

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

CRM(M) no. 76/2021  
CrIM no. 219/2021

Reserved on: 28.09.2022

Pronounced on: 17.11.2022

Shah Fahad Peerzada and another .....Petitioner(s)/Appellant(s)

Through: Mr. Hashir Shafiq, Advocate vice  
Mr. Mohammad Altaf Khan, Advocate

V/s

UT of JK and others ..... Respondent(s)

Through: Mr. Sheikh Mushtaq, AAG for R-1  
Mr. T. M. Shamsi, DSGI of R-2

**CORAM:**

**HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**ORDER**

1. The petitioners feeling aggrieved of FIR No.06/2021 for offences punishable under Section 153, 505, IPC registered with Police station, Imam Sahib, Shopian, have filed this petition under Section 482 Cr.P.C., seeking quashment of the said FIR. The FIR has been registered with the said Police Station on the basis of written complaint made by Company Commander D-Coy 44 1-Rashtriya Rifles Camp Imam Sahib Shopian. In the complaint they have alleged that the Media outlet Kashmiryat and Kashmir Walla have published an article on their news portal by claiming that the army has forced the school authorities of Siraj-ul-Uloom to celebrate Republic parade. The complainant had also alleged that spreading of such kind of fake news is bound to cause serious concern for the security and can create law and order situation.
2. The FIR no. 06/2021 was registered with the Police Station for offences punishable under Section 153, 505 IPC and during the course of investigation, it was found that said article was published by Mr. Mir Junaid of Kashmiryat and Mr. Yashraj Sharma (Kashmir Walla). During the course of investigation as per the status report filed by

respondent No. 1, the statement of Mr. Yousuf Madoo, Chairman, Siraj-ul-Uloom, was recorded, wherein he has stated that allegation made against the army were baseless and article published by the aforementioned media outlet against the army was found to be fake. The investigation of the case is underway.

3. Respondent No. 2, in his objections to this petition, submits that on 27.01.2021, an article published by Mr. Mir Junaid in Kashmiryat and Mr. Yashraj Sharma in Kashmir Walla about Siraj-ul-Uloom, a private school situated at Imam Sahib, Shopian, stating that the school was pressurized by the Army to hold the 72<sup>nd</sup> Republic Day function in their school. The article also stated that in presence of Army, the National Flag was unfurled and celebrations of Republic Day was carried out on 26.01.2021. The respondent submit and allege that by making such false publication, they had intended to cause provocation to committed riot and thus have committed offences punishable under Section 153 as well as 505 IPC. The investigation in the case is under way and is yet to be concluded.
4. The main allegation in the report on the basis of which FIR has been registered and which is under investigation, is that a false news was carried by the petitioners with regard to the celebrations of Republic Day in the school Siraj-ul-Uloom and it was alleged in such publication that the school was forced by the Army to celebrate and conduct such function. The complaint is that false accusation regarding use of force for celebrating the Republic Day by the school was alleged against the Army authorities. It is on the basis of said allegation that accused is alleged to have committed offences under Section 153, 505 IPC.
5. The petitioner seeks exercise of inherent powers under Section 482 Cr.P.C. to quash the impugned FIR. Thus, it would be appropriate to say that the scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Code, to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it

is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about existence of sufficient ground for proceedings against accused and the court cannot look into materials, acceptability of which is essentially a matter for trial.

6. The judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C., if answer to all the steps, as enumerated herein after, is in affirmative, has been so said by the Supreme Court in ***Rajiv Thapar v Madan Lal Kapoor, 2013 (3) SCC 330:-***

“Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

i. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

ii. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

iii. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

iv. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

7. The case in hand, when examined on the touchstone of law laid down by the Supreme Court, does not at all persuade this Court to grant the relief prayed for by the petitioner in the instant petition. It is well settled law that Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. The Supreme Court in ***State of Telangana v. Habib Abdullah Jeelani, reported in 2017 (2) SCC 779***, has held that the powers under Section 482 Cr.PC or under Article 226 of the Constitution of India, to quash the FIR, is to be exercised in a very sparing manner as is not to be used to choke or smother the prosecution that is legitimate. Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. Such power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Inherent powers in a

matter of quashing FIR have to be exercised sparingly and with caution and only when such exercise is justifying by the test specifically laid down in provision itself. Power under Section 482 Cr.PC, is a very wide, but conferment of wide power requires the Court to be more conscious. It casts an onerous and more diligent duty on the Court.

8. The Supreme Court in the case of *State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335*, has elaborately considered scope and ambit of Section 482 Cr.P.C. and Article 226 of the Constitution of India in the background of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements, the Supreme Court enumerated certain categories of cases by way of illustration, where the power under Section 482 Cr. P.C. can be exercised to prevent abuse of the process of the Court or secure ends of justice. Paragraph 102, which enumerates seven categories of cases where power can be exercised under Section 482 Cr. P.C. are extracted as follows:

“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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under 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.”

9. In another case of *State of Andhra Pradesh v. Golconda Linga Swamy, reported in (2004) 6 SCC 522*, the Supreme Court, while dealing with inherent powers of the High Court under Section 482 Cr. P.C., has observed and 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 recognizes 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 aliique 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 process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercises 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.

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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. 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 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).....

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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 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. 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 : The Janata Dal etc. v. H.S. Chowdhary and others, etc. (AIR 1993 SC 892), Dr. Raghbir Saran v. State of Bihar and another (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 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/F.I.R. 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 or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. 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

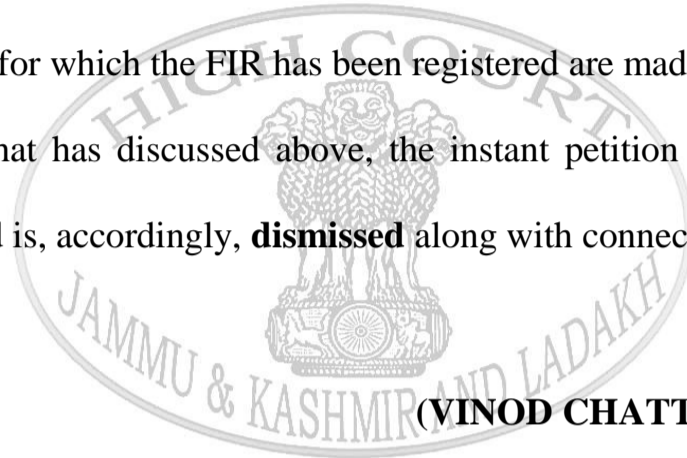
accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.”

10. The above settled position of law has also been reiterated by the Supreme Court in *Priti Saraf & anr v. State of NCT of Delhi & anr*, **2021 SCC Online SC 206**, and it has been said that inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize a complaint/FIR/ charge-sheet in deciding whether the case is the rarest of rare cases, to scuttle the prosecution at its inception. It is settled that whether the allegations in the complaint were true, is to be decided on the basis of evidence during the trial. In the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court.

11. In the above backdrop it may be appropriate to mention here that Section 482 of the Code of Criminal Procedure, preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court. The High Court, while forming an opinion whether a criminal proceeding or complaint or FIR should be quashed in exercise of its jurisdiction under Section 482 Cr. P.C., must evaluate whether the ends of justice would justify the exercise of the inherent power. While inherent power of the High Court has a wide ambit and plenitude, it has to be exercised to secure ends of justice or to prevent an abuse of the process of any court.

12. Since the allegations contained in the complaint on the basis of which the FIR in question has been registered allege commission of offences punishable under Section 153, 505 IPC, which requires to be investigated by the police and during the investigation, the defence which may be available to the petitioners can be taken and after the investigation is concluded, the police has to find out whether or not offences for which the FIR has been registered are made out or not.

13. For all that has discussed above, the instant petition is without any merit and is, accordingly, **dismissed** along with connected CM(s).



(VINOD CHATTERJI KOUL)  
JUDGE

**SRINAGAR**

17.11.2022

“Imtiyaz”

Whether the order is reportable: Yes