

CRM-M-30363-2018
CRM-M-30451-2018

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

DATE OF DECISION: 01.08.2023

**EURO INTERNATIONAL SCHOOL AND ANOTHER
.....PETITIONERS**

VERSUS

**STATE OF HARYANA AND ANOTHER
.....RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Arun Sheemar, Advocate for
Mr. Gurmandeep Singh Sullar, Advocate
for the petitioners.

Mr. Surender Singh, AAG, Haryana.

Ms. Mehak Sawhney, Advocate for
Dr. Deipa Singh, Advocate
for the complainant-respondent No.2.

VIKRAM AGGARWAL, J (ORAL)

1. By way of the present judgment, I propose to decide two petitions, both preferred under Section 482 of the Criminal Procedure Code (for short "Cr.P.C.") seeking quashing of FIRs No.63 and 256 dated 06.06.2018 registered under Section 188 of the Indian Penal Code (for short 'IPC') at Police Station Sadar, Rewari (Haryana) and Police Station Dharuhera, Rewari (Haryana) respectively. Since the petitioners in both cases are the same and the question of law raised is also the same, both cases are being disposed of by way of a common judgment.

2. The facts of the case, as pleaded are that the petitioners are private schools situated in Rewari. They are affiliated to the Central Board of Secondary Education. Both schools are privately managed and un-aided

schools. They are registered under the Haryana School Education Act, 1995 (hereinafter referred to as the '1995 Act') and the Rules framed thereunder i.e. Haryana School Education Rules, 2003. Rule 134A was introduced by way of an amendment and notification dated 19.06.2013 (Annexure P-1) was issued as per which the recognized private schools were required to reserve 10% seats for meritorious students belonging to Economically Weaker Sections (EWS) and Below Poverty Line (BPL) categories. It was further laid down that the schools would charge the same fee as was being charged in the Government Schools.

3. On 26.04.2018, the Block Education Officer, Bawal (Rewari) passed an order (Annexure P-2) stating that certain complaints had been received that the guardians of students admitted in pursuance of the provisions of Rule 134A should not be unnecessarily harassed and that the students could not be deprived of the facilities available in the school. The order stated that as per the complaints, transportation was not being provided to such students. It was directed that if the bus of the school was going to the residential area of the concerned students, the bus facility could not be refused. It was also stated that if the provisions of Rule 134A were violated, recommendations would be made to the department for cancellation of recognition of the concerned school.

4. Thereafter on 14.05.2018, an order was passed by the District Education Officer, Rewari to the same effect (Annexure P-3). Finally, on 25.05.2018, an order was issued under Section 144 Cr.P.C. stating that if anyone was found guilty of non-compliance of the order, he would be liable for punishment under IPC, 1973.

5. Finally, the FIRs in question were registered under Section 188 IPC leading to the filing of the present petitions.

6. The petitions have been opposed by way of a reply filed by the Deputy Commissioner, Rewari. It has been averred that certain private schools were reluctant to give admission to eligible candidates as per provisions of Rule 134A of the 2003 Rules and were avoiding giving admission to such candidates on one pretext or the other. Such candidates were asked to file an affidavit undertaking payment of full fee in case the same was not paid by the Government, proof of income of parents etc. The schools were also taking tests at their own level whereas assessment test was to be conducted by the Education Department. There was great resentment among the aspiring candidates and their families. Even the students who were given admission were subjected to discrimination and separate classes were held for them. They were not provided facilities of transportation etc. which were available to other schools. Many complaints were received by the Education Department and the Administration. The matter was also reported in the newspapers. The candidates and their families held demonstrations and dharnas. Under the circumstances, the orders referred to in the petitions were passed from time to time and eventually an order under Section 144 Cr.P.C. was passed with a view to prevent obstruction, annoyance and injury to the public or to prevent disturbance to public tranquility. Even thereafter, the private recognized schools did not stop the harassment as a result of which the FIRs were got registered as the schools had violated/disobeyed the lawful orders passed by the Deputy Commissioner. It has been averred that since offence under Section 188 IPC is a cognizable offence, an FIR can always be registered. Reliance has also been placed upon Rule 191A of the 2013 Rules stating that any Act in contravention of the Rules was to be treated as an offence and would be

punishable under the relevant laws. On merits also, the averments made in the petitions have been denied.

7. I have heard learned counsel for the parties and have perused the petitions.

8. Learned counsel for the petitioners strenuously urged that the FIRs in question deserve to be quashed. It was contended that the bar of Section 195 Cr.P.C. would become applicable as a result of which no FIR could have been registered for an offence punishable under Section 188 IPC. Reference was made to the orders passed by the authorities from time to time and it was submitted that all orders were illegal and arbitrary. It was also contended that Rule 134A provided for admission of students belonging to the Economically Weaker Sections (EWS) and Below Poverty Line (BPL) categories and the same does not provide for extending of other facilities to them though all facilities are extended. It was contended that transport facilities etc. are always provided on first come first serve basis as there are limited number of vehicles and vehicles cannot be provided for all students. It was submitted that the Deputy Commissioner at the relevant time took personal interest in the matter and got the illegal FIRs registered. Learned counsel relied upon a judgment passed by a Division Bench of this Court in **‘Jiwan Kumar Vs. State of Punjab and others’ 2000(1) RCR (Criminal) 415.**

9. On the other hand, learned counsel representing the State of Haryana opposed the petitions stating that since cognizance of the offence has not yet been taken by the Court, the bar of Section 195 Cr.P.C. would not apply. The petitions were opposed on merits also while referring to various order passed by the authorities from time to time. In support of his contentions,

learned counsel relied upon some judgments passed by a Co-ordinate Bench of this Court in *CRM-M-4211-2014* titled as “*Hardeep Singh and another Vs. State of Haryana and others*”, *CRM-M-14160-2016* titled as “*Ila Sood Vs. State of Punjab*”, *CRM-M-36146-2021* titled as “*Dr. Anant Ram Vs. State of Haryana*” and *CRM-M-36456-2017* titled as “*Anuj Vs. State of Haryana*”.

10. I have given my thoughtful consideration to the arguments addressed by learned counsel for the parties.

11. Before advertng to the merits of the case, it would be essential to refer to the statutory provisions. The 1995 Act was enacted for better organization and development of school education in the State of Haryana and for matters connected therewith or incidental thereto. There are various provisions dealing with establishment, recognition, management and aid to schools, school property, terms and conditions of service of employees, admission to schools and fees and miscellaneous provisions. Section 22 bars the jurisdiction of Civil Courts whereas Section 24 deals with the power to make rules. Section 21 deals with the inspection of schools and also has some penal provisions. It provides for inspection of schools by the authorities and that if the school failed to comply with any direction, action could be taken as may be deemed fit including stoppage of aid, withdrawal of recognition, taking over of management etc. Section 21 lays down as under:-

“Inspection of Schools.-

(1) Every recognized school shall be inspected at least once in each financial year in such manner as may be prescribed.

(2) The Director may also manage special inspection of any school on such aspects of its working as may, from time to time, be considered necessary by him.

(3) The Director may give directions to the managing committee requiring it to rectify the defects or deficiencies at the time of inspection or otherwise, in the working of the school.

(4) If the managing committee fails to comply with any directions given under sub-section(3), the Director may, after considering the explanation or report, if any, given or made by the managing committee, take such action as he may deem fit, including-

(a) stoppage of aid (in case of aided schools);

(b) withdrawal of recognition or

(c) taking over of management.”

11.1 The 2003 Rules were framed under powers conferred by Section 24 of the 1995 Act. Rule 134A was introduced by way of notification dated 19.06.2013. It provided for reservation of 10% seats for meritorious students belonging to Economically Weaker Sections (EWS) and Below Poverty Line (BPL) categories. It also laid down that the school would charge fee from these students at the same rate as charged in the Government Schools. Rule 134 lays down as under:-

“The recognized private schools shall reserve ten percent seats for meritorious students belonging to Economically Weaker Sections (EWS) and Below Poverty Line (BPL) categories. The school shall charge fee from these students at the same rate as charged in Government Schools.”

11.2 Rule 191 lays down penal provisions and the action which can be taken in case schools fail to comply with the directions given after inspection of the school. Rule 191 lays down as under:-

“Failure to comply with directions-Section 24(2).-

If the managing committee fails to comply with the directions given under rule 189 the Director may, after

considering the explanation or report, if any given or made by the managing committee, take such action as he may deem fit, including:

- (a) stoppage of aid (in case of aided schools);*
- (b) withdrawal of recognition; or*
- (c) taking over the managing committee in case of aided school.”*

12. Apart from the aforesaid provisions, there are no other penal provisions in either the Act or in the Rules.

13. Now coming to the provisions of the Code of Criminal Procedure (Cr.P.C.), Section 144 lays down as under:-

“Power to issue order in urgent cases of nuisance of apprehended danger.-

(1) In cases where, in the opinion of a District Magistrate, a Sub- divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) *An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.*

(4) *No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.*

(5) *Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor- in- office.*

(6) *The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub- section (4).*

(7) *Where an application under sub- section (5) or sub- section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.”*

Section 195 (1)(a) lays down as under:-

“Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. _

(1) No Court shall take cognizance-

*(a) (i) of any offence punishable under sections 172 to 188 (both inclusive of the Indian Penal Code (45 of 1860), or
(ii) of any abetment of, attempt to commit, such offence, or
(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;”*

14. The basic argument which has been raised is whether an FIR could have been registered under Section 188 IPC in view of the bar laid down by Section 195 (1)(i)(a). However, apart from the argument that has been raised in the present petition, another important aspect which needs to be examined is as to whether the action of the respondents in issuing an order under Section 144 Cr.P.C. was legal and justified and further as to whether the FIR registered for alleged violation of the said order would be sustainable.

15. The legal position of the subject also needs to be noticed. On a plain reading of Section 195 (1)(i)(a), it emerges that no Court would take cognizance of an offence punishable under Section 188 IPC except on a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. It, therefore, needs to be examined whether mere registration of an FIR would amount to taking of cognizance by a Court or it is only when a final report under Section 173 is submitted and some further action is taken that cognizance could be said to have been taken. This issue has been resolved by the Hon'ble Apex Court in the case of '*Jayant Etc. Vs. State of Madhya Pradesh*' (*Criminal Appeal*

Nos.824-825 of 2020 and Criminal Appeal No.826 of 2020 decided on

03.12.2020), 2021 AIR (SC) 496. In this case, a surprise inspection was carried out by the Mining Authorities to check illegal mining in some districts of Madhya Pradesh. Certain vehicles loaded with minor minerals were impounded and were handed over to the concerned police stations to keep them in safe custody. Finding that illegal mining had been resorted to, a report was submitted to the concerned Mining Officers with a proposal for compounding of the offences. The cases went to the Higher Authorities who approved the proposal and after the violators had accepted the decision, the amounts determined by the Collector for compounding were deposited. After some time, FIRs were registered under Sections 379 and 414 IPC and Sections 4 and 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the 'MMDR Act'). Quashing petitions were filed in the High Court of Madhya Pradesh which were dismissed. The State of Madhya Pradesh went to the Hon'ble Apex Court. The private parties also approached the Hon'ble Apex Court with difference grievances. The State of Madhya Pradesh had contended that the Magistrate concerned had no power to take action *suo moto* and get FIRs registered by exercising powers under Section 156(3) Cr.P.C. whereas the case of the private parties was that in view of the bar laid down under Section 22 of the MMDR Act, no FIR could have been registered. The Hon'ble Apex Court examined the matter threadbare and came to two conclusions. One was that the Magistrate duly had the power to take *suo moto* action under Section 156 (3) Cr.P.C. for getting an FIR registered and secondly that the bar of Section 22 of the MMDR Act would be attracted at the stage of taking of cognizance and not at the stage of registration of FIR or investigation. The plea of the private parties was, however, accepted on a different ground that since the offences had already been compounded and

compounding fee had been deposited, then as per the provisions of Section 23A (2) of the MMDR Act, no further proceedings could have been initiated. The Hon'ble Apex Court, therefore, maintained the FIRs under Section 379 and 414 IPC etc. and quashed them in so far as Sections 4 and 21 of the MMDR Act are concerned. While arriving at this conclusion, the Hon'ble Apex Court examined the entire law on the subject. One of the judgments which was noticed by the Hon'ble Apex Court was '**Manohar M. Galani V. Ashok N. Advani**', (1999) 8 SCC 737. After examining the entire law on the subject, the Hon'ble Apex Court concluded as under:-

“After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder visàvis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned Incharge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned Incharge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

v) in a case where the violator is permitted to compound the offences on payment of penalty as per subsection 1 of Section 23A, considering subsection 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made

thereunder so compounded. However, the bar under sub-section 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.

14. In view of the above and for the reasons stated above, the appeals filed by the violators/private appellants are partly allowed, to the extent quashing the proceedings for the offences under the MMDR Act-Sections 4/21 of the MMDR Act only. The appeal preferred by the State of Madhya Pradesh stands dismissed.”

A similar view had also been taken by a Division Bench of this Court in the case of ***‘Hardeep Singh and another Vs. State of Haryana and others’*** (CRM-M-4211-2014) wherein an FIR was registered under the provisions of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. There also the argument was that in view of the bar laid down under Section 28 of the said Act, an FIR could not have been registered. This judgment also referred to many other judgments of this Court as also that of the Hon’ble Apex Court and it was held by the Division Bench as under:-

“In the circumstances, the questions as formulated in the reference are answered in the following manner, that:-

(1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.

(2) A report under Section 173 CR.P.C., 1973 along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the

complaint that has been filed in accordance with Section 28 of the Act.

(3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.”

Though, there are a large number of other judgments on this point, there would be no necessity to refer to them all which would only add volume to the present judgment as the Hon’ble Apex Court and the Division Bench of this Court has discussed the entire law on the subject.

16. In so far as quashing of FIR is concerned, the Hon’ble Apex Court culled out the principles and laid down guidelines with regard to quashing of FIRs in the case of **‘State of Haryana and others Vs. Bhajan Lal and others’**, **1992 SUPP (1) SCC 335**. It was laid down in the said judgment as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima

facie constitute any offence or make out a case against the accused.

- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the 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.*
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

17. In the case of ***'M/S Neeharika Infrastructure Private Limited Vs. State of Maharashtra and others'*** 2021 AIR (SC) 1918, a three Judges Bench of the Hon'ble Apex Court also laid down the principles regarding the circumstances under which the High Court would be justified in quashing of FIRs. The Hon'ble Apex Court was also considering as to whether any order at the stage of investigation should be passed or not. The Hon'ble Apex Court concluded as under:-

“In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

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;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

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

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

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

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;

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

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

xiv) *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

xv) *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has*

to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and

the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

The principles as to when FIRs can be quashed have been laid down in a large number of judgments which have been discussed by the Hon’ble Apex Court in the case of M/S Neeharika Infrastructure Private Limited (supra), the basic cases being the judgments in **‘State of Haryana and others Vs. Bhajan Lal and others’ (supra) and R.P. Kapur Vs. State of Punjab AIR 1960 (SC) 886.**

18. Reverting to the facts of the present case, the State of Haryana wanted strict implementation of Rule 134A. Though the Rule mentions only about admissions and not about other facilities, it goes without saying that schools should also offer the same facilities to students of EWS and BPL categories and there should be no discrimination. It is not unknown that private schools do hesitate to admit students from these categories and even discrimination cannot be ruled out. The authorities would be well within their powers to take action in case of such violations. However, the action should be as per the powers conferred on the authorities and the authorities cannot be permitted to assume powers and pass illegal orders. As borne out from the paper book, the issue started with notice dated 26.04.2018 (Annexure P-2) issued by the Block Education Officer, Bawal (Rewari) calling upon all schools should give equal treatment to students of the EWS and BPL

categories. It was duly mentioned that if any school violated the provisions of Rule 134A, a recommendation would be made to the department for cancellation of recognition of the concerned school. There is absolutely no illegality in this notice. The same is the case with notice dated 14.05.2018 (Annexure P-3). However, issuance of an order under Section 144 Cr.P.C. which is Annexure P-4 on record is totally illegal and arbitrary. The very language of Section 144 would show that the powers have to be used in emergent situations and with a view to maintain peace and to avoid law and order situations. An order under Section 144 for enforcing the provisions of Rule 134 A of the 2003 Rules is without any authority and justification. A perusal of the order shows that it does not refer to any dharnas etc. being organized by the parents of such students nor does it refer to any law and order situation. It does not mention as to what was the urgent situation or what nuisance or danger was apprehended as a result of which, the order under Section 144 Cr.P.C. was being passed. The matter did not stop there. The FIRs in question were registered under Section 188 IPC for alleged violation of the order passed under Section 144 Cr.P.C. In the considered opinion of this Court, the Deputy Commissioner had no authority to get the FIRs registered. Though the FIRs cannot be quashed by invoking the provisions of Section 195 Cr.P.C. because of the law laid down by the Hon'ble Apex Court in the case of '*Jayant Etc. Vs. State of Madhya Pradesh*' (*supra*) but in the present case, the FIR cannot sustain because of there being no legal order which could be said to have been violated by the petitioners. In the considered opinion of this Court, the mere registration of the FIRs in question was a total abuse and misuse of the process of law. The authorities, if at all, could have taken action under the provisions of the 1995 Act and 2003 Rules, referred to in the preceding

paragraphs, and there was absolutely no occasion to get FIRs registered on account of violation of Rule 134A of the 2003 Rules. Strangely enough, though the same also would have been illegal, the FIRs also do not mention violation of the order passed under Section 144 Cr.P.C. and only mention violation of the provisions of Rule 134A of the 2003 Rules.

19. This Court is, therefore, of the considered opinion that the FIRs in question are not legally sustainable.

In view of the aforesaid, the present petitions are allowed. FIRs No.63 and 256, dated 06.06.2018 registered under Section 188 of the Indian Penal Code at Police Station Sadar, Rewari (Haryana) and Police Station Dharuhera, Rewari (Haryana) respectively and all consequential proceedings arising therefrom are quashed qua the petitioners.

01.08.2023
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No