

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 712 of 2022

Shreekant Sharma

Vs.

The State of West Bengal & Anr.

For the Petitioner: Mr. Milon Mukherjee, Sr. Adv.,
Mr. Daanish Haque, Adv.,
Mr. Karan Sharma, Adv.,
Md. Zohaib Rauf, Adv.

For the O.P No.2: Mr. Subhamoy Bhattacharya, Adv.,
Mr. Shankar Mukherjee, Adv.,
Mr. Mohammad Shamim Akhtar, Adv.,
Mrs. Kausturi Hazra, Adv.

For the State: Mr. Madhusudan Sur, A.P.P.,
Mr. Dipankar Paramanik, Adv.

With

CRR 714 of 2022

Narayan Sharma

Vs.

The State of West Bengal & Anr.

For the Petitioner: Mr. Sudipta Moitra, Sr. Adv.,
Mr. Daanish Haque, Adv.,
Mr. Karan Sharma, Adv.,
Md. Zohaib Rauf, Adv.,
Mr. Siddhartha Deb Roy, Adv.

For the O.P No.2: Mr. Subhamoy Bhattacharya, Adv.,
Mr. Shankar Mukherjee, Adv.,
Mr. Mohammad Shamim Akhtar, Adv.,
Mrs. Kasturi Hazari, Adv.

For the State: Mr. Madhusudhan Sur, A.P.P.,
Mr. Dipankar Paramanick, Adv.

Heard on: 21 December, 2022.

Judgment on: 12 July, 2023.

BIBEK CHAUDHURI, J. : –

1. Both the criminal revisions filed by the two accused persons praying of quashing of FIR and subsequent investigation against them were heard analogously and this Court delivers the following composite judgment as hereunder.

2. The Petitioner, Shreekant Sharma is a senior citizen aged about 63 years and a priest by profession. His nephew, Narayan Sharma, (co-accused person) is also a priest. Narayan Sharma was married to one Jyoti Sharma, who is the opposite party in this case, in May 2001 and from the said wedlock, two sons named Nimish Sharma and Nikunj Sharma, and a daughter, the alleged victim were born. There is a history of criminal proceedings and pending litigation between the co-accused person and the Opposite Party and several First Information Reports and written complaints have been lodged by both the co-accused person and his wife against each other and there is a pendency of Matrimonial Suit No. 277/21 filed under section 13B of the Hindu Marriage Act before the Court of Learned Additional District Judge at Sealdah pursuant to Memorandum of Understanding dated 18.11.20 entered into by both the parties.

3. Between April to October 2020, several written complaints were made and FIRs were lodged by both the parties and their family members and associates alleging threat and intimidation and various other implications throughout this duration. Thereafter, both Narayan and Jyoti Sharma decided to resolve the differences and settle the matters outside Court.

Accordingly, they executed a Memorandum of Understanding on 18.11.2020 whereby the terms of such settlement were reduced into writing and it was decided between the parties that Narayan Sharma would transfer a flat/apartment in Rajarhat to Jyoti Sharma (which was completed) and Jyoti Sharma started residing there with the children. In addition to the same, both the parties would jointly prefer an application for mutual divorce under Section 13B of the Hindu Marriage Act, 1956 and Narayan Sharma would also give a sum of 50,00,000/- to Jyoti Sharma, out of which they had paid Rs. 15,00,000/-. The said Memorandum of Understanding (MoU) was acted upon and an application under 13B of the Hindu Marriage Act, 1956 was also filed along with a copy of the said MoU. However, during the pendency of the said application, it is alleged that Narayan Sharma received more demands of money from Jyoti Sharma. The said matter was diarized on 17.06.2021 by Narayan Sharma's brother, Abhishek Sharma.

4. Among all these written complaints, the one which is the most important and the issue, in this case, was made on 13.10.2020 by one Raghu Sharma, the brother of the co-accused Narayan Sharma against Arvind Mishra, alleging that he had received threats through WhatsApp messages to implicate him under the POCSO Act by Arvind Mishra, who was an associate of the wife of the co-accused, Jyoti Sharma.

5. Thereafter, the opposite party no. 2, Jyoti Sharma, lodged a complaint with Techno City Police Station on 14.06.21, alleging that her daughter, the alleged victim, disclosed to her that on two occasions, i.e., once in August 2018, during Rakshabandhan, and the other time after Diwali in 2019, on the pretext of performing puja, the accused Shreekant Sharma touched her

inappropriately and violated her with his fingers. The present Petitioner flashed his private parts and asked the girl child to touch them. The child felt traumatized, scared, exploited and was allegedly threatened by the present Petitioner, Shreekant Sharma who told her not to disclose the incident to anyone. The victim immediately informed her father, but her father blamed her for being a liar and did not believe her. The victim did not dare to tell anything to her mother or elder brothers immediately after the occurrence. Sometimes, in June 2021, her mother proposed to her and her brothers that they might return to her father's house to stay and in such an event they might not face financial hardship. The victim girl vehemently opposed such proposal and then only she disclosed the incident that happened to her by Shreekant Sharma in the year 2018 and 2019 to her brother Nimish and her mother, opposite party No.2. The aforementioned act of the petitioner was encouraged and abetted by her father Narayan Sharma, i.e., co-accused person. It is alleged that when the brother of the victim went to confront their father the accused no.2 Narayan Sharma slapped him. It was then that the brother of the victim went to the police station to make a complaint. It is worth mentioning that it is alleged by the opposite party that as a result of the assault on the victim, she suffered severe trauma which resulted in acute severe facial palsy, which was diagnosed via a medical examination on 18.01.2020 when the victim was aged about 16 years. After the FIR was filed, the statement of the victim was recorded on 17.07.21, where she narrated the entire incident in detail stating that she had come to give the statement at her own will. The aforementioned allegations led to the registration of Zero First Information

Report dated 03.07.21 before the Techno City Police Station and was later transferred and registered before the Phoolbagan Police Station and Phoolbagan P.S. Case No: 165 of 2021 dated 15.07.21 under sections 354/ 354A/ 376(2)(1) of the Indian Penal Code, 1860 (IPC) and under sections 6/ 10/ 17 of the Protection of Children from Sexual Offences Act, 2013 (POCSO) was against Shreekant Sharma and Narayan Sharma.

6. Having heard the learned Advocates for the parties and perused the materials on record, the issue involved in this instant application is whether the criminal proceeding instituted against the petitioners is liable to be quashed under Section 482 of the CrPC.

7. The learned Advocates in favour of the accused and co-accused present a series of defences as to why their clients are not guilty and for that the proceedings are liable to be quashed. Firstly, they contend that the petitioner, Mr. Shreekant Sharma was never an accused or witness in any of the prior cases or disputes between Narayan Sharma and Jyoti Sharma and that he was not even a witness to the MoU. They argue that if the MoU had been followed and reached its logical conclusion, then the impugned proceedings would not have been instituted. Moreover, the petitioner is a victim in the instant case who is caught in the crossfire of matrimonial acrimony between his nephew [Narayan Sharma] and his wife. He has been unnecessarily dragged in this case and has nothing to do with either the family or personal dispute of the aforementioned estranged couple. The petitioner is a senior citizen who lives in a separate residence with his family since 1994 much prior to the marriage of the estranged couple in May 2001. Due to separate residence, busy schedule, preoccupation and travelling, the

petitioner seldom gets the time and opportunity to interact with any of his family members. The incident as described in the FIR is false, fabricated and has never taken place in reality.

8. Next, the learned Counsels argue that there was an inordinate delay of two years in lodging F.I.R. against the petitioners in violation of Section 19 read with Section 21 of the POCSO Act. The alleged incident of sexual assault happened in 2018 and 2019 and the offence was reported in 2021. It is contended that the complainant reported the incident 3 weeks after her daughter informed of its occurrence and that there was no plausible reason for such delay. In the statement recorded under Section 164 of the Code of Criminal Procedure, the victim stated having disclosed the incident to her brother Nimish in 2020 who has actively taken legal steps against Narayan Sharma and yet there is no plausible reason as to why no efforts were made by him to report the incident to the police. Therefore, they contend that such an incident has never occurred and has been fabricated to wreak vengeance.

9. Next, the learned Counsels argue that the FIR is laced with material contradictions and suppressions as it is lodged after an inordinate delay of two years and is an outcome of concoction and afterthought and lodged with the ulterior motive to humiliate the Petitioner and lower his prestige in the estimation of people in the society. FIR has been very cleverly drafted to not only describe a concocted story with frivolous allegations but to share only selective information in order to mislead and suit the narrative and ulterior motive of the complainant.

10. The learned Counsels for the petitioner further urge that the victim is in violation of S.164A of the Code of Criminal Procedure along with Section

27 of the POCSO Act. The victim refused to give her consent to be physically examined by the medical examiner. They argue that the allegation of aggravated penetrative sexual assault or physical assault of any nature cannot be sustained in the absence of any medical evidence. The victim refused to undergo a medical examination under section 164A of the Code of Criminal Procedure which itself leads to non-compliance with mandatory S. 27 of the POCSO Act and a plausible reason to draw an adverse inference against the prosecution case. Moreover, the aforesaid medical examination was illegal as it should have been conducted within 24 hours from the reporting of the incident as mandated by S. 164A of the Code of Criminal Procedure. However, the same was conducted on 22.07.2021 while the incident was reported on 03.07.2021. Therefore, there is no medical document whatsoever indicating sexual assault and/or any disclosure made by the victim nor any statement of the doctors recorded either under section 161/164 of the Code of Criminal Procedure to substantiate the allegation of sexual assault.

11. Next, the learned counsels for the defendants argue that Section 39 of the POCSO Act has not been complied with. Section 39 of the POCSO Act requires the State Governments to prepare guidelines for use of NGOs, professionals and experts or persons to be associated with the pre-trial and trial stage to assist the child/victim. According to the complainant, the victim suffered trauma and facial paralysis as a result of sexual assault. In such an event, the investigating agency should have taken recourse to S. 39 of the POCSO Act and referred the girl child to an expert/ psychologist/ counsellor/ mental health expert/ neurologist to assess and ascertain her

actual mental and physical condition. Such omission on the part of the investigating agency caused grave prejudice to the petitioner as it could have demolished the false narrative of facial palsy, sexual assault and trauma experienced by the victim.

12. The learned counsels also argue that the witnesses, namely the complainant and her two children are related and interested parties and have been living separately from Narayan Sharma since 2017 and the parties have been involved in continuous disputes. In the absence of any independent witness, the testimony of the three related witnesses cannot be relied upon as the gospel truth and false implication of the petitioner cannot be ruled out. There is no other independent witness either in this case or in the other cases who have even suggested the presence of the accused Shreekant Sharma in the victim's residence.

13. Next, the learned counsels argue that the narrative of facial palsy by the victim and the complainant is false. They contend that all the medical documents pertaining to facial palsy are from the year 2020. Nowhere there is any mention of any sexual assault in any document reflecting patient history, whether in the prescription of the private doctor Dr. S. K. Biswas or any medical reports thereafter. Further, there is no statement of Dr. S. K. Biswas or any other doctor recorded under section 161 of the Code of Criminal Procedure by the investigating agency to corroborate such an allegation. Therefore, they argue that the complainant has taken undue advantage and made a vague attempt to connect the medical condition of the victim, which may have happened in a much later period due to some other reasons, with the instant case.

14. Next, the learned advocates contend that the investigation by the police was perfunctory and biased and that the chargesheet against the accused has been filed in a mechanical manner without taking into consideration all the vital aspects of the investigation and materials. This has caused grave prejudice to the petitioner and his case.

15. Lastly, the counsels for the accused argue that there is a possibility of tutoring or coaching by the mother and as a result, the POCSO Act had been misused and that S.22 of the POCSO Act should be invoked against the mother. It is their contention that all three children were living with the mother and the statement of the victim was recorded four times, and those statements were laced with variations, contradictions and inconsistencies with regard to the version or description of the incident on several aspects which clearly establishes that the minor has been unduly influenced and tutored by her mother to make false allegations of sexual assault on her father and the petitioner. It is also alleged that the provisions of the POSCO Act have been misused by the complainants out of vengeance and to realize her selfish objectives and in the process has dragged her own daughter through this. As a result of these false allegations, Section 22 of the POCSO Act must be invoked which makes scope for punishment where false complaints or false information is given. A false complaint with the intention to humiliate, exhort or threaten or defame is punishable with imprisonment or fine or both.

16. The prosecution argues that there was a delay in filing the FIR because the victim was not believed by her own father when she informed him about the activities of his accused uncle. As soon as the first incident

occurred during the festival of Rakshabandhan, 2018, she informed her father without delay, but he accused the victim of being a liar. As a result, when she was again assaulted after Diwali, 2019, she did not tell her father. Moreover, she did not inform her mother as she was going through matrimonial disputes for a long time and she herself was a victim of domestic abuse. But eventually when the victim confided in her brother and both of them went to confront their father, he assaulted his son and filed a complaint against them. They were made to sit in the police station for long hours as they went to complain and threatened there as well. After this incident, their own father lodged a complaint against them. The victim confided in her mother only after she decided to return to her matrimonial home as the MoU failed to reach a logical conclusion. She confided in her mother as she was afraid that she would have to go back to that place where she was assaulted twice. Therefore, there are enough reasons why there was a delay in FIR.

17. The learned Counsel then argued that the consent not given for medical examination should not be a ground for quashing the FIR against the accused. In this particular case of sexual assault no penetrative act done by the accused on both occasions. On the first occasion, the accused touched the breasts and private parts of the victim without consent and on the second occasion, the victim was forced by the accused to touch his private parts. Therefore, it is apparent that medical examination by the doctor cannot prove whether these acts had been committed by the accused. This reason cannot be cited for quashing the FIR and investigation against the accused persons.

18. Having heard the counsels for both the petitioners and the complainant/opposite parties, the Court cannot quash the FIR and investigation under Section 482 of the Code of Criminal Procedure.

19. The counsels for the petitioner/ accused, Mr. Shreekant Sharma argue that he was neither a party nor a witness to the ongoing dispute between Narayan Sharma and Jyoti Sharma and that he is caught in the cross-fire between the parties and that he would never have been accused if the MoU between his nephew and his wife would have reached a logical conclusion. However true may that be, it cannot be a reason for this court to quash the investigation proceedings against him. The allegation of sexual assault is different and not in any way related to the disputes between the parents of the victim. The two incidents of sexual assault, one during Rakshabandhan in 2018 and the other after Diwali in 2019 are not related to the ongoing matrimonial dispute disputes between the parents of the victim. The accused perpetrated this alleged heinous act on the victim when her mother was out of the station on both these occasions. Moreover, it is not that the accused was not at all involved with the family of the victim. Firstly he was a close relative of the victim, being the uncle of his father, Narayan Sharma and secondly, both the accused and his father were in the same profession, therefore, they were frequently in contact for matters related to their profession. In her statement recorded on 01.08.2021, the victim said that the accused used to visit her house twice every week. Therefore, it would be completely wrong to say that the accused was not at all involved in the family's affairs as his place of residence was different, as it is apparent that he visited the victim's house multiple times.

20. Next the issue under consideration for this Court is whether a delay in filing FIR by the victim should be a cogent reason for quashing the investigation against the accused and the co-accused. This Court is inclined to answer in the negative as there is a catena of judgements by the Supreme Court, as well as High Courts which hold that delay in filing F.I.R. in cases of sexual assault, should not be equated with other cases to quash proceedings or hold an accused not guilty. The Supreme Court, in **Satpal Singh vs State of Haryana** reported in **(2010) 8 SCC 714** held that:

“13. In a rape case the prosecutrix remains worried about her future. She remains in traumatic state of mind. The family of the victim generally shows reluctance to go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than comfort and sympathise with her. Family remains concern about its honour and reputation of the prosecutrix. After only having a cool thought it is possible for the family to lodge a complaint in sexual offences. (Vide Karnel Singh Vs. State of M.P. AIR 1995 SC 2472; and State of Punjab Vs. Gurmeet Singh &Ors. AIR 1996 SC 1393).

14. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety. [vide State of Andhra Pradesh Vs. M. Madhusudhan Rao (2008) 15 SCC 582].

15. However, no straight jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to

take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon" [vide Satyapal Vs. State of Haryana AIR 2009 SC 2190]."

21. In **State of Himachal Pradesh Vs. Prem Singh** reported in **AIR 2009 SC 1010**, the Supreme Court considered the issue at length and observed as under :-

"So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR."

22. The Bombay High Court in **State of Maharashtra vs Savala Sagu** **1997 Bom CR Cri, 1997 CriLJ 786** observed that:

"15. We wish to emphasise that any unmarried girl on account of her bashfulness and the circumstance that not only her own honour but that of her family was at stake, would have been extremely reluctant and loath to disclose to the police, her traumatic experience of being raped. It is only after efflux of time, when she is able to get over a part of her trauma, will she think of lodging the FIR. In our view, no mathematical time limit in lodging an FIR can be fixed in cases of rape. Courts in such cases should adopt a realistic approach rather than one which is unimaginative and theoretical. After all our conduct in life is governed by brass realities."

23. In **X v. State of Kerala CrI. A. No. 649 of 2021, decided on 01-07-2022**, the Kerala High Court observed that:

“The delay in a case of sexual assault cannot be equated with a delay in a case involving other offences since several factors weigh on the mind of the victim and members of her family. In a tradition-bound society like ours, particularly in rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there was a delay in lodging the FIR.”

24. In the Supreme Court’s decision of **Tulsidas Kanolkar v State of Goa (2003) 8 SCC 590**, where the victim of rape was a mentally challenged person and there was a delay in reporting the crime, the Court took into consideration the unusual circumstances while holding the accused guilty and observed that:

“We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of first information report does not in any way render prosecution version brittle.”

25. The victim attained majority on 08.07.2021, but when the acts of sexual assault were committed she was a child of 15 and 16 years old respectively. Her statement was recorded on 01.08.2021 after she turned 18

years old, and therefore this Court has every reason to believe that she was fully aware of what she was saying in the statement, where she described in quite detail the heinous act committed on her. In her statement, she says that after the first incident happened, she immediately called her father and told him everything and instead of believing her, he totally shut her down and accused her of lying and having a “dirty head who is misunderstanding things”. Subsequently, the accused also denied everything. At that point in time, she did not inform her mother as she herself was going through marital problems. Then again in 2019, a few days after Diwali, the accused assaulted her again and threatened not to tell anyone. In June 2020, the victim told everything to her brother and when they went to confront their father for not believing and supporting her, he allegedly slapped him, after which her brother took her to the police station where they were made to sit for long hours and their father and uncle were called. Hereafter on 04.06.2020, their father Narayan Sharma registered a FIR against the victim and her brother, due to which the brother was detained and later released on bail. Then again on 23.09.2020, accused no.2 again complained against his son and his daughter, the victim in Phoolbagan Police Station. After this, the mother, Jyoti Sharma, the complainant moved out of her matrimonial home with her three children. When the accused persons were not complying with the terms of the MoU and the complainant decided to return back to her matrimonial home, the victim decided to disclose everything to her mother as she did not want to go back to the place where such heinous crimes were committed on her. After this, the complainant lodged F.I.R. against the accused.

26. Therefore, it is not that the victim did not try to raise a complaint against the accused after the act was committed. She at once informed her father, who did not believe her. Therefore, she could not confide in him again after she was violated the second time. When she informed her brother, they were threatened by her father and his family and when they went to file the FIR in the police station, they were threatened there as well. Therefore, there seems to be a cogent reason for the delay in filing the FIR. Moreover, as seen from the series of cases cited above it is the opinion of the Courts that the delay in FIR cannot be a reason for acquitting an accused person and this Court is of the opinion that technical grounds cannot be cited as a reason for quashing of the investigation at this stage in a heinous crime like sexual harassment of a girl child. There are a plethora of reasons why victims of sexual assault do not come forward with allegations. Firstly, they are discouraged from filing F.I.R. and are not believed by the authorities. This is coupled with the social stigma that a woman and her family face from society when such an act is committed against her. More importantly, sexual harassment and rapes are crimes which can cause lifelong trauma to the victims and it is impossible to mathematically calculate or prescribe a time limit as to when a person would recover and would be comfortable with filing a complaint. This Court is not inclined to believe the allegations of the accused and believes that there was sufficient reason which explained the cause of delay in filing the FIR.

27. Next, the defendant argues that the complainant is in violation of Section 164A of the Code of Criminal Procedure along with Section 27 of the POCSO Act as the victim refused to give her consent to be physically

examined by the medical examiner. This Court is of the opinion that the victim refusing to give her consent for medical examination cannot be a reason to quash the FIR, because the medical examination of the victim would not have yielded such results which could have proved to be of material importance for the conviction of the victim. In this particular case of sexual assault, there was no penetrative act done by the accused on both occasions. On the first occasion, the victim touched the breasts and private parts of the victim without consent and on the second occasion, the victim was forced by the accused to touch his private parts. Therefore, it is apparent that medical examination by the doctor cannot prove whether these acts had been committed by the accused.

28. The counsels for the defendants argue that Section 164A of the Cr.P.C was violated as the examination was not done within 24 hours from reporting of the incident. Another procedural lapse by the investigating authority is also pointed out by the learned counsels for the defendant. They argue that Section 39 of the POCSO Act has not been complied with as the victim was not referred to an expert/psychologist/counsellor/mental health expert/neurologist to ascertain her actual mental health and physical condition. This Court would like to point out that such omission on the part of the investigating agency is neither the fault of the victim nor the complainant and they should definitely not be made to suffer for the police not adhering to procedural and technicalities as mandated by POCSO and CrPC. This Court cannot quash the investigation at this stage of the trial for technical matters. As to the allegation of the accused that the narrative of facial palsy is false, the Court after seeing the final conclusion in the report

made by Dr. S. K. Biswas, the victim was indeed suffering from “acute severe left facial motor neuropathy” on 18.01.2020 and it is apparent that this happened after the alleged sexual assaults by the accused.

29. Now coming to the question as to whether taking the facts and arguments under consideration, whether this Court can quash the FIR and investigation under Section 482 of the CrPC. Depending on the specifics of a case, these powers may be used to uphold the goals of justice, prevent abuse of any court's process, and issue any orders necessary to carry out any orders issued under this Code. The court can always take note of any injustice and stop it by using its authority under Section 482 of the Criminal Procedure Code. No other clause of the Code restricts or limits their capabilities. Such natural powers should only be used sparingly and with caution. In the landmark case **State of Haryana vs. Bhajan Lal** reported in **(1992 Supp.(1) SCC 335)**, a two-judge bench of the Supreme Court of India considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Supreme Court summarized the legal position by laying the following guidelines to be followed by High Courts in the exercise of their inherent powers to quash a criminal complaint:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) *where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*

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

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

(f) *where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*

(g) *where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

30. To quash the FIR against the accused, this Court would have to examine if the facts of the case come under any of the exceptions given in **State of Haryana vs. Bhajan Lal** reported in **(1992 Supp.(1) SCC 335)**. It is the opinion of the Court that the facts of the case do not fall under any of the exceptions. Firstly, the allegations made in the FIR do constitute an offence against the accused persons and disclose a cognizable offence. Secondly, the allegations are neither absurd nor improbable and there are sufficient grounds for proceeding against the accused. Lastly, this Court does not believe that it should quash the proceedings because it is manifestly attended with mala fide or that the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused persons to spite him due to private and personal grudge. In the Supreme Court's judgement in **Sanapareddy Maheedhar and Another vs.**

State of Andhra Pradesh reported in **AIR 2008 SC 787**, which dealt with a similar issue of quashing a proceeding, the apex court opined that:

“If the allegations contained in the FIR or complaint discloses commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 Cr.P.C.”

Several rounds of complaints and litigations have been going on between the parties involved for a long time. The accused persons and their families have lodged 13 complaints against the complainant and her children and the complainant have lodged 5 complaints against the accused persons. The victim was a woman of 18 years when she lodged the complaint and it is expected that she was fully aware of the nature of the accusations and the consequences she and her family would have to face if they turn out to be false. When a victim comes forward with an allegation of sexual assault, it tags along with the person and their families for the rest of their lives and it is given that they would have to face ostracization by the society in case the accused is proven innocent. This accused in this present case could not prove any mala fide intention. Still, even if they did, this Court would not

have been compelled to go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the FIR or the complainant, and use it as a reason to quash the FIR.

31. In **Som Mittal vs. Government of Karnataka** reported in **AIR 2008 SC 1126**, the Supreme Court while deciding on whether to quash a proceeding under S.482 of CrPC, in paragraph 19 opined that:

“We may observe here that despite this Court’s consistently held in catena of decisions that inherent power of the High Court should not be exercised according to whims and caprice and it has to be exercised sparingly, with circumspection and in the rarest of rare cases, we often come across the High Court exercising the inherent power under Section 482 of the Code of Criminal Procedure in a routine manner at its whims and caprice setting at naught the cognizance taken and the FIR lodged at the threshold committing grave miscarriage of justice. While it is true that so long as the inherent power of Section 482 is in the Statute Book, exercise of such power is not impermissible but it must be noted that such power has to be exercised sparingly with circumspection and in the rarest of rare cases, the sole aim of which is to secure the ends of justice. The power under Section 482 is not intended to scuttle justice at the threshold.”

The matter at hand is not a rare case that justifies the Court's interference at the investigation stage. The allegation in the FIR makes out a prima facie case against the accused persons, and for this reason, the FIR registered should not be quashed.

32. With this, the instant petitions are dismissed on contest.

(Bibek Chaudhuri, J.)