspur, Police Station Civil Line, Tahsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Rahul Agrawal, Advocate
For State/Res.No. 1 to 3	:	Shri Vinod Tekam, Panel Lawyer
For Respondent No.4	:	Shri Devesh G. Kela, Advocate

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

Order

11/11/2021

1. By this petition, petitioner is seeking for quashment of the criminal

proceedings of Complaint Case No.51 of 2016 pending before the Special Judge (Atrocities), Bilaspur and sought for following reliefs:-

“A . A writ and/or an order in the nature of writ of appropriate nature do issue calling the entire records pertaining to the case from the respondent No.3 police.

B. A writ and/or an order in the nature of writ of appropriate nature do issue to quash the criminal proceedings and Complaint Case No.51 of 2016 order dated 30.11.2016 pending before Special Judge SC/ST or may direct to tag the all the proceedings and to be heard simultaneously.

C .Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of case.”

2. Facts of the case are that petitioner and respondent No.4 got married and started living as husband and wife. Some dispute arose between the petitioner and respondent No.4 on the issue of extramarital relationship of the petitioner with one another woman named in the complaint. It is alleged that when said extramarital relationship was objected by respondent No.4/complainant, petitioner abused and also threatened her. On 3.8.2016, respondent No.4/complainant was abused in filthy language and also by her caste and threatened her. She made report to the Inspector General of Police and other police officials. Thereafter, respondent No.4 filed a complaint case under Section 200 of

Cr.P.C. for commission of offence under Sections 497, 294, 506-B IPC, Section 3 (1) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "*the Act of 1989*") before Special Judge (Atrocities), Bilaspur. Upon receiving the complaint, Special Judge proceeded with the complaint and recorded preliminary statement of the complainant as well as her witnesses, registered complaint on 3.4.2017 and issued process for appearance of the petitioner and another non-applicant therein.

3. Shri Rahul Agrawal, learned counsel for the petitioner would submit that the complainant could not have filed the complaint case under Section 200 of Cr.P.C. directly before the Special Judge. Special Court cannot take cognizance of the offence directly. If any offence is committed against the complainant then it is to be filed primarily before the jurisdictional Magistrate. Special Court could have taken cognizance only upon committal of the case by Magistrate. In case at hand, respondent No.4 filed complaint case/application directly before Special Court. Hence the entire criminal proceedings pending against the petitioner in Special Case No.51 of 2016 in the Court of Special Judge, SC/ST (PA) Act, 1989, Bilaspur is liable to be quashed. It is further pointed out that before lodging complaint, respondent No.4/complainant has lodged report with the police, and the police upon inquiry found that no offence is made out. Hence, it is prima facie apparent that respondent No.4 is misusing process of law. Caste certificate submitted by respondent No.4 is not genuine. She does

not belong to either SC or ST category. Hence also, the complaint is not maintainable before the Special Judge (Atrocities). Allegation levelled against the petitioner are not specific. In this case, the allegation is that when complainant went to house of non-applicant No.2 where complainant was abused in filthy language, and also by her caste, hence the offence under Atrocities Act would not be made out. Special Judge ought to have called for report from the police but without calling for the report, proceeded with the complaint and issued process which is illegal. In support of his contention, he relied upon judgment passed by Hon'ble Supreme Court in the case of **B.S. Joshi & Ors. Vs. State of Haryana & Anr.** reported in AIR 2003 SC 1386, **Swaran Singh & Ors. Vs. State through standing counsel & Anr.** reported in (2008) 8 SCC 435 and **Rattiram & Ors. Vs. State of MP through Inspector of Police** reported in AIR 2012 SC 1485.

4. Learned counsel for the State opposed the submissions made by learned counsel for the petitioner and would submit that the offence as alleged against the petitioner is under Special Act i.e. Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. For trial of the offence, Special Court is constituted under Section 14 of the Act of 1989. By way of amendment incorporated under the Act of 1989, which came into force in the year 2016, the proviso has been brought in wherein it is envisaged that the Special Court can take cognizance directly. The grounds raised by learned counsel for the petitioner with regard to

maintainability of the complaint case before the Special Judge (Atrocities) directly is not sustainable. The petitioner can raise all the grounds with regard to merits of the case before the Special Court where complaint case is pending. He will be having opportunity to controvert the allegations levelled against him including the ground that the offence as alleged against him would not be made out.

5. Shri Devesh Kela, counsel for respondent No.4- complainant would submit that in view of allegation levelled in the complaint, prima facie, the petitioner is involved in commission of offence for which the complaint case was registered. Whether the offence under Section 3 (1) (r) or 3 (1) (x) of the Act of 1989 would be made out or not is a matter of evidence which is still to be recorded before the Court below. Hence, the petition is having no substance and it is to be dismissed.
6. I have heard learned counsel for the parties and perused record of the case.
7. To appreciate submissions made by learned counsel for the petitioner, I find it appropriate to extract here relevant provision under the Act of 1989. The preamble of the Act reads thus:-

“An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for [Special Courts and Exclusive Special Courts] for the trial of such offences

and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.”

8. The offence under the Act of 1989 are to be tried by Special Court and the exclusive Special Court only. Under section 2(1) (bd) of the Act of 1989, exclusive Special Court is defined which reads as under:-

“2. Definitions.-

x x x

x x x

(bd) “Exclusive Special Court” means the Exclusive Special Court established under sub-section (1) of Section 14 exclusively to try the offences under this Act”

9. Under Section 2 (1) (d) of the Act of 1989, Special Court is defined which reads as under:

“(d) “Special Court” means a Court of Session specified as a Special Court in Section 14.”

10. Section 14 of the Act of 1989 deals with Special Court. Section 14 (1) of the Act reads as under:-

“[14. Special Court and Exclusive Special Court.--(1) For the purpose of providing for

speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

x x x

x x x

11. From perusal of the second proviso to Section 41 (1) of the Act of 1989, it is ample clear that the Courts established under Section 14 have been vested with jurisdiction to directly take cognizance of offence under this Act. This proviso is brought in by way of amendment which came into force by way of Act No.1 of 2016 in Section 14 of the Act of 1989. The Special Courts have been constituted to try the cases for commission of offence under the Atrocities Act 1989. Hence they are having original jurisdiction. Once they are having original jurisdiction, then even the complaint

case if filed by the party under Section 200 Cr.P.C. making allegations of commission of offence under Section 3 of the Act of 1989, is to be filed directly before the Special Court constituted for trying the offence under the Act of 1989. Magistrate will not have any jurisdiction to entertain the complaint filed under Section 200 of Cr.P.C. alleging commission of offence under the Act of 1989 because provisions under the Act are having overriding effect to general law. Section 20 of the Act of 1989 reads as under:-

“20. Act to override other laws- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.”

12. Full Bench of High Court of Madhya Pradesh in the case of **Anand Swaroop Tiwari Vs. Ram Ratan** reported in (1996) MPLJ 141, while dealing with the identical issue, has held thus:

“16. It is contended that if warrant case procedure is to be adopted, the case has to pass through the stage of enquiry and in a case of private complaint, there may be occasion for an enquiry under Section 202 of the Code and since the Act has empowered the Special Court to 'try' or conduct 'trial' and has not empowered the Special Court to

conduct an 'enquiry' it must follow that the Special Court can only function as a Court of Session whose jurisdiction arises only on committal. Reference is made to the definition of 'enquiry' in Section 2(1)(g) of the Code as meaning every enquiry, other than a trial, conducted under this Code by a Magistrate or Court. Our attention has been invited to a decision of Allahabad High Court and another of Patna High Court. In *R. P. Kapoor v. Pratap Singh Kairon*, AIR 1966 All. 66, the Allahabad High Court considered the scope of preliminary enquiry under Section 476 of the old Code and held that an enquiry should be made in the case of an offence under Section 195(l)(b) or (c), Indian Penal Code and thereafter a complaint should be forwarded to the competent Magistrate. In that connection, the Court observed that 'enquiry' as defined in Section 4(1)(k) of the old Code does not include trial. In *Tuneshwar Prasad Singh and Anr. v. State of Bihar*, AIR 1978 Patna 225, committal proceeding was pending in regard to an offence under Section 392, Indian Penal Code. The question arose whether Magistrate has power to remand the accused to custody between the date of taking cognizance and the date of committal. The question depended on the true interpretation of the provisions of Section 209 read with Section 309(2) of the Code. It was held that a proceeding under Section 209, i.e. committal proceeding, is in the nature of an 'enquiry' within the meaning

of Section 2(1)(g) of the Code and as such under Section 309(2), read with Section 209, the Magistrate having taken cognizance and before committal, is empowered to remand the accused. The Court observed that the definition of the term 'enquiry' does not lead one very far and the term 'enquiry' has a very wide connotation under the Code, that while trial is a judicial proceeding which ends either in conviction or acquittal, enquiry takes in investigation into facts, causes, effects and relations generally. Application of mind to ascertain what evidence is made out on the facts alleged and whether such an offence is exclusively triable by a Court of Session is an absolute necessity for the Magistrate before he can commit a case. Bringing of the judicial mind to bear upon the facts alleged and the ascertainment of the particular penal provision which is attracted and as to whether such offence is exclusively triable by a Court of Session certainly needs a scrutiny in the sense of an enquiry, though within a very narrow compass. These decisions are of no assistance to us in considering the amplitude and significance of the expression 'trial' or 'try'.

17. The Supreme Court, in *The State of Bihar v. Ram Naresh Pandey and Anr.*, AIR 1957 SC 389, had occasion to consider the meaning and significance of these words in the context of power of withdrawal of a case at committal stage under the provisions of the

old Code. The provision, similar to Section 321 of the Code, enables withdrawal from prosecution of any person either generally or in respect of anyone or more of the offences for which he is 'tried' and consequential order or discharge or acquittal being passed. After referring to the distinction sought to be drawn between the words 'trial' and 'enquiry' and the definition of the word 'enquiry' under Section 4(k) of the old Code, the Court observed as follows :

"There is hardly anything in this definition which throws light on the question whether the word 'trial' is used in the relevant section in a limited sense as excluding an inquiry. The word 'trial' is not defined in the Code. 'Trial' according to Stroud's Judicial Dictionary, means the conclusion by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal, (Stroud's Judicial Dictionary, 3rd Edition, Vol. 4, page 3092) and according to Wharton's Law Lexicon, means the hearing of a cause, civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land'. (Wharton's Law Lexicon, 14th Edition, P. 1011). The words 'tried' and 'trial' appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn, the

words 'tried' and 'trial' have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. *There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they" are used and with regard to the scheme and purpose of the provision under consideration."* (Emphasis provided)

18. We have to understand the meaning, amplitude and significance of provision used in Section 14 in the background of legislative scheme, the purpose sought to be achieved, namely 'speedy trial' of categories of offences against the most depressed and oppressed class of citizens. The provisions regarding committal proceeding under the old Code were found to be conducive to delay in disposal of cases leading to injustice all round and were drastically altered in enacting the present Code. The elaborate enquiry contemplated in the old Code had to be replaced by an enquiry of a very limited scope with a view to expedition. Even such enquiry of limited scope can contribute to delay as we find from our experience over the years after

the enactment of the present Code. Even in this State, there are thousands of cases pending committal for long periods. In these circumstances, it is clear that these words used in Section 14 of the Act should be understood in a wide sense as to include all stages of investigation and application of judicial mind, whether technically regarded as 'enquiry' or 'trial'. The full amplitude of expression 'to try' has been explored by various authoritative dictionaries, according to which the expression means 'examine judicially to examine and investigate a controversy by legal method', 'to submit someone to judicial enquiry', 'to submit a case to judicial examination.' According to Black's Dictionary 'trial' means a judicial examination in accordance with the law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or facts, before a Court that has jurisdiction over it. Understood in this sense, the words must necessarily be comprehended within its scope, all stages, including taking cognizance, enquiry in the technical sense and trial in the technical sense. We are quite conscious that a contrary view is not impossible; but bearing in mind the legislative scheme and purpose, we are of the opinion that the interpretation that we seek to give accords with the legislative intention. Looking at the matter even pragmatically, we are satisfied that a view or understanding which dispenses with

the cumbersome and delay-prone committal proceedings accords with public interest as well as the interest of those who may be arraigned before a Special Court.

20. In the result, we hold as follows :

(a) Special Courts under the Act are not to function as Sessions Court, but as Courts 'of original jurisdiction'.

(b) Proceedings of Special Court are governed by Section 190, Chapters XV, XVI (other than Section 209) as also Chapters XIX and XX as the case may be and such other provisions of the Code as are not inconsistent with the scheme and provisions of the Act, reading "Special Courts" wherever the expression "Magistrate" occurs.

(c) Section 193 of the Code of Criminal Procedure does not apply to proceedings under the Act and committal orders are not required.

(d) Special Court can take cognizance on private complaints after following the procedure provided in the Code in relation to private complaints.

(e) Where cognizance has already been taken on the basis of committal orders in Police challan cases, it is not necessary for the Courts to retrace their steps or to take cognizance afresh.

(f) Where cognizance has already been taken on the basis of committal orders in private

complaint cases, the Special Courts may deal with the cases as if they are dealing with private complaints under Section 200 of the Code.

13. The aforementioned judgment was passed by Full Bench of Madhya Pradesh High Court considering the unamended provision of Section 14 of the Act of 1989 relying upon the judgments passed by Hon'ble Supreme Court holding that the Special Court under the Act of 1989 functions as **“Court of Original Jurisdiction”** and further clarified the proceedings of Special Court in para 20 (b) of the above judgment (*Anand Swarop Tiwari*).
14. The Law Makers thereafter amended provision of Section 14 of the Act of 1989, by inserting proviso, made it ample clear that Special Courts under the Act of 1989 shall have power to take cognizance directly of the offences under the Act of 1989.
15. In view of foregoing discussions, submission made by learned counsel for the petitioner that the Special Court ought not to have taken cognizance of the criminal case directly without there being any committal proceedings initiated by the Magistrate, is not sustainable and it is hereby repelled. Submission made by learned counsel for the petitioner that when once police came to the conclusion, that no case is made out, the complaint case cannot be permitted to continue is also not sustainable. Both, the police as well as the Courts exercise different jurisdiction and if for any

reason the police, after inquiry/investigation comes to the conclusion that no case is made out then also the concerned Court having jurisdiction to consider the final report can very well differ from the view of the police, may direct for further investigation or can decline to accept the report.

16. Facts of case in hand would show that respondent No.4 lodged report to the police making allegation of abusing her by caste also. The Additional Superintendent of Police submitted enquiry report (Annexure P-3) to Superintendent of Police, Bilaspur stating that no independent witness of abusing the complainant by caste was found, dispute is between husband and wife (at page 31 of the petition). In enquiry report dated 2.4.2017 also the SHO PS (AJAK) Bilaspur did not found commission of offence under the Act of 1989 (at page 30 of the petition). The above two documents would show that report was lodged for commission of cognizable offence but the police has not registered the FIR and investigated the complaint, not submitted final report before the jurisdictional Court.
17. Chapter XIV of the Code of Criminal Procedure talks of “Conditions Requisite for Initiation of Proceedings”. Section 190 envisages cognizance of offences by Magistrate which reads as under “-

“190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this

behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.

18. As discussed in preceding paragraph that on the report of respondent No.4, police did not register first information report and hence there was no proceeding under Section 173 of Cr.P.C. In these peculiar facts of the case, the remedy available to respondent No.4 is to knock the door of Court under Section 190 of Cr.P.C. and for the purpose of the case in hand where there are allegation of commission of offence under the Act of 1989 is reported/pleaded, the Special Court being Court of original jurisdiction (Special Court) is having jurisdiction to exercise the

powers under Section 190 of Cr.P.C.

19. From perusal of the provision of Section 190 of Cr.P.C. would show that the victim has not been left remedy less when police does not take cognizance of the complaint lodged by him, register FIR and investigate into the matter. Under Section 190 (1) (a) of Cr.P.C., Magistrate is empowered to take cognizance of any offence upon receiving a complaint of facts which constitutes an offence while drawing proceedings under Sections 200 to 204 of Cr.P.C. Similar issue came up for consideration before Hon'ble Supreme Court in the case of **H.S. Bains Vs. The State (Union Territory of Chandigarh)** reported in AIR 1980 SC 1883 wherein complaint was filed before the jurisdictional Magistrate upon which learned Magistrate ordered for investigation to police under Section 156 (3) of Cr.P.C. Police submitted report under Section 173 of Cr.P.C. that allegations levelled against the accused persons are not correct and the proceedings may be dropped. Learned Magistrate after perusing the report submitted by police after investigation, disagreed with the conclusion arrived at by police and took cognizance of the case. It was held thus:-

“7.....We find it impossible to say that a Magistrate who takes cognizance of an offence on the basis of the facts disclosed in a police report must be said to have taken cognizance of the offence on suspicion and not upon a police

report merely because the Magistrate and the Police arrived at different conclusions from the facts. The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. If a complainant states the relevant facts in his complaint and alleges that the accused is guilty of an offence under Sec. 307 Indian Penal Code the Magistrate is not bound by the conclusion of the complainant. He may think that the facts disclose an offence under Sec. 324 Indian Penal Code only and he may take cognizance of an offence under Sec. 324 instead of Sec. 307.”.....

8.It was contended that the Magistrate acted without jurisdiction in taking cognizance of the case as if upon a complaint when the police had submitted a report that no case had been made out against the accused. This Court held that the Magistrate acted within his powers and observed that the complaint did not get exhausted as soon as the Magistrate ordered an investigation under Sec. 156(3). We are, therefore unable to agree with the submission of Shri Sibal that the Magistrate acted without jurisdiction in

taking cognizance of the offence and issuing process to the accused notwithstanding the fact that the police report was to the effect that no case had been made out.”

20. Hon'ble Supreme Court in case of **Gangadhar Janardan Mhatre Vs. State of Maharashtra & Ors.** reported in (2004) 7 SCC 768, while considering the maintainability of the writ petition when police has not taken any action even after reporting cognizable offence, has held that in such case complainant is having the remedy to file complaint before the Magistrate under Section 190 read with Section 200 of Cr.P.C. and held thus:-

“13. When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into

offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Reg.) through its President v. Union of India* and Others, [1997] Supreme Court Cases (Crl.) 303.".....

21. In view of the above discussions, submissions of learned counsel for the petitioner that the complaint case under Section 200 Cr.P.C. to be not maintainable as police did not find commission of offence under the Act of 1989 on enquiry, is not sustainable.
22. Observations made in case of *Subhash Kashinath Mahajan Vs. State of Maharashtra* reported in (2018) 6 SCC 454 that the cases under the Act of 1989 could be registered only after preliminary enquiry into the complaint was overruled in case of **Prathvi Raj Chauhan Vs. Union of India & Ors.** (2020) 4 SCC 727. Hon'ble Supreme Court has

also taken note of the fact that the Legislature has amended provision of Section 18 of the Act of 1989 and brought in Section 18-A with effect from 20th August 2018 wherein it is envisaged that no enquiry or approval required for registration of first information report. It is not the case of the petitioner that based on the complaint lodged by respondent No.4 first information report was registered and thereafter the police arrived at conclusion that no offence is made out and submitted final report before the Court of competent jurisdiction but the documents placed on record only show that the report is on a preliminary enquiry. In view of specific provision of Section 18-A of the Act of 1989, the dictum of Hon'ble Supreme Court in case of **Prathvi Raj Chauhan** (supra), submission of learned counsel for the petitioner that once the enquiry is conducted and found, no offence is made out, complaint application could not be registered for adjudication, is not sustainable and it is hereby repelled.

23. For registration of complaint, the Court competent is to only consider whether there is any sufficient ground for proceeding with the complaint is made out or not and not whether there is sufficient ground for conviction. The Special Court after recording the preliminary evidence of the complainant and witnesses as also considering the contents of the complaint has issued processes.
24. For quashment of criminal complaint case, FIR or criminal proceeding, party seeking such relief has to make out exceptional reasons as held by Hon'ble Supreme Court in case of **State of Haryana vs. Bhajanlal** reported in (1992) Suppl. (1) SCC 335 and recently in

the case of **Amish Devgan vs. Union of India** reported in (2021) 1 SCC 1.

25. The law with regard to quashment of FIR is well settled by Hon'ble Supreme Court in case of **Bhajanlal** (supra), whereby the Supreme Court has categorized some of the cases wherein inherent jurisdiction under Section 482 of CrPC can be exercised to prevent abuse of process of Court or to secure ends of justice, which reads as under:-

“102. 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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

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

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

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

the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, 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."

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

26. Recently in case of **Amish Devgan** (supra), Hon'ble Supreme Court has held that quashing of FIR can only be in exceptional circumstances and some of the exceptional circumstances are held to

be where manifestly there is some legal bar against institution or continuation of prosecution; where allegations made even if taken at face value do not constitute any offence; allegations made do not constitute cognizable offence and allegations made are so absurd and improbable that any prudent person can ever reach to a conclusion that there is sufficient ground for proceeding against accused.

27. In view of above discussion, petitioner could not able to make out a case for granting any relief as prayed for in this petition. The petition is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge