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

**Judgment reserved on: 07.05.2022**
**Date of Pronouncement: 30.05.2022**

**113 (1)**

**CRM-M-29235-2021 (O&M)**

**JATINDER PAL SINGH**

**... Petitioner**

**Versus**

**STATE OF PUNJAB**

**... Respondent**

**A N D**

**113 (2)**

**CRM-M-51883-2021 (O&M)**

**SACHIN GROVER**

**... Petitioner**

**Versus**

**STATE OF PUNJAB**

**... Respondent**

**CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.**

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Present : Mr. Damanbir Singh Sobti, Advocate
for petitioner(s).

Ms. Amarjit Kaur Khurana, DAG, Punjab.

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**VINOD S. BHARDWAJ. J.**

This common order shall dispose of two Criminal Misc. Petitions referred to above as the point in issue in both petitions is the same and both petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') for quashing of the proceedings against the petitioners in case bearing FIR No.36 dated 27.05.2020 under Sections 61-1-14 and 78(2) of the Punjab

Excise Act, 1914 and Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and Section 181 of the Motor Vehicle Act, 1988 (added later on) registered at Police Station Mukandpur, Nawanshahr (Annexure P-1).

2. Learned counsel appearing on behalf of the respective parties agree that as the dispute involved in both the petitions is identical, therefore, both these petitions can be decided by a common order. For facility of reference, the facts are noticed from CRM-M-51883 of 2021 titled 'Sachin Grover Vs. State of Punjab'.

3. As per the averments made in the petition, an FIR No.36 dated 27.05.2020 was registered on the statement of one Jarnail Singh who is an ASI at Police Station Mukandpur. It is averred in the said FIR that on 27.05.2020, when the police team was present at the bridge of the pond near Gate Talwandi Phattu for patrolling, a special messenger informed that one Ashok Kumar Saini resident of Gorakhpur, Police Station Sadar, Nawanshahr, SBS Nagar is coming to Banga from Mukandpur side in his vehicle make TATA 407 bearing No. PB-32D-8625 after loading it with a large quantity of English and country-made liquor from Jalandhar and that if the checking of the said vehicle is done, the said Ashok Kumar can be nabbed alongwith his vehicle TATA 407 duly loaded with huge quantity of liquor. Placing reliance on the same, a *Nakabandi* was held after sending a report to the police station through PHG Daulat Ram No.27904 and the Excise Inspector was also informed in this regard, so that he could reach the spot. Thereafter, the vehicle in question was apprehended and Ashok Kumar was arrested and released on

bail. A disclosure statement was made by the said Ashok Kumar while in custody, on the basis whereof General Diary No.001 dated 28.05.2020 for offences under Section 420, 465, 467, 468 and 471 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') was also registered. In the said disclosure statement, the abovesaid Ashok Kumar had stated that he had gone to Jalandhar for taking liquor on the asking of one Sohan Singh Uppal son of Kabal Singh and that at the asking of Sohan Singh Uppal, he had gone to the Patwari Dhaba situated near the Farm Paragpur of Kashmiri Lal where Sohan Singh Uppal had got loaded the boxes of English and country-made liquor from the godown building in a liquor vend. He further stated that Sohan Singh Uppal had instructed that he shall escort the vehicle and in the event of any problem, which would be likely to be faced, he shall inform Ashok Kumar on telephone.

On the basis of the abovesaid disclosure statement recorded by the co-accused Ashok Kumar , Sohan Singh Uppal and Kashmiri Lal were also nominated as accused.

It was further alleged in the police proceedings that the said persons have played fraud and handed over fake receipt E-way Bills with regard to sending illicit liquor in violation of orders passed by the Punjab Government. It is further contended that the accused Kashmiri Lal, who was nominated as an accused on the basis of statement of Ashok Kumar, was arrested and taken into custody vide General Diary No. 25 dated 31.05.2020 and that he nominated the petitioner Sachin Grover alongwith the others as accused.

That as per the confessional statement of Kashmiri Lal, the petitioners Sachin Grover and Jatinder Pal Singh were impleaded as accused along with Naresh Aggarwal and Satwinder Singh. Petitioner Sachin Grover has filed CRM-M-51883 of 2021, whereas Jatinder Pal Singh has filed CRM-M-29235 of 2021.

It is further contended that after the conclusion of investigation, a final report (Annexure P-11) has been filed. As per the case of the prosecution, the accused Ashok Kumar had stated that the liquor contractor namely Sohan Singh Uppal had taken his vehicle on rent for a sum of Rs.3,000/- for bringing liquor from the vend situated at Jamsher Road, Jalandhar and the said Sohan Singh Uppal had informed him that he alongwith Harjinder Singh @ Lali would met him at the liquor vend and that he should bring his vehicle there. When he reached the liquor vend, they were already present there. They got the boxes of English liquor and country-made liquor loaded in his vehicle through a person namely Kashmiri Lal and handed over a bill of the loaded liquor. Sohan Singh Uppal and Harjinder Singh @ Lali told Ashok Kumar that they would be following in their private vehicle and that Ashok Kumar need not worry and that in the event of any problem, they will handle the same. While Sohan Singh Uppal was escorting the vehicle TATA 407, Harjinder Singh @ Lali was following the vehicle. The papers submitted by Sohan Singh Uppal and Harjinder Singh @ Lali were found to be forged and not having been issued by the Department of Excise and Taxation, Punjab, whereupon, Sections 420, 465, 467, 468 and 471 of the IPC were added. The statement of accused Kashmiri Lal that he got recorded during investigation is appended alongwith the reply filed by the respondent-State as Annexure R-2 and relevant part of the same reads as thus:

> *"In the presence of undersigned witnesses the accused Kashmiri Lal S/o Ram Krishan, r/o H.No.530, Guru Teg Bahadur Nagar, Jalandhar, PS Division No.6 Jalandhar, District Jalandhar during interrogation confessed before me ASI that "I along-with Sachin Grover resident of Jalandhar, Naresh Agarwal resident of Hoshiarpur, Satwinder Singh resident of Chandigarh are doing joint business by taking contracts of English and Desi liquor. All the business work of Satwinder Singh resident of Chandigarh is being looking after by Jatinder Pal Singh resident of Jalandhar. Every benefit or loss in this business has been partitioned between all of us. The license of liquor vends Desi and English near Patwari Dhaba Jamsherpur Road Jalandhar is in the name of Sachin Grovar resident of Jalandhar. On 27.05.2020 the liquor contractor of Nawanshahr namely Sohan Singh Uppal and Harjinder Singh alias Lally got loaded heavy quantity of English, Desi Liquor and Beer in vehicle make Tata 407 bearing Regd. No.PB.32.D.8625 from the liquor vend English and Desi of Sachin Grover, who told that they have made the Bill of liquor, due to which Sachin Grover did not issue any bill and the price of the liquor amounting to Rs.10 Lakh 480/- was received in cash by Jatinder Pal Singh resident of Jalandhar from liquor contractors of Nawashahr"*

In the aforesaid confessional statement, Kashmiri Lal alleged that he was doing joint business alongwith petitioner Sachin Grover, Naresh Aggarwal and one Satwinder Singh while petitioner Jatinder Pal Singh was looking after all the business work of Satwinder Singh. He also submitted that the licence of liquor vend near Patwari Dhaba, Jamsherpur Road is in the name of petitioner Sachin Grover and that the liquor was got loaded by Sohan Singh Uppal and Harjinder Singh @ Lali and said accused had told Sachin Grover that they have made a bill of liquor due to which Sachin Grover did not tender any bill and the price of the liquor to the tune of Rs.10,00,480/- was received in cash by the petitioner Jatinder Pal Singh. During investigation, statement of petitioner Sachin Grover was recorded by the DSP, SBS Nagar in report dated 23.11.2020 and the same reads as under:-

> *"During investigation applicant Sachin Grover in his statement disclosed that he is doing business of wholesale & retail of liquor at Distt. Jalandhar. Except the above mentioned mobile number is is having one more mobile number 76269-23059. FIR No.36 Dated 27-05-2020 U/s 61-01-14 Excise Act, 420, 465, 468, 471, 120-B IPC, 78(2) Excise Act and 181 Motor Vehicle Act which has been registered at PS Mukandpur Distt. SBS Nagar, in which he has been arrayed as accused on the basis of the statement of Kashmiri Lal. Regarding the same he want to disclose that on 27-5-2020 in Distt. SBS Nagar the liquor which was recovered, regarding which the accused levied allegation that this liquor has been taken from his liquor vend Desi & English Near Patwari Dhaba Jalandhar, on the same day on 27/28-05-2020 in midnight by Excise Department after sealing his liquor vend the same was checked, then during checking 42 boxes English liquor and 109 boxes Beer found to be less, then the department laid fine of Rs.1,00,000/-, he deposited the same on 04.06.2020 in Govt. Treasury. The report of Excise Department and copy of Receipt has been produced before you. Statement given by Kashmiri Lal that he, Kashmiri Lal, Naresh Agarwal and Satwinder Singh are doing*

> *joint business and the whole work of Satwinder Singh being looked after by Jatinder Singh, is all wrong. Being in one trade all these persons are known to him, but they have no partnership with him in liquor vend Desi & English near Patwari Dhaba Jalandhar Group Pragpur. He has no knowledge that why Kashmiri Lal has named him and he has no concern with the same. He received the knowledge regarding the name of driver of the vehicle Ashok Kumar and Sohan Singh Uppal & Harjinder Singh Lally contractors of Nawashahr. He did not meet then, neither he known to them nor he talked to them on phone at any time. Please after conducting proper inquiry his name may kindly be deleted from the case and he may be given justice."*

It is recorded in the report furnished by the DSP that 396 boxes of English liquor, country made liquor and Beer were recovered and that when Ashok Kumar asked for the bills to be handed over him, then Harjinder Singh @ Lali i.e. co-accused gave him the bill.

In the aforesaid final report submitted by the Police, Naresh Kumar and Satwinder Singh were not challaned by the police and a supplementary challan was furnished against the petitioners on the ground that the licence of the liquor vend situated near Patwari Dhaba Jamsherpur Road, Jalandhar was in the name of the petitioner-Sachin Grover. The other alleged partners as per the confessional statement of co-accused Kashmiri Lal namely Naresh Aggarwal and Satwinder Singh were found innocent. It has also come in the confessional statement of accused Sohan Singh Uppal that Bill No.375 dated 27.05.2020 which was issued in the name of Rana Sugar Mill was given by Harjinder Singh @ Lali and that he had given a sum of Rs.3,00,000/- to

Harjinder Singh @ Lali. It is also stated by him that the liquor vend at Barnala Gate was in the name of Sohan Singh Uppal since the year 2020-21. Accused Harjinder Singh @ Lali had also got recorded his confessional statement before ASI Palwinder Singh and stated that Sohan Singh Uppal had Zone-3 liquor vend and Harjinder Singh @ Lali asked him to lift the liquor and that cash amount was given to a handicapped person wearing a cap and a face mask. A bill in respect of the liquor was given by the said person to the driver Ashok Kumar and that he was not aware that the bill was bogus. The petitioner-Sachin Grover was nominated as an accused solely on the basis of disclosure statement of Kashmiri Lal and shortage of liquor in his vend was also noticed in an inspection conducted by the Excise Department.

The petitioners have raised a challenge to the filing of charge sheet.

**SUBMISSIONS ON BEHALF OF PETITIONER SACHIN GROVER IN CRM-M-51883-2021 :**

Learned counsel for the petitioner has argued on behalf of petitioner Sachin Grover that the petitioner was nominated as an accused solely on the basis of disclosure statement made by Kashmiri Lal. He has submitted that there is no recovery effected from the petitioner during the course of investigation. He has made a statement that immediately pursuant to the seizure of the truck, the liquor vend of the petitioner was sealed and that the entire stock was checked. Upon inspection thereof, a total 42 cases of Indian Made Foreign Liquor (IMFL) and 109 cases of beer were found short. Reference in this regard is made to the order passed by Collector-cum-Deputy

Excise & Taxation Commissioner, Jalandhar Division, Jalandhar part of which is extracted as under:

| *Sr. No.* | *Brand Name* | *Shortage Details (IMFL)* | | |
|---|---|---|---|---|
| | | **Qurts** | **Pints** | **Nips** |
| 1. | Peter Scott | 5 | 5 | 85 |
| 2. | Black & White | 48 | | |
| 3. | Teacher Highland | | | 24 |
| 4. | Jagor Miller | 1 | | |
| 5. | Black Lable | 108 | | |
| 6. | Officer Choice | 50 | | |
| 7. | Royal Challenge | 24 | | |
| 8. | Royal Stag | 48 | | |
| 9. | All seasons | 12 | | |
| 10. | Mcdowell No.1 | 48 | | |
| 11. | Mcdowell Luxury | 72 | | |
| 12. | Patiala Peg | 60 | | |
| 13. | Imperial Blue | 24 | | |
| | Total | 500 | 5 | 109 |
| | Total Cases IMFL | 42 | | |
| | | | | |
| | | **Beer** | | |
| 1. | Kingfisher Strong | 58 | | |
| 2. | Haywards 5000 Can | 204 | | |
| 3. | Ginsberg | 23 | | |
| 4. | Gingberg Can | 247 | | |
| 5. | Kingfisher Ultra | 68 | | |
| 6. | Carling | 13 | | |
| 7. | Budwiser | 607 | | |
| 8. | Budwiser Can | 69 | | |
| 9. | Heinekin | 17 | | |
| | Total | 1306 | | |
| | Total Cases Beer | 109 | | |

He has argued that a penalty of Rs.1,00,000/- was imposed for the alleged contravention of Rule 37(14) of Punjab Liquor Licence Rules, 1956 and Order 1 of Punjab Intoxicants and Sales order, 1956 in exercise of the powers conferred under Section 80(2) of the Punjab Excise Act, 1914 and as such, the offence was compounded. He further contends that the fine so imposed was duly paid by the petitioner vide E-challan dated 06.04.2020. He has argued that as per the police investigation, a total of 396 cases of liquor were recovered from the TATA 407 vehicle and that none of the recovered liquor was of the brand that was found short in the liquor vend of the petitioner. Even otherwise, as per the inspection, only 151 cases (42 cases of IMFC + 109 cases of beer) were found to be short whereas 396 cases were recovered from the possession of Ashok Kumar i.e. co-accused. It has further been argued that out of all the 396 cases so recovered, 273 boxes were of English liquor, 78 boxes were of country-made liquor and 45 cases were of Beer. It is argued that even if the case of the prosecution is taken as gospel truth and the entire amount of liquor is claimed to have been loaded in the truck from the front of the liquor vend of the petitioner, no country-made liquor was found short from the stock of the petitioner and that only 42 cases of IMFL were found to be short, whereas 273 cases of IMFL and 45 boxes of Beer were recovered from the truck in question. Furthermore, he submits that as per the statement of Ashok Kumar, he had been engaged by Sohan Singh Uppal and Harjinder Singh @ Lali, who themselves had liquor vends in Zone -3 and that the loading was alleged to have been carried out in the presence of one Kashmiri Lal, who claims to be working jointly with the petitioner amongst others whereas, there is no evidence to establish that the petitioner was joined in business with said Kashmiri Lal. No relationship between the petitioner and Kashmiri Lal has been established by any direct or indirect evidence. Besides, if the confession of co-accused Kashmiri Lal is taken into consideration, he had also named Naresh Aggarwal and Satwinder Singh as his partners as well, at par with the petitioner. The aforesaid persons have already been exonerated by the investigating agency and they have been found to be innocent. He further submits that the entire compounding fee and penalty for deficient stock has already been paid. It is further argued that there is no allegation that the alleged forged bills were prepared or handed over by the petitioner. As per the statement of Ashok Kumar, the bill in question was handed over by Kashmiri Lal and was in possession of Harjinder Singh @ Lali, who had handed over the same to him (Ashok Kumar). Despite completion of investigation and filing of final report, there is no allegation that the present petitioner had forged any bill or received any amount as there is no recovery of any money from the petitioner or discovery of any fact. He further submits that even if the final report submitted by the prosecution is accepted as gospel truth, there is no incriminating material against the petitioner and the sole circumstance relied upon by the prosecution to implicate the petitioner is that the seized liquor is alleged to have been loaded from the front of the liquor vend of the petitioner. There is no co-relation of the liquor recovered with the liquor found short from the vend belonging to the petitioner. Resultantly, it cannot be said that any liquor loaded in the truck of Ashok Kumar belonged to the petitioner. He further argued that the case against him is based solely on the confessional statement recorded by the police during the custody of the co-accused and that in the absence of discovery of any fact on the basis of said statement, the same could be hit by Section 25 of the

Evidence Act, 1872 and cannot be read against the petitioner. He places reliance on various judicial pronouncements to substantiate his contention.

**ARGUMENTS ON BEHALF OF PETITIONER JATINDER PAL SINGH IN CRM-M-25329-2020:**

Learned counsel appearing on behalf of petitioner Jatinder Pal Singh has argued that insofar as the allegations against Jatinder Pal Singh in the confessional statement of Kashmiri Lal are concerned, the same is to the effect that Jatinder Pal Singh used to manage the entire business on behalf of Satwinder Singh. Even though, the police alleges that the petitioner-Jatinder Pal Singh was paid a salary of Rs.50,000/- for managing the work, however, no evidence has been collected in support thereof. There is no proof to link Jatinder Pal Singh either with Satwinder Singh or with Sachin Grover. Besides handling the vends, the case of the prosecution is that the petitioner used to handle the work on behalf of Satwinder Singh, and as the said Satwinder Singh has been found innocent, no liability can be fastened upon the petitioner. Moreover, the vend, in front whereof the liquor is stated to have been loaded, does not stand in the name of Satwinder Singh and there is no evidence to establish any partnership or association amongst Satwinder Singh, Sachin Grover, Naresh Aggarwal and the petitioner. It is further argued that the only evidence collected by the investigating agency against the petitioner is the confessional statement of Kashmiri Lal, which did not lead to any recovery or disclosure of any fact and as such, the same would be inadmissible in evidence qua the petitioner and moreover, the said confession is not admissible under Section 27 of the Evidence Act.

**ARGUMENTS ON BEHALF OF RESPONDENT-STATE**

Ms. Amarjit Kaur Khurana, DAG, Punjab has opposed the petitioners while submitting that the name of the petitioners has figured in the confession of Kashmiri Lal and that the seized quantity of the liquor was loaded from the liquor vend that stands in the name of petitioner Sachin Grover. She has further alleged that as per the confessional statement of Kashmiri Lal, he was in joint business with Sachin Grover, Naresh Aggarwal, Satwinder Singh and that the business of Satwinder Singh was taken care of by petitioner Jatinder Pal Singh. She has further submitted that undisputedly, the stock of Sachin Grover was found short and that the inspection by Excise Department duly established the said fact. It is also submitted that the petitioner is alleged to have received a sum of Rs.10,00,480/- and had not issued any bill with respect to the liquor loaded on the vehicle. She contends that the disputed questions of facts arise for determination in the instant petitions, and that the same can be looked at only during the course of trial and that the High Court should not, in exercise of its jurisdiction under Section 482 of the Cr.P.C., ascertain the probative value of the evidence collected by the investigating agency and filed alongwith the final report.

I have heard the learned counsel for the respective parties and have also gone through the evidence and documents as well as judgments relied upon by the learned counsel for the respective parties.

**ANALYSIS**

Considering the first argument raised by the petitioner Jatinder Pal Singh that the disclosure statement of Kashmiri Lal has not led to any recovery from the petitioner and as such, the proviso contained under Section 27 of the Indian Evidence Act would not be applicable to the case of the petitioner is concerned, there is no dispute to the said proposition of law that a statement that has not led to any discovery of any fact cannot be considered as evidence against an accused.

Reference in this regard has been made by the petitioner to the judgment of this High Court in the matter of ***Preet Kamal Vs. State of Punjab*** passed in ***CRM-M-20680 of 2017 on 21.08.2018***. The relevant extract of the same is reproduced herein below:

> *"11. After going through the supplementary challan, the question that has been posed and needs to be answered is whether the petitioners herein can be summoned to face trial on the statement/disclosure/confession, of co-accused who was in police custody?*
>
> *12. Sections 26 and 27 of the Evidence Act 1872 are to the effect that any statement made by an accused while in police custody would be inadmissible. Any recovery made pursuant to a confessional statement be made admissible as per Section 27, but the said evidence would be admissible against the maker of such statement and not against any other co- accused. Sections 26 and 27 of the Evidence Act are re-produced as under:-*
>
>> *"26. Confession by accused while in custody of police not to be proved against him.--No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.*
>>
>> *27. How much of information received from accused may be proved.--Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any*

> *offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

*13. The question which has been posed as above, also arose for consideration before the Privy Council in the leading case Pulukuri Kottaya v. King-Emperor, 1946 SCC OnLine PC 49 : 1947 Cri LJ 533 wherein the Privy Council has dealt with the provisions of Sections 26 and 27 of Indian Evidence Act in detail and observed as under:*

> *"7.The second question, which involves the construction of Section 27 of the Indian Evidence Act, will now be considered. That section and the two preceding sections, with which it must be read, are in these terms:-*
>
> *"25. No confession made to a Police Officer, shall be proved as against a person accused of any offence.*
>
> *"26. No confession made by any person whilst he is in the custody of a Police Officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."*
>
> *8. The explanation to the section is not relevant.*
>
> *"27. Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*
>
> *9. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by*

*the preceding sections, and enables certain statements made by a person in Police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police Officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly, can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in Police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered"is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two* *preceding sections on confessions made to the Police, or by persons in Police custody. That ban was presumably inspired by the fear of the Legislature that a person under Police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the Police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view, it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these* *words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."*

*14. XX XX XX*

*15. Further in the case Jaffar Hussain Dastagir v. State of Maharashtra, (1969) 2 SCC 872, while dealing with Sections 25, 26, 27 of Indian Evidence Act, it was observed that:*

> *"5. Under Section 25 of the Evidence Act no confession made by an accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled. If an accused charged with a theft of articles or receiving*

> *stolen articles, within the meaning of Section 411 IPC states to the police, "I will show you the articles at the place where I have kept them" and the articles are actually found there, there can be no doubt that the information given by him led to the discovery of a fact i.e. keeping of the articles by the accused at the place mentioned. The discovery of the fact deposed to in such a case is not the discovery of the articles but the discovery of the fact that the articles were kept by the accused at a particular place. In principle there is no difference between the above statement and that made by the appellant in this case which in effect is that "I will show you the person to whom I have given the diamonds exceeding 200 in number". The only difference between the two statements is that a "named person" is substituted for "the place" where the article is kept. In neither case are the articles or the diamonds the fact discovered.".*

*16. Recently, the Supreme Court in the case of **Debapriya Pal v. State of W.B., (2017) 11 SCC 31**, while following the view taken in Jaffar Hussain Dastagir 's case (supra) observed as under:-*

> *"10. Same reasoning goes with the recovery of laptop as well. Merely because laptop belonging to the sister of the deceased Anusha Sarkar (sic was recovered from the house of the appellant) is not indicative that the appellant is responsible for the commission of the crime. Under Section 27 of the Evidence Act only so much of recovery, as a result of the disclosure statement, which directly pertains to the commission of crime is relevant. Otherwise, such an evidence is barred under Section 25 of the Evidence Act. Recovery*

*of laptop does not have any bearing. It is neither the weapon of crime nor it has any cause of connection with the commission of crime. The law on this aspect is succinctly said in* ***Jaffar Hussain Dastagir v. State of Maharashtra*** *in the following manner:*

*"5. Under Section 25 of the Evidence Act no confession made by an accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence."*

*17. Further in the case of* ***Dhan Raj @ Dhand vs. State of Haryana 2014 (6) SCC 745,*** *the Apex Court held that a person could not be convicted on the basis of the confessional statement of a co-accused, in the absence of other cogent evidence. Even recently, in* ***Surinder Kumar Khanna Versus Intelligence Officer***

***Directorate of Revenue Intelligence 2018 SCC Online 757, the Supreme Court has held as under:-***

> *"In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges leveled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence."*

*Therefore, in nutshell, it can safely be concluded that a person cannot be held guilty primarily on confession of a co-accused without there being any substantive corroborative evidence to that effect.*

*18. XX XX XX*

*19. In* ***Surendera Prasad vs. State of Bihar, 1992 Cr. LJ 2190,*** *it was held that under Section 27 of the Indian Evidence Act statements are not admissible against person other than the maker of the statement. Under these peculiar facts and* *circumstances of the present case, prima facie there is no material available against the present petitioners to challan them except the disclosure statements of the co-accused, which are clearly inadmissible in evidence either against the maker or against the co-accused. A disclosure statement of an accused to the police, while in police custody, can be used only for a limited purpose, as provided under Section 27 of the Indian Evidence Act and not otherwise.*

*20. An argument has been raised by the learned counsel for the respondent--complainant that once a challan has been presented, this Court should not interfere in the matter. It was also argued that at the stage of submission of challan only prima facie evidence is to be seen and the prosecution has a right to lead the conclusive evidence establishing the guilt of the accused at the time of trial, while also arguing that it is on the statement of co-accused Sachin Sharma @ Golu that recovery of weapon and live cartridges have been made and, therefore, if the proceedings are quashed, it would tantamount to travesty of justice. It was also argued that CRR No. 3385 of 2016, filed by accused Tarandeep Singh was dismissed by this Court on 21.12.2016, in which petition he too had submitted that the evidence with the challan is weak and insufficient. These arguments are not acceptable in view of the fact that the statements in the supplementary challan do not reflect active participation or any participation of the petitioners in hatching the alleged conspiracy to eliminate Varinderpal Singh. Tarandeep Singh who is the main accused in the FIR is facing trial. He had filed a revision petition to challenge the charges framed which is different from the challenge herein. Moreover, the judgment rendered in CRR 3385 of 2016 is distinguishable since Tarandeep Singh was named in the FIR as against the petitioners who have been named by co-*

*accused while in custody. The main persons as mentioned in the FIR are already facing trial. It is well settled that if there is no corroborative evidence, the court can quash the F.I.R.*

*21. In a judgment rendered in State of* ***Haryana Vs Bhajan Lal 1992 AIR SC 604****, guidelines have been laid down as to when the courts can exercise extra-ordinary power under Section 482 of the Code of Criminal Procedure to interfere and quash a FIR. Primarily, such power should be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The Supreme Court in the case of* ***State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors., 2014(4) RCR (Criminal) 381 : (2014) 15 SCC 29*** *similarly observed that powers under Section 482 of the Code of Criminal Procedure must be exercised sparingly, carefully and with great caution. It is only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, should the Courts exercise power to quash the proceedings. In a latest pronouncement in the case of* ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another, 2017 (4) RCR (Criminal) 523 : (2017) 9 Supreme Court Cases 641,*** *while discussing the various decisions of the Apex Court, the broad principles which emerge from the precedents on the subject, have been summarized in the following propositions:*

> *"(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court;*

*(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence.*

*While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-*

*compoundable.*

*(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;*

*(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;*

*(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;*

*(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the*

*nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;*

*(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;*

*(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;*

*(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

*(x) There is yet an exception to the principle set out in propositions (viii) and clause.*

*(ix) Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in*

> *declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."*

*22. Therefore, in view of the settled proposition of law that a statement/disclosure/confession of a co-accused cannot be used against another co-accused, particularly in the absence of any substantive corroborative evidence to that effect, which is the case here, this Court is of the opinion that it would be an abuse of the process of law, if the petitioners are allowed to face trial solely on the statements of Tarandeep Singh and Robin Singh. The petitioners who are the relatives of Tarandeep should not be made to face the ignominy of a trial especially when there is no evidence direct or otherwise available to hold them prima facie guilty."*

Furthermore, the Hon'ble Supreme Court has held in the matter of ***Navaneethakrishnan Vs. State by Inspector of Police*** reported as ***(2018)5 RCR. Criminal 157***. The relevant extract of the same is reproduced herein below:

*"21) In* ***Madhu vs. State of Kerala 2012(5) RCR (Criminal) 520 : (2012) 2 SCC 399,*** *this Court while discussing the mandate of Section 27 of the Evidence Act held as under:-*

> *"49. As an exception, Section 27 of the Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The rationale of Sections 25 and 26 of the Evidence Act is, that police may procure a confession*

> *by coercion or threat. The exception postulated under Section 27 of the Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance under the exception postulated by Section 27 aforesaid, is limited "... as relates distinctly to the fact thereby discovered....". The rationale behind Section 27 of the Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. The discovery of facts itself, therefore, substantiates the truth of the confessional statement. And since it is truth that a court must endeavour to search, Section 27 aforesaid has been incorporated as an exception to the mandate contained in Sections 25 and 26 of the Evidence Act."*

*22) Section 27 of the Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance is limited as relates distinctly to the fact thereby discovered. In the case at hand, the Yashika Camera which was recovered at the instance of Accused No. 3 was not identified by the father as well as the mother of the deceased. In fact, the prosecution is unable to prove that the said camera actually belongs to the deceased-John Bosco. Though the mobile phone is recovered from A-1, but there is no evidence on record establishing the fact that the cell phone belongs to the deceased-John Bosco or to PW-8 as the same was not purchased in their name. Further, the prosecution failed to examine the person on whose name the cell phone was purchased to show that it originally belongs to PW-8 to prove the theory of PW-8 that he had purchased and given it to the deceased John-Bosco. Further, the material objects, viz., Nokia phone and Motor Bike do not have any bearing on the case itself. The Nokia phone was* *recovered from Accused No. 1 and it is not the case that it was used for the commission of crime and similarly the motor cycle so recovered was of the father of Accused No. 3 and no evidence has been adduced or produced by the prosecution as to how these objects have a bearing on the case. In fact, none of the witnesses have identified the camera or stated the belongings of John Bosco. The said statements are inadmissible in spite of the mandate contained in Section 27 for the simple reason that it cannot be stated to have resulted in the discovery of some new fact. The material objects which the police is claimed to have recovered from the accused may well have been planted by the police. Hence, in the absence of any connecting link between the crime and the things recovered, there recovery on the behest of accused will not have any material bearing on the facts of the case.*

*23) The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may* *happen to be a short step between moral certainty and legal proof. There is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. The Court in mindful of caution by the settled principles of law and the decisions rendered by this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution has failed to prove.*

***Conclusion:***

*24) In view of the foregoing discussion, we are of the considered opinion that both the courts below have erred in relying that part of the statement which can be termed as confession which were given to the police officer while they were in custody and it will be hit by Section 26 of the Indian Evidence Act,1872 and only that part of the statement which led to the discovery of various materials would be permissible. Hence, in the absence of any other material evidence against the appellants-accused, they cannot be convicted solely on the basis of evidence of last seen together with the deceased."*

In the judgment of Preet Kamal (supra) this High Court exercised its power under Section 482 of the Cr.P.C. for quashing the proceedings qua the petitioner that was based solely on the strength of a confession of a co-accused and held that subjecting an accused to undergo criminal trial on the strength of a confessional statement would be a travesty of justice and the evidence which is clearly inadmissible in evidence against the accused cannot be taken into consideration to subject an accused to undergo incarceration in a criminal trial. In the judgment of Hon'ble Supreme Court passed in Navaneethakrishnan's case (supra) the judgment of conviction passed by the High Court was set aside by the Supreme Court as being hit by Section 25 of the Indian Evidence Act and not falling within the scope of Section 27 of the said Act.

The requirement which thus arises is to examine as to whether the case against the petitioner Sachin Grover is based solely on a disclosure statement of co-accused Kashmiri Lal or there is any other incriminating material evidence available on record which *prima facie* may indicate towards the involvement of the petitioner in the commission of offence. Some of the aspects in this regard are stated herein below:

(i) As per the statement of the witnesses as well as the investigation conducted by the police, the liquor was loaded in the vehicle from the vend belonging to the petitioner Sachin Grover.

(ii) The statements of Ashok Kumar as well as Sohan Singh Uppal alongwith Harinder Singh @ Lalli are also corroborative of the said aspect and the same has also been demarcated as per the site plan.

(iii) As per the inquiry conducted, the petitioner Sachin Grover himself admits that the liquor vend is licensed in favour of the petitioner himself.

(iv) Even though the petitioner claimed that none of the recovered liquor from the vehicle was amongst the brands/labels found there at the time of inspection by the Department of Excise and Taxation, however, the said statement is false inasmuch as the details of the following brands/labels were found short at the spot inspection of the petitioner and were amongst the recovered liquor from the vehicle:

| ***Sr. No.*** | ***Brand Name*** | ***English Liquor*** |
|---|---|---|
| 1. | Officer Choice | 25 boxes |
| 2. | Royal Challenge | 20 boxes |
| 3. | Royal Stag | 19 boxes |
| 4. | Mcdowell No.1 | 26 boxes |
| 5. | Patiala Peg | 05 boxes |
| 6. | Imperial Blue | 20 boxes |
| 7. | Punjab King Super Whisky | 62 boxes |
| 8. | Punjab Everyday Whisky | 22 boxes |
| 9. | Punjab First Choice Whisky | 38 boxes |
| 10. | Punjab Cash Whisky | 21 boxes |
| 11. | Punjab Kings Whisky | 05 boxes |
| 12. | Punjab Special Whisky | 10 boxes |
| | **Total English Liqur** | **272** |
| | | ***Beer*** |
| 1. | GINSBERG | 07 boxes |
| 2. | Haywards 5000 | 10 boxes |
| 3. | Kingfisher | 09 boxes |
| 4. | Miller ACE | 14 boxes |
| 5. | Heineken | 05 boxes |
| | **Total Beer** | **45 boxes** |
| | | ***Country-made liquor*** |
| 1. | Punjab Saunfia 1 | 24 boxes |
| 2. | Punjab Ranjha Saunfia | 02 boxes |
| 3. | Punjab Rano Saunfi Gold | 02 boxes |
| 4. | Punjab Club Gold XXX Rum, | 50 boxes |
| | **Total Country-male liquor** | **78 boxes** |

It is, thus, evident that as many as 12 different brands of liquor/beer that were recovered were also amongst the quantity found short at the time of spot inspection of the vend of the petitioner.

(v) That the petitioner himself has acknowledged the aforesaid shortage by paying the compounding charges to the Department of Excise and Taxation, however, he has not given any explanation about the circumstances in which the stock fell short by such huge quantity.

(vi) The mere fact that the recovered quantity of liquor loaded in the vehicle was found short or that various other brands of liquor were recovered from the vehicle in question does not mean that the case against the petitioner is not supported by any document and it must be entirely disbelieved merely because no satisfactory explanation is coming forth with respect to the remaining seized liquor.

The aforesaid facts are also the factors that have to be examined and the case against the petitioner is not based on the sole disclosure statement of Kashmiri Lal, but is corroborated through various circumstantial link evidence as well.

Insofar as the case against co-accused Jatinder Pal Singh is concerned, the said arguments bear to be forceful at the first look. However, the evidence of the case also shows that one other person had come over to the spot and handed over the bills to Harinder Singh @ Lalli that were thereafter given to the driver Ashok Kumar. The money in question amounting to

Rs.10,00,480/- is also stated to have been paid in cash to Jatinder Pal Singh. The prosecution had attracted Section 120-B of the IPC in the present case and a such there can be no direct evidence available in the circumstances where criminal conspiracy is attracted. A conspiracy by its very nature is hatched in the dark and seeks to cover the traces and bury the witnesses/evidence. The circumstances of the case cannot be segregated in isolation to extend any benefit to a person especially when the implication of such person is to be sought with the aid of Section 120-B of the IPC.

The power under Section 482 of the Cr.P.C. is an extraordinary power and the said power is invoked only when the circumstances of a case fail to disclose the existence of any cognizable offence, even though the prosecution version is expected to be as correct in its entirety or that the necessary ingredients for the commission of the offences are not made out or even in the circumstances where the process of criminal law has been set in motion for malicious consideration that is duly established on record. The said circumstances do not envelope the case of the petitioner on the said parameters as no mischief or malice is alleged or established by the petitioners against the investigating agency. It is also well established that while exercising the jurisdiction under Section 482 of the Cr.P.C., the Court does not go into the probative value of the evidence collected by the investigating agency and is only required to see the existence of a *prima facie* case. The assessment and validation of the evidence so collected is to be seen at the stage of trial. The High Court shall not skittle the process of law and enjoy upon its responsibility of assessing the admissibility of the evidence relied upon and acceptability of the quality of evidence and return a finding on the investigation so conducted by the police without the witnesses being made to withstand the test of cross-examination on oath before the Court. The disputed questions of facts cannot be examined by the High Court at the preliminary stage itself.

**<u>Scope of powers under Section 482 CrPC</u>**

In exercising the jurisdiction under this Section the High Court cannot embark upon an enquiry as to whether the evidence in the case is reliable or not. Reference in this regard was made to the 3-Judge bench judgment in the case of ***R.P. Kapur v. State of Punjab*, reported as AIR 1960 SC 866,** the relevant extract is reproduced hereinbelow :

> *"6. Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under Section 561-A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the Magistrate before whom the police report has been filed under Section 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse*

*of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent* *jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide: In Re: Shripad G. Chandavarkar [AIR 1928 Bom 184] , Jagat Chandra Mozumdar v. Queen Empress [(1899) ILR 26 Cal 786] , Shanker Singh (Dr) v. State of Punjab [(1954) 56 Punjab LR 54] , Nripendra Bhusan Ray v. Gobind Bandhu Majumdar [AIR 1924 Cal 1018] and Ramanathan Chettiyar v. K. Sivarama Subrahmanya Ayyar [ILR 47 Mad 722] .*

This view was also followed in the matter of ***MMTC Ltd v. Medch Chemicals and Pharma (P) Ltd reported as AIR 2002 SC 182*** *and*

***State of Madhya Pradesh v. Awadh Kishore Gupta reported as AIR 2004 SC 517*** wherein it was held that in exercise of its powers under inherent jurisdiction the High Court should not embark upon an enquiry as to whether the evidence in question is reliable or not as that would be the function of the Trial Court.

The High Court would not embark upon enquiry whether the allegations in the complaint are likely to be established by evidence or not. Reference in this regard is made to the judgment by the Hon'ble Supreme Court in ***State of Bihar v. Murad Ali Khan*** **reported as (1988) 4 SCC 655 :**

> ***15.*** *It is trite that jurisdiction under Section 482 CrPC, which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not.*
>
> ***16.*** *In* ***Municipal Corporation of Delhi v. R.K. Rohtagi [(1983) 1 SCC 1,*** *it is reiterated:*
>
> "*It is, therefore, manifestly clear that proceedings against an*

*accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code."*

***17.*** *In* ***Municipal Corporation of Delhi v. P.D. Jhunjunwala [(1983) 1 SCC 9,*** *it was further made clear:*

*"As to what would be the evidence against the respondents is not a matter to be considered at this stage and would have to be proved at the trial. We have already held that for the purpose of quashing the proceedings only the allegations set forth in the complaint have to be seen and nothing further."*

For purpose of quashing the proceedings under this section, delay of the truth or otherwise of the allegations made in the complaint, broadly speaking, cannot be gone into. What is stated in the complaint or in the FIR is to be assumed to be true unless the allegations are absurd or inherently improbable to such an extent that no person can ever believe such a thing to have happened.

This view was reiterated in the judgment of the Hon'ble Supreme Court in ***Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.,*** reported as ***(2000) 3 SCC 269***. The relevant extract of the said judgment is reproduced as under:

***2.*** *Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated* *as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount.*

***14.*** *Needless to record however and it being a settled principle of law that to exercise powers under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The observations in Nagawwa v. Veeranna Shivalingappa Konjalgi [(1976) 3 SCC 736] lend support to the above statement of law:*

"*(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;*

> *(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;*
>
> *(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and*
>
> *(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.*
>
> *The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."*

The High Court while exercising its jurisdiction under this section would not embark upon an enquiry as to whether the evidence in question is reliable and sufficient or not. This function is clearly within the domain of the trial Magistrate. It is not open to invoke the inherent jurisdiction of the High Court by contending that on a reasonable appreciation of the evidence the accusations made against the applicants would not be sustained. Again the High Court would not usurp the functions of the trial Magistrate and it would be for him to dispose of the case according to law in the light of the evidence. Such an intervention or interference in the powers of the trial Magistrate is uncalled for. Neither it is the function of the High Court while exercising its inherent jurisdiction to appraise the evidence nor to enquire as to whether it is reliable or not. The aforesaid view was further noticed in the judgment of Hon'ble Supreme Court in ***Monica Kumar (Dr.) v. State of U.P.***, reported as

**(2008) 8 SCC 781.** The relevant extract of the same is reproduced herein below:

> ***33.*** *The parties have exchanged their counter-affidavits and rejoinders. Indisputably, there is no quarrel with the well-settled principles of law that while exercising powers under Section 482 CrPC, the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which courts exist. When the complaint is sought to be quashed it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.*
>
> ***34.*** *In R.P. Kapur v. State of Punjab [AIR 1960 SC 866 : (1960) 3 SCR 388] this Court summarised some categories of cases in which inherent power can and should be exercised to quash the proceedings.*
>
> *(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;*
>
> *(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged;*
>
> *(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*
>
> ***35.*** *The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise*

*its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court which has been dealt with by the High Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . In the said case, a note of caution to the effect was, however, added that the power should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The illustrative categories indicated by this Court are earlier extracted in the order of the High Court.*

***36.*** *We may reiterate and emphasise that the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its jurisdiction of quashing the proceeding at any stage.*

***38.*** *This Court in the latest decision has held that where investigation was completed, charge-sheet had been filed and charges are framed, the High Court should not ordinarily embark upon an enquiry as to the reliability of offences to sustain the allegations made in the complaint which is the function of the trial court.*

So far as the aspect of the ownership of Naresh Aggarwal and Satwinder Singh is concerned, there is no record to suggest that the said two persons had any concern with the liquor vend or were known in the liquor zone. There is also nothing to suggest that any of the liquor in their vend was found to be short during any inspection. Thus, in the absence of the abovenamed persons being personally known to Sachin Grover and any stock of their vends found to be short, their discharge during the course of the investigation cannot be made a ground to claim parity by petitioner Sachin Grover.

**CONCLUSION**

In view thereof, I do not find sufficient grounds as would arise in the instant case justifying the invocation of the power under Section 482 of the Cr.P.C. to quash the FIR as well as the prosecution arising therefrom.

Accordingly, both the petitions are, hereby, dismissed.

**30.05.2022** **(VINOD S. BHARDWAJ)**
***rajender*** **JUDGE**

*Whether speaking/reasoned : Yes/No*
*Whether reportable : Yes/No*