

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3047 of 2022

Ram Chandra Panda & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Rajdeep Mazumder,
Mr. Sourav Chatterjee,
Mr. Moyukh Mukherjee,
Mr. Pritam Roy,
Mr. Koustav Lal Mukherjee,
Mr. Avijit Singh.

For the State : Mr. Saswata Gopal Mukherji, Learned PP
Mr. Rudradipta Nandy, Learned APP

For the defacto complainant : Mr. Sabyasachi Banerjee,
Mr. Anand Kesari.

Heard on : 13.12.2022

Judgment on : 09.01.2023

Shampa Dutt (Paul), J.:

The revisional application is moved by **Mr. Rajdeep Majumder**, learned Counsel for the petitioner with a prayer for setting aside of the impugned notices dated 04.07.2022, 05.07.2022, 23.07.2022, 06.08.2022 and 07.08.2022 issued to the petitioners under Section 160 of the Code of Criminal Procedure in connection with Contai P.S. Case No. 265 of 2022 dated 29.06.2022 corresponding to G.R. Case No. 1357 of 2022 under Section 406/409/420/467/468/471/477A/120B of the Indian Penal Code on the ground that the Police in the garb of a notice under Section 160 of the code of Criminal Procedure, is arresting persons during examination. Documents (G. R. 1357 of 2022 in connection with Contai P.S. Case No. 265 of 2022 dated 29.06.2022) relating to such an incident leading to such arrest made in respect of (accused) Alok Sahoo, have been filed by the petitioner.

Apprehending such arrest the present application has been filed, praying for setting aside/quashing of the said notices.

Mr. Saswata Gopal Mukherjee, Learned Public Prosecutor submits that it is in due course of investigation that a notice under Section 160 of the Cr.P.C. is issued by virtue of power conferred upon the Police Officer (Investigating Officer) and if orders as prayed for by the petitioner is passed, it shall hamper proper investigation and thus

will be an abuse of the process of court and also against the interest of justice.

It is further submitted that Section 160 Cr.P.C. empowers a Police Officer making an investigation under chapter XII of the code to **requires the attendance of any person.....**

A notice under Section 160 Cr.P.C. is issued to such persons where it appears that a person may be acquainted with the facts and circumstances of the case and as such a notice under Section 160 of the Code issued in due course of investigation cannot be quashed.

Mr. Sabyasachi Banerjee, Learned Counsel for the defacto complainant/opposite party no. 2 while supporting the Learned Public Prosecutor has submitted that a notice under Section 160 Cr.P.C. being an integral part of investigation and being issued in accordance with law cannot be quashed as it is not an abuse of process of either Court or law, the same being issued in the interest of justice.

Considering the submissions of the learned lawyers for the parties in this case and the materials placed before this court, the following facts are on records:-

- (a) Notice under Section 160 of the Code of Criminal Procedure have been issued against the petitioners in respect of Contai P.S. Case no. 265 of 2022 dated 29.06.2022.

(b) Alok Sahoo was taken into custody in connection with (the same case) Contai P.S. Case No. 265 of 2022 dated 29.06.2022, when notice under Section 160 Cr.P.C. had been issued to him and he had complied with the same.

(c) The present petitioners have also been served with notices under Section 160 Cr.P.C. in connection with (the same case) Contai P.S. Case No. 265 of 2022 dated 29.06.2022.

On 08.09.2022, this Court on hearing both sides while considering the prayer of the petitioners for stay of the said notices/pending prayer for quashing at the time of final hearing, granted interim protection to the petitioners to approach the appropriate forum/competent court for relief, relying upon the rulings of the Supreme Court in 2021 SCC online Sc 315 para 80 (Neeharika Infrastructure Pvt. Ltd Vs The State of Maharashtra and others) and in (Subrata Chatteraj Vs Union of India and Ors. (2019)7, SCC 393).

On 15.09.2022 the order of interim relief was extended relying upon the judgment in **Rajesh Seth Vs The State of Chattisgarh Special Leave to Appeal (Crl.) No. 1247 of 2022** during pendency of the application for anticipatory bail before the Sessions Judge, Tamluk.

The application for Anticipatory Bail was “not pressed” as the Session Judge held as follows:-

“Considered the submission of Ld. PP, Ld. Advocate for the petitioners and I.O., wherefrom it appears that a petition under Section 438 Cr.P.C. will not lie only in the event of service of notice Section 160 Cr.P.C. **as question apprehension of arrest is lacking at this stage.**”

The said observation was totally against the findings of this court dated 08.09.2022. An explanation was called for. The only explanation of the Session Judge was that he had not seen the order dated 08.09.2022 of this Court. (Though the order was duly annexed to the petition under Section 438 Cr.P.C.) Finally an apology was tendered.

Inspite of the said observation of the Session Judge contrary to the view of this Court, the petitioner no. 1 was arrested. While granting bail to the petitioner no. 1, a division bench of this court held :-

“We have considered the materials on record. Petitioner is not the principal accused. Though F.I.R. was registered in June, 2022, till 28th October, 2022 it appears there was no incriminating material against him. This prompted the investigating agency to contend that during the hearing of the application for anticipatory bail he was summoned as a witness and not an accused. Immediately after withdrawal of the prayer of the pre-arrest bail, two statements were recorded under Section 161 of the Code of Criminal Procedure stating that the petitioner had supervised the illegal construction of stalls and was dealing with the monies received in connection with such unlawful activity. It is relevant to note that the contract had not been awarded in favour of the petitioner but one Satinath Das Adhikari. The said Satinath Das

Adhikari had been arrested during investigation and nothing incriminating against the petitioner transpired from his statement. In view of the aforesaid circumstances, credibility of belated statements of witnesses implicating the petitioner requires to be thrashed out at the appropriate stage of the proceeding. He had been interrogated in the course of police custody and no incriminating material was recovered.”

Apprehending arrest the petitioner no. 2 then approached this court for further protection.

On 7.11.2022 this Court considering the facts and circumstances and judgements relied upon by the petitioner and other related judgments of the Supreme Court, the petitioner was given a **protective order** as follows :-

- (1) If the petitioner no. 2's presence is required for investigation, he shall be given at least 72 (seventy two) hours' notice to appear.**
- (2) Should at any point of time the Investigating Agency propose to accuse the petitioner of any alleged offence and start a criminal case against him, he shall not be arrested for a period of 10 (ten) days from such decision to enable him to avail of his remedies against arrest available in law.**

The matter has now come up for final hearing.

Learned Counsel for the petitioner has submitted that the petitioners apprehension of being arrested while being served with a notice under Section 160 Cr.P.C. is well founded. The circumstances leading to the arrest of the petitioner no. 1 have proved the case of the petitioners as to the intention of the investigating agency. As such it is prayed that the notices dated 04.07.2022, 05.07.2022, 23.07.2022 06.08.2022 & 07.08.2022 in this case under Section 160 Cr.P.C. be quashed and set aside.

Learned Public prosecutor, has restricted his argument to the notices under Section 160 Cr.P.C. in this case. He has submitted that issuance of notice under Section 160 Cr.P.C. is an important part of a free and fair/proper investigation provided under the Code of Criminal Procedure. It is further submitted by the Learned Prosecutor that a notice under this Section cannot be quashed as it is an integral part of investigation and if it is permitted, the total investigation shall fail as the said provision enables the collection of evidence in an investigation thus leading to a logical/lawful conclusion in a case.

Learned prosecutor has then submitted that the notices in this case have now become infructuous as the notices are valid for a certain time period, which in this case has expired, the last notice being dated 07.08.2022. As such these notices whose validity has expired and are

not in force as on date have no force in law and thus being infructuous, quashing of the same will not serve any purpose.

It is further submitted by the Learned prosecutor that as the petitioner no. 1 has been granted bail and the petitioner no. 2 has a protective order from this court, the revision can be accordingly disposed of.

Learned Counsel for the defacto complainant/opposite party no. 2 while supporting the Learned Public Prosecutor has submitted that a notice under Section 160 Cr.P.C. being an integral part of investigation and being issued in accordance with law cannot be quashed as it is not an abuse of process of either Court or law, the same being issued in the interest of justice.

It is further submitted that no relief as prayed for by the petitioner is permissible under the law. No person can get any protection under the law in respect of such a notice as it will hamper an investigation being conducted in accordance with law, when the person has only been summoned as a witness who may be acquainted with the facts of the case and not as an accused. As such he has prayed for rejection of the revisional application.

Heard Learned counsels for all sides and the Learned Public prosecutor. Perused the materials on record and the relevant provision of law. Considered.

The only apprehension/case of the petitioners at the time of filing the revisional application was that during investigation some person not named in the FIR or not connected in any way in committing the offence is being called by an issuance of a notice under Section 160 of the Cr.P.C. And when the person complies with such notice, the investigating officer in the name of interrogation implicates him as an accused and he is directly arrested.

The petitioners also thus apprehended arrest as they were served consecutive notices under Section 160 Cr.P.C. and called to the police station. As such the prayer for stay of the notices and quashing/setting aside of the same.

During pendency of this case, petitioner no. 1 has been arrested. Consequently the petitioner no. 2 has been protected, while allowing the investigating agency to proceed with the investigation in accordance with law.

Mr. Mazumder has relied upon the following rulings in support of the petitioner's case.

- (i) (2021) 2 SCC 427, Arnab Manoranjan Goswami vs. State of Maharashtra and Ors.**

“67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of

criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC “or prevent abuse of the process of any court or otherwise to secure the ends of justice”. Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post-Independence, the recognition by Parliament [Section 482 CrPC, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. Courts must be alive to the need to safeguard the

public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.”

The court was considering a case for quashing of FIR among other reliefs prayed for including bail.

In the present case the petitioners only prayed for quashing of the notices under Section 160 Cr.P.C. as till then they had not been implicated as an accused.

(ii) (2004) 5 SCC 729, State Represented by Inspector of Police and Ors. vs. N.M.T. Joy Immaculate, (page 743).

DR AR. LAKSHMANAN, J., held:-

“(Section 160 of the Code of Criminal Procedure deals with police officer's power to require attendance of witnesses. This section aims at securing the attendance of persons who would supply the necessary information in respect of the commission of an offence and

*would be examined as witnesses in the inquiry or trial therefor. This section applies only to the cases of persons who appear to be acquainted with the circumstances of the case i.e. the witnesses or possible witnesses only. An order under this section cannot be made requiring the attendance of an accused person with a view to his answering the charge made against him. The intention of the legislature seems to have been only to provide a facility for obtaining evidence and not for procuring the attendance of the accused, who may be arrested at any time, if necessary. In other words, this section has reference to the persons to be examined as witnesses in the trial or inquiry to be held after the completion of the investigation. As an accused cannot be examined as a witness either for or against himself, he cannot be included in the class of persons referred to in the section. But the police officers are fully authorised to require the personal attendance of **the suspects** during the investigation.”*

The court categorically observed that Section 160 Cr.P.C. applies to the witnesses and possible witnesses only. The court further held that an order under this Section cannot be made requiring the attendance of an accused person with a view to his answering the charge against him.

The Court also held :-

“... The intention of the legislature seems to have been only to provide a facility for obtaining evidence and not for procuring the attendance of the accused, **who may be arrested at any time if**

necessary” But the court also made it clear that the police officers are fully authorised to require the personal attendance of **suspects** during the investigation.

At this stage the judgement of the **Privy Council, in Pakala Narayana Swami Vs – The King – Emperor (43 CWN, 473 at Page 480)** relied upon by Mr. S.G. Mukherjee Learned Public Prosecutor becomes relevant.

The said observation of the Privy Council in respect of Sec. 160 Cr.P.C. makes it clear that the word “any person” may or may not include a “suspect” and finally may be an accused and as the Section (161 Cr.P.C.) prohibits the statement recorded from being signed, it must therefore also apply to a statement made by a person who eventually becomes an accused.

Several Judgements of Coordinate and Division Bench of this court has also been relied upon on behalf of the petitioners.

As such the question before this court is as to why is the investigating agency adopting an **indirect method to arrest a person**, when they have the power to arrest at any time, directly, if necessary, in a case of cognizable offence.

The only reason may be that it is the intention of the investigating agency to not give a person the chance/ opportunity

to avail of the benefit of anticipatory bail or a protective order, which is available to an accused or a person apprehending arrest.

If this be the intention, it is in violation of natural justice and also an abuse of process of law and as such in such circumstances, the situation requires the exercise of this courts inherent powers, in the interest of justice.

The said “intention” of the investigating agency is strengthened from their conduct in respect of the petitioner no. 1 in this case. That immediately after withdrawal of the prayer of the pre-arrest bail (as discussed earlier) two statements were recorded under Section 161 Cr.P.C. (at a belated stage) and the petitioner no. 1 was arrested.

Admittedly the notices under Section 160 Cr.P.C. challenged in this case have become infructuous, the notices being for a specific date and time, **but this will not stop them from issuing further notices under Section 160 Cr.P.C. upon the petitioner no. 2 who as of now is protected by an order of this court to such an extent that he gets the opportunity to avail of remedies provided under the law.**

The said protection is no longer applicable in respect of petitioner no. 1 who was arrested and is now on bail, on the Court **taking into account the conduct** of the investigating agency leading to the arrest of the petitioner no. 1.

As discussed earlier, from the facts and circumstances before this court it is evident that the reason for arresting a person in this indirect manner, (when they can be arrested directly, in appropriate cases) is only to ensure that the person sought to be arrested shall not have the chance or opportunity to avail of the benefit of anticipatory bail/protective orders (available to accuseds/person apprehending arrests) to avoid detention in a case in which there **May Not** be any prima facie case of a cognizable offence in respect of that person who has been made an accused subsequently at the time of compliance of notice under Section 160 Cr.P.C. as a witness or a suspect and finally arrested as an accused.

This is a situation when the court should not hesitate to exercise its inherent process to prevent abuse of process of law and also in the interest of justice.

In ***Umesh Kumar Vs State of Andhra Pradesh and Anr.***

(Supra) the Supreme Court **also** held :-

“20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on

record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (*Vide Pepsi Foods Ltd. v. Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] , *Ashok Chaturvedi v. Shitul H. Chanchani* [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796] , *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and *Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy* [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In *Rajiv Thapar v. Madan Lal Kapoor* [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while dealing with the issue held as follows : (SCC p. 348, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High

Court under Section 482 of the Code of Criminal Procedure:

- 30.1. *Step one : Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?*
- 30.2. *Step two : Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?*
- 30.3. *Step three : Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*
- 30.4. *Step four : Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"*

22. In State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] *this Court dealt with an issue of whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68)*

"68. ... Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to 'killing a stillborn child'. Till the

criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report."

(emphasis supplied)

23. *The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16)*

"16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."

24. In Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] this Court held as under : (SCC p. 43, para 74)

“74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.”

25. In State of A.P. v. Golconda Linga Swamy [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] this Court held as under : (SCC p. 529, para 8)

“8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

(See also *K. Karunakaran v. State of Kerala* [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251] .)

26. *Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.*

27. *The scheme for inquiry/trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under Section*

190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said court under Section 209 CrPC. It is for the court to examine whether there is sufficient material collected during investigation and filed along with the charge-sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/ altered at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is altered or added by the court.”

In ***Birla Corporation Ltd. vs Adventz Investments and holdings (Criminal Appeal no. 875 of 2019)***, the Supreme Court on **9th May, 2019** also observed:-

“82. Exercise of power under Section 482 Cr.P.C. envisages three circumstances in which the inherent jurisdiction may be exercised namely:- (i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Inherent jurisdiction under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution.

83. *It is well settled that the inherent jurisdiction under Section 482 Cr.P.C. is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of the inherent powers, such proceedings can be quashed. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736, the Supreme Court reviewed the earlier decisions and summarised the principles as to when the issue of process can be quashed and held as under:-*

“5. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(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.”

84. In *State of Haryana and Others v. Bhajan Lal and Others* 1992 Supp (1) SCC 335, the Supreme Court considered the scope of inherent powers of the Court and after referring to earlier decisions, the Supreme Court enumerated categories of cases by way of illustration where the extraordinary jurisdiction under Article 226 of the Constitution of India can be exercised by the High Court to prevent abuse of process of Court or otherwise to secure ends of justice. It was held that “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.

85. *In the present case, it is one thing to say that the documents have not been secured in accordance with the law and no value could*

be attached to them. But merely because documents have been produced from one source or other, it cannot be said that documents have been dishonestly removed to obtain “wrongful gain” to the respondents and cause “wrongful loss” to the appellant. Where it appears that the criminal complaint has been filed to bring pressure upon the respondents who are shown as accused in the criminal case, the complaint is to be quashed.

87. *In Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandrojirao Angre and Others (1988) 1 SCC 692, it was held that “when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima-facie establish the offence.” It was further held that “while considering the matter, the court is to take into consideration any special feature which appear in a particular case showing whether or not it is expedient in the interest of justice to permit a prosecution to continue.”*

88. *The FIR or the criminal proceedings can be quashed if the allegations do not make out a prima-facie case or allegations are so improbable that no prudent person would ever reach a just conclusion that there are sufficient grounds for proceeding against the accused. Where on the admitted facts no prima-facie case is made out against the accused for proceeding or when the Supreme Court is satisfied that the criminal proceedings amount to abuse of process of court, Supreme Court has the power to quash any judicial proceedings in exercise of its power under Article 136 of the Constitution of India.....”*

But even considering all these materials, the circumstances and the situation **in the present case,** this is not a case where quashing can be done as here it is a notice under Section 160 Cr.P.C which has been sought to be quashed. **To allow the same would hamper free investigation.**

The Supreme Court in **M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), in Criminal Appeal No. 330 of 2021,** citing several precedents held :-

“i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

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

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

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

Thus to prevent the abuse of the process of law by the investigating agency as already discussed, and to ensure the end of justice, it is directed that:-

(1) If the petitioner no. 2's presence is required for investigation, he shall be given at least 72 (seventy two) hours' notice to appear.

(2) Should at any point of time the Investigating Agency propose to accuse the petitioner of any alleged offence and start a criminal case against him, he shall not be arrested for a period of 10 (ten) days from such decision to enable him to avail of his remedies against arrest available in law.

(Taking guidance from the decision of the Supreme Court in Arnab Manoranjan Goswami Vs State of Maharashtra and others (Supra) and WPA 20866 of 2022 and MAT 1690 of 2022 of a Division Bench of this Court.)

The Notices under revision being infructuous, no order need be passed.

CRR 3047 of 2022 is accordingly disposed of.

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)