

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 1055 of 2019

Order Reserved on : 28.07.2021

Order Delivered on : 07.09.2021

1. Pradeep Kumar Arya, S/o N.R. Arya, Aged About 38 Years, R/o Indrasen Nagar, 27 Kholi, Thana- Civil Lines, Bilaspur (C.G.)
2. Ekta Sahu, D/o Late Girja Shanker Sahu, W/o Pradeep Kumar Arya, Aged About 36 Years, R/o Gole Bazar, Near Mansarover, P.S. Kotwali, District- Bilaspur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Home Department, Mantralaya, Naya Raipur, District- Raipur (C.G.)
2. Station House Officer, through-In-Charge, Police Station- Mahila Thana Bilaspur, District- Bilaspur (C.G.)
3. Complainant/ ABCD, D/o XYZ, Aged About 42 Years, Post at Town Inspector, CID Branch, Raipur, District- Raipur (C.G.)

---- Respondents

For Petitioners	:	Dr. N.K. Shukla, Sr. Advocate with Mr. Parag Kotecha, Advocate.
For State/Resp. 1 & 2	:	Mr. Devendra Pratap Singh, Dy. A.G.
For Resp. No. 3	:	Mr. Neeraj Choubey, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. The petitioners have filed this writ petition under Article 226 of the Constitution of India to quash the FIR bearing Crime No. 49/2018 registered at Mahila Thana, Bilaspur for committing offence punishable under Sections 376, 376-F, 377, 313, 114, 506-B, 323 & 34 of I.P.C. and subsequent final report and proceeding in Sessions Trial No. 101/2019 pending before Additional Sessions Judge (F.T.C.), Bilaspur (C.G.)
2. The brief facts as projected by the petitioners are that the petitioner No. 1 is working as Police Inspector in Police Department and complainant/respondent No. 3 is also

working as Sub-Inspector in Police Department. Petitioner No. 1 & respondent No. 3 were appointed as Sub-Inspector on 14.09.2011 (Annexure P/2) in Police Department. The performance of petitioner No. 1 was excellent, as such, he was given out of turn promotion and promoted as Town Inspector on 30.12.2016 (Annexure P/3). He has also received many appreciation letters from the department. Complainant/ respondent No. 3 who was also appointed as Sub-Inspector in the department, lodged a report on 07.09.2018 against the petitioner No. 1 alleging that on 15.02.2012 at about 9-10 a.m., petitioner No. 1 came and forcefully committed sexual intercourse with her. She became pregnant and it was further alleged that with the help of petitioner No. 1, abortion was also done. Petitioner No. 1 had relationship with many girls. The petitioner No. 1 has committed sexual intercourse with respondent No. 3 in presence of petitioner No. 2, as such, petitioner No. 2 has also been arrayed as accused in the case and FIR has been registered against them for committing offence punishable under Sections 376, 376-F, 377, 313, 114, 506-B, 323 & 34 of I.P.C.

3. Learned Senior counsel for the petitioners would submit that an agreement (Annexure P/7) has been executed between petitioner No. 1 & respondent No. 3 on 28.02.2015, wherein it is mentioned that Flat No. 302 situated at Second Floor of Vishwanath Apartment was purchased with the investment of equal share of amount towards purchase of the flat and with consent of both the parties, the name of petitioner No. 1 has been recorded in the records. He would further submit that the present FIR registered on pretext of marriage, petitioner No. 1 committed sexual intercourse with respondent No. 3, has no force and is false and fabricated one. Even from the bare perusal of the FIR, no offence is made out against the petitioners. He would further submit that petitioner No. 1 is two-three years younger than the complainant as petitioner

No. 1 is at present aged about 38 years and respondent No. 3 is aged about 40 years. The respondent No. 3 being very clever and smart having knowledge of legal proceedings, has filed false and fabricated FIR just to spoil service career of the petitioners. It has been further contended that serious allegations against the petitioners have been levelled, which is nothing but involving an innocent in a serious crime, which he had not committed.

4. Learned Senior counsel for the petitioners would further submit that since respondent No. 3 is major lady, therefore, it is consensual intercourse and does not come within the ambit of rape as defined under Section 375 of I.P.C. He would draw attention of this Court towards Section 375 of I.P.C. which is extracted below:-

“375. Rape.-- A man is said to commit "rape" if he-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:-

First.- Against her will.

Secondly.- Without her consent.

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he

is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.- With or without her consent, when she is under eighteen years of age.

Seventhly.- When she is unable to communicate consent.

Explanation 1.- For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.- A medical procedure or intervention shall not constitute rape.

Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

5. He would further submit that complainant/ respondent No. 3 started blackmailing petitioner No. 1 and his family members and gave threat that she will falsely implicate the present petitioners. To substantiate his submission, he would draw attention of this Court towards Rojnamcha Sanha (Annexure P/8) and would submit that as far as the allegation of the abortion is concerned, petitioner No. 1 was not present as he was on duty which is far away from the place where it has been alleged that abortion has been done. The present case is an abuse of process of law and the allegation made in the FIR are so absurd and inherently, improbable on the basis of which no prudent person can ever reach to a just conclusion

that there is sufficient ground for proceedings against the petitioners.

6. He would further submit that sister of respondent No. 3 has stated that petitioner No. 1 had sat like husband and wife at the time of pooja of their flat. He would further submit that respondent No. 3 is a mature lady, she is fully aware of the consequence of having sexual intercourse with a man before marriage. In the present case prosecution has failed to prove any material which shows that the consent obtained by the petitioner for sexual intercourse with fraud, inducement, the necessary ingredients are missing, therefore, promise to marry cannot be said to be an inducement in this type of case.
7. He would place reliance on the judgment of Hon'ble the Supreme Court in **Pramod Suryabhan Pawar Vs. State of Maharashtra** reported in (2009) 9 SCC 608, **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra**, reported in (2019) 18 SC 191, **Navtej Singh Johar Vs. Union of India**, reported in (2018) 10 SC 1, **Bhawani Shavara Vs. State of Chhattisgarh**, reported in 2012 CRLJ 4418, **Uday Vs. State of Karnataka**, reported in 2003 SCC (Cri) 775, 2014 SCC Online Bom 348, AIR 1998 SC 128, AIR 2018 SC 4321, 1998 Cr.LJ 321 & AIR Online 2020 Mad 2206.
8. Learned Senior counsel for the petitioners would submit that after registration of FIR, respondent No. 3/complainant got transferred to Mahila Thana, Bilaspur wherein the FIR has been registered against the petitioners with intention to influence the investigation. The petitioners have already been granted anticipatory bail by this Court on 19.11.2018 & 11.12.2018 respectively. He would pray that this petition may kindly be allowed and the FIR and subsequent charge-sheet, proceeding of Session Trial No. 101/2019 pending before the learned Additional Sessions Judge (F.T.C.), Bilaspur may kindly be quashed.
9. Learned counsel for State/ respondent No. 1 & 2 has filed return wherein it has been stated that no case is made out for

grant of any relief. The petitioners are unable to bring their case within the parameters for quashing of the charge-sheet as framed by Hon'ble the Supreme Court in case of **State of Haryana Vs. Choudhary Bhajan Lal & others** reported in **AIR 1992 SC 604**. The writ petition is without any substance and is liable to be dismissed.

10. Earlier the complainant was not made party in this case, therefore, she has filed intervention application on 23.06.2021 for intervening in the present case. This Court vide order dated 24.06.2021 directed the petitioners to implead the complainant as party/ respondent No. 3 and in compliance of the order passed by this Court, complainant/ prosecutrix has been impleaded as respondent No. 3 in the present case.
11. Learned counsel for respondent No. 3 filed reply on 05.07.2021 denying the allegations made in this petition. He would submit that the allegation levelled against the petitioners are very serious in nature, hence, it is prayed that the present writ petition is liable to be dismissed.
12. He would further submit that after registration of FIR, final report has been submitted in connection with Crime No. 49/2018 registered at Police Station- Mahila Thana, Bilaspur, which is registered at Sessions Trial No. 101/2019 by Additional Sessions Judge (F.T.C.), Bilaspur and the same is still pending. He would further submit that since petitioner No. 1 is holding higher and respectable post in the police department, misusing his post and position and trying to influence the investigation.
13. He would further submit that before registration of FIR, after direction of the then Inspector General/ Superintendent of Police, the Additional Superintendent of Police, Bilaspur had investigated the matter and seized the documents, audio-video evidence and after the due investigation, the sufficient material evidence has been found by him, therefore, the report has been submitted by them on 19.07.2018 before the Higher Authority and after examination of the said report dated

19.07.2018, the same was forwarded by the Superintendent of Police, Bilaspur before the concerned Thana, in which, on 07.09.2018, the offence in accordance with law has been registered by the concerned authority against the petitioners. In view of the above, the allegation alleged by the petitioners in this writ petition against respondent No. 3 is baseless and without any substance. He would further submit that the after due investigation, material evidence has been investigated, therefore, at this juncture, the FIR cannot be quashed by this Court while exercising power under Article 226 of the Constitution of India. He would further submit that this writ petition is without any substance which is liable to be dismissed by this Court.

14. Learned counsel for the petitioners as well as learned counsel for respondent No. 3 have filed their return submission reiterating the stand taken by them in the writ petition as well as in the reply.
15. Learned counsel for respondent No. 3 would submit that the offence is not consensual but it has been committed forcefully by petitioner No. 1 on 22.10.2017, as the respondent No. 3 has stated in her statement recorded on 08.09.2018. The conduct of petitioner No. 1 would prima facie establish that petitioner No. 1 was never inclined to marry with the victim. It has been further submitted that subsequent marriage of respondent No. 3 on 11.12.2018 with other person cannot dilute the offence which was committed by petitioner No. 1. He would rely upon the judgment rendered by Hon'ble the Supreme Court in **State of Orissa Vs. Thakara Besra**, reported in **(2002) 9 SCC 86**, **Krishan Kumar Malik Vs. State of Haryana**, reported in **(2011) 7 SCC 130** & **Anurag Soni Vs. State of Chhattisgarh** in **SLP (Cri.) No. 618/2019** reported in **(2019) 13 SCC 1**.
16. He would further submit that petitioner No. 1 from very beginning was not intended to marry with respondent No. 3 and on the basis of false promise of marriage, he has

committed sexual intercourse with respondent No. 3, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 of I.P.C., as such, a consent shall not excuse the accused from the charge of rape and offence under Section 375 of I.P.C. He would also rely upon the judgment passed by Hon'ble the Supreme Court in **State of Madhya Pradesh Vs. Laxmi Narayan & others**, reported in **2019 (5) SCC 688**, **Shyam Narain Vs. State (NCT of Delhi)**, reported in **(2013) 7 SCC 77**, **Shimbhu Vs. State of Haryana**, reported in **(2014) 13 SCC 318** & **State of Madhya Pradesh Vs. Madan Lal**, reported in **(2015) 7 SCC 684**.

17. I have heard learned counsel for the parties and perused the documents placed on records with utmost satisfaction.
18. The point required to be determined by this Court is whether the offence committed by petitioner No. 1 is said to have been done with the consent of respondent No. 3, who is major lady and the same does not fall within ambit of rape?
19. Learned Senior counsel would submit that it is not disputed that petitioner No. 1 & respondent No. 3 are working in the police department. Now, petitioner No. 1 is working as Inspector whereas respondent No. 3 is presently working as Sub-Inspector and they are known to each other as they have undergone training in the police department at PTS, therefore, it can be presumed that they have developed intimacy and out of intimacy, consensually intercourse has been performed by the petitioner No. 1 with the consent of respondent No. 3, therefore, it cannot be said that it is a rape. He would refer to the judgment of Hon'ble the Supreme Court in **Pramod Suryabhan Pawar** (Supra), wherein Hon'ble the Supreme Court has held as under:-

“21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the

appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 of the IPC has occurred."

20. He would also refer to judgment of Hon'ble the Supreme Court in **Dr. Dhruvaram Murlidhar Sonar** (Supra), wherein Hon'ble the Supreme Court has held as under:- Para 23, 24

"23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.

24. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas some time at his home." Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained."

21. He would also refer to judgment of Hon'ble the Supreme Court in **Navtej Singh Johar** (Supra), wherein Hon'ble the Supreme Court has held as under:-

"267. Thus analysed, Section 377 IPC, so far as it penalizes any consensual sexual activity between two adults, be it homosexuals (man and a man),

heterosexuals (man and a woman) and lesbians (woman and a woman), cannot be regarded as constitutional. However, if anyone, by which we mean both a man and a woman, engages in any kind of sexual activity with an animal, the said aspect of Section 377 IPC is constitutional and it shall remain a penal offence under Section 377 IPC. Any act of the description covered under Section 377 IPC done between the individuals without the consent of any one of them would invite penal liability under Section 377 IPC. ”

22. Learned counsel for respondent No. 3 would submit that the enquiry has been conducted by Additional Superintendent of Police (Rural), Bilaspur, who has submitted report on 19th July, 2018 wherein it has been recorded that petitioner No. 1 has committed sexual intercourse with respondent No. 3 on the pretext of marriage, which caused pregnancy to respondent No. 3 and thereafter, petitioner No. 1 has not performed marriage with respondent No. 3, therefore, it *prima facie* falls within ambit of commission of crime. The learned counsel for respondent No. 3 would submit that as per law laid down by Hon'ble the Supreme Court in **Thakara Besra (Supra)**, rape is not mere physical assault but it distracts the whole personality of the victim. He would further submit that Hon'ble the Supreme Court in **Krishan Kumar Malik (Supra)**, has held that in rape case, the statement of prosecutrix is sufficient for conviction, which is as under:-

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the Appellant guilty of the said offences.”

23. He would also refer to judgment of Hon'ble the Supreme Court in **Anurag Soni (Supra)**, wherein Hon'ble the Supreme Court has held as under:-

“19. As observed hereinabove, the consent given by the prosecutrix was on misconception of fact. Such incidents are on increase nowadays. Such offences are against the society. Rape is the most morally and physically reprehensible crime in a society, an assault on the body, mind and privacy of the victim. As observed by this Court in a catena of decisions, while a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, the rape tantamounts to a serious blow to the supreme honour of a woman, and offends both her esteem and dignity. Therefore, merely because the accused had married with another lady and/or even the prosecutrix has subsequently married, is no ground not to convict the appellant-accused for the offence punishable under Section 376 of the IPC. The appellant-accused must face the consequences of the crime committed by him.”

24. From above discussion and considering the factual and legal preposition, it is clear that respondent No. 3 in her statement recorded under Section 161 of the Cr.P.C. has deposed that petitioner No. 1 has committed sexual intercourse forcefully with her on 15.02.2012 & 22.10.2017. She has made complaint to the Director with regard to conduct of petitioner No. 1 in the year 2014 with regard to the incident took place on 5.02.2012 and subsequent conduct of petitioner No. 1. She has also stated that petitioner No. 1 forcefully compelled her for abortion and thereafter, she was taken to Kanwar Nursing Home for abortion, where petitioner No. 1 recorded her name as his wife. Due to mental and physical torture suffered by her on account of the act of petitioner No. 1, she was compelled to lodge FIR against petitioner No. 1. By this statement, she has made an attempt to explain delay in lodging FIR against petitioner No. 1 though the correctness and genuineness of

the statement can be examined by the trial Court at the of recording of evidence.

25. So far as contention of learned Senior counsel for the petitioners that subsequent marriage of respondent No. 3 can escape petitioner No. 1 from his criminal liability of committing offence punishable under Section 376-F of I.P.C. even without recording of evidence in the trial, is not acceptable. The law on this issue has already been considered by Hon'ble the Supreme Court that even subsequent marriage with prosecutrix by the accused cannot escape from his criminal liability than the subsequent marriage of respondent No. 3 cannot escape petitioner No. 1 from his criminal liability unless it is established in the trial that he has not committed any offence.
26. From material placed on record, it is quite vivid that *prima facie* the offence has been committed by petitioner No. 1, therefore, the registration of FIR cannot be said to be abuse of process of law. The judgment cited by learned senior counsel for the petitioners are distinguishable from the facts and circumstances of the present case as the complainant in her statement has categorically stated about incident which forcefully taken place though its correctness and genuineness can be examined at the time of recording of evidence. Therefore, the petitioners cannot be benefited of the judgment cited by the learned senior counsel for the petitioners.
27. Simultaneously, the correctness of statement of the prosecutrix under Section 161 of the Cr.P.C., their genuineness and correctness can be examined by the trial Court while recording of evidence. This Court while hearing the matter under Section 482 of the Cr.P.C. cannot examine the reliability or genuineness of the statement or allegations made in the FIR.
28. Hon'ble the Supreme Court in **State of A.P. Vs. Golconda Linga Swamy & another**¹, held as under:-

¹ (2004) 6 SCC 522

“10. In all these cases there was either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in *R.P. Kapoor and Bhajan Lal cases* (supra).

11. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases.

12. So far as Criminal Appeal Nos. 1183/2003, 1193-1196/2003 and Criminal Appeals arising out of SLPs(Crl.) Nos. 2191/2003, 2632/2003, 2633/2003, and 3463/2003 are concerned, we find that the FIR did not disclose commission of an offence without anything being added or subtracted from the recitals therein. Though the FIR is not intended to be an encyclopedia of the background scenario, yet even skeletal features must disclose the commission of an offence. The position is not so in these cases. Therefore, the High Court's interference does not suffer from any legal infirmity, though the reasonings indicated by the High Court do not have our approval.”

29. Hon'ble the Supreme Court in **Rajiv Thapar & others Vs. Madan Lal Kapoor**², held as under:-

“28. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/ complainant against the accused. Likewise, it is

² (2013) 3 SCC 330

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

30. Hon'ble the Supreme Court in **State of Telangana Vs. Habib Abdullah Jeelani & others**³, held as under:-

“15. We have referred to the said decisions only to stress upon the issue, how the exercise of jurisdiction by the High Court in a proceeding relating to quashment of FIR can be justified. We repeat even at the cost of repetition that the said power has to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. The surprise that was expressed almost four decades ago in *Kurukshetra University* case compels us to observe that we are also surprised by the impugned order.”

31. Hon'ble the Supreme Court in **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others**⁴, held as under, relevant paragraphs are reproduced below:-

“iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be

³ (2017) 2 SCC 779

⁴ AIR 2021 SC 1918

confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;"

32. From the perusal of the above discussions and considering the materials placed on record, I am of the view that no case is made out for interference by this Court.
33. As an upshot, the petition fails and is hereby dismissed. However, it is made clear that this Court has not expressed anything on the merits of the case. The facts have been considered for adjudication of the present writ petition. The

trial Court is directed to proceed further, in accordance with law, without there being influenced by any of the observations made by this Court while deciding this writ petition.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun