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

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Reserved on: January 24, 2024**Decided on: February 16, 2024**+ **CRL.M.C. 6099/2023 & CRL.M.A. 22926/2023 (stay)****DR HARSHITA MALU & ANOTHER Petitioners**

**Through: Mr. Tanveer Ahmed Mir,
Senior Advocate with
Mr. Vaibhav Suri, Mr. Saud
Khan, Mr. Tushan Rawal,
Mr. Shivaz Berry and Mr. R.
Jude Rohit, Advocates.**

V**STATE OF NCT OF DELHI & ANOTHER****..... Respondents**

**Through: Mr. Sanjeev Bhandari, ASC
(Criminal) with Mr. Kunal
Mittal, Mr. Arjit Sharma
and Ms. Rishika, Advocates
for State along with Insp.
Manjusha, P.S. R.K. Puram.
Mr. Kumud Shekhar and
Mr. Murari Singh,
Advocates for R-2.**

+ **CRL.M.C. 6100/2023 & CRL.M.A. 22928/2023 (stay)****VINEET MALU****..... Petitioner**

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By: HARVINDER KAUR
BHATIA
Signing Date: 19.02.2024
11:45:33



**Through: Mr. Tanveer Ahmed Mir,
Senior Advocate with
Mr. Vaibhav Suri, Mr. Saud
Khan, Mr. Tushan Rawal,
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and Ms. Rishika, Advocates
for State.
Mr. Kumud Shekhar and
Mr. Murari Singh,
Advocates for R-2.**

+ CRL.M.C. 6101/2023 & CRL.M.A. 22930/2023 (stay)

VIKAS MALU

..... Petitioner

**Through: Mr. N. Hariharan, Senior
Advocate with Mr. Vaibhav
Suri, Mr. SaudKhan,
Mr. Tushan Rawal,
Mr. Shivaz Berry and Mr. R.
Jude Rohit, Advocates.**

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**Mr. KumudShekhar and
Mr. Murari Singh,
Advocates for R-2.**

**CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

J U D G M E N T

1. The present petitions are filed under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) for quashing of the cognizance & summoning order dated 19.08.2023 (hereinafter referred to as “**the impugned order**”) passed by the court of Ms. Apoorva Rana, Metropolitan Magistrate, District Courts, Dwarka in Criminal Case bearing no. 7443/2023 and chargesheet dated 16.06.2023 and FIR bearing no. 0525/2022 registered at P.S. Kapashera under sections 323/354/376/377/506/509/34 IPC along with consequential proceedings.

2. The facts of the case are that the respondent no. 2 (hereinafter referred to as “**the complainant**”) submitted a written complaint dated 15.11.2022 to the SHO, P.S. Kapashera, New Delhi wherein



alleged that she was raped and threatened by her husband Vikas Malu (petitioner in CRL.M.C. 6101/2023 and hereinafter referred to as “**Vikas Malu**”) and the son of Vikas Malu, namely Vineet Malu (petitioner in CRL.M.C. 6100/2023 and hereinafter referred to as “**Vineet Malu**”). The complainant further alleged in the complaint that she was molested and beaten by the two daughters of Vikas Malu namely, Harshita Malu and Sakshi Malu (petitioners in CRL.M.C.6099/2023 and hereinafter referred to as “**Harshita Malu**” and “**Sakshi Malu**” respectively). Accordingly present FIR bearing no. 0525/2022 was registered under sections 323/354/376/377/34 IPC on the basis of complaint made by the complainant against Vikas Malu, Vineet Malu, Harshita Malu and Sakshi Malu.

2.1 Briefly stated, the facts as mentioned in the FIR are that Vikas Malu in February 2019 called the complainant for an event discussion at A-15, Pushpanjali Farm, Bijwasan, Delhi and offered her a hard drink which she refused and thereafter, Vikas Malu felt offended and mercilessly beaten her and forcibly raped her at the above said place and made a video of the incident. Vikas Malu subjected the complainant to repeated instances of sexual assault,



coercion and threats. Vikas Malu pressurized the complainant by stating that if she does not comply with his demands then he would make her videos viral. The complainant due to social stigma associated with such incidents refrained from reporting or disclosing the same as Vikas Malu always boasted of his money and muscle power and his high contacts in Delhi Police. The complainant after some time refused to surrender before Vikas Malu and confined herself at her house at Shalimar Bagh, Delhi and did not allow Vikas Malu to further rape her. Vikas Malu proposed to the complainant for marriage and solemnised court marriage with the complainant on 13.03.2019 before SDM, Jhandewalan. The complainant soon after marriage found Vikas Malu as sexual beast and a sadistic person. Vikas Malu on 13/14.03.2019 also made unnatural physical relations forcibly with the complainant. Vikas Malu also used to take sexual drugs and injections at time of committing unnatural sex which resulted into his impotency. The marriage reception was held at Kochi in May, 2019.

2.2 Vikas Malu by threatening the complainant forced her to sleep on the same bed along with Vineet Malu by her side and Vikas Malu



on the other side and due to which she felt very uncomfortable as she became sandwiched between both of them. Vineet Malu took advantage of this and touched her inappropriately the whole night. Sakshi, Harshita and Vineet, the children of Vikas Malu also started to take advantage of her helplessness as they were aware of the sexual atrocities being committed on her by Vikas Malu. The complainant always felt a change in the behaviour of Vineet Malu who deliberately and intentionally used to touch the complainant inappropriately. The complainant asked Vineet Malu to restrict his movements many times but he always ignored words of the complainant. The complainant on 11.08.2022 brought bad behaviour of the children to notice of Vikas Malu. Harshita and Sakshi on 14.08.2022 directed the complainant to walk on her hands and legs like an animal and on her refusal, Harshita said "*Chal saali ko maza chakhate hain, hamare order ko mana kar rahi hai*". Thereafter Harshita and Sakshi pinned down the complainant to the floor and Sakshi held both her hands and Harshita started to slap on her face. The complainant became semi-conscious then Sakshi spread her legs and inserted her middle finger in the private part of the complainant



and thereafter forcibly put fingers in the mouth of the complainant. The complainant was mercilessly beaten and was threatened that her videos would go viral and the complainant and her mother would be killed.

2.3 The complainant further alleged that Vineet Malu on 17.10.2022 entered into room of the complainant, forcibly held her and forced her to sit on his lap and when the complainant refused and tried to escape, then Vineet Malu raped her and also made the video of the incident. Vineet Malu threatened her not to disclose this incident to anyone and he would make the said video viral. The complainant tried to tell about this incident to Vikas Malu but he rebuked her and also did not listen to her.

2.4 The complainant on 17.10.2022 around 11:00 am was forced to accompany Vikas Malu and his children to Sardarshahar, Rajasthan. On the way, when they reached Hansi, the complainant received a call from her mother who informed the complainant about her illness. The complainant told about the same to Vikas Malu but he got angry and tried to hit her with a bottle but the complainant managed to save herself. The complainant then went to her



matrimonial house to collect her belongings but she was not allowed to enter by the guards on instructions of Vikas Malu. The complainant was continuously threatened by Vikas Malu and his relatives of dire consequences of being killed through accident or professional murderers and her videos would be viral. The complainant also alleged that Vikas Malu is very influential person with high contacts and illegal business. Accordingly, due to delay in making complainant, initial inquiry was made and thereafter present FIR bearing no.0525/2022 dated 20.11.2022 was registered under sections 323/376/377/506/509/34 IPC at P.S. Kapashera, Delhi and investigation was conducted.

3. The respondent no. 1/State filed a Status Report wherein besides mentioning the contents of the complaint/FIR, it stated about investigation being conducted in pursuance of the complaint. The medical examination of the complainant was conducted on 20.11.2022 at Deen Dayal Upadhyay Hospital vide MLC bearing no. 461/2022 with consent of the complainant. The statement of the complainant under section 164 of the Code was recorded on 21.11.2022 wherein the complainant supported her version as



mentioned in the FIR. A raid was conducted on 22.11.2022 at the house of Vikas Malu in presence of the complainant to collect bedsheets and clothes as evidences but the complainant could not identify bedsheets and clothes. The CCTV footage and a DVR were seized. The complainant provided 06 CDs containing supporting evidence regarding sexual and physical harassment with her but nothing incriminating was found. CDRs were also procured and scrutinised. It was revealed that on 14.08.2022 and 17.10.2022, Vikas Malu and his children and the complainant were present at Pushpanjali Farms. A Look Out Circular (LOC) was also opened against Vikas Malu on 18.01.2023 which was closed on 02.02.2023 as Vikas Malu joined investigation and was granted interim protection by this Court. Vikas Malu also produced his mobile phone make 'HTC' used by him in 2019 but nothing incriminating was found on checking.

3.1 Vikas Malu during investigation stated that he was in touch with the complainant since 2008-09 and was in a relationship with the complainant since 2017. Vikas Malu to support his version submitted documents which includes air tickets, hotel bookings,



salary details and employment contract of the complainant, printouts of WhatsApp chats, marriage certificate and one hard disk containing videos of parties/functions/trips etc. with the complainant. Vikas Malu with regard to the allegation that he used a 'Huawei' make phone for recording obscene video of the complainant disclosed that the said phone since 2019 was in possession of and was used only by the complainant.

3.2 The complainant was enquired about the documents, travel details and other documents submitted by Vikas Malu. The complainant stated that she travelled abroad with Vikas Malu only for event related purposes and she was never an employee of Vikas Malu. Vikas Malu opened some firm/company in her name just to save tax liability. The salary as claimed by Vikas Malu was never given to her and the account in which the salary stated to be credited was actually operated by associate of Vikas Malu. The complainant categorically denied that she was an employee of or shared a room with Vikas Malu.

3.3 Harshita, Sakshi and Vineet were also interrogated during investigation and mobile phone of Vineet Malu was also taken into



possession. The capability test of Vikas Malu and Vineet Malu was also conducted from Deen Dayal Upadhyay Hospital. The DVR installed at the house of Vikas Malu and the mobile phones of Vineet Malu and Vikas Malu were deposited in FSL to retrieve the data. The FSL result in respect of the DVR is received but the FSL result in respect of the mobile phones of Vineet Malu and Vikas Malu is still awaited. The other relevant witnesses including the cab driver and PSO who took the complainant back from Hansi, Haryana to Delhi and other domestic helpers were also examined during the investigation.

3.4 The charge sheet after completion of investigation was filed against Vikas Malu for offences punishable under sections 323/354/376/377/506/509/34 IPC and against Vineet Malu for offences punishable under sections 323/354/376/506/509/34 IPC before the concerned court. Harshita Malu and Sakshi Malu were kept in column 12 of the chargesheet.

4. Harshita also got registered FIR bearing no.0526/2022 dated 20.11.2022 under sections 354/354A/354B/506/509/34 IPC at P.S. Kapashera and Vineet Malu also got registered FIR bearing no.



0086/2023 dated 02.02.2023 for offences punishable under section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) at P.S. Kapashera and in both the FIRs, the complainant was implicated.

5. The court of Ms. Apoorva Rana, Metropolitan Magistrate, District Courts, Dwarka vide the impugned order, took cognizance for offences punishable under sections 323/354/376/377/506/509/34 IPC against Vikas Malu; offences punishable under sections 323/354/376/506/509/34 IPC against Vineet Malu and offences punishable under sections 323/354/509/34 IPC against Harshita Malu and Sakshi Malu and summoned the petitioners. The relevant portion of the impugned order is verbatim reproduced as under:-

I have gone through the charge sheet and other documents annexed alongwith it.

Perusal of the same shows that accused persons Vikas Malu and Vineet Malu have been charge sheeted under column no. 11 of the charge sheet while persons namely Sakshi Malu and Harshita Malu have been kept as suspects in column no. 12 of the charge sheet.

Now, perusal of the statement of the victim recorded u/s 164 Cr.PC highlights that there are specific allegations against suspect Sakshi and Harshita made by the complainant to the effect that the said persons had given beatings to the complainant and suspect Sakshi Malu had also inserted her middle finger in vagina of the complainant



alongwith assistance of suspect Harshita. Allegations to this effect have also been made by the complainant in her MLC. Thus, specific allegations have also been levelled by the complainant against suspects Sakshi Malu and Harshita Malu with respect to commission of aforesaid acts by them.

In the opinion of this court, sufficient grounds are made out for proceeding against suspect Sakshi Malu and Harshita Malu as well. *Accordingly, I take cognizance of the offence u/s 323/354/376/377/506/509/34 IPC.*

Accused Vikas Malu is being proceeded against for offence u/s 323/354/376/377/506/509/34 IPC.

Accused Vineet Malu is being proceeded against for offence u/s 323/354/376/506/509/34 IPC.

In light of judgment of Hon'ble Supreme Court of India in case titled as "*Priya Patel vs. State of M.P (2006 SC)*", suspect Sakshi Malu and Harshita Malu are being proceeded against for offence u/s 323/354/509/34 IPC at this stage.

Accused Vikas Malu is stated to be on anticipatory bail. Accused Vineet Malu, Sakshi Malu and Harshita Malu have not been arrested.

Accordingly, issue summons to all accused persons namely Vikas Malu, Vineet Malu, Sakshi Malu and Harshita Malu for NDOH.

6. The petitioners Vikas Malu, Vineet Malu, Harshita Malu and Sakshi Malu being aggrieved by the impugned order, filed the present petitions and challenged the impugned order primarily on the grounds that the petitioners have been falsely implicated at the instance of the complainant who has deliberately and consciously lodged a false



complaint with a clear malicious intent for oblique motives and to extort pecuniary demands from the petitioners. The complaint is reflecting matrimonial discord between the complainant and Vikas Malu which was given a colour of serious criminal offences. There is no evidence which could even remotely attract the offences as alleged against the petitioners. Vikas Malu and the complainant were in a consensual committed relationship and travelled to different destinations and shared the same room. Vikas Malu and the complainant got married on 13.03.2019 before the Marriage Registrar, Jhandewalan, Delhi and thereafter the complainant enjoyed a happy married life. The complainant in March, 2022 demanded USD 9,00,000/- (approximately INR 7.2 crores) from Vikas Malu which is the genesis of the marital discord between them.

6.1 The complaint filed by the complainant is not credible and does not inspire any confidence. The complainant has made 05 separate statements out of which 03 statements have been recorded as an afterthought to cover up the loopholes/lacunae discovered during the course of investigation. There are material improvements in the statements of the complainant. The complainant deliberately did not



disclose her past association of over 11 years with Vikas Malu. The complainant travelled with Vikas Malu to more than 07 countries on 34 different occasions before the first alleged incident in February 2019. The complainant has concocted a story to falsely implicate Vikas Malu and his children in order to settle her personal scores on account of dispute in their marriage.

6.2 The majority of allegations were found to be false and wrong during the investigation and the Investigating Officer admitted that the allegations of the complainant could not be substantiated. The complainant did not provide any material in support of her allegations and refused to hand over her phone when she was directed to produce it. The investigating authorities have observed that no such video as alleged by the complainant has surfaced during investigation. The statement given by the mother of the complainant was found to be contradictory with version of the complainant. The complainant was an employee of Vikas Malu's company since 29.09.2017 and the complainant withdrew salaries from the said company till November 2019. The complainant despite repeated requests from the Investigating Officer did not submit her mobile



phone for forensic examination. The complainant is a well-educated mature lady and a social media influencer who would never live in an atmosphere where she is being beaten up, sexually assaulted and threatened on a daily basis. The material collected during investigation clearly reveals that the present case is not one of rape but of marital discord and the complainant with utterly oblique motives has deliberately given it a colour of sexual abuse and assault. The allegations levelled by the complainant, even if taken on their face value do not inspire any confidence as they are absolutely absurd and inherently improbable. The FIR is *malafide* has been lodged with ulterior motives. The Investigating Officer has acknowledged through the chargesheet and the documents appended thereto that there is nothing on record to substantiate the allegations. The chargesheet has been filed only on the basis of the statement of the complainant recorded under section 164 of the Code which does not inspire confidence in any manner. The petitioners have also raised several other grounds.

7. The complainant filed reply to the present petitions wherein the complainant has denied all allegations levelled against her and the



contentions raised by the petitioners. It is stated that the complainant was forced to marry Vikas Malu to save her dignity and respect in the society as he blackmailed her to marry him or else, he would make her obscene video viral. The complainant soon after with Vikas Malu was subjected to rape, unnatural sex, and gruesome cruelty. Vikas Malu in his fits of rage has physically and mentally abused the complainant on many occasions. The complainant denied that she has falsely accused the petitioners of serious offences without any basis in order to extort money from them. The complainant had to run from pillar to post just to get the present FIR registered. The complainant has received various threats that she would be destroyed and killed.

7.1 The complainant was working as an event coordinator/supervisor with M/s Creative, an event management firm of Mr. Dinesh Tuli who used to organise events for Vikas Malu and the complainant looked after the said events only as an event supervisor. There was no inter-personal relationship between them before their marriage. The complainant never acted friendly or tried to establish contact with Vineet Malu, who at that time was only 6-7 years old when he used to visit the office to meet his father Vikas



Malu. The opening of M/s High Sky Marketing Solution in the complainant's name was Mr. Dinesh Tuli's idea and the complainant had no control over the business of the said firm. The complainant has never asked Vikas Malu for money for starting any business rather Vikas Malu himself wanted to open a franchise named 'Bershka' in the name of the complainant. The complainant used to travel with Vikas Malu only as an event supervisor and not for leisure. Vikas Malu use to bear expenses of the travels as the events were organised for his company. Vikas Malu had a fallout with his first wife in 2012 but the complainant did not take advantage of the same or developed any relationship with Vikas Malu. The allegation that the complainant demanded USD 900,000 from Vikas Malu is absolutely false, incorrect and out of imagination. The marital discord between the complainant and Vikas Malu happened when the complainant made Vikas Malu to listen audio recordings of the bad behaviour of his children. The children of Vikas Malu wanted to throw the complainant out of their house and wanted to bring their biological mother back and due to this reason they mistreated and harassed her. Vikas Malu is an influential person and has caused



tampering and destruction of evidences. Vikas Malu snatched the mobile phone of the complainant (iPhone 7 Plus Rose Gold colour) which contained all the recordings of sexual atrocities and physical and verbal abuse to which the complainant was subjected.

7.2 The complainant stated that the present petitions should be dismissed on the grounds that the accused can be convicted for rape solely on the basis of the victim's testimony if the court has reason to believe that the testimony is reliable and trustworthy. There is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration. The testimony of the prosecutrix must be appreciated in the background of the entire case and non-examination of other witnesses may not be a serious infirmity in the prosecution case particularly where the witnesses had not seen the commission of the offence. FIR is not an encyclopaedia disclosing all facts and details relating to the offence. It is not meant to be a detailed document containing chronicle of all intricate and minute details. FIR is not even considered a substantive piece of evidence and can only be used to corroborate or contradict the testimony given by the complainant in court.



7.2 The complainant further stated that the rape was committed in February 2019. The Investigating Officer has deliberately not searched for the 'Huawei' phone on which Vikas Malu and the 'iPhone 13 Plus' on which Vineet Malu recorded the obscene videos and no action has been taken to seize these mobile phones. Vikas Malu has deliberately wiped off some crucial previous data and then submitted the phone to the Investigating Officer. It is completely incorrect to say that the complainant did not take any steps to register a complaint. The complainant ran from pillar to post just to get the present FIR registered and even after getting the FIR registered, she continued to receive threats from relatives of Vikas Malu. The threat calls were made through WhatsApp and there is no application to record WhatsApp calls. The travel history of the complainant and Vikas Malu before marriage was formal and only work related and they never shared a room. The witness Dinesh Tuli has business ties with Vikas Malu and therefore he would not produce any evidence against Vikas Malu. The witness Sarika Malu is also an interested witness and has provided a false and concocted story due to vengeance.



8. The learned Senior Counsels for the petitioners advanced oral arguments and also submitted written submissions. It was argued that the present petition is maintainable as filing of chargesheet does not deter this court from exercising its inherent plenary powers under section 482 of the Code when the chargesheet *prima facie* does not disclose an offence against the petitioners and referred **Anand Kumar Mohatta V State of NCT of Delhi** (2019) 11 SCC 706 wherein it was held as under:-

16. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.

8.1 It was further argued that during investigation, no evidence against the petitioners was surfaced in terms of the allegations levelled by the complainant. The Metropolitan Magistrate has not



considered the fact that the contents of the statement of the complainant under section 164 of the Code have been proved false by the investigating authorities. The complainant pursuant to the alleged incident on 14.08.2022 did not call the police helpline nor did she raise any alarm or visited the doctor for the injuries sustained by her on the contrary, she continued to stay in the same house and travelled to Dubai with the family on 20.08.2022 and returned on 14.10.2022. The present case is an offshoot of matrimonial discord and the investigation carried out in the present matter by collecting documents and statements recorded reveals that the case is registered to maliciously prosecute the petitioners. The complainant has roped the son and daughters of Vikas Malu on account of admitted marital discord which had arisen out of monetary disagreement. The learned Senior Counsels for the petitioners have placed reliance on **Salib alias Shalu alias Salim V State of U.P 2023 SCC OnLine SC 947** wherein it was held as under:-

28. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the



ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

8.2 There is a delay of about four years in lodging of the complaint which shows the ulterior motive behind lodging of the complaint. The statement of the complainant under section 164 of the Code is



the only evidence and the contents of the same have not been proved during the investigation and the same cannot be relied upon for summoning of the accused as contents of the statement are false. The learned Senior Counsels for the petitioners placed reliance on **Vineet Kumar V State of Uttar Pradesh (2017) 13 SCC 369** wherein it was held as under:-

41. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in State of Haryana v Bhajan Lal. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there is material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in State of Haryana v Bhajan Lal, which is to the following effect:

“(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.”

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of the State of Haryana v Bhajan Lal, but did not advert to the relevant facts of the present case, materials on



which Final Report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where High Court ought to have exercised its jurisdiction under Section 482 Cr. P.C. and quashed the criminal proceedings.

8.3 The learned Senior Counsel for the petitioners Harshita and Sakshi also argued that the prosecution has relied upon the WhatsApp chats and stated that Vikas Malu was informed about the said incident but WhatsApp chats are dated 20.01.2023 i.e. after two months of registration of FIR which clarifies the fact that the complainant never informed about any such incident to Vikas Malu. The transcript conversation on which reliance is placed does not disclose commission of any offence.

8.4 The learned Senior Counsel for Vineet Malu also argued that the allegation against Vineet Malu is that the complainant after her wedding reception in Kochi was forced by Vikas Malu to sleep in the same bed with him and Vineet Malu who was at that time 15 years of age. The complainant did not raise any alarm when the unwelcomed gestures were felt by her during the night and the messages exchanged on the family group during the said period do not reflect any hostility between Vineet Malu and the complainant. The complainant also alleged that Vineet Malu committed rape after



beating her and a video of the same was recorded by him but no incriminating material could be brought on record to prove the said allegation and also the medical documents do not show any sign of beatings. The mother of the complainant in her statement under section 161 of the Code has not mentioned about any mention of the beating/injuries by the complainant. The taxi driver who took the complainant from Hansi did not state in his statement recorded before the investigating authorities that there were any signs of beatings.

8.5 There are contradictions in the initial statements made by the complainant with statements of various employees recorded under section 161 of the Code in relation to her meeting with Vikas Malu for the first time when she was being sexually assaulted and raped in February 2019 as alleged by the complainant. The statements of employees recorded under section 161 of the Code reflect that the complainant was working as a receptionist at the office of Vikas Malu's company in Kirti Nagar from the year 2008. The ledger account of the company showed that the complainant was paid salary in the year 2010. The complainant was residing in Dubai for majority of time from the year 2017 with Vikas Malu. The complainant also



visited 7 countries with Vikas Malu on 24 occasions before her marriage with Vikas Malu. There are also material contradictions in the supplementary statement dated 12.04.2023 of the complainant with that of her statements previously made on 15.11.2022, 21.11.2022, 13.12.2022 and 26.03.2022 in relation to her being called at the farm house by Vikas Malu. The complainant in her supplementary statement stated that she was told by Dinesh Tuli to visit the Farmhouse in February, 2019 and alleged that incident happened on 21.02.2019. Later, the complainant in her statement dated 13.12.2022 stated that the incident had happened in the beginning of February, 2019. The witness Dinesh Tuli in his statement under section 161 of the Code stated that he met with the complainant for the first time in year 2010-2011 and he never asked the complainant to visit farmhouse of Vikas Malu. The complainant in her statement dated 12.04.2023 stated that the incident took place on 21.02.2019 but investigation revealed that the complainant along with Vikas Malu was attending Celebrity Cricket League organized in Chandigarh from 27.02.2019 till 01.03.2019 and stayed at Hotel Taj, Chandigarh.



8.6 The learned Senior Counsels for the petitioners prayed that the present petitions be allowed and the impugned order dated 19.08.2022, chargesheet dated 16.06.2023 and FIR bearing no. 0525/2022 registered at P.S. Kapashera under sections 323/354/376/377/506/509/34 IPC along with consequential proceedings be quashed.

9. The Additional Standing Counsel for the respondent no.1/State advanced oral arguments and also submitted written submissions. He submitted that the allegations levelled against the petitioners are serious and specific. There are no discrepancies in different versions of the complainant. The complainant has supported her case in the complaint dated 15.11.2022, FIR dated 20.11.2022, examination report of the complainant during the investigation before the Investigating Officer as well as the statement recorded under section 164 of the Code and the present case is fit for framing of charge. The alleged discrepancies in statements of the complainant cannot be a ground for quashing the proceedings. The transcript of the call recordings and the screenshots of the conversation established that the complainant was forced into marrying Vikas Malu. The



complainant had also complained of the acts of Vineet Malu, Harshita and Sakshi to Vikas Malu. The mobile phones of Vikas Malu were taken into possession through seizure memo and the exhibits were sent for Forensic Examination and the result of the same is awaited. The final reports of the MLC are also awaited. The Additional Standing Counsel further submitted that as per the cardinal principle of law, while exercising the powers under section 482 of the Code, at the stage quashing of the criminal proceedings, the court is not required to conduct a mini trial.

9.1 The Additional Standing Counsel to counter the arguments raised by the learned Senior Counsels for the petitioners as regard to the discrepancies in the version of the complainant submitted that the petitioners have not referred the contents of the FIR and the statement recorded under section 164 of the Code. The complainant has supported the version of the FIR in her statement under section 164 of the Code. There are no discrepancies and discrepancies if any, are matter of trial and cannot to be tested under section 482 of the Code.

9.1.1 The Additional Standing Counsel to counter the argument raised on behalf of the petitioners that there was no established



chronology of events since the complainant attended parties with Vikas Malu despite the allegations argued that there was established chronology as regards the series of events as Vikas Malu called the complainant at his farm house for some event discussion as per the FIR where he raped her and also made a video of the same. Vikas Malu continued to rape the complainant and threatened her to make her video viral and the complainant did not report the said incident due to the said threats, social stigma, his money and muscle power. He also argued that the complainant in the last week of February, 2019 gathered the courage and refused to surrender before Vikas Malu and confined herself at her house at Shalimar Bagh and this action of the complainant led to a marriage proposal by Vikas Malu. The complainant in order to save her respect agreed to marry Vikas Malu. The complainant under threats of making her videos viral by Vikas Malu accompanied him to attend the Celebrity Cricket League at Chandigarh from 27.02.2019 to 01.03.2019.

9.1.2 The Additional Standing Counsel to counter the argument raised on behalf of the petitioners that there was nothing in the MLC dated 20.11.2022 to support the allegations made by the complainant



argued that forceful sexual assault was committed on 17.10.2022 at 4:00 am which was complained of after about a month on 15.11.2022 and medical examination was done on 20.11.2022. The result of the MLC dated 20.11.2022 of the complainant is still awaited and as such, the FIR along with consequential proceedings cannot be quashed.

9.1.3 The Additional Standing Counsel in response to the argument advanced on behalf of the petitioners that the complainant never complained about the alleged acts of Vineet Malu, Harshita and Sakshi to Vikas Malu argued that screenshots of chats between the complainant and Vikas Malu clearly reflect the complaints made by the complainant to Vikas Malu regarding the acts done by Vineet Malu, Sakshi Malu and Harshita Malu.

9.2 The Additional Standing Counsel further argued that as per the settled legal position, the contents of the chargesheet cannot be looked into under section 482 of the Code rather they must be tested during the trial. The Senior Counsels for the petitioners have only referred the selected portions of the chargesheet filed against Vikas Malu and the trial court took cognizance and summoned the



petitioners after considering contents of the chargesheet. The court of Metropolitan Magistrate at the stage of taking cognizance and summoning is required to apply its judicial mind only with a view to take cognizance of the offence and to find out whether a *prima facie* case has been made out for summoning the accused. The Metropolitan Magistrate is not required to consider the defence or to evaluate the merits of the case.

9.3 The Additional Standing Counsel regarding **Salib alias Shalu alias Salim V State of U.P. and Others** 2023 SCC OnLine SC 947 as relied upon by the Senior Counsels for the petitioners stated that it pertains to quashing of FIR registered under section 506 IPC but the present case involves serious allegations of rape which need to be tested during the course of trial and also stated that the parameters laid down in **State of Haryana V Bhajan Lal**, 1992 Supp. 1 SCC 335 are not applicable to the facts of the present case. The Additional Standing Counsel placed reliance on various judgments of the Supreme Court in **Dr. Dhruvaram Murlidhar Sonar V State of Maharashtra and Others**, (2019) 18 SCC 191; **Hazrat Deen V State of Uttar Pradesh and Others**, (2022) SC 1781; **State of**



Punjab V Gurmit Singh and Others, (1996) 2 SCC 384; **Sham Singh V State of Haryana**, (2018) 18 SCC 34; **State of U.P. V Pappu alias Yunus and Another**, (2005) 3 SCC 594; **State of Rajasthan V Ashok Kumar Kashyap**, (2021) 11 SCC 191; **Central Bureau of Investigation V Aryan Singh etc.**, 2023 SCC Online SC 379; **Jagdish Kumar Dhingra V Central Bureau of Investigation**; (2010) SCC OnLine Del 2762; **Pradeep S. Wodeyar V State of Karnataka**, 2021 SCC OnLine SC 1140 and others.

10. The counsel for the complainant/respondent no.2 also advanced oral arguments and submitted written submissions. The counsel for the respondent no 2 primarily argued that the powers possessed by this Court under section 482 of the Code are required to be exercised with great caution and decision in exercise of power under section 482 of the Code must be based on sound principles and inherent power should not be exercised to stifle a legitimate prosecution. The counsel for the complainant placed reliance on the judgment titled as **R.P. Kapur V State of Punjab** AIR 1960 SC 866 wherein it was held as under:-

Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of



the High Court under Section 561-A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the Magistrate before whom the police report has been filed under Section 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish



cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re : Shripad G. Chandavarkar [AIR 1928 Bom 184] , Jagat Chandra Mozumdar v. Queen Empress [(1899) ILR 26 Cal 786] , Shanker Singh (Dr) v. State of Punjab [(1954) 56 Punjab LR 54] , Nripendra Bhusan Ray v. Gobind Bandhu



Majumdar [AIR 1924 Cal 1018] and Ramanathan Chettiyar v. K. Sivarama Subrahmanya Ayyar [ILR 47 Mad 722] .

10.2 The counsel for the complainant further submitted that inherent jurisdiction under section 482 of the Code must be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. The Court while exercising its power under section 482 of the Code does not function as a court of appeal or revision. The counsel referred the judgment titled as **Didigam Bikshapathi V State of Andhra Pradesh**, AIR 2008 SC 527 wherein it was held as under:-

[Section 482] 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.....”

10.3 The counsel for the complainant also countered the arguments advanced on behalf of the petitioners that there is no evidence to



attract the offences alleged; allegations are false and matrimonial discord was given colour of rape. The counsel for the complainant also submitted that the allegations against the complainant that she has lodged a false complaint cannot be entertained at this stage. The allegations made by the complainant and her statement recorded under section 164 of the Code *prima facie* disclose the elements of alleged offences. The counsel for the complainant argued that the present petitions be dismissed.

11. The present petitions are filed under section 482 of the Code for quashing of FIR bearing no.0525/2022, chargesheet dated 16.06.2023 and the impugned order besides other consequential reliefs. The Supreme Court has continuously observed that the extraordinary power under section 482 of the Code should be exercised sparingly and with great care and caution and can be used to prevent abuse of the process of the court or to secure ends of justice and the exercise of inherent powers entirely depends on facts and circumstances of each case. Section 482 saves the inherent power of the High Court and reads as follows:-

**Section 482. Saving of inherent power of High Court.-
Nothing in this Code shall be deemed to limit or affect the**



inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

11.1 The Supreme Court in **Sushil Suri V Central Bureau of Investigation and Another** (2011) 5 SCC 708 considered the scope and ambit of the inherent jurisdiction of the High Court and observed as under:-

Section 482 Code of Criminal Procedure itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under Code of Criminal Procedure; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debitojustitiae to do real and substantial justice for which alone the Court exists.

12. The learned Senior Counsels for the petitioners argued that the present petitions are maintainable as chargesheet *prima facie* does not disclose any offence against the petitioners and the present FIR and consequential proceedings are abuse of process of law and based on false and frivolous allegations and referred **Anand Kumar Mohatta V State of NCT of Delhi** (*supra*) wherein it was held that there is nothing in section 482 of the Code which restricts the exercise of the



power of the Court to prevent the abuse of process of Court or miscarriage of justice only to the stage of the FIR. It was further observed that the High Court can exercise jurisdiction under section 482 of the Code even when the discharge application is pending before the trial court and it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialized into a chargesheet. The learned Senior Counsels for the petitioners also placed reliance on **Salib alias Shalu alias Salim V State of U.P** (*supra*) wherein it was held that whenever an accused comes before the Court either under section 482 of the Code or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. The learned Senior Counsels for the petitioners also placed reliance on **Vineet Kumar V State of Uttar Pradesh** (*supra*) wherein it was held that if solemn process of Court



is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold and the court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated in **State of Haryana V Bhajan Lal** (*supra*).

12.1 The Additional Standing Counsel for the respondent no. 1/State and counsel for the respondent no. 2/the complainant argued that the contents of the chargesheet cannot be looked into under section 482 of the Code and can only be tested during the trial. The Metropolitan Magistrate at the stage of taking cognizance and summoning is only required to apply his judicial mind only with a view to take cognizance of the offence and to find out whether *prima facie* case has been made out for summoning the accused. It was also argued that **Salib alias Shalu alias Salim V State of U.P. and Others** (*supra*) pertains to quashing of FIR registered under section 506 IPC but the present case involves serious allegations of rape which can be tested during trial. It was argued that parameters laid down in **State of Haryana V Bhajan Lal** (*supra*) are not applicable to the facts of the present case. The counsel for the respondent no.



2/the complainant also referred **R.P. Kapur V State of Punjab** (*supra*) wherein it was held that the inherent power under section 482 of the Code cannot be exercised in regard to matters specifically covered by the other provisions of the Code and 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. It was also observed that 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. The counsel for the respondent no. 2/the complainant also referred **Didigam Bikshapathi V State of Andhra Pradesh** (*supra*).

12.2 The Supreme Court in **Vineet Kumar V State of Uttar Pradesh** (*supra*) observed as under:-

This Court time and again has examined scope of jurisdiction of High Court under Section 482 Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of High Court under Section 482 Cr.P.C. A three-Judge Bench of this Court in State of Karnataka vs. L. Muniswamy and others, 1977 (2) SCC 699, held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue



would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

The Supreme Court also referred the judgment titled as **State of Karnataka V L. Muniswamy** 1977 (2) SCC 699 wherein it was observed as under:-

7...In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

12.3 The Supreme Court in **State of Haryana V Bhajan Lal** (*supra*) which is also referred in **Vineet Kumar V State of UP** (*supra*) considered the scope and ambit of section 482 of the Code



and after noticing various earlier pronouncements has enumerated 07 categories of cases by way of illustration where the power under section 482 of the Code can be exercised to prevent abuse of the process of the Court or to secure ends of justice which are 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 channelized 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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;**
- (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.

12.4 The Supreme Court in **Priya Vrat Singh and Others V Shyam Ji Sahai**, (2008) 8 SCC 232 as referred in **Vineet Kumar V State of UP** (*supra*) relied on Category 7 as laid down in **State of Haryana V Bhajan Lal** (*supra*). In this case, the Allahabad High Court had dismissed an application filed under section 482 of the Code to quash the proceedings under sections 494/120B/109 IPC and sections 3 and 4 of Dowry Prohibition Act, 1961. The Supreme



Court after noticing the background facts and parameters for exercise of power under section 482 of the Code observed as under:-

8. Further, it is pointed out that the allegation of alleged demand for dowry was made for the first time in December 1994. In the complaint filed, the allegation is that the dowry torture was made sometime in 1992. It has not been explained as to why for more than two years no action was taken.

9. Further, it appears that in the complaint petition apart from the husband, the mother of the husband, the subsequently married wife, husband's mother's sister, husband's brother-in-law and Sunita's father were impleaded as party. No role has been specifically ascribed to anybody except the husband and that too of a dowry demand in February 1993 when the complaint was filed on 6-12-1994 i.e. nearly after 22 months. It is to be noted that in spite of service of notice, none has appeared on behalf of Respondent 1.

10. The parameters for exercise of power under Section 482 have been laid down by this Court in several cases.

11. "19. The section does not confer any new power 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, 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 alicui concedit, concedere videtur 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 abuse. It would be an abuse of 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/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

20. 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, Raghubir Saran (Dr.) v. State of Bihar and Minu Kumari v. State of Bihar*, SCC p. 366, paras 19-20.]

12. The present case appears to be one where Category 7 of the illustrations given in *State of Haryana v. Bhajan Lal* is clearly applicable.

12.5 The learned Senior Counsels for the petitioners primarily argued that the proceedings arising out of present FIR are *malafide* and are maliciously instituted with ulterior motive and such covered under category 07 as enumerated in *Bhajan Lal (supra)*. The petitioners have stated that the proceedings out of present FIR are outcome of personal grudge on part of the complainant due to marital discord between the complainant and Vikas Malu. This Court is well in its power to exercise power as per the mandate of section 482 of the Code after considering averments as mentioned in present petitions. The arguments advanced by the Additional Standing



Counsel for the respondent no.1/State and counsel for the respondent no.2/the complainant that the allegations as levelled by the complainant can be tested during trial and cannot be considered in the present petitions are without any basis particularly in view of legal position arising out of various decisions delivered by the Supreme Court. The present petitions under section 482 of the Code are maintainable.

13. The complainant in her complaint dated 15.11.2022 primarily alleged that Vikas Malu in February, 2019 called the complainant for event discussions at his home bearing property no.A-15, Pushpanjali Farm, Bijwasan, Delhi and offered her a hard drink but the complainant refused to drink. Vikas Malu felt offended and raped the complainant after beating her. Vikas Malu also allegedly made video at that time. Vikas Malu thereafter repeatedly committed rape with the complainant. The complainant in last week of February, 2019 did not allow Vikas Malu to commit further rape upon her. The complainant got married to Vikas Malu on 13.03.2019 before the SDM, Jhandewalan, Delhi. The complainant in May, 2019 was inappropriately touched by Vineet Malu. On 14.08.2022, Harshita



Malu and Sakshi Malu slapped the complainant and Sakshi Malu also forcibly inserted fingers inside the private parts of the complainant. The complainant also alleged that Vineet Malu raped her on 17.10.2022 and also recorded a video of the said act. The complainant in her statement under section 164 of the Code also reasserted and reiterated contents of the complaint dated 15.11.2022.

14. It is reflecting from the material placed on record and collected during investigation including statements of various witnesses that the complainant and Vikas Malu were known to each other since 2008-09 as the complainant was employed as a receptionist at office of Vikas Malu situated at Kirti Nagar. The complainant subsequently became personal secretary of Vikas Malu and was receiving salary from Kevin Metpack Private Limited. The complainant also stayed in Dubai since 2017 and the company of Vikas Malu namely Kaane American International Tobacco Co. FZE had sponsored her employment and residence visa which was valid till 2020. The complainant travelled with Vikas Malu to more than 7 countries on more than 24 different occasions before their marriage. The material collected during investigation clearly and amply established that the



complainant and Vikas Malu were having consensual relationship with each other.

15. The learned Senior Counsels for the petitioners argued that the present FIR as per investigation was maliciously instituted by the complainant to seek vengeance against Vikas Malu by falsely implicating him and his entire family and present case is an offshoot of a marital discord and relied on **Salib alias Shalu alias Salim V State of U.P.** (*supra*). The learned Senior Counsels after referring to para 102(7) of **State of Haryana V Bhajan Lal** (*supra*) argued that present complaint was lodged due to nefarious motive and after delay of about four years. It was further argued that the contents of statement of the complainant under section 164 of the Code were dislodged and disproved by subsequent investigation and due to this reason, the said statement cannot be relied upon and referred **Vineet Kumar V State of Uttar Pradesh** (*supra*).

15.1 The Additional Standing Counsel for the respondent no.1/State primarily argued that the complainant has levelled serious and specific allegations against the petitioners and the complainant has supported her case in the complaint dated 15.11.2022, FIR dated



20.11.2022, statements recorded during investigation by the Investigating Officer and in her statement recorded under section 164 of the Code and as such, the present case is a fit case for framing of charge against the petitioners and thereafter to put them to trial. It was further argued that there are no material discrepancies in various statements of the complainant. The trial court has taken cognizance against the petitioners after due application of judicial mind. It was further argued that FSL report in respect of exhibits collected during investigation and the medical opinion on MLC of the complainant are still awaited. The Additional Standing Counsel for the respondent no.1/State also argued that Vikas Malu raped the complainant in February, 2019 at his farm house and subsequently also and made video of the act. The complainant did not report the said incidents of rape due to fear but subsequently refused to surrender before Vikas Malu to further rape her. The complainant got married with Vikas Malu to save her dignity and respect and the complainant due to threats of making the obscene video viral, accompanied Vikas Malu to Chandigarh to attend the Celebrity Cricket League during 27.02.2019 to 01.03.2019.



15.2 The counsel for the respondent no.2/the complainant during arguments, rebutted the arguments advanced by the learned Senior Counsels for the petitioners which are that there is no evidence to attract the offences as complained of by the complainant, allegations as made by the complainant are false and the present case is lodged by the complainant due to matrimonial discord which was given the colour of rape.

15.3 The Supreme Court in **State of Haryana V Bhajan Lal** (*supra*) has enumerated certain categories of cases where power under 482 of the Code can be exercised to prevent abuse of the process of the Court or secure ends of justice which as argued by the learned Senior Counsels for the petitioners include (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 and (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.

15.3.1 The Supreme Court in **Vineet Kumar V State of UP** (*supra*) also observed as under:-

The fact is that no medical examination was got done on the date of incident or even on the next day or on 07.11.2015, when IO asked the complainant and her husband to get done the medical examination. Subsequently it was done on 20.11.2015, which was wholly irrelevant. Apart from bald assertions by the complainant that all accused have raped, there was nothing which could have led the Courts to form an opinion that present case is fit a case of prosecution which ought to be launched. We are conscious that statement given by the prosecutrix/complainant under Section 164 Cr.P.C. is not to be lightly brushed away but the statement was required to be considered along with antecedents, facts and circumstances as noted above.

The Supreme Court in **Vineet Kumar V State of UP** (*supra*) also referred **Prashant Bharti V State (NCT of Delhi)**, (2013) 9 SCC 293 wherein despite statement under section 164 of the Code by the prosecutrix, the Supreme Court held that the case was fit where the High Court ought to have quashed the criminal proceedings.

15.3.2 The Supreme Court in **Salib alias Shalu alias Salim V State of UP and Others** (*supra*) as referred by the learned Senior Counsels for the petitioners observed as under:-



At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.

16. The complainant as mentioned hereinabove alleged commission of rape by Vikas Malu in February, 2019 and subsequently also but the complainant till registration of present FIR



did not make any complaint against Vikas Malu regarding commission of rape by him on various occasions including commission of rape in month of February, 2019. The complainant happens to be an educated and mature lady and could not explain that why she did not make any complaint against Vikas Malu regarding rape on various occasions and recording of video. The plea of the complainant that Vikas Malu pressurized the complainant with threat of making the said video viral does not inspire much confidence under the given facts and circumstances of the case. The complainant in her supplementary statement dated 12.04.2023 stated that the first incident of rape was committed on 21.02.2019 but as per investigation, the complainant enjoyed Celebrity Cricket League organized at Chandigarh from 27.02.2019 till 01.03.2019 with Vikas Malu and had stayed with him at Hotel Taj, Chandigarh. Had Vikas Malu committed rape upon the complainant on 21.02.2019, then the complainant would not have accompanied Vikas Malu to enjoy Celebrity Cricket League organized at Chandigarh from 27.02.2019 till 01.03.2019. Vikas Malu during investigation, has also produced his mobile phone make 'HTC' stated to be used by him in the year



2019 but on checking, no incriminating material was found in mobile phone. The allegations made against Vikas Malu are appearing to be highly improbable, concocted and do not appeal to reasons of a common and prudent man and could not be established during investigation. The complainant was staying and living with Vikas Malu even before marriage out of her own consent and due to their consensual relationship. It appears that the complainant did not enjoy harmonious matrimonial relationship and soon after marriage, differences started to arise in their marital relationship.

16.1 There is factual force in arguments advanced by the learned Senior Counsels on basis of **State of Haryana V Bhajan Lal** (*supra*) that allegations against the petitioners are absurd and inherently improbable and present criminal proceedings are maliciously instituted. The arguments advanced by the Additional Standing Counsel for the respondent no.1/State and the counsel for the respondent no.2/the complainant that the complainant has levelled serious and specific allegations against the petitioners and the complainant has supported her case in various statements and as such, the petitioners should be put to trial are not supported by the



outcome of the investigation. The investigating agency could not collect even minimum incriminating material against the petitioners for their implication in the present case. The petitioners could not be subjected to prolonged criminal trial for want of FSL and other reports. The arguments advanced by the Additional Standing Counsel for the respondent no.1/State that the complainant did not report incidents of rape due to fear and got married with Vikas Malu to save her dignity and respect and under threats by Vikas Malu of making the obscene video of the complainant viral are also not good enough to inspire confidence of this Court as the complainant accompanied Vikas Malu to Chandigarh immediately after alleged commission of rape in February, 2019 and thereafter, also till 17.10.2022 i.e. the day when the complainant came back to her parental home from Hansi on way to Sardarshahar, Rajasthan. The complainant happens to be a well educated and mature lady and as such, it does not appeal to reason that the complainant did not report about the commission of rape out of threats of making her video viral by Vikas Malu and no such video could be recovered during investigation.



16.1.1 The Additional Standing Counsel for the respondent no.1/State argued that the complainant supported her allegations in her statement under section 164 of the Code and due to this reason, the present petitions be dismissed. The said argument does not inspire much confidence in view of the observations made by the Supreme Court in **Vineet Kumar V State of UP** (*supra*) and **Prashant Bharti V State (NCT of Delhi)** (*supra*) as referred hereinabove.

17. The complainant against Vineet Malu alleged that Vikas Malu in May, 2019 at Kochi after wedding reception had forced the complainant to sleep on the same bed between Vikas Malu and Vineet Malu. It is also alleged that at that time, she was inappropriately touched by Vineet Malu. The said allegation of the complainant does not inspire any confidence as at that time, Vineet Malu was stated to be just 15 years old and the complainant herself did not raise any alarm for the inappropriate and unwarranted gesture on the part of Vineet Malu. The complainant even subsequently did not report the said incident to any of the family members. The Investigating Officer during the investigation collected the family photographs, which reflect that the complainant was celebrating the



birthday of Vineet Malu. The complainant alleged that Vineet Malu on 17.10.2022 committed rape upon her after giving mercilessly beating and also recorded a video of the said act. The said allegation of the complainant also appears to be general and without any specification and has not been supported by any other corroborating material as no such video was recovered during the investigation and there is no medical document which can demonstrate that the complainant was beaten by Vineet Malu. It is also pertinent to mention that on 17.10.2022, the complainant accompanied the petitioners to Sardarshahar, Rajasthan although on the way, she came back to her parental home from Hansi. The allegations against Vineet Malu were not established during investigation.

18. The complainant also alleged that Harshita and Sakshi on 14.08.2022, commanded her to walk like an animal and on refusal, the complainant was pinned down on the floor by Harshita and Sakshi and thereafter, after beating the complainant, Sakshi spread the complainant's legs and inserted her middle finger in vagina of the complainant and thereafter, put her fingers in the complainant's mouth. These allegations of the complainant against the petitioners



are highly improbable and do not pass the test of reasonableness. It is highly improbable that the complainant had met with such treatment by Harshita and Sakshi.

19. The Additional Standing Counsel for the respondent no.1/State during the course of arguments, referred the MLC of the complainant prepared on 20.11.2022 wherein the complainant has complained of forcible sexual intercourse on 17.10.2022 at Pushpanjali Farm at 4:00 am by Vineet Malu, who was stated to be 19 years of age at that time. The complainant also complained of unnatural intercourse by her husband i.e. Vikas Malu since marriage and also alleged sexual assault on her. The Additional Standing Counsel for the respondent no.1/State argued that the complainant in MLC also supported her version as mentioned in the complaint dated 15.11.2022 and subsequently.

20. The learned Senior Counsels for the petitioners to rebut the said arguments, also referred the MLC of the complainant wherein it is mentioned that there was no tear, injury, bleeding or discharge in the external genitalia of the complainant and the external genitalia were found to be normal. The MLC as referred by the Additional



Standing Counsel for the respondent no.1/State is not reflective of any forcible sexual intercourse on 17.10.2022 at 4:00 am by Vineet Malu and there was no sign of unnatural sex on the body of the complainant. Accordingly, the arguments so advanced by the Additional Standing Counsel for the respondent no.1/State do not provide any help or assistance to the case of the prosecution.

21. It is reflecting from the above discussion that the allegations as made by the complainant in the complaint dated 15.11.2022 and subsequently including her statement under section 164 of the Code do not inspire any confidence and appear to be highly improbable. It is reflecting that the complainant was not enjoying good matrimonial life with Vikas Malu and was also not having a cordial relationship with the other petitioners namely, Vineet Malu, Harshita and Sakshi. The complainant since the commission of rape for the first time in February, 2019 had not brought the said fact to the notice of any person and also did not file any complaint being a mature and well-educated lady. The complainant also moved around with the petitioners even after February, 2019 and till 17.10.2022. The complainant and Vikas Malu developed consensual relationship with



each-other with the explicit consent of the complainant. The proceedings arising out of the present FIR, if allowed to be continued, shall be a gross abuse of the process of law.

22. Accordingly, the present petitions are allowed and FIR bearing no.0525/2022 dated 20.11.2022 registered under sections 323/354/376/377/506/509/34 IPC at P.S. Kapashera along with consequential proceedings arising therefrom including the chargesheet dated 16.06.2023, the impugned order i.e. the summoning order dated 19.08.2023 are quashed.

23. The present petitions bearing nos. CRL.M.C. 6099/2023, CRL.M.C. 6100/2023 and CRL.M.C. 6101/2023 stand disposed of along with pending applications, if any.

DR. SUDHIR KUMAR JAIN
(JUDGE)

FEBRUARY 16, 2024
N/SD/AM