

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

CRM(M) no.619/2024
CrIM Nos.1432/2024; 1433/2024;
2434/2024;2438/2024

Pronounced on: 13.02.2025

Nagraj V.

.....Petitioner(s)

Through: Mr Aatir Kawoosa, Advocate &
Mr. Daya Reddy, Advocate

Versus

UT of J&K through P/S Anantnag and another

.....Respondent(s)

Through: Mr Mohsin Qadri, Sr.AAG
Mr Syed Musaib, Dy.AG
Mr S. R. Hussain, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Quashment of Charge-Sheet titled as *UT of J&K v. Nagraj V. and others*, pending before the court of Chief Judicial Magistrate, Anantnag, as well as FIR no.77/2024 registered in police station Anantnag under Section 420 IPC is sought in the instant petition preferred under Section 482 of the Code of Criminal Procedure read with Section 528 of Bharatiya Nagrik Suraksha Sanhita (BNSS) of 2023.
2. The case set up by petitioner is that he is a Member of Bhartiya Janta Party and is also an entrepreneur. He had contested Assembly Election in the State of Tamil Nadu in the year 2016 on the ticket of said party. It is also the case of petitioner that respondent No. 2 is a Government

Official and is serving as a Major in Army and is posted in Khanabal area of District Anantnag. It is also stated by petitioner that respondent No.2 approached petitioner through his friend, who happens to be a Parliament Director, in the first week of August 2023 in New Delhi and subsequently kept on insisting the petitioner to visit Kashmir as respondent no.2 was posted in Anantnag. Petitioner came to Kashmir and since Amarnath Yatra was going on, he performed Holy Amarnath Yatra. Respondent No. 2 informed petitioner that he enjoys good standing in Anantnag District, in fact in the entire valley. Respondent No. 2 told petitioner that he can help petitioner in investing in Pahalgam area, which is a tourist spot.

3. It is also assertion of petitioner that respondent no.2 in fact told him that he knew various businessmen and land owners in Kashmir who would offer land to petitioner at reasonable rates because of influence of respondent No.2. Respondent No.2 wanted petitioner to invest money here and wanted to collaborate with petitioner for business purposes. Petitioner avoided to invest in the Kashmir. Subsequently, respondent No.2 came to Chennai and wanted to invest in production house of petitioner. Respondent No.2 was also time and again requesting petitioner for unreasonable favours. After repeated requests and offers, the petitioner accepted the proposal of respondent No.2, when Respondent No. 2 visited petitioner in Chennai around last week of October 2023.
4. It is also submission of petitioner that as per arrangement, respondent no.2 had to invest Rs.2.00 crores in the film production for which respondent No.2 was assured by petitioner that he would get 20% profit

from the earnings of film production. The money was being paid to the artists including Mr. Samudra Kuni, who is a known actor/film star in the South Indian Film Industry. Petitioner requested respondent No.2 for entering into a formal agreement with him but Respondent No.2 refused the same citing the reason that he is a government official and cannot officially do business as he will lose his job. Petitioner also states that he also did not press upon signing of any agreement as respondent No.2 assured that there would be no problem from his end. Respondent No.2 said that he would be wanting his share in the profits in cash to which the petitioner did not agree. Subsequently, after initial investment of Rs.76.00 Lacs, respondent No.2 refused to invest further in film-production and was pestering petitioner for return of investment made. Respondent No.2 visited petitioner in New Delhi at his rental accommodation in Defence Colony. Respondent No.2 along with certain other people, whom petitioner did not know, forced him to give blank cheques to him. Petitioner will be in a position to produce more details regarding said transaction, once he is bailed out. In fact, during this period, one song was also produced and directed by petitioner and the same is also available in Hindi version online on YouTube having more than one million views. Petitioner thereafter assured respondent that petitioner would return basic investment, i.e., Rs.76.00 Lacs minus the loss which petitioner had suffered due to acts of respondent no.2, which irked respondent no.2, who was demanding crores of rupees from petitioner. Respondent no.2 started misusing his official position and his status to coerce petitioner to make payment to respondent no.2. Out of nowhere, on 26th April 2024, impugned FIR No.77/7024 came

to be registered against petitioner on the complaint of respondent No. 2.

5. It is also contention of petitioner that he had good friendly relations with respondent No.2 until starting of 2024, when respondent No.2 started blackmailing him and was asking for one favour or the other keeping in view high reputation of petitioner in the society. Impugned FIR has been registered at the behest of respondent No.2, using influence which the said officer is enjoying in District Anantnag of UT of J&K. In fact, contents of impugned FIR would reveal that how the police agency has been manipulated to serve the motives of respondent No.2 and to extort money from petitioner. The impugned FIR was registered against petitioner under Section 420 IPC, in which respondent No.2 has mentioned contradictory facts and has shown himself as some kind of land broker/agent in Kashmir Valley. Respondent No.2 in the said FIR has alleged that he met petitioner during Amarnath Yatra and that respondent No.2 accompanied him in Amarnath Yatra and was also showing different places to petitioner for investment in the Kashmir, particularly Pahalgam Area.
6. It is being also stated by petitioner that respondent No. 2 on one hand, in impugned FIR has alleged that he paid petitioner Rs.12.00 Lacs as petitioner had to meet President of India and on the other hand, has said that respondent No.2 went to Delhi to discuss some property related matter with the petitioner in Delhi and respondent No.2 allegedly entered into some agreement with petitioner relating to the sale of property in New Delhi, on account of which respondent No.2 allegedly paid a certain amount to father of petitioner, petitioner and some other

person, namely, Ranjeet. It has further been alleged in the complaint that the total amount which was credited in three different accounts by respondent No.2 was Rs.1.06 crores and petitioner could not deliver the property. It has been further alleged that petitioner tried to repay respondent No.2 by issuing the cheque of Rs.1.00 Crore, which got bounced and then issuing another cheque of Rs.2.00 crore (Rs.1.00 Crore as principal amount and Rs.1.00 Crore as compensation), however, both cheques got bounced due to insufficient amount. In the complaint/impugned FIR, it has been mentioned that petitioner paid Rs.5.25 Lacs to respondent No.2 prior to registration of FIR, however for repaying the remaining amount, petitioner was asking for time. Respondent No.2 has addressed this complaint to Shri G. V. Sundeep Chakarvarthy (IPS), SSP Anantnag, J&K, and on his direction, SHO concerned registered impugned FIR. In impugned FIR, respondent No.2 prays for recovery of money. Impugned FIR reveals that complaint has been filed on 26th April 2024 before SSP concerned and impugned FIR has been registered on 26th April 2024, i.e., on the very same day without approaching SHO concerned. Petitioner was arrested on 9th May 2023 and the entire residence was searched without any search warrant. From 10th May 2024 to 16th May 2024, when petitioner was in custody of police, respondent no.2 while using his influence and with the aid and assistance of police agencies, tortured petitioner and while generating pressure upon him, made petitioner talk to his wife on phone viz WhatsApp of petitioner and threatened the entire family of petitioner that petitioner would be booked in terrorist activity, PSA would be slapped on him and petitioner would be killed by creating

fake documents and graphics against him as a terrorist. On 16th May 2024, petitioner was produced before the court of Chief Judicial Magistrate, Anantnag, and remand was presented before it, and remand was extended for further three days, but petitioner brought to the knowledge of the court that torture being meted out to him in police custody at the behest of complainant. On 24th May 2024, petitioner was again presented before the court, where petitioner submitted that he was being physically and mentally tortured in police custody by giving electric shocks to sensitive parts of the body of petitioner, applying burning and itching cream on skin and by hitting petitioner on his chest. It was brought to the knowledge of the court that treatment was being meted out to petitioner in police custody so as to pressurise him to transfer money into the account of respondent no.2. Besides respondents forced him to sign blank stamp papers, green papers and white papers while he was in police custody. Keeping in view the said treatment being meted out to petitioner, the court ordered petitioner to be sent to judicial custody. Apart from the above, respondent no.2 also used to talk to wife of petitioner via WhatsApp of petitioner in front of petitioner, while petitioner was in police custody and also used to threaten petitioner, his wife and his family to pay money to respondent no.2 or else the entire family would be arrested. The said calls were made from two WhatsApp numbers of petitioner to the wife of petitioner and family from 10th May 2024 to 16th May 2024, which phones are also in the police custody and respondent no.2 told wife of petitioner that she too will be involved in alleged offence allegedly committed by petitioner.

7. Next submission of petitioner is that while pressure was being generated upon petitioner and his family by respondent No.2 in league with respondent No.1, his father filed a bail application before the court of Chief Judicial Magistrate, Anantnag, on 15th May 2024, which was listed on 16th May 2024 and police report was called and subsequently the matter was again listed several times. Meanwhile, as the family of petitioner and his wife were being threatened constantly and respondent No.2 was making constant demands to family of petitioner with the help of respondent-police, the wife of petitioner transferred Rs.10.00 lacs through Bank RTGS to the account of petitioner, whereafter Rs.4,99,900/- and Rs. 4,99,900/- were transferred immediately from the account of the petitioner to the account of Respondent No.2 through online mode, while petitioner was in police custody, by generating pressure upon him. Petitioner was forced to give passwords to respondents for enabling the said payment. Thereafter, on 16th May 2024, again Rs.4,99,900/- and Rs.50,000/- were transferred from the account of petitioner to the account of respondent No.2 through online mode while petitioner was behind bars and both the phones of the petitioner were also with respondent-police. On 17th May 2024, petitioner's father was also forced to transfer Rs.14,50,000/- to the account of respondent No.2 through SBI Bank. The said amount was being extorted from petitioner and his family by respondent No.2 in league with respondent-police, while misusing his official position as respondent No.2 enjoys clout in UT of J&K, particularly in Anantnag area. Fearing their arrest, wife of petitioner and his family members also could not stay in UT of J&K. The matter was listed before CJM

Anantnag on 15th, 16th, 28th and 29th May 2024, on 3rd, 5th, and 6th June 2024. Respondent no.2 on all dates used to remain present before the court. Police report was called and prosecution also filed its objections.

8. It is being also submitted by petitioner that police report reveals that how respondent no.2 has been unduly influencing respondent-police and Investigating Officer, and has been generating pressure upon police for making out a case when there is none. According to petitioner, basic FIR, which was registered against petitioner, was under Section 420 IPC; however, offences, like offence under Section 487 IPC are not made out at all from the contents of impugned FIR, police report or objections filed by respondent have also been added just to ensure that petitioner is not released on bail.
9. Further contention of petitioner is that when matter was heard by CJM, Anantnag, on 3rd June 2024, the matter was posted for arguments on 5th June 2024, on which date matter was argued through virtual mode and matter was posted for further arguments on 6th June 2024. However, on said date, it came to knowledge of petitioner that CJM, Anantnag, recused from hearing the matter and the matter was transferred to the court of Judicial Magistrate 1st Class (Munsiff), Anantnag, which Court rejected the bail application vide order dated 12th June 2024. Thereafter, petitioner filed an application for grant of bail before this Court, being Bail App. No.571/2024, which was disposed of vide order dated 26th July 2024, with a direction to SSP concerned to supervise and monitor investigation himself to ensure fair investigation. The IO was also reminded to not act as a recovery agent

of complainant. The bail was not granted to petitioner by this Court as respondent no.1 undertook to file charge sheet within ten days and also respondent claimed to have recovered some allegedly forged document, the details whereof are even given in the order dated 26th July 2024. This Court granted liberty to petitioner to approach Trial Court after filing of charge-sheet by respondent no.1 as investigation against petitioner would be completed by then. Thereafter, respondent No.1 filed impugned chargesheet before CJM, Anantnag, (Trial Court) under Sections 424, 120B, 467, 468, 471 and 419 IPC against petitioner. He filed another bail application before Trial Court on 7th August 2024 in terms of the liberty granted to petitioner by this Court, which was dismissed by the Trial Court vide order dated 3rd October 2024 on the count that subsequent bail application filed by petitioner is not maintainable.

10. It is further assertion of petitioner that the bail application was filed in view of liberty granted by this Court and the change in circumstances. However, Trial Court despite the said liberty has held successive bail application not maintainable stating that mere filing of charge sheet is not change in circumstance to file successive bail application. The Trial Court has even observed in para 18 of the order dated 3rd October 2024 that counsel for applicant emphasized that accused is returning the money to complainant by making payments at different intervals through his wife. As such cannot be said to have cheated accused. However, the fact of the matter is that said submission was never made before the Trial Court. In fact, in bail application which had been filed before Trial Court, it has been specifically pleaded that respondent no.2

has extorted money from petitioner by generating pressure upon petitioner while he continues to languish in custody. Even the mode and manner in which the money was extorted has been stated in the bail application along with the proof thereof, however, the Trial Court has given above observation contrary to the record for the reasons best known to it. Not only that, none of the submissions raised in the application have been considered while dismissing the application filed by petitioner for grant of bail. The Trial Court has not even considered that this Court has granted bail to co-accused in the matter vide order dated 6th September 2024 nor has the Trial Court considered the fact that alleged forged sale deed does not form part of impugned charge sheet, as such, petitioner has lost faith in the courts at Anantnag District.

11. Response/status report has been filed by respondent no.1. It is insisted that complainant presented an application before SSP, Anantnag, against one person namely, Nagraj V., who had fraudulently grabbed Rs.1.00 crore and Rs.6.00 Lacs from complainant on the name of fake property. SSP, Anantnag forwarded complaint to police station Anantnag. Upon receipt of complaint, FIR no.77/2024 was registered. Investigation was set into motion. During investigation, IO recorded complainant's statement on 27th April 2024, which detailed the nature of fraud and interactions with accused. Subsequent to this, police sought and received call details records (CDRs) and bank transaction details from SBI, ICICI and Axis Bank, revealing multiple transaction totaling Rs.1.00 crore and Rs.6.00 Lakhs to the accounts of Nagraj V. and his associates. Specifically, Rs.44.00Lacs was transferred to petitioner; Rs.32.00 Lacs to his father, K. Vishnu Sagar, and Rs.30.00

Lacs to associate Ranjeet Surya Ganeshan, indicating a coordinate effort to defraud complainant. It is also contention of respondent no.1 that on 9th May 2024, a movement order was issued to apprehend petitioner in Delhi. A police team, comprising of I.O. and Head Constables, successfully arrested petitioner/accused at his residence, D-132, Defence Colony, New Delhi, where they also recovered electronic devices and documents relevant to investigation. Following his arrest, petitioner was presented before CJM, Anantnag, on 10th May 2024, where a remand for seven days was granted for further investigation. During course of investigation, it became apparent that petitioner employed various fraudulent identities, possessing multiple Aadhar cards and a passport with differing addresses, raising concerned regarding his identity and intent to commit fraud.

12. Respondent no.1 also avers that involvement of co-accused, including K. Vishnu Sagar, who received Rs.32.00 Lacs and Shweeta B, who actively assisted petitioner in orchestrating the fraud by facilitating communications with complainant. Rajeev Surya Ganeshan, another key associate received Rs.30.00 Lacs, solidifying their roles in the criminal enterprise. Evidence suggests that petitioner operated within an organized crime syndicate, frequently changing residences to avoid detection and defraud unsuspecting victims, with records indicating similar offences committed in Tamil Nadu. On 18th May 2024, a request was forwarded to UIDAI for verification of Aadhar numbers associate with petitioner due to discrepancies in address details. Additionally, correspondence initiated with Sub Registrar Office, Lajpat Nagar, to verify authenticity of a sale deed recovered during search operation on

15th June 2024, the Court issued a search warrant for D-132, Defence Colony, New Delhi. The execution of this search on 10th July 2024 was conducted under the supervision of local Executive Magistrate, resulting in recovery of documents that further substantiated fraudulent activities. Throughout investigation, it became clear that petitioner lacks a permanent address and continuously alters his identity, utilizing various addresses in government issued documents to facilitate his crimes. As a result of amassed evidence, a charge sheet has been prepared against petitioner and his associates under Section 420, 467, 468, 471, 419, and 120-B IPC, detailing their involvement in fraudulent scheme and same has been produced before the competent court of law.

13. Objections have also been filed by respondent no.2, in which he would contend that petitioner/accused is involved in commission of serious offences of forgery, cheating and fraud in conspiracy with his other aides particularly his father and his wife. Accused/petitioner has duped complainant and his wife of their hard-earned money amounting to Rs 1.06 crore which they had raised on loan from financial agencies/banks and has made the complainant and his wife to deliver an amount of Rs.1.06 crores from time to time with dishonest and fraudulent intentions. In order to give effect to his dishonest intentions he, besides deceiving the complainant and making him to deliver money to him has also forged the documents to ensure that his correct address is not disclosed to anyone including the complainant. From the facts and circumstances of the case and from contents of FIR it will be abundantly clear that petitioner had dishonest and fraudulent intentions to cheat and deceive the complainant from the very inception and for

giving effect to his notorious designs he has also committed forgery of valuable security. The accused is a habitual criminal and has a number of cases/FIRs of similar nature pending against him at various places in the country. Petitioner has been fleeing from wings of justice. He has been throwing dust in the eyes of law, enforcing agencies and has never been cooperating with the investigating agencies or the Courts of law and has been absenting himself from trial of the cases. He is wanted in various cases of similar nature and non-bailable warrants are pending against him, so much so the High Court of Madras cancelled his bail in one of such cases. The petitioner has been changing his addresses every now and then and giving wrong addresses and it becomes difficult for the courts trying the offences against him, to procure his appearance. Even the warrants of arrest issued by different courts are not being executed against accused/petitioner for the reason that he has been changing his places of residence from time to time. According to respondent no.2, the High Court of Madras while dealing with one of such cases against petitioner has observed that considering the facts and circumstances of the case and also considering that there are eight previous cases pending against petitioner herein and he did not comply with the conditions imposed by the Sessions's court, this Court is inclined to cancel the bail granted to petitioner.

14.It is also stated by respondent no.2 that petitioner is also guilty of offence of forgery under section 467 IPC as he has forged valuable securities including Forged registry of D-132 Defence colony New Delhi which he promised to sell to the complainant, Adhaar Cards, Passports and Election Voter Card with the intention to cheat and

defraud the innocent victims. The petitioner has no permanent address and has not still revealed his real address either before this Court or before investigating agencies. The address given by accused in present application is also wrong and incorrect as the tenancy in respect of the premises has since been terminated. Petitioner/accused has, thus, mislead this Court by providing a fake address. Earlier when petitioner was living in a rented accommodation in Chennai, he tried to sell out the said property by projecting himself as real owner of the same, as such, owner of house filed an eviction suit against him and an order of eviction from the premises was passed by the court of Small Causes, Chennai, on 25th July 2019.

15.It is also averred by respondent no.2 that he seeks to place on record the documents, viz. the cancellation of bail by the High Court of Madras; copy of eviction order passed by the court of Small Causes, Chennai as also the notice of termination of tenancy pertaining to premises, namely, D-132, Ground Floor, Defence Colony, New Delhi. Moreover, in a case of similar nature, petitioner sought an anticipatory bail from the court of Sessions in Chennai in respect of offences under Section 406, 420 IPC, which was rejected by the court vide its order dated 23rd January 2021. In another case covered under FIR no.268/2021 of cheating of Rs.92.00 Lacs, anticipatory bail was rejected by the High Court of Madras vide order dated 25th November 2021.

16.It is further submission of respondent no.2, that as regards misleading information being furnished by petitioner, giving incorrect and inconsistent addresses, petitioner has been showing different addresses in different documents. In Aadhar Card, his address is shown as Flat

no.7, 2nd Floor, River View Apartment no.2/10, Boat Club Road, 3rd Avenue, Raja Annamalaipuram, Chennai, Tamil Nadu. In his Election voter, petitioner has shown his address as 163/321, Triplicane High Road, Triplicane, Chennai, 80005. In his passport, petitioner has shown his address as no.7, Gf, Ranimeyammai Towers, NRC, R.A.Puram, Chennai, 6000028. This goes to show that accused / petitioner has no permanent address and has been furnishing fake addresses so as to escape the clutches of law enforcing agencies and flee from the wings of justice. He has never been cooperating with investigating agencies/law enforcing agencies and has been absenting himself from the court proceedings pending against him in different courts of India. Petitioner has a track record of abusing and jumping over concession of bail wherever granted to him by courts of law. He is a notorious conman and in case bail is granted to petitioner, he will not be available either to investigating agencies or to the Court to face the trial. FIR no.78/2014 of P/S District Crime Branch, Kaniya Kumari is a testament to the fact that petitioner is habitual of committing the crimes of like nature and has defrauded of committing the crimes of like nature and has defrauded the victim in said FIR for Rs.53.00 Lacs. The said FIR is lodged against him, his father and sister. Further accused in conspiracy with his father and sister has also committed a fraud within jurisdiction of police station CCB, Chennai, in which he defrauded and cheated victim and made him to deliver an amount of Rs.79.30 Lacs; regarding which FIR no.395/2017 was lodged, which is pending against him before the court of Chief Metropolitan Magistrate, Egmore, Chennai, in which besides petitioner, his sister and father are also arrayed as

accused persons. FIR no.268/2021 is also registered against petitioner and his father and sister, for defrauding victim in said FIR for making him to deliver an amount of Rs.92.00 Lacs. A non-bailable warrant of arrest is also pending against accused in the court of Metropolitan Magistrate for exclusive trial of CCB cases and CBCID Metro cases which fortifies the contention that there is every likelihood of accused absconding in case he is released on bail. The petitioner by impersonating as a businessman has cheated number of people while adopting the same modus operandi as is evident from various FIRs. He has projected himself as a co-producer of a Movie “Banu Bali”. In another case, petitioner has projected himself as grandson of the Governor. The accused is a threat to the society and if he is set at large there is no possibility of accused turning up again to face the trial after getting the bail as his real address has not still been ascertained. Petitioner has been making headlines about his involvement in criminal cases in the print media also, particularly in Chennai. According to respondent no.2, as many as five FIRs are registered against petitioner and non-bailable warrants are pending against petitioner.

17.I have heard learned counsel for parties and considered the matter. I have gone the record on the file.

18.Petitioner seeks quashment of charge-sheet and FIR in exercise of inherent powers under Section 482 Cr.P.C. read with Section 528 of BNSS, to quash impugned FIR and charge-sheet filed by respondent no.1 before the competent court of law. The scope of Section 482 Cr.P.C. (which is *pari materia* to Section 528 of BNSS) is well defined and inherent powers could be exercised by the High Court to give effect

to an order under the Code/Sanhita, to prevent abuse of the process of the 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 the material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceeding against the accused and the court cannot look into materials, acceptability of which is essentially a matter for the trial.

19. Law on exercise of powers by the High Court under Section 482 Cr.P.C.

to quash FIR/complaint and parameters for exercise of such powers and scope and ambit of the power by the High Court under Section 482 Cr.P.C. are required to be referred to as the very parameters which are required to be applied while quashing FIR will also be applicable while granting interim stay/protection. The Supreme Court in the case of ***R. P. Kapur v. State of Punjab***, AIR 1960 SC 866, while dealing with inherent powers of the High Court under Section 561-A of the earlier Code (which is *pari materia* with Section 482 Cr.P.C.), observed and held that inherent powers of the High Court cannot be exercised in regard to the matters specifically covered by 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 the Supreme 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.”

20. The Supreme Court has 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 of *Kurukshetra University v. State of Haryana (1977) 4 SCC 451*, the High Court had quashed FIR filed by Kurukshetra University in exercise of inherent powers under Section 482 Cr.P.C. The Supreme Court noticed and observed that the High Court was not justified in quashing FIR when police had not even commenced investigation into complaint filed by University and no proceedings were at all pending before any Court in pursuance of the FIR.

21. The Supreme Court in the celebrated case of *State of Haryana and others v. Bhajan Lal and others*, 1992 Supp (1) SCC 335, has elaborately considered the 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 the criminal investigation. After noticing the various earlier pronouncements, the Supreme Court made certain categories of cases by way of the illustration, where the power under Section 482 Cr.P.C. can be exercised to prevent the abuse of the process of the Court or secure ends of justice. Paragraph 102, which gives seven categories of cases where power can be exercised under Section 482 Cr. P.C. are reproduced 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.”

22. The Supreme Court in another case of *State of Andhra Pradesh v.*

Golconda Linga Swamy, reported in (2004) 6 SCC 522, 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 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 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. Raghubir 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.”

23. Even the Supreme Court in the case of *State of Maharashtra v. Arun Gulab Gawali, (2010) 9 SCC 701*, set-aside the order passed by the High Court of Judicature at Bombay, by which criminal complaint/FIR was quashed on prayer made by complainant himself. While quashing and setting-aside the order passed by the High Court, the Supreme Court in paras 13 and 27 to 29 has observed and held 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 F.I.R./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 it can ‘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 ‘Cr.P.C.’) 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 esteem 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 Sessions is empowered to discharge an accused under Section 227 Cr.P.C. 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 Cr.P.C. 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 a society and not against a 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 Cr.P.C., where the Court could apply the ratio of the case in *Madhavrao Jiwaji Rao Scindia* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234 : AIR 1988 SC 709].”

24. As bare perusal of afore-quoted paragraphs of the ruling of the Supreme Court in *Arun Gulab Gawali* (supra) would show that it was observed that the High Court in the said case proceeded on the perception that since complainant therein had not supported the complaint, he would

not support the case of prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. The Supreme Court held that quashing of FIR/complaint on such a ground cannot be held to be justified in law. It was said by the Supreme Court that ordinarily, the court of Sessions was empowered to discharge an accused under Section 227 Cr.P.C. even before initiating the trial. The accused could, 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 was, therefore, unnecessary to invoke jurisdiction under Section 482 Cr.P.C. to quash 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 and the presumption that an accused would never be convicted on the material available was too risky. The Supreme Court further elaborated that a claim founded on a denial by complainant even before trial commences coupled with an allegation that police had compelled lodging of a false FIR, was a matter that required further investigation. If prosecution was quashed, then neither Trial Court nor Investigating Agency had any opportunity to go into that question, which might have required consideration. The State was the prosecutor and all prosecution was social and legal responsibility of the State. The Supreme Court also went to say that an offence committed is a crime against a society and not against a 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.

25. Power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court cannot be justified in embarking upon an enquiry about reliability or genuineness or otherwise of allegations made in the F.I.R./Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion.

26. The judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of the powers 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?”

27. 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.P.C. 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. The 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. The 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 the provision itself. The power under Section 482 Cr.PC, is a very wide, but conferment of the wide power requires the Court to be more conscious. It casts an onerous and more diligent duty on the Court.

28. It cannot be said that a complaint does not disclose commission of offence. Merely because offence was committed during the course of a commercial transaction, would not be sufficient to hold that the complaint does not warrant a trial. Whether or not allegations in complaint are true is to be decided on the basis of evidence to be led at the trial in the complaint case. It certainly is not a case in which criminal trial should be cut short inasmuch as quashing of complaint would result in grave miscarriage of justice. The Supreme Court in *Nagpur Steel & Alloys (P) Ltd v. P. Radhakrishna*, 1997 SCC (Cri) 1073, after saying that restored the complaint and directed the Magistrate to proceed with the complaint.

29. 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) 16 SCC 142, 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 has also been held by the Supreme Court whether allegations in the complaint are otherwise correct or not has to be decided on the basis of evidence to be led during the course of trial.

30. Perusal of the instant petition and the contents contained therein require and demand full dress trial and examination of facts by this Court as if this Court is in appeal and acting as an appellate court and to draw its own conclusion vis-à-vis impugned FIR, complaint and proceedings emanating therefrom including charge sheet presented before the court of competent jurisdiction. This is not the aim and objective of the provisions of Section 482 Cr. P.C. (Section 528 of BNSS), particularly when the petition on hand does not unveil any ground muchless cogent or material one, to indicate that the inherent powers are to be exercised to prevent abuse of process of law and to secure the ends of justice. The reference made by the learned counsel for the petitioner to the judgements are distinct in the facts and circumstances of the present case. In that view of the matter, the impugned FIR and charge sheet do not call for any interference and as a sequel thereof, petition in hand is liable to be dismissed.

31.For the reasons discussed above, the instant petition is without any merit and is, accordingly, **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.

32.Needless to say that, petitioner shall be free to approach the Trial Court for grant of bail in accordance with law.

33.It is made clear here that I have not adjudicated the contentions raised by petitioner in the petition and the same are left open for petitioner to raise at an appropriate stage in an appropriate proceeding in accordance with law.

(Vinod Chatterji Koul)
Judge

Srinagar
13.02.2025
'Imtiyaz'

Whether approved for reporting? Yes/No.

