

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 04.09.2023
Date of Decision: 18.09.2023

CRM (M) 111/2023 c/w WP (C) 592/2023

Khursheed Ahmad Chohan

.....Petitioner

Through: Mr. B. A. Bashir, Sr. Advocate

Versus

UT of JK and others

Through: Mr. Mohsin Qadiri, Sr. AAG with Mr. Syed Musaib, DAG
Ms. Maha Majid, Assisting Counsel

.....Respondent(s)

CORAM:

Hon'ble Mr. Justice Javed Iqbal Wani, Judge

J U D G E M E N T

1. The controversy involved in the instant petitions is inter-connected to each other, having been clubbed together pursuant to order dated 29.3.2023, and, as such, are being disposed of by this common judgment.

WP (C) 592/2023

2. The petitioner in the instant petition filed under Article 226 of the Constitution implores for the following reliefs:

“a) Respondent No. 4 be directed to immediately enter FIR on the basis of complaint and documents received by him through registered post as mentioned above.

b) Respondent No. 2 be directed to constitute a Special Investigation Team (SIT) headed by a gazetted officer and assisted by two senior officers for

conducting thorough investigation in the matter, so that interests of justice are met.

c) In case this Hon'ble Court deems it fit and proper in view of gravity of offences committed as well as the influence that can be exerted by accused persons being police officials, the matter may please be referred to CBI for investigation so that fair and uninfluenced investigation takes place in the matter, in the interests of justice.

3. The facts under the cover of which the aforesaid reliefs are being prayed as stated in the petition are that the petitioner, a police constable, while being posted in District Police Lines, Baramulla was called upon to present himself in the office of respondent 3 herein on 20.2.2023 in pursuance of a signal sent by the office of Joint Interrogation Centre (JIC) Kupwara (respondent 5) to Deputy Superintendent of Police, Baramulla in connection with an inquiry relating to a narcotic case.

It is being stated that the petitioner left his place of posting at 11:45 AM on 20.2.2023 after entering his departure in the daily diary maintained for the said purpose and upon reaching the destination, the petitioner came to be subjected to heinous and brutal torture in the JIC Kupwara for six days regularly besides mutilating/amputating his body/private parts, and thereafter in a half dead state was shifted to the District Hospital Kupwara and subsequently to SKIMS, Soura, Srinagar in a serious condition accompanied by a Sub-Inspector namely Ashiq Hussain, Belt no. 289/PAU, where the petitioner got admitted for treatment and was

advised an immediate surgery owing to the amputation of his private body part having been brought in a polythene bag by the accompanying sub-inspector.

It is being next stated by the petitioner that while being admitted in SKIMS Soura his wife approached respondent 4 for registration of FIR owing to custodial torture and amputation of his body parts, against the accused police personnel and on his failure to register the same, the petitioner's wife approached the respondent 3 who too did not take any action in the matter resulting into serving of a legal notice by the petitioner's wife upon the respondents 2 to 4 through her advocate.

4. The petition is being maintained 'inter alia' on the ground of violation of rights of the petitioner by the respondent herein guaranteed under Article 21 of the Constitution as also of blatant breach of the directions issued by the Apex Court in case titled as "Lalita Kumari vs. Government of UP and others" qua the registration of an FIR.
5. Upon coming up of this matter for consideration on 17.3.2023, the counsel for the respondents came to be directed by this court to inform the court about the status of the complaint claimed to have been lodged by the wife of the petitioner and on 18.3.2023 the said information came to be furnished suggesting that an FIR, being FIR No. 32/2023 regarding the incident had been registered on 25.2.2023, however, not on the complaint of the petitioner's wife. No information/response was

furnished and conveyed by the counsel for the respondents with respect to the status of the complaint claimed to have been filed by the petitioner's wife. Accordingly, respondents 3 and 4 came to be directed to file the reply to the petition by or before 28.3.2023.

6. **Response/status report** has been filed by the respondents wherein it has been stated that on 26.2.2023 police station Kupwara received a written docket from SI Muneer Ahmad no. 108/KP Incharge police post Tad, Karnah camp JIC Kupwara to the effect that while being in the camp for questioning in cases related to narcotics and psychotropic substance including FIR 17/2023 registered for offences under section 8/21 and 29 NDPS Act in police station Karnah, the petitioner was kept in a barrack for further questioning where he himself cut his private part using shaving razor blade under the quilt and the said act being attempt to suicide necessitated registration of FIR bearing No. 32/2023 dated 26.3.2023 under section 309 IPC wherein investigation was commenced.

It is further stated in the response that during the course of investigation it got revealed that the presence of the petitioner was sought by the police owing to his involvement in various cases registered in police station Karnah including in FIR 01/2023 registered for offences under section 7/25 Indian Arms Act, 8/21, 29 NDPS Act, and sections 13, 18, 20, 23 and 37 ULA(P) Act and FIR no. 17/023 for offences under section 8/21, 29 NDPS Act and

that approximately 9 KG and 450 grams of heroin and 5 pistols, 10 pistol magazine and 77 pistol rounds, four grenades, 1 pistol cleaning rod and a pistol user guide were recovered during investigation of said FIR 01/23 *supra* whereas 2.674 KG of heroine were recovered in FIR no. 17/2023 *supra*.

It has been further stated in the response by the respondents that the petitioner reported in the JIC Kupwara on 21.2.2023, however due to further leads was asked to report again on 22.2.2023, whereafter the petitioner was advised to remain available on each day owing to the requirement of his presence in the investigation and that since the petitioner resided at a far off place from the JIC in question, the petitioner, as such, himself preferred to stay in the Centre itself in a barrack along with other police personnel.

It has been further stated in the response that on 25/26.2.2023 one of the accomplices of the petitioner was caught with 2.674 KG of heroin at Karnah and the said arrest of his accomplice triggered panic in the petitioner due to fear of being exposed, the petitioner tried to commit suicide at around 11:15 AM while he was resting on his bed in the barrack in the Centre where few more police personnel were present.

Lastly, it has been stated that the investigation of the case is in progress with regard to the complaint filed by the petitioner's wife. It has been also stated that the said complaint was received in

the police station Kupwara on 15.3.2023 and that since the investigation had been initiated in the incident alleged in the complaint in FIR 32/2023 *supra*, as such the said complaint was made part of the said FIR and that, as such, in presence of an FIR already registered in the incident another FIR could not be registered in view of the law laid down by the Apex Court in case titled as **T. T. Anthony vs. State of Kerala reported in AIR 2002 SC 2637.**

7. It is significant to mention here that upon consideration of the matter on 28.3.2023, 3.4.2023 and 4.4.2023 by this court and after perusing the CD filed of FIR No. 32/2023 *supra* inasmuch as having regard to the issues raised in the instant petition, respondent 3 came to be directed to hand over the investigation of the case to an officer of the rank of Deputy Superintendent of Police with a further direction to file status report of the investigation of the said FIR.
8. It is also pertinent to mention here that in the meantime the petitioner herein challenged the FIR 32/2023 *supra* in the accompanying petition being CRM(M) 111/2023 invoking the inherent power of this court enshrined under section 482 Cr.PC and in the application accompanying the said petition, on 3.4.2023 this court directed continuation of the investigation in FIR, however, provided that in the process of investigation the petitioner be not subjected to any kind of harassment.

9. It is worthwhile to mention here that the respondents in compliance to order passed by this Court on 26.4.2023 filed further response to the petition on 11.5.2023 wherein while reiterating the facts stated in the earlier status report, it came to be averred that the investigation of the case FIR 32/2023 *supra* was handed over to Dy. SP, DAR Kupwara and that despite repeated requests, the petitioner did not present himself before the investigating officer though his wife appeared and stated that the petitioner is not yet in a condition to present himself before the investigating officer and assured his presence as soon as his health recuperates.

It also came to be stated in the said response that the investigation conducted points towards the fact that the injury appears to have been self-inflicted by the petitioner though the investigation was reported to be still going on exploring the case from all possible angles.

CRM (M) 111/2023

1. In terms of the instant petition filed under section 482 Cr.PC, the petitioner has invoked the inherent power of this court enshrined in section 482 Cr.PC seeking quashment of FIR No. 32/2023 dated 26.2.2023 registered with police station Kupwara for commission of offences under section 309 IPC having arraigned the petitioner as an accused.

2. The facts stated in the instant petition are almost identical to those stated in WP (C) 592/2023 supra, as such, for the sake of brevity and in order to avoid repetition, are not being referred hereunder.
3. The petitioner is seeking quashment of aforesaid FIR in the instant petition primarily on the ground that he himself is the victim of custodial torture and has been falsely implicated in the impugned FIR by the respondents to save their officers being involved in the custodial torture of the petitioner.
4. **The respondents have opposed** the reliefs sought by the petitioner on the ground that as per the investigation conducted in the impugned FIR, the petitioner has caused self-harm with the intention of committing suicide owing to surfacing of his involvement in multiple narcotic cases inasmuch as getting the same established, as also due to the arrest of one of his accomplices along with a commercial quantity of narcotic substance/heroin being *prima facie* opinion based on the statement of ocular witnesses, examination of CCTV footage as also other circumstantial evidence strongly revealing involvement of the petitioner in the offence.

ANALYSIS:

WP (C) 592/2023

- A. Mr. B. A. Bashir, Senior Advocate, appearing for the petitioner, contended that the respondents flagrantly violated the rights of the petitioner guaranteed under Article 21 of the constitution by

declining to register an FIR on the complaint filed by the petitioner's wife with regard to the alleged occurrence, besides having observed the directions passed by the Apex Court in *Lalita Kumari's case supra* in breach, as such the learned counsel reiterated the prayer of the petitioner made in the petition for directing the respondents to register an FIR with regard to alleged occurrence and also to transfer the investigation of the case to Central Bureau of Investigation (CBI) and would rely on the following judgments:

- i) **Lalita Kumari vs. Government of Uttar Pradesh and others reported in (2014) 2 SCC 1** wherein at para 3 following has been laid down:

“A two-Judge Bench of this Court in [Lalita Kumari vs. Government of Uttar Pradesh & Ors.](#) (2008) 7 SCC 164, after noticing the disparity in registration of FIRs by police officers on case to case basis across the country, issued notice to the Union of India, the Chief Secretaries of all the States and Union Territories and Director Generals of Police/Commissioners of Police to the effect that if steps are not taken for registration of FIRs immediately and the copies thereof are not handed over to the complainants, they may move the Magistrates concerned by filing complaint petitions for appropriate direction(s) to the police to register the case immediately and for apprehending the accused persons, failing which, contempt proceedings must

be initiated against such delinquent police officers if no sufficient cause is shown.”

- ii) **State of Haryana and others Vs. Bhajan Lal and others reported in 1992 Supp (1) SCC 335** wherein it has been observed as under: “It is therefore manifestly clear that if any information disclosing a cognizable offence is laid before an officer-in-charge of a police station satisfying the requirements of Section 154(1) of the Cr.PC, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

A similar view has been taken by the Apex Court in case titled as **Ramesh Kumari vs. State (NCT of Delhi) and others reported in (2006) 2 SCC 677, Parkash Singh Badal and another Vs. State of Punjab reported in (2007) 1 SCC 1, and Aleque Padamsee and others versus Union of India and others reported in (2007) 6 SCC 171.**

Mr. Mohsin Qadiri, Sr. AAG appearing for the respondents on the contrary while opposing the submissions of Mr. B. A. Bashir, Senior Advocate, contended that the reliefs sought by the petitioner are available to him in terms of section 156 (3) Cr.PC whereunder a Magistrate can direct registration of FIR if commission of a cognizable offence is disclosed and the complainant had followed the mandate of section 154 (1) and 154

(3) Cr.PC and, as such, the remedy of extraordinary writ jurisdiction in the matter is not available to the petitioner, more so, in light of the judgments of the Apex Court passed in the case titled as **Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others reported in (2016) SCC 277** wherein at paras 2 and 3 following has been laid down:

[2] This Court has held in *Sakiri Vasu v. State of U.P.*, 2008 2 SCC 409 , that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in *Sakiri Vasu v. State of U.P.*, 2008 2 SCC 409 because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

[3] We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

Mr. Qadiri further contended that even otherwise as well the prayer for registration of FIR in the instant petition by the petitioner can also not be granted in view of the law laid down by the Apex Court in **T. T. Antony v. State of Kerala reported in AIR 2001 SC 2637** wherein at para 27 following has been laid down:

“27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution.”

B. The petitioner in the present case is seeking registration of FIR which FIR can safely be said to be a counter FIR and permissible, having regard to the facts and circumstances of the case, inasmuch as, the position of law referred in *T. T. Antony's* case *supra* as in the said judgment the second FIR has been held to be impermissible only when the same is against same accused for the same offenses for which an FIR had been registered. Furthermore, perusal of the record of the case, facts and circumstances obtaining in the matter as also the status report filed by the respondents what catches attention of this court is that the petitioner was called to JIC Kupwara by the respondents on 20.2.2023 when FIR came to be registered on 23.2.2023 i.e. after the petitioner was called for interrogation. This sole fact creates a reasonable doubt in the story projected by the respondents coupled with the fact that the petitioner himself a police personnel alleging custodial torture by the fellow police personnel being a serious issue, thus necessitating an enquiry as contemplated by the Apex Court in *Lalita Kuamri's* case *supra*.

C. Viewed thus, what has been observed, considered and analysed hereinabove, the instant petitions is held maintainable and is disposed of in the following manner:

- i) The Sr. Superintendent of Police, respondent 3 herein, is directed to conduct an indepth enquiry into the

allegations of custodial torture made by the petitioner's wife in the complaint filed by her as also by the petitioner in the instant petition without any further delay preferably within a period of eight weeks from today. If upon such enquiry the respondent 3 finds commission of an offence is made out, he shall direct registration of FIR forthwith against the accused persons involved in the same and entrust the investigation of the case to a police officer not below the rank of the Deputy Superintendent of Police.

ii) Disposed of.

ANALYSIS:

CRM (M) 111/2023

D. The scope and exercise of inherent power enshrined under section 482 Cr.PC has been laid down by the Apex Court in a series of judgments including the one passed in case titled as **Neeharika Infrastructure Pvt. Ltd. versus State of Maharashtra and others reported in AIR 2021 SC 1918**, wherein at para 7 following has been laid down:

“7. While considering the aforesaid issue, law on the exercise of powers by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India to quash the FIR/complaint and the parameters for exercise of such powers and scope and ambit of the power by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India are required to be referred to as the very parameters which are required to be applied while quashing the FIR will also be applicable while granting interim stay/protection.

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

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

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

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question.

In exercising its jurisdiction under Section 561- A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

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

7.3 Then comes the celebrated decision of this Court in the case of Bhajan Lal (supra). In the said decision, this Court considered in detail the scope of the High Court powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

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

7.4 In the case of Golconda Lingaswamy (supra), after considering the decisions of this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra) and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., in paragraphs 5, 7 and 8, it is 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 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, conceditur et id sine quo res ipsa esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the

section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice.

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

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained.

That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see 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 Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghbir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed.

It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal.

The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."

7.5 In the case of Zandu Pharmaceutical Works Ltd. (supra), in paragraph 11, this Court has observed and held as under:

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

It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premise arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code.

It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."

7.6 In the case of Sanapareddy Maheedhar Seshagiri (supra), in paragraph 31, it is observed and held as under:

"31. A careful reading of the abovenoted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court.

In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect.

If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 CrPC."

7.7 In the case of Arun Gulab Gawali (supra), this Court set aside the order passed by the High Court quashing the criminal complaint/FIR which was even filed by the complainant. In the case before this Court, prayer for quashing the FIR before the High Court was by the complainant himself and the High Court quashed the FIR/complaint

in exercise of the powers under Section 482 Cr.P.C. Quashing and setting aside the judgment and order passed by the High Court quashing the FIR, this Court in paragraphs 13 and 27 to 29 has observed as under:

"13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it "soft-pedal the course of justice" at a crucial stage of investigation/proceedings.

The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "CrPC") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure.

However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] , Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] and Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])

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27. The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Session is empowered to discharge an accused under Section 227 CrPC even before initiating the trial.

The accused can, therefore, move the trial court itself for such a relief and the trial court would be in a better position to

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

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

29. Thus, while exercising such power the Court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. It should be a case where no other view is possible nor any investigation or inquiry is further required. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit and the facts warranting exercise of such power. More so, it was not a case of civil nature where there could be a possibility of compromise or involving an offence which may be compoundable under Section 320 CrPC, where the Court could apply the ratio of *Madhavrao Jiwajirao Scindia* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234 : AIR 1988 SC 709]."

Thus what emerges from the above judgments of the Apex Court is that when a prayer for quashing of FIR is made by the alleged accused, the court exercising power under section 482 Cr.PC has only to consider whether the allegations in FIR disclose commission of the cognizable offence or not. The court is not

required to consider on merits whether or not the allegations make out a cognizable offence and the court is to permit the investigation agency to investigate the allegations in FIR.

- E. In view of the aforesaid principles of law laid down by the Apex Court and having regard to the facts and circumstances of the case inasmuch as the stand taken by the respondents, the investigation in the impugned FIR is at its infancy stage and this court cannot at this stage marshal and scan the evidence so far collected by the investigating agency and ascertain its genuineness and credibility *qua* the accusation foisted on the petitioner and instead it would be appropriate and in the fitness of things to leave it open to the investigating agency to investigate the case as the matter requires investigation as the charge is levelled against the police and if the FIR is quashed at this stage then the investigating agency will have no opportunity to go into the matter.
- F. This court, in view of the above, is not inclined to exercise inherent power. Petition is liable to be dismissed and is accordingly dismissed.

(Javed Iqbal Wani)
Judge

Srinagar
18.9.2023

N Ahmad

Whether the order is speaking?	Yes
Whether approved for reporting?	Yes