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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th DECEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 769/2022 & CRL.M.A. 3211/2022**

NRUPALBHAI NARENDRABHAI SHAH

.....Petitioner

Through: Mr. Purvish Jitendra Malkan, Sr. Advocate with Ms. Yashasvi Virendra, Ms. Nandini Chhabra, Ms. Neha Ambasta, Mr. Anany Virendra Mishra and Ms. Gitika Dixit, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for the State.
Mr. Pankaj Kumar Sharma, Advocate for Respondent No.2.
SI Kiran Dayal, D-2009, PS Moti Nagar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking quashing of FIR No.716/2021, dated 20.11.2021, registered at Police Station Moti Nagar for offences under Sections 376/506/509 IPC.
2. It is pertinent to mention that charge-sheet has already been filed in the FIR. The Petitioner has filed an application under Section 227 Cr.P.C., seeking discharge which has been dismissed *vide* Order dated 06.06.2023 passed by the learned Trial Court. This Court *vide* Order dated 10.12.2024 has affirmed the said Order. The present petition challenging the FIR has been filed after the application for discharge has been dismissed by the learned Trial Court.



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3. The facts, in brief, leading to the present Petition, are that the present FIR was registered on the complaint of the Respondent No.2 herein who stated that she used to work as a guard in Santoshi Mata Mandir at Jail Road. It is stated that she became friends with one Savita in 2017, who told the Prosecutrix about the Petitioner herein. It is stated that when the Petitioner visited Delhi, Savita introduced him to the Prosecutrix. It is stated that the Petitioner asked the Prosecutrix to invite him to her house. It is further stated that one day when the Prosecutrix was outside the temple, the Petitioner herein asked her that he wants to come to her house for having tea. It is stated that the Petitioner came to the house of the Prosecutrix and finding the Prosecutrix alone, the Petitioner herein committed rape on the Prosecutrix. It is stated that the Petitioner herein promised marriage to the Prosecutrix and asked her not to tell anyone about the incident. It is stated that after the incident, the Petitioner came to Delhi twice and on both the occasions, he made physical relations with the Prosecutrix on the pretext of marriage. It is stated that the last such act was committed by the Petitioner on 13.11.2020, when the Petitioner came to the house of the Prosecutrix and made physical relations with her. It is further stated that during lockdown, the Petitioner herein stopped talking with the Prosecutrix and coming to Delhi. It is stated that on 31.10.2021, the Prosecutrix reached Ahmedabad to meet the Petitioner at his office. It is stated that the Petitioner stopped her outside his office and threatened her with dire consequences. It is stated that on coming back to Delhi, the Prosecutrix lodged the complaint against the Petitioner herein and the present FIR was registered.

4. It is stated that during the course of investigation, medical examination of the Prosecutrix was done vide MLC No.7476/2021, however, the Prosecutrix refused to undergo internal examination. It is



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stated that on 22.01.2022 the statement of the Prosecutrix under Section 164 Cr.P.C was recorded.

5. It is stated that the Petitioner filed an application before the Trial Court seeking anticipatory bail. The Trial Court vide Order dated 05.01.2022 granted anticipatory bail to the Petitioner herein. It is stated that the Petitioner joined investigation on 07.01.2022 and his medical examination was conducted.

6. It is stated that during further investigation, Notice under Section 92 Cr.P.C. was served to get the CDR, CAF and location of the Petitioner and the Prosecutrix. Material on record discloses that on analysis of the CDR, CAF and location of the Petitioner and the Prosecutrix, no contact between the Petitioner and the Prosecutrix was found. It is stated that investigation was carried out to get the details of Savita from the Santoshi Mata Mandir, Jail Road, but no details could be found as the register was destroyed. It is further stated that during investigation the details from airlines has also been verified and it was found that on 13.11.2020, the Petitioner herein along with one Raj Guru Radhe Bapu and one Bharvad Ranubhai Bhaikabhai came to Delhi by flight from Surat. It is stated that the statements of Raj Guru Radhe Bapu and Bharvad Ranubhai Bhaikabhai were recorded under Section 161 Cr.P.C wherein they stated that after coming to Delhi the Petitioner was not with them and he went somewhere. In their statements both Raj Guru Radhe Bapu and Bharvad Ranubhai Bhaikabhai have stated that they along with the Petitioner herein reached Delhi on 13.11.2020 at about 11 AM and they had a flight to Patna at about 3:55 PM on the very same day. It is stated that while Raj Guru Radhe Bapu and Bharvad Ranubhai Bhaikabhai stayed back at the Delhi Airport, the Petitioner herein went somewhere stating that he has to meet someone. It is stated that the



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Petitioner returned after some time and then all the three boarded the flight for Patna at 03:55 PM. It is stated that in his statement under Section 161 Cr.P.C, the son of the Prosecutrix has stated that the Petitioner knew the Prosecutrix.

7. It is stated that after completion of investigation, chargesheet under Sections 376/506/509 IPC has been filed.

8. Petitioner filed an application under Section 227 of the Cr.P.C before the learned Additional Sessions Judge, Tis Hazari Courts, seeking discharge from the charge-sheet. The learned Additional Sessions Judge *vide* Order dated 06.06.2023 dismissed the application of the Petitioner herein by holding that a *prima facie* case under Sections 376(2)(n) IPC and 506 IPC is made out against the Petitioner. However, the learned Additional Sessions Judge discharged the Petitioner of offences under Section 509 IPC.

9. The Petitioner has, thereafter, approached this Court seeking quashing of FIR No.716/2021, dated 20.11.2021, registered at Police Station Moti Nagar for offences under Sections 376/506/509 IPC.

10. Learned Counsel appearing for the Petitioner contends that the only person who could depose the fact that the Petitioner knew the Prosecutrix was the friend of the Prosecutrix – Savita, who allegedly had introduced the Prosecutrix to the Petitioner herein. He states that Savita has not been included as a witness in the charge-sheet, rather, there is no information regarding that lady as all the registers of Santoshi Mata Mandir have been destroyed. He, therefore, states that there is nothing to show that the Petitioner knew the Prosecutrix. He states that the statement of the son of the Prosecutrix under Section 161 Cr.P.C cannot be believed as he is related to the Prosecutrix. He further states that the FIR is vague regarding date and time on which the Petitioner has made forceful physical relationship with the



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Prosecutrix. He states that the only date that is relevant to the present case is 13.11.2020. He states that on 13.11.2020, the Petitioner was travelling from Surat to Patna via Delhi. He states that the Petitioner landed in Delhi at 11:00 AM and boarded the flight for Patna from Delhi Airport at 03:55 PM and there is nothing on record to show that the Petitioner left the airport between 11:00 AM – 03:55 PM. He has taken this Court through the transactional history of the Petitioner on 13.11.2020 to state that while the Petitioner was in the airport he bought some refreshments and, therefore, it cannot be said that the Petitioner has left the airport after completing the formalities and he came back to the airport at least one hour before boarding the flight to Patna. He, therefore, states that the present FIR be quashed. Other than submitting that the story of the prosecution regarding the incident occurred on 13.11.2020 is not a probable story, no arguments were advanced regarding the allegation of promise to marry.

11. *Per contra*, learned APP for the State and the learned Counsel for the Prosecutrix state that while exercising jurisdiction under Section 482 Cr.P.C the Court must be cautious in exercising its power to quash an FIR. They state that the statement of the Prosecutrix under Section 164 Cr.P.C. coupled with the statement under Section 161 Cr.P.C of Raj Guru Radhe Bapu and Bharvad Ranubhai Bhaikabhai, who accompanied the Petitioner to Patna, shows that the Petitioner was not with them between 11:00 AM -03:55 PM and he had told them that he has to meet someone makes out a prima facie case against the Petitioner and, therefore, the present FIR should not be quashed.

12. Heard the Counsels for the parties and perused the material on record.

13. It is well settled that the High Court must exercise its power under Section 482 Cr.P.C with circumspection. It is well established that the power



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of quashing should be exercised very sparingly and with circumspection and in rare cases and at the time of quashing an FIR the Court should not embark upon any enquiry as made in the FIR. Way back in 1960 the Apex Court in R.P. Kapur v. State of Punjab, **1960 SCC OnLine SC 21**, has laid down the principle for quashing any criminal proceedings. Relevant portion of the said Judgment reads as under:

"14. In R.P. Kapur v. State of Punjab [AIR 1960 SC 866] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

14. The said Judgment has been followed by the Apex Court in Gorige Pentaiah v. State of A.P., **(2008) 12 SCC 531**, wherein the Apex Court has observed as under:

"12. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:



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- (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 powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

15. In State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522, the Apex Court has held as under:

“5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under 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. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts,



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whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid aliunde concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

16. In Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122, the Apex Court has held as under:

“11. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to



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cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

“102. (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



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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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides 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.”

As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 2 SCR 336 : (1964) 1 Cri LJ 1] .] It would not be



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proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. 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 proceedings. [See Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304 : AIR 1999 SC 1044] , State of U.P. v. O.P. Sharma [(1996)



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7 SCC 705 : 1996 SCC (Cri) 497] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503 : AIR 1999 SC 3596] and Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]

17. In State of Maharashtra v. Arun Gulab Gawali, (2010) 9 SCC 701, the Apex Court has observed as under:

“13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it “soft-pedal the course of justice” at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as “CrPC”) are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] , Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC



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(Cri) 513 : AIR 2000 SC 754] and *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])”

18. In *State of Odisha v. Pratima Mohanty*, (2022) 16 SCC 703, the Apex Court has held as under:

“8.2. It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482CrPC the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482CrPC are 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.”

19. The Apex Court in *Neeharika Infrastructure Private Limited v. State of Maharashtra & Ors.*, (2021) 19 SCC 401, has culled out the entire law till the time of passing of the judgment as to when an FIR can be quashed. Paragraph 10 of the said judgment reads as under:-

“10. While considering the aforesaid issue, law on the exercise of powers by the High Court under Section 482CrPC and/or under Article 226 of the Constitution of India to quash the FIR/complaint and the parameters for exercise of such powers and scope and ambit of the power by the High Court under Section 482CrPC and/or under Article 226 of the Constitution of India are required to be referred to as the very parameters which are required to be applied while



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quashing the FIR will also be applicable while granting interim stay/protection.

10.1. *The first case on the point which is required to be noticed is the decision of this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] . While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is in pari materia with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; **the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage.** After observing this, thereafter this Court then carved out some exceptions to the abovestated rule, which are as under : (AIR p. 866)*

“(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the



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accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.” (emphasis supplied)

10.2. *In Kurukshetra University [Kurukshetra University v. State of Haryana, (1977) 4 SCC 451 : 1977 SCC (Cri) 613] , this Court observed and held that inherent powers under Section 482CrPC do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; **that statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases.** In the case before this Court, the High Court quashed the first information report filed by the Kurukshetra University through Warden and that too without issuing notice to the University, in exercise of inherent powers under Section 482CrPC. This Court noticed and observed that the High Court was not justified in quashing the FIR when the police had not even commenced investigation into the complaint filed by the Warden of the University and no proceedings were at all pending before any Court in pursuance of the FIR.*



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10.3. *Then comes the celebrated decision of this Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . In the said decision, this Court considered in detail the scope of the High Court powers under Section 482CrPC and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:*

“102. (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



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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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides 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.”

10.4. *In Golconda Linga Swamy [State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522 : 2004 SCC (Cri) 1805] , after considering the decisions of this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and other decisions on the exercise of inherent powers by the High Court under Section 482CrPC, in paras 5, 7 and 8, it is observed and held as under : (Golconda Linga Swamy case [State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522 : 2004 SCC (Cri) 1805] , SCC pp. 526-29)*

“5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three



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circumstances under 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. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid aliqne concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent such abuse. It would be an abuse of the process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts



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to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. ...

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see



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that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Raghubir Saran v. State of Bihar [Raghubir Saran v. State of Bihar, 1963 SCC OnLine SC 102 : AIR 1964 SC 1].] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it



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appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. 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.”

10.5. *In Zandu Pharmaceutical Works Ltd. [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283] , in para 11, this Court has observed and held as under : (SCC pp. 129-30)*

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



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extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. 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 proceedings.”

10.6. In *Sanapareddy Maheedhar Seshagiri* [Sanapareddy Maheedhar Seshagiri v. State of A.P.,



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(2007) 13 SCC 165 : (2009) 1 SCC (Cri) 170] , in para 31, it is observed and held as under : (SCC p. 180)

“31. A careful reading of the abovenoted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in FIR or complaint disclose 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 FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible



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harassment which may be caused to the petitioner on account of investigation of 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 482CrPC.”

10.7. *In Arun Gulab Gawali [State of Maharashtra v. Arun Gulab Gawali, (2010) 9 SCC 701 : (2010) 3 SCC (Cri) 1459] , this Court set aside the order [Arun Gulab Gawali v. State of Maharashtra, 2006 SCC OnLine Bom 1524] passed by the High Court quashing the criminal complaint/FIR which was even filed by the complainant. In the case before this Court, prayer for quashing the FIR before the High Court was by the complainant himself and the High Court quashed the FIR/complaint in exercise of the powers under Section 482CrPC. Quashing and setting aside the judgment and order passed by the High Court quashing the FIR, this Court in paras 13 and 27 to 29 has observed as under : (Arun Gulab Gawali case [State of Maharashtra v. Arun Gulab Gawali, (2010) 9 SCC 701 : (2010) 3 SCC (Cri) 1459] , SCC pp. 706 & 710)*

“13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or



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caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it “soft-pedal the course of justice” at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as “CrPC”) are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide State of W.B. v. Swapan Kumar Guha [State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561 : 1982 SCC (Cri) 283] , Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Ajay Mitra v. State of M.P. [Ajay Mitra v. State of M.P., (2003) 3 SCC 11 : 2003 SCC (Cri) 703])

27. The High Court proceeded [Arun Gulab Gawali v. State of Maharashtra, 2006 SCC OnLine Bom 1524] on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Session is empowered to discharge an accused under Section 227CrPC even before initiating the trial. The accused can, therefore, move the trial court itself for



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such a relief and the trial court would be in a better position to analyse and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction under Section 482CrPC for the quashing of a prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial. The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion.

*28. A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police. **If the prosecution is quashed, then neither the trial court nor the investigating agency has any opportunity to go into this question, which may require consideration.** The State is the prosecutor and all prosecution is the social and legal responsibility of the State. An offence committed is a crime against society and not against the victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.*

29. Thus, while exercising such power the Court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. It should be a case where no other view is possible nor any investigation or inquiry is further required. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power.



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Each case will have to be judged on its own merit and the facts warranting exercise of such power. More so, it was not a case of civil nature where there could be a possibility of compromise or involving an offence which may be compoundable under Section 320CrPC, where the Court could apply the ratio of Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692 : 1988 SCC (Cri) 234] .”

(emphasis in original)

10.8. *Thereafter in a catena of decisions, this Court has reiterated the parameters for exercise of inherent powers under Section 482CrPC and/or under Article 226 of the Constitution of India in the matter of quashing the FIR/complaint.”*

(emphasis supplied)

20. It is trite law that an accused gets several stages to close the proceedings, however, the Court must keep in mind the rights of the victim as the victim cannot be left remediless.

21. Applying the law laid down by the Apex Court to the facts of the present case, this Court is of the opinion that the fact that the Prosecutrix in her statement under 164 Cr.P.C has stated that she became friends with the Petitioner herein and he made forceful physical relations with the Prosecutrix on several occasions on the pretext of marriage and the fact that the Prosecutrix has very specifically stated that on 13.11.2020 the Petitioner came and made forceful physical relations with her coupled with the statement of Raj Guru Radhe Bapu and Bharvad Ranubhai Bhaikabhai, who stated that the Petitioner was not with them between 11:00 AM - 03:55 PM on 13.11.2020 and that he had told them that he has to go meet someone, makes out a *prima facie* case against the Petitioner. The fact as to whether



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the transactions, as shown by the learned Counsel for the Petitioner, took place during the interregnum when the Petitioner was in the Airport is a matter of trial and it cannot be said to be an evidence which is unimpeachable in nature and sterling in quality for this Court to exercise its jurisdiction under Section 482 Cr.P.C to quash the present FIR at this juncture. As stated before, arguments were not advanced on the question of promise to marry by the learned Counsel for the Petitioner.

22. In view of the above, the Petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 10, 2024

Rahul