IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(211)

CRM-M-45411-2021
Date of Decision: - 07.01.2022

Gurmail Singh

….Petitioner

Versus

State of Punjab and another

…..Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr.Preetinder Singh Ahluwalia, Advocate,
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

Mr. Mohit Sadana, Advocate
for respondent No.2.

(Through Video Conferencing)

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VIKAS BAHL, J. (ORAL)

This petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.236 dated 15.09.2021 (Annexure P-1), under Sections 384, 511 and 506 IPC, registered at Police Station Lehra, District Sangrur along with all consequential proceedings emanating therefrom.

The FIR in the present case has been registered on 15.09.2021, on the statement of respondent No.2 Jagdeep Singh/complainant, as per which, the occurrence has been stated to have taken place during the period starting from 10.10.2019 to 15.09.2021. In his statement, the complainant has alleged that the

petitioner was having enmity against father of the complainant since 2008 and the petitioner in connivance with his accomplices, had got registered a false rape case against the complainant in the year 2019, so that he could blackmail the complainant and could take Rs.14 lakhs from the complainant and could take revenge on account of his enmity and in the said FIR, the SHO and Superintendent of Police had declared the complainant innocent. It is further alleged that as per the enquiry report of the police officials, the petitioner got the said false case registered against the complainant for taking Rs.14 lakhs from the complainant. It is further alleged that in the year 2020, Gurjit Singh had told the complainant that one girl 'S' (name withheld) was demanding money by blackmailing the said Gurjit Singh and the complainant being an advocate, advised Gurjit Singh to get a case registered against the said girl 'S' and as per the advice given by the complainant, the said Gurjit Singh got a case registered under Section 384 IPC against 'S' and it was the petitioner who helped 'S' in getting bail and then provoked 'S' to register a false case against the complainant, but said 'S' refused to do so and got registered the rape case i.e. case 307/2020, only against Gurjit Singh, which was subsequently cancelled as the same was found to be false. It is further alleged that now, the petitioner, in connivance with wrong persons, is demanding Rs.14 lakhs from the complainant and has threatened that in case, the said amount is not paid, then a false rape case will again be registered against the complainant. On the basis of the said

complaint and allegations, the present FIR under Sections 384, 511 and 506 IPC has been registered.

Learned counsel for the petitioner has submitted that the registration of the present FIR is a complete abuse of the process of the Court. It is submitted that the FIR in question can be divided into two parts. The first part pertaining to the allegations with respect to the rape case filed in the year 2019 by 'R' (name withheld) against Gupreet Singh @ Goldy, Jagdeep Singh son of Najar Singh and Respondent No.2/Complainant and in the second part, the allegations pertain to the year 2020 involving Gurjit Singh and the second girl 'S' (name withheld) as per which, the Petitioner in connivance with other persons had been demanding Rs. 14 lakhs from Respondent No.2/complainant failing which, the petitioner would get another false case registered against respondent no.2/complainant. It is argued that even a perusal of the FIR would show that the period during which the alleged offences have been committed is from 10.10.2019 to 15.09.2020. Reference has been made to Annexure P-2, which is an FIR bearing No.263 dated 10.10.2019, registered under Section 376, 342, 506 and 120-B IPC and Section 8 of the Protection of Children from Sexual Offence Act, 2012 which was registered at the instance of one girl 'R' (name withheld) and in the said case, the respondent no.2/complainant was also made an accused in addition to Gurpreet Singh @ Goldy and Jagdeep Singh son of Najar Singh. It is stated that the first part of the present FIR relates to the said FIR No.263 dated 10.10.2019 and with respect to the same, it is submitted that the

complainant-respondent No.2 had filed an application dated 07.07.2020 in the Court of Judicial Magistrate, 1st Class, Moonak against the said girl 'R', the present petitioner as well as three other persons. The said application has been annexed as Annexure P-5 along with the present petition. Learned counsel for the petitioner has referred to the said application and has specifically highlighted the allegations made at page Nos.54, 58 and 59 of the paper-book with respect to the allegations of the alleged demand of Rs.14 lakhs by the present petitioner and the false implication of the complainant by the petitioner in the said rape case. Reference has also been made to the prayer clause to show that a prayer was made to register a case under Sections 211, 193, 389 and 120-B IPC. It is submitted that the said case had come up before the Judicial Magistrate, 1st Class, Moonak on 20.07.2020, on which date, the Judicial Magistrate, 1st Class, Moonak observed that the Court was of the opinion that the facts disclosed in the application did not warrant registration of the FIR and treated the application under Section 156(3) as a criminal complaint and adjourned the same to 21.08.2020 for pre-summoning evidence. It is further submitted that the said girl 'R' (name withheld) appeared in the witness box as PW-1 in the FIR No.263 on 17.08.2021 and made specific allegations against respondent No.2 and on the basis of the said allegations, an application dated 24.08.2021 under Section 319 Cr.P.C. for summoning of respondent No.2 as an accused was filed. It is argued that without disclosing the factum of the filing the application under Section 156(3) Cr.P.C. as well as the order dated

20.07.2020, respondent No.2 has got the present FIR registered. The same is stated to be an act of active concealment and abuse of the process of the Court on part of the respondent No.2. It is also submitted that once the Judicial Magistrate 1st Class, Moonak had observed that the application under Section 156(3) did not warrant registration of the FIR and the allegations made in the said application under Section 156(3) Cr.P.C. were similar to the allegations made in the first part of the FIR, then, it was not for the police officials to act in violation of the orders passed by the Judicial Magistrate, 1st Class, Moonak and register the present FIR. It is submitted that the complainant/respondent No.2 by getting the present FIR registered has in fact tried to nullify the order dated 20.07.2020 passed by the Judicial Magistrate, 1st Class, Moonak, without even challenging the said order before a higher forum.In order to complete the chain of events with respect to the first part, learned counsel for the petitioner has stated that after registration of the present case, respondent No.2 had withdrawn the said complaint under Section 156(3) Cr.P.C. and for the said purpose, he has referred to the order dated 11.12.2021 (Annexure P-11), at page 216 of the paperbook. Learned counsel for the petitioner has further submitted that the allegations in the FIR with respect to the fact that respondent No.2 was implicated in a false case in the year 2019 and was exonerated by the police, cannot even remotely stand, on account of the fact that respondent No.2 has been summoned under Section 319 Cr.P.C. vide order dated 01.12.2021 passed by the Sessions Judge, Sangrur and the said order has been

annexed with the paperbook as Annexure P-9. Paragraph 8 of the said order would show that respondent No.2 has been summoned to face trial under Sections 363, 376(D) and 384 of the IPC along with the other accused persons for 23.12.2021.

With respect to the second part of the FIR, in which allegations pertaining to the year 2020 have been made involving Gurjit Singh and the girl 'S' (name withheld) and with respect to the petitioner demanding Rs.14 lakhs failing which, respondent No.2/complainant has been threatened to be implicated in another false case of rape, it is submitted that a second complaint under Section 156(3) Cr.P.C. had been filed before the Judicial Magistrate, 1st Class, Moonak, in which, the present petitioner was also made an accused and a prayer was made for registration of FIR under Sections 116, 195, 211, 384, 389 read with Sections 511 and 120-B IPC. The said application has been annexed as Annexure R-2/1 by respondent No.2. Specific reference has been made to the averments made in the said application, moreso, pargraphs No.5, 6 and 8 to highlight that the allegations with respect to the petitioner wanting to extort money from respondent No.2 and implicating him in a false case of rape by taking the help of second girl 'S' (name withheld), have been made and the said allegations are similar to the allegations made in the second part of the present FIR. It is submitted that although the said application is not dated, but since the said application was withdrawn on 22.03.2021 (Annexure P-12), thus, it is apparent that the said application was filed prior to 22.03.2021. It is argued that the said application was also

prior to the registration of the present i.e. FIR No.236 dated 15.09.2021 and yet, in the present FIR, no reference with respect to the filing of the said application under Section 156(3) Cr.P.C., much less, the order dated 22.03.2021 has been made. Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court of India in "***Moti Lal Songara Vs. Prem Prakash @ Pappu"***, reported as **2013(9) SCC 199**, to contend that suppression of a vital fact, which is in the special knowledge of a person would itself be a ground for quashing of the proceedings, moreso, when the Court finds that a party has abused the process of the Court. Learned counsel for the petitioner has submitted that in the above-cited case, accused therein, had challenged the order under Section 319 Cr.P.C., without disclosing to the Court that charges had been framed against him and the accused therein was successful in getting the order under Section 319 Cr.P.C. set aside. The Hon'ble Supreme Court had allowed the appeal of the appellant therein and set aside the orders vide which the order summoning the accused under section 319 was set aside and thus, upheld the order summoning the accused therein by observing that it was a clear case of suppression of a vital fact which was in the knowledge of the accused therein.

Reliance has also been placed upon a judgment of the Hon'ble Supreme Court in case "***Mrs. Priyanka Srivastava and another Vs. State of U.P. and others***, reported as **2015(6) SCC 287**, to contend that the proceedings under Section 156(3) Cr.P.C are on a higher footing than the proceedings under Section 154 Cr.P.C.,

inasmuch as, in the said proceedings under Section 156(3) Cr.P.C., a Court of law is involved and even in the said proceedings, the Hon'ble Supreme Court had observed that at the time of filing of the application under Section 156(3) Cr.P.C., it was incumbent upon the complainant/applicant to specifically indicate that earlier applications under Section 154 (1) and 154 (3) have been filed. Even supporting affidavit is also required to be filed alongwith the application under Section 156 (3) CrPC. It is submitted that once in the proceedings under Section 156(3) Cr.P.C., it is necessary to mention about the said application, it is equally incumbent upon respondent No.2 to have mentioned about the filing of application under Section 156(3) Cr.P.C. before the Judicial Magistrate, 1st Class, Moonak in his complaint on the basis of which the present FIR has been registered. It is, thus, submitted that the present petition for quashing deserves to be allowed solely on the ground of active concealment/suppression of the proceedings under Section 156(3) Cr.P.C and the orders passed therein. Additionally, it is submitted that once respondent No.2 has been summoned in proceedings under Section 319 Cr.P.C., then, the allegations in the FIR to the effect that respondent No.2 was falsely involved in the case,cannot stand. It is submitted that the FIR also deserves to be quashed on the ground that the police officials cannot act in violation of the the orders passed by the Judicial Magistrate, 1st Class, Moonak, moreso, the order dated 20.07.2020 vide which,it was specifically observed that the application under Section 156(3) CrPC did not warrant registration of an FIR. Learned counsel for the

petitioner has also argued that even the allegations to the effect that the petitioner is demanding Rs.14 lakhs and is threatening the complainant to involve in a false rape case in case the amount is not paid, are vague, inasmuch as, no details as to when the said demand was made or when the threat was issued have been mentioned in the FIR and at any rate, would not constitute an offence and have apparently been made only to get the present false FIR registered for mala-fide reasons to harass the present petitioner. It is submitted that the act and conduct of respondent No.2 is contemptuous, inasmuch as respondent No.2 has made every effort to win over the prosecutrix or to pressurize the prosecutrix with respect to the FIR No.263 dated 15.09.2021. It is submitted that initially an attempt was made to falsely involve the said prosecutrix 'R' in proceedings under Section 182 IPC and once the same was rejected on the basis of an opinion given by the Deputy DA, Sangrur, then a complaint was also got filed from the said prosecutrix 'R', even after she had given evidence against respondent No.2 before the trial court and in the said complaint, certain averments in favour of respondent No.2 were sought to be incorporated. However, the said complaint was also withdrawn on 18.11.2021 (Annexure P-13) as respondent No.2 was aware that any statement contrary to the evidence given in the Court could result in initiation of proceedings against the persons, who were trying to influence the said witness. It is submitted that the present FIR was also registered on false, frivolous and vague allegations only on the understanding of Respondent no 2 that the present petitioner

may have some influence on the said prosecutrix 'R' and by registering the present FIR, the petitioner might persuade the said prosecutrix 'R' to withdraw the application under Section 319 Cr.P.C, which had been filed on 24.08.2021, immediately prior to the registration of the FIR dated 15.09.2021. It is submitted that in fact respondent No.2 had abused the process of the Court and had made every attempt to influence the prosecutrix and to tamper with the evidence. It is submitted that no offence under Section 384, Section 511 or Section 506 has been made out.

On the other hand, learned State counsel and counsel for the complainant have opposed the present petition for quashing of FIR and have submitted that the present petition under Section 482 Cr.P.C. deserves to be dismissed on the ground that the report under Section 173 Cr.P.C in the present case has not been submitted and have relied upon the judgment of the Hon'ble Supreme Court in "***Mahendra K.C.Vs. State of Karnataka and another***", ***2021(4) R.C.R. (Criminal) 653***, to contend that at the stage before the report, the High Court cannot test the veracity of the allegations nor can it proceed in the manner that a Judge conducting a trial would, on the basis of evidence collected during the course of the trial. Learned counsel for respondent No.2 has referred to Annexure P-5, which is an application under Section 156(3) Cr.P.C., and has highlighted paragraph 7 (page 52 of the paperbook), to contend that it has been specifically averred in the said application under Section 156(3) Cr.P.C. that Kulwant Singh had called up respondent No.2 and had informed him that

respondent No.2 should give Rs.14 lakhs and the said Kulwant Singh is the real uncle of prosecutrix 'R' and has submitted that there was a telephonic conversation between the said Kulwant Singh, the present petitioner and Respondent No.2 with respect to the said demand. It is, thus, submitted that the allegations with respect to the first incident as mentioned in the present FIR, have substance. Learned counsel for respondent No.2 has further referred to statement under Section 161 Cr.P.C. of respondent No.2, which is stated to have been recorded on 16.09.2021 i.e., one day after registration of the FIR and has submitted that in the said statement the allegations have been made with respect to the petitioner asking for Rs.14 lakhs on 06.09.2021 from respondent No.2, failing which, he would falsely implicate respondent No.2 in a criminal case. It is submitted that all the said factors would be taken into consideration at the time of trial and thus, the present petition deserves to be dismissed.

Learned counsel for the petitioner in rebuttal to the said argument has submitted that the counsel for respondent no.2 is seeking to rely upon the allegations/averments in the petition under Section 156(3) Cr.P.C. dated 07.07.2020 (Annexure P-5),after considering which,on 20.07.2020, the Judicial Magistrate First Class, Moonak had observed that the application does not warrant registration of an FIR. It is further submitted that even in the alleged statement under Section 161 Cr.P.C., there is no mention about the filing of the earlier application under Section 156(3) Cr.P.C. or the orders thereon and thus, his plea of active concealment, would stand.

It is submitted that it is surprising as to how respondent No.2 has got the copy of the said statement under Section 161 Cr.P.C. without the final report under Section 173 Cr.P.C. being submitted. It is further submitted that in the alleged statement under Section 161, reference has been made to an incident of 06.09.2021 whereas in the FIR which has been registered on 15.09.2021, after the said date, there is no reference with respect to the said incident.

With respect to the maintainability of the petition under Section 482 Cr.P.C., learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court passed in case "***Ajay Mitra Vs***. ***State of M.P.& Ors.,*** reported as **2003(3) SCC 11**, to contend that where the FIR and the criminal proceedings are an abuse of the process of the Court or does not constitute any offfence or is mala-fide or involves a legal argument, then even in case, the report under Section 173 Cr.P.C. has not been submitted, still, the FIR can be quashed. Further, reference has also been made to the provision of Section 482 Cr.P.C. to state that as per the said provision, nothing in the Code of Criminal Procedure, 1973 shall deem to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is submitted that the said provision does not in any way envisage that the power under Section 482 Cr.P.C. cannot be exercised unless the report under Section 173 Cr.P.C. is submitted.

This Court has heard the learned counsel for the parties and perused the record.

This Court would first like to deal with the objection raised by the learned counsel for the respondents with respect to the maintainability of a petition under Section 482 for quashing of an FIR without the final report under Section 173 CrPC having been presented.

For determining the said objection, it would be pertinent to note the relevant judgments on the said aspect.

The Hon'ble Supreme Court in ***Ajay Mitra's case (supra)*** has held as has observed as under: -

> *"Leave granted.*
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> *These appeals by special leave are directed against the judgment and order dated January 16, 2002 of High Court of Madhya Pradesh, by which three Petitions filed by the appellants under Section 482 Cr.P.C. were dismissed.*
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> *Thereafter, the appellants filed three Criminal Miscellaneous Petitions under Section 482 Cr.P.C. before the High Court for quashing of the FIR and the proceedings of the case before the learned Magistrate. After hearing the parties, the High Court held that the investigation had not yet commenced in connection with the FIRs which had been registered at the Police Station and, therefore, the Petitions were pre-mature and accordingly all the three Petitions were rejected.*
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> *The High Court has held that the Petitions filed by the appellants for quashing the complaint and the FIRs registered against them are pre-mature. The question which arises is that where the complaint or the FIR does not*

disclose commission of a cognizable offence, whether the same can be quashed at the initial stage? This question was examined by this Court in ***State of West Bengal &Ors. V. Swapan Kumar Guha & Ors., AIR 1982 Supreme Court 949*** *and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in****State of Haryana &Ors. V. Ch. Bhajan Lal &Ors. 1991(3) RCR (Criminal) 383 (SC)*** *and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. either to prevent abuse of the process of any Court or to secure the ends of justice, were sumarised in para 108 of the Report and sub- paras 1 to 3 thereof are being reproduced hereinbelow :*

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

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the

same do not disclose the commission of any offence and make out a case against the accused."

The said judgment by the Three Judges Bench of the Hon'ble Supreme Court had affirmatively held that where an FIR does not disclose the essential requirements of the penal provision or does not disclose the commission of a cognizable offence, the same can be quashed at the initial stage. Reference has also been made to the judgment of Hon'ble Supreme Court in case "***State of Haryana and others Vs. Ch. Bhajan Lal & Ors.*, *1991(3) RCR (Criminal) 383)***, in which, it was observed that the High Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. 1973 either to prevent abuse of the process of any Court or to secure the ends of justice.

The Hon'ble Supreme Court of India in "***R Kalyani vs. Janak C. Mehta" reported as 2009 (1) SCC 516*** has held as under:

"Leave granted.

2. Appellant lodged a First Information Report (FIR) against the respondents on or about 4.1.2003 under Sections 409, 420 and 468 read with Section 34 of the Indian Penal Code.

3. First and second respondent approached the High Court for an order for quashing of the said FIR as also the investigation initiated pursuant thereto or in furtherance thereof. The High Court allowed the said proceedings by reason of the impugned order dated 29.4.2004.Mr. K.K. Mani, learned counsel appearing on behalf of the appellant, would, in support of the appeal, contend :

(1) The High Court exercised its inherent jurisdiction under Section 482 of the Code of Criminal Procedure wholly

illegally and without jurisdiction insofar as it entered into the disputed questions of fact in regard to the involvement of the respondents as the contents of the first information report disclose an offence of cheating, criminal breech of trust and forgery.

(2) While admittedly the investigation was not even complete, the High Court could not have relied upon the documents furnished by the defendants either for the purpose of finding out absence of mens rea on the part of the applicants or their involvement in the case.

(3) Respondent Nos.1 and 2 herein being high ranking officers of M/s. Shares and Securities Ltd., a company dealing in shares, were vicariously liable for commission of the offence being in day to day charge of the affairs thereof.

(4) An offence of forgery being a serious one and in view of the fact that the respondent No.2 forwarded a letter purporting to authorise the accused No.3 to transfer shares to the National Stock Exchange, he must be held to have the requisite intention to commit the said offence along with the respondent No.3.

(5) In any view of the matter, the respondent No. 3 being not an applicant before the High Court, the entire criminal prosecution could not have quashed by the High Court.

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In Hamid v. Rashid alias Rasheed & Ors. [(2008) 1 SCC 474], this Court opined :

"6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Criminal Procedure Code saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however

exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court."

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One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

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A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in-charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created. In Sham Sunder & Ors. v. State of Haryana [(1989) 4 SCC 630], this Court held :

> *"9. But we are concerned with a criminal liability under penal provision and not a civil" liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."*

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27. If a person, thus, has to be proceeded with as being vicariously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the Company as well as the person responsible for the acts of the Company.

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30. The appeal is dismissed with the aforementioned observations."

A perusal of the said judgment would show that the High Court had in a petition under section 482 quashed the FIR without the investigation having been completed and the said order was upheld by the Hon'ble Apex Court qua the persons who had filed the petition under Section 482. The specific objection of the appellant therein to the effect that the investigation was not complete was noticed in Paragraph 3 of the said judgment. In the abovesaid case, it was observed that for a person to be proceeded against vicariously for the acts of a company, the company must be made an accused. It was also observed that vicarious liability can be fastened only by reason of a provision of a statute and not otherwise and incase, under a special statute vicarious criminal liability is fastened upon a person on the allegation that he was in-charge of the affairs of the company, then all the other ingredients laid down under the statute must be fulfilled. It is thus apparent that in case, a legal issue is raised by an accused person to the effect that he has been vicariously prosecuted without there being any provision in the Act for vicarious liability under which he is

being prosecuted, then his petition under Section 482 CrPC raising such issues could not be rejected solely on the ground that report under Section 173 has not been filed.

The Hon'ble Supreme Court in "***T.T. Antony*** Vs. ***State of Kerela***" ***reported as 2001 (6) SCC 181*** has observed as under: -

> *"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) Criminal Procedure Code, 1973 It would clearly be beyond the purview of sections 154 and 156 Criminal Procedure Code, 1973 nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of a 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 Criminal Procedure Code, 1973 or under Articles 226/227 of the Constitution.*
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> *The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of the Criminal Procedure Code as pointed out above, therefore, the investigation undertaken and the report thereof cannot but be invalid. We have, therefore, no option except to quash the same leaving it open of the investigating agency to seek permission in Crime No. 353/94 or 354/94 of the Magistrate*

> *to make further investigation, forward further report or reports and thus proceed in accordance with law."*

A perusal of the above judgment would show that it was observed by the Hon'ble Supreme Court of India that in case, with respect to one incident an FIR has already been registered, then a second FIR with respect to the same incident cannot be registered and in case the same is registered then the High Court while exercising its powers under Section 482 CrPC would be well within its rights to quash the second FIR. The same principle has been followed by the Hon'ble Supreme Court in the case of "***Amitbhai Anil Chandra Shah vs. Central Beureu of Investigation and Anr***" reported **2013 (6) SCC 348**. Thus, in a situation where a second FIR is registered with respect to the same incident on which an FIR has already been registered, the petition for quashing of the second FIR should not be thrown out on the ground that the report under Section 173 CrPC has not been submitted.

A Coordinate Bench of this Court in "***Kuldeep Raj Mahajan*** vs. ***Hukam Chand***" in a judgment dated 05.12.2007 passed in **CRM-34272-M of 2003** had observed as under:

> *" Kuldip Raj Mahajan has approached this Court by way of instant petition under Section 482 of the Code of Criminal Procedure (in short 'the Code') for quashing of criminal complaint No. 130 of 2000 instituted by Hukam Chand-respondent against the petitioner in the court of Judicial Magistrate Ist Class, Hisar (Annexure P-1) under section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act') and*

Section 506 of the Indian Penal Code, along with summoning order dated 19.9.2002 (Annexure P-2).

2. The respondent inter alia alleged in the impugned complaint Annexure P-1 that he belongs to Dhanak caste which is a Scheduled Caste whereas the petitioner belongs to Vaish caste which is a higher caste. The respondent, at the relevant time, was working as Head Cashier in State Bank of Patiala, Branch Mayar, District Hisar where the petitioner was posted as Branch Manager. On 9.9.19999, at about 4.45 p.m., the petitioner insulted the respondent in the presence of other employees and abused him by his caste. Petitioner's utterances demeaning the respondent by caste have been quoted in paragraph 4 of the complaint. Tilak Raj Khurana, Cashier Incharge and also Jag Ram and Wazir Singh, Watchmen-cum-Peons were present there at that time. They objected to the offensive utterances made by the petitioner, but the petitioner continued with his abusive language. On 10.9.1999, the respondent reported this matter to the higher authorities which further annoyed the petitioner, who ran towards respondent to assault him. Same witnesses saved the respondent. Petitioner was using abusive caste based language against the respondent and threatened to implicate him in a false case and to get him removed from service. The petitioner extended threat to the life of the respondent. The respondent filed a complaint in Police Station Hisar and later on made representation on 29.10.1999 to Inspector General of Police, Hisar Range, Hisar. Another representation was made to the Inspector General of Police on 9.11.1999. Ultimately FIR No. 11 dated 8.1.2000 was registered, but the police, even thereafter, did not take any action nor arrested the petitioner. On 23.4.2000, the respondent went to the Police Station to inquire about the progress in the matter and was told that due to political pressure, police officials were unable to arrest the petitioner. Thereupon the respondent filed the impugned complaint dated 24.4.2000 (Annexure P-1). After recording of preliminary evidence, the learned

Magistrate, vide impugned order dated 19.9.2002 (Annexure P-2), summoned the petitioner as accused for offence under Section 3 of the Act and Section 506 of the Indian Penal Code. Feeling aggrieved, the petitioner has filed the instant petition for quashing of the impugned complaint and summoning order.

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It would indicate that the respondent, after being aware of the cancellation of the FIR, filed the impugned complaint, but did not disclose in the complaint that FIR lodged by him had been cancelled.

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Perusal of impugned summoning order (Annexure P-2) reveals that there is no reference at all to the investigation report/cancellation report of the police in the summoning order. Without considering the investigation report/cancellation report of the police, the impugned summoning order could not have been legally passed by the learned Magistrate. The respondent, despite knowledge, concealed the cancellation report of the police from the learned Magistrate. This is another indicator of mala fide on the part of the respondent.

11. Learned counsel for the petitioner next pointed out that offence under Section 506 of the Indian Penal Code, as well as offence under Section 3 of the Act, is not made out from the allegations in the impugned complaint. It was pointed out that alleged empty threat, to implicate the respondent in false case or to get him removed from service, would not come within the mischief of criminal intimidation punishable under Section 506 of the Indian Penal Code. There is considerable merit in the submission. Alleged threat by the petitioner could not have caused any alarm to the respondent nor he was being compelled to do an act which he was not legally bound to do or to omit to do an act which he was entitled to do. The allegations in the complaint do not

make out a case of criminal intimidation punishable under Section 506 Indian Penal Code.

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There cannot be any quarrel with this legal proposition. Disputed questions of fact cannot be gone into in a petition under section 482 of the Code. ***However, this Court cannot be a helpless spectator when it is made out that the criminal prosecution is mala fide and an abuse of the process of the court. In fact, this Court has inherent power and corresponding duty to prevent abuse of the process of any court or otherwise to secure the ends of justice.*** *In the instant case, the impugned complaint is result of mala fide as the respondent was nursing grudge against the petitioner as discussed herein above.*

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After investigation by Gazetted Officer, the FIR lodged in the same matter was found to be false and cancellation report was submitted by the police. The respondent, despite being aware of the cancellation report, concealed the same from the learned Magistrate. The impugned summoning order has also been passed without considering or even referring to the cancellation report. Keeping in view all these circumstances, it is a fit case in which this Court has to exercise its inherent powers under section 482 of the Code by quashing the impugned complaint and summoning order so as to prevent the abuse of process of court and to secure the ends of justice."

A perusal of the above judgment would show that it has been observed that the High Court cannot be a helpless spectator when it is made out that the criminal prosecution is mala fide and an abuse of the process of the court and that the High Court has inherent power and a corresponding duty to prevent the abuse of the process of

the court or otherwise to secure the ends of justice and in the said case, the petition under Section 482 Cr.P.C. was allowed on grounds which are akin to the present case inasmuch as, there was concealment by the complainant therein in his complaint with respect to the fact that in the FIR registered earlier regarding the same occurrence, a cancellation report had been submitted and the same was considered as an indicator of *mala fide* on the part of the complainant therein and was considered as one of the grounds for quashing the proceedings. It was further observed that even the allegations in the complaint with respect to threat given by the accused therein to complainant therein was found not to make out a case under Section 506 IPC.

The aspect with respect to concealment/suppression of facts has also been dealt in detail by the Hon'ble Supreme Court of India in the case of ***Moti Lal* (*supra)*** as well ***Mrs. Priyanka Srivastava (supra)***. In the case of ***Priyanka Srivastava (supra)***, the Hon'ble Supreme Court had observed that in the application under Section 156(3) Cr.P.C., it was necessary to be spell out the details of the applications filed under Sections 154(1) and 154(3) Cr.P.C. in the application under Section 156(3) Cr.P.C. Even supporting affidavit was required to be submitted. The copy of the said judgment was circulated to all the High Courts for further circulation to the Sessions Judges and to the Magistrates. Once, in the application under Section 156(3) Cr.P.C., it is found incumbent to mention about the application filed before the police, it would be equally incumbent or rather, the higher duty of the complainant to mention about the application under

Section 156(3) Cr.P.C. filed and the orders thereof in his complaint before the police when the complaint before the police is subsequent to the application filed under Section 156(3) Cr.P.C.

The judgment of the Hon'ble Supreme Court of India in "***Mahendra KC***" (supra) relied upon by the Learned Counsel for the Respondent no.2 would not further the case of respondent no.2 in any manner. In the said case, none of the issues i.e., either of active concealment or registration of FIR being in violation of the order passed by the Judicial Magistrate or forum shopping or criminal proceedings being an abuse of the process of law or being mala-fide etc. raised by the petitioner in the present petition, were the basis for quashing of the FIR by the High Court. The relevant portion of the said judgment is reproduced hereinbelow: -

> *5. The FIR was registered at 20:00 hours on 6 December 2016. The second respondent-accused, an SLAO for Bengaluru City, and another driver of his car were named as accused. The suicide note recorded by the deceased allegedly in his own handwriting contains a detailed narration of the properties alleged to have been illegally acquired by the second respondent.* ***Besides detailing the properties which were acquired by the accused in paragraphs 1 to 13, the suicide note refers to:***
>
> *(i) The transfer of funds in several lakhs of rupees by the accused to his relatives by using the cell phone and bank account of the deceased;*
>
> *(ii)* ***The conversion of approximately Rs. 100 crores into currency notes of Rs. 2,000/-, Rs. 100/- and Rs. 50/-;***
>
> *(iii) The knowledge of the deceased in regard to the transactions of the accused as a result of which he had been threatened to be killed "by rowdies";*

(iv) A raid conducted against the accused by the establishment of the Lokayukta of Karnataka while he was posted in the Housing Board;

(v) The involvement of judges to whom presents or gifts were made;

(vi) The payment of salary to the deceased having been stopped at the behest of the accused;

(vii) ***The accused having used the deceased for changing currency worth over Rs. 75 crores; and***

(viii) ***The deceased being in knowledge of "all the information", and when a shortage of an amount of Rs. 8 lakh was found, the deceased had been directed to make good the deficiency, failing which he was threatened to be killed by rowdies.***

6. ***In this backdrop, the deceased recorded that he had been threatened by the accused and hence was ending his life by consuming poison. Both the second respondent and his "house driver" were specifically named as responsible for this death.***

7. The second respondent-accused was arrested on 11 December 2016. On 12 December 2016, based on a complaint made by BT Suresh, a friend of the deceased, an FIR was registered against the accused as Crime No.128/2016 in Ijur Police Station, Ramnagar District, under Sections 323, 324, 341, 342, 363, 506, 114 read with Sections 120B and 34 of the IPC.

8. On 18 April 2017, the accused instituted a petition under section 482 CrPC, 1973 for quashing the FIR registered as Crime No. 565/2016. A Single Judge of the High Court of Karnataka stayed investigation and proceedings in Crime No.565/2016. After arguments were heard, judgment was reserved on 12 November 2019. Eventually, by his judgment delivered nearly 6 months thereafter on 29 May 2020, the Single Judge allowed the petition and quashed all proceedings relating to the complaint and FIR registered as Crime No. 565/2016.

9. At the outset, it is necessary to elucidate the reasons which have weighed with the High Court in quashing the FIR. The High Court has held that:

(i) The suicide note which consists of 21 numbered paragraphs gives a detailed account of the transactions undertaken by the accused;

(ii) For a person who has made such a detailed account of twenty transactions in the suicide note, it can be prudently expected that the deceased would have furnished details of the threats administrated to him by the accused;

iii) In the unnumbered paragraph of the suicide note "the totally different story" is set out, stating that the accused threatened to kill the deceased since there was a shortage of cash to the tune of Rs 8 lacs for which the accused suspected the deceased to be responsible;

(iv) The deceased held the accused responsible for withholding his salary for three months;

(v) Though a query was put to the Government Pleader and counsel for the complainant as to whether the investigation had thrown up any material which corroborated the allegations set out in the suicide note, the GP submitted that "they have not been able to unearth any material to corroborate any of the allegations";

(vi) Though the petition was instituted before the High Court on 18 April 2017, and was pending for over three years, no corroborative material had been produced before the Court by the investigating agency;

(vii) Even assuming that the accused has amassed huge wealth, that would not constitute a good ground for a person to commit suicide since it was not the case of the deceased that the accused had deprived him of his wealth;

viii) The suicide note contains no incriminating statement or material except for a bald and vague statement that the accused had threatened the deceased;

(ix) The complaint does not disclose details of the alleged threat nor does it state that the deceased had on

multiple occasions complained of having received threats from the accused;

(x) The allegation in regard to the demand for repayment of Rs 8 lacs rings hollow "as neither the prosecution nor the de facto complainant had placed an iota of material that the deceased was or had in fact been in possession of huge sum of money";

(xi) No act proximate to the time of death is alleged against the accused;

(xii) If the allegation of the demand of Rs. 8 lacs was correct, it would have been natural for the accused to restrain the deceased from leaving Bangalore to ensure the recovery of the alleged sum;

(xiii) The investigation had not thrown up any material regarding the use of the mobile banking facilities of the deceased for the transfer of funds;

(xiv) Neither the death-note nor investigation revealed a threat call to the deceased;

(xv) The only witness who could have spoken about the veracity of the suicide note was the deceased;

(xvi) If a threat had been administered to the deceased, he would have narrated the incident to the complainant or his friends;

(xvii) Even if a threat was given, the nature of the threat would have to be examined particularly on the question as to whether it was of such an alarming proportion so as to drive a `normal person' to contemplate suicide;

(xviii) If the deceased had felt threatened by the accused, this was belied by his visits to his village to meet his parents and friends and the failure to lodge a complaint with the police particularly when the Police Commissionerate was a stone's throw away. This casts doubt on the veracity of the suicide note;

(xix) Since the deceased had consumed alcohol, it is possible that in the grip of intoxicants he had failed to act sanely;

(xx) The conduct of the deceased in attending a marriage in a different town is indicative of the actions of a normal person; and

(xxi) How the deceased had sourced the poison was unknown.

10. The judgment of the Single Judge has given rise to two special leave petitions under Article 136 of the Constitution: one by the complainant and the second by the State of Karnataka.

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The High Court in the present case has virtually proceeded to hold a trial, substituting its own perception for what it believed should or should not have been the normal course of human behavior. This is clearly impermissible.

17. The complaint in the present case on the basis of which the FIR was registered contains a detailed account of:

(i) The knowledge of the deceased in regard to the illegal activities of the accused;

(ii) The accused having used the deceased's bank account for transfer of funds to his relatives;

(iii) The deceased having been threatened by the accused and by his "house car driver" with death; and

(iv) The recovery of the suicide note which was also uploaded on the Facebook account of the deceased; The suicide note in turn provides a detailed account of

(a) The wealth amassed by the second respondent-accused who was an SLAO, worth over Rs. 100 crores;

(b) The second respondent-accused having converted approximately Rs. 100 crores into currency notes of various denominations;

(c) The knowledge of the deceased with respect the illegal activities of the accused;

(d) The accused having used the deceased for the conversion of currency notes amounting to over Rs. 75 crores;

(e) The payment of the salary of the deceased, who was a driver having been stopped for three months;

(f) A threat of murder being administered to the deceased following a shortage in the currency; and

(g) The deceased having decided to end his life by consuming poison, having suffered at the hands of the accused.

18. In this backdrop, it is impossible on a judicious purview of the contents of the complaint and the suicide note for a judicial mind to arrive at a conclusion that a case for quashing the FIR had been established. In arriving at that conclusion, the Single Judge has transgressed the well settled limitations on the exercise of the powers under section 482 CrPC, 1973 and has encroached into a territory which is reserved for a criminal trial.

19. ***The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice.*** *The law on the exercise of power under Section 482 to quash an FIR is well settled. In State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540, a two judge Bench of this Court, observed that:*

> *"8. [...] While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers*

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

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20. In Bhajan Lal (supra), this Court laid down the principles for the exercise of the jurisdiction by the High Court in exercise of its powers under section 482 of the CrPC, 1973 to quash an FIR. Justice Ratnavel Pandian laid down the limits on the exercise of the power under section 482 CrPC, 1973 for quashing the FIR and observed:

"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 channelised 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 Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

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

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The judgment in Bhajan Lal (supra) has been recently relied on by this Court in State of Telangana v. Managipet, (2019) 19 SCC 87.

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26. Instead of applying this settled principle, the High Court has proceeded to analyze from its own perspective the veracity of the allegations. ***It must be emphasized that this is not a case where the High Court has arrived at a conclusion that the allegations in the FIR or the complaint are so absurd and inherently improbable on the basis of which no prudent person could ever reach a just conclusion that there is sufficient ground for proceeding against the accused. Nor is this a case where the criminal proceeding is manifestly mala fide or has been instituted with an ulterior motive of taking vengeance on the accused. On the contrary, the specific allegations in the FIR and in the complaint find due reflection in the suicide note and establish a prima facie case for abetment of suicide within the meaning of Sections 306 and 107 of the IPC. The entire judgment of the High Court consists of a litany of surmises and conjectures and such an exercise is beyond the domain of proceeding under section 482 of the CrPC, 1973. The High Court has proceeded to scrutinize what has been disclosed during the investigation, ignoring that the investigation had been stayed by an interim order of the High Court, during the pendency of the proceedings under section 482.***

27. The High Court observed that a prima facie case for the commission of offence under Section 306 of the IPC is not made out since: i) the suicide note does not describe the specific threats; ii) details of the alleged demand of Rs. 8 lacs from the deceased by the respondent-accused are not set out in the suicide note; and iii) no material to corroborate the allegations detailed in the suicide note has been unearthed by the investigating agency. The High Court observed that since the deceased took considerable time to write a twelve page suicide note, "it would have been but natural for the author to set out the details". The High Court has evidently travelled far beyond the limits of its inherent power under section 482 CrPC, 1973 since instead of determining whether on a perusal of the complaint, a prima facie case is made out, it

has analysed the sufficiency of the evidence with reference to the suicide note and has commented upon and made strong observations on the suicide note itself.

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Further, the observation of the High Court that there is no material to corroborate the allegations made in the suicide note is erroneous since it is not a consideration for the High Court while exercising its power under section 482 of the CrPC, 1973 particularly in view of the fact that the trial has not begun and the Single Judge had stayed the investigation in the criminal complaint.

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The alleged suicide is of a person who was working as a driver of a Special Land Acquisition Officer, who is a public servant and against whom serious and grave allegations of amassing wealth disproportionate to the known sources of income were made by the deceased. The suicide note contains a detailed account of the role of the accused in the events which led to the deceased committing suicide. These are matters of investigation and possibly trial. The High Court stalled the investigation by granting an interim order of stay. If the investigation had been allowed to proceed, there would have been a revelation of material facts which would aid in the trial, for the alleged offence against the second respondent.

31. For the above reasons, we allow the appeals and set aside the impugned judgment and order of the Single Judge of the High Court of Karnataka dated 29 May 2020. In the circumstances, the petition for quashing the FIR instituted by the respondent-accused shall stand dismissed.

32. Pending application(s), if any, stand disposed of."

A perusal of the above judgment would show that in the said case, the FIR was registered under Section 306 and there was a detailed suicide note of the deceased alleging that the accused person

had committed corruption of hundreds of crores and since the deceased was in the knowledge of the said transactions, the accused person had threatened to kill him and inspite of that, the High Court had disregarded the suicide note without recording a finding that the criminal proceedings were manifestly mala fide or had been instituted with an ulterior motive and the Hon'ble Supreme observed that the judgment of the High Court was based on surmises and conjectures and the High Court had made observations that the allegations in the FIR were not supported by any material during investigation whereas, the investigation had been stayed by the High Court itself. In the said judgment, the principles as observed in the case of ***Bhajan Lal (supra)*** were detailed and it was also observed that the principles were illustrative and not exhaustive.

A comprehensive reading of the above judgments would show that the exercise of power under Section 482 CrPC for quashing of an FIR has not been absolutely excluded where a report under Section 173 CrPC is not filed. The said power is to be exercised sparingly and no straitjacket formula can be laid down as to in which situations and when the said power can be or should be exercised. Some of the situations in which, depending upon the facts and circumstances of the case, the said power may be exercised in spite of the report under Section 173 CrPC having not been filed, are illustrated hereinbelow:

i. Where a second FIR has been registered with respect to an incident regarding which there is already an FIR

registered, then the second FIR could be sought to be quashed in a proceeding under Section 482 on the principle laid down by the Hon'ble Supreme Court in ***T.T. Antony*** **(supra)** and ***Amitbhai Anil Chandra Shah (supra)*** without waiting for the report under Section 173 Cr.P.C.

ii. Where a bare reading of the FIR does not disclose the commission of any offence. Reference may be made to the judgment of the Hon'ble Supreme Court in ***Ajay Mitra*** (supra).

iii. Where the FIR has been registered for offences which are non-cognizable, then the FIR could be quashed without waiting for the report under Section 173 Cr.P.C. as the police would have no jurisdiction to investigate the said offences.

iv. Where the FIR has been registered, for offences not exceeding three years, after the period of limitation as provided for under Section 468 CrPC, except if saved by any specific provision of the Code.

v. Where the FIR has been registered in violation of any judicial order.

vi. Where the registration of the FIR is in violation of a statute or some principle settled by judicial pronouncement and the said violation can be

demonstrated from the FIR and unimpeachable material on record.

a) For example, a person prosecuted for an offence for being vicariously liable without there being any provision for vicarious criminal liability in the statute under which he is sought to be prosecuted. Reference may be made to the judgment of the Hon'ble Supreme Court in ***"R. Kalyani"*** *(supra)*.

b) The FIR and its proceedings are an abuse of the process of law and the said fact is apparent from the material before the court as in the case of ***Moti Lal*** (supra) wherein the Hon'ble Supreme Court had observed that a case of suppression of material facts could amount to playing fraud with the Court and the maxim *"suppressio veri, expression faisi"* i.e suppression of the truth is equivalent to the expression of falsehood, gets attracted. Reference may also be made to the judgment of the coordinate bench of this Court in ***Ramesh Chand (supra)***.

It is reiterated that the above said instances are only enumerative and not exhaustive.

It is however, clarified that whether a case for quashing is made out or not, even in a case where the abovesaid issues arise would depend upon the facts and circumstances of the said case and it cannot be stated in absolute terms that in all cases where the above

said issues arise that the FIR has to be quashed. It is further clarified that all the necessary facts should be before the Court so as to undisputedly raise the above issues before the Court and should not depend upon the facts which might emerge from the report under Section 173.

Adverting to the facts of the present case and after keeping in mind the observations of the Hon'ble Supreme Court and of various High Courts, detailed hereinabove, this Court is of the opinion that the present FIR deserves to be quashed for the reasons detailed hereinbelow.

A perusal of the present FIR dated 15.09.2021 would show that the period for which the offences alleged to have been committed is from 10.10.2019 to 15.09.2021 and the same are with respect to two incidents. First incident being with respect to the petitioner allegedly involving respondent No.2 in a false rape case in the year 2019, which has been registered on the statement of 'R' (name withheld) against Gurpreet Singh @ Goldy, Jagdeep Singh son of Najar Singh and respondent no.2 and the second incident pertains to the year 2020 involving Gurjeet Singh and one girl 'S' (name withheld) and the allegation against the petitioner in the same is with respect to demand of Rs.14 lakhs from respondent No.2, failing which, it has been alleged that he would involve the respondent No.2 in a false rape case. It is not in dispute that the first incident in the present FIR pertains to FIR No.263 dated 10.10.2019, registered under Sections 376, 342, 506 and 120-B IPC and Section 8 of the

Protection of Children from Sexual Offence Act, 2012. In the said FIR, the allegations made by the prosecutrix 'R' are against respondent No.2 also. It is not in dispute that respondent No.2 had filed an application under Section 156(3) Cr.P.C. against the said prosecutrix 'R', the present petitioner and three other persons for registration of an FIR under Sections 211, 193, 389 and 120-B IPC on the averment that in the FIR No.263 dated 10.10.2019, the police had found the respondent no.2 to be innocent and thus, a false case was registered against Respndent no.2. The relevant part of the said application dated 07.07.2020 under Section 156(3) is reproduced hereinbelow: -

> *"Jagdeep Singh alias Jolly, age around 30 years s/o Sh. Hargopal Singh R/o Village Bakhora Khurd, Tehsil Lehra presently R/o Ward No.9, Lehra, Tehsil Lehra, District Sangrur.*
>
> *Applicant*
>
> *Versus*
>
> *1. "R"xxxxx D/o xxx xx 2. Sarabjit Kaur W/ Amarjit Singh 3. Kulwant Singh alias Kanti S/o Karnail Singh 4. Lachhman Singh S/o Gurcharan Singh residents of Village Gobindpura Jawahar Wala, Tehsil Lehra, District Sangrur 5.* ***Gurmail Singh*** *alias Mely S/o Bant Singh R/o Village Bakhora Khurd, Tehsil Lehra, District Sangrur.*
>
> *Accused*
>
> *Applicant under section 156 (3) Cr.PC for instructing SHO P.S. Lehra for registering case U/s 211, 193, 389, 120-B IPC against the abovementioned accused.*

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12) That after getting registered false case against the applicant, Gurmail Singh alias Mely had. called up my father on phone and had said that 1 and aforesaid. accused had in connivance got registered this false case and said that if you will give us Rs. 14 lakhs only then we will leave you, otherwise be ready to face its consequences. The accused Gurmail Singh alias Mely had called up my father on phone only after registration of case. This fact can be cleared by taking the call recording.

13) That the aforesaid accused in mutual connivance, for settling old enmity with me and by fearing me of alleging about serious offence against me, for extracting heavy amount from me, 04 days' after 07-10-2019, had got registered falsely Case No. 263/2019, under a planned conspiracy. In this connection the enquiry of the enquiry officer who had declared me innocent is enclosed with the application."

Perusal of the above would show that the allegations made in the said application under Section 156(3) Cr.P.C. pertain to the allegations made in the first part of the present FIR. The averments made in the said application have also been relied upon by learned counsel for respondent No.2 while making his submissions and it was argued by the said counsel that the allegations contained in paragraph 7 (Page 52 of the paperbook) of the said application, would make out a case for the registration of FIR against the present petitioner. On 20.07.2020, Judicial Magistrate, 1st Class, Moonak after considering the allegations made in the application under 156(3) Cr.P.C. had observed that the Court was of the opinion that the facts

disclosed in the application did not warrant registration of an FIR. The order dated 20.07.2020 is reproduced as under: -

> *"Present: Sh. J.S. Azzee, Advocate*
> *counsel for the applicant.*
>
> *Report of SHO perused.*
>
> *Perusal of the record reveals that FIR against the complainant was registered on the statement under Section 376 IPC and Section 8 of POCSO Act.* ***The Court is of the opinion that the fact disclosed in the application does not warrant be registration of FIR. Thereby, the present application is treated as criminal complaint and the case is adjourned to 21.08.2020 for pre summoning evidence.***
>
> *Date: 20.07.2020* *(Gurmehtab Singh) PCS*
> *Judicial Magistrate 1st Class,*
> *Moonak. UID-PB0473."*

It is not in dispute that the said order had not been challenged and has thus attained finality. The case was then fixed for pre-summoning evidence. It would be relevant to point out that after registration of the present FIR, the said complaint under Section 156(3) Cr.P.C. has been withdrawn, vide order dated 11.12.2021 (Annexure P-11). It is not in dispute that inspite of the said criminal complaint being pending, respondent No.2 has chosen to file the present complaint before the police on the basis of which, the present FIR has been registered, without disclosing the fact with respect to the filing of the application under Section 156(3) Cr.P.C. or the order dated 20.07.2020. The said fact has also not been disclosed in the alleged statement under Section 161 Cr.P.C., which was stated to have

been recorded on 16.09.2021 (Annexure R-2/3), which was referred to by the learned counsel for respondent No.2. Even with respect to the second incident, it is not in dispute that respondent No.2 had filed an application under Section 156(3) Cr.P.C. against the present petitioner and other accused. The relevant portion of the said application (Annexure R2/1) is reproduced hereinbelow: -

"To,

The Judicial Magistrate (1st Class),
Moonak

Sub: Application u/s 156(3) Cr.P.C. for direction to S.H.O., Lehra, Distt. Sangrur to register the case against the accused 1) Buta Singh HC, Punjab Police, Choki Chotian, P.S. Lehra, Distt. Sangrur. 1) ***Gurmail Singh @ Meli*** *S/o Bant Singh R/o village BakhoraKhurad, Tehsil Lehra, Distt. Sangrur u/s 116, 195, 211, 384, 389 read with 511, 120-B of IPC.*

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5. That when the complainant was exonerated from FIR No. 263 of 10-10-2019 he was apprehensive that the accused can again hatch any conspiracy to implicate him any other false case so he moved applications to CM Punjab, DGP. Punjab Police, Punjab, Chief Secretary, Punjab on 15-10-19 stating that he is fearing that the accused may again implicate him any false case.

6. Then the fear of the complainant proved true when a client namely ***Gurjeet Singh*** *came to him and told him that the was facing troubles by a lady namely "S"xxxx W/oxxxx R/o* **xxxxxxxxx(withheld)** *who was threatening him and demanding Rs 40000 per month as extortion money. He*

told the complainant that he was already in relation with that lady but now she had started to threaten him. So the complainant advised him to file complaint u/s 384 against the lady for blackmailing with police. On my advice he filed application and the police registered an FIR no. 281 of 3-11-2020 at Police station Lehra against the lady namely Sxxxxxx. She was arrested on 6 11-2020 in the said case by the police and was produced at court at Moonak She got regular bail from the court at Moonak. Thereafter the lady Sxxxx got registered an FIR no. 307 of 1-12-2020 police station City Ratia u/s 376(2)(N), 384, 450, 34 of IPC. This case was cancelled by the police after inquiry being found false.

7. That due to close proximity with Gurjeet Singh i.e. my client who was my classmate too I was pursuing the matter of FIR no. 307 of 2020 which was got registered by Sxxxx against him and for that purpose I visited Fatehabad DSP office during inquiry of that case. I talked with Sxxxxthere and advised her to compromise the matter then she told me that Buta Singh HC introduced me to a Sarpanch who arranged my bail at court at Moonak. Buta Singh HC told her to act as per advice of Sarpanch in future and the Sarpanch and she were having conversation on phone. Many days they kept pressurising her for registration of the case at Fatehabad. At that time Sarpanch was inst, gating her to file application of rape against Jolly Advocate (Complainant) also and told her to say that he had raped me during custody of police. She also told the complainant that her internal voice did not allow her to make allegations against complainant and she told the complainant that another person also instigated her on the instance of Sarpanch."

Perusal of the said averments would show that respondent No.2 sought to get an FIR registered under the same offences under which the present FIR has been registered. Perusal of the allegations/averments in the said application would also show that

the same are with respect to the second incident as detailed in the present FIR. The said application was withdrawn on 22.03.2021 by respondent No.2. The order dated 22.03.2021 is reproduced hereinbelow: -

> *"Present: Sh. J.S. Azzee, Adv.*
> *Counsel for applicant.*
>
> *Statement of applicant Jagdeep Singh @ Jolly recorded qua withdrawal of the present application.*
>
> *In view of the statement suffered by applicant, the present application is hereby dismissed as withdrawn. File be consigned to Record Room Moonak.*
>
> *Date: 22.03.2021* *sd/-*
> *(Gurmehtab Singh), PCS*
> *Judicial Magistrte 1st Class,*
> *Moonak, UID-PB0473"*

It is apparent from the above that even the said application under Section 156 (3) was filed prior to the filing of present complaint on the basis of which the present FIR was registered. Even the said application under Section 156(3) Cr.P.C. or the order dated 22.03.2021 has not been referred to either in the FIR or in the alleged statement under Section 161 Cr.P.C. nor the respondents have been able to show any document which was the basis of the registration of the FIR, where reference of the proceedings under Section 156(3) have been made. The Hon'ble Supreme Court in ***Moti Lal Songara's case (supra)*** has observed as under: -

> *"2. The factual score of the case in hand frescoes a scenario and reflects the mindset of the first respondent which*

would justifiably invite the statement "court is not a laboratory where children come to play". The action of the accused-respondent depicts the attitude where one calculatedly conceives the concept that he is entitled to play a game of chess in a court of law and the propriety, expected norms from a litigant and the abhorrence of courts to the issues of suppression of facts can comfortably be kept at bay. Such a proclivity appears to have weighed uppermost in his mind on the base that he can play in aid of technicalities to his own advantage and the law, in its essential substance, and justice, with its divine attributes, can unceremoniously be buried in the grave.

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18. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused- respondent is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim supressioveri, expression faisi, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted.

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19. Consequently, the appeal is allowed, the order passed by the High Court in Criminal Revision No. 327 of 2011 and the order passed by the learned Additional District and Sessions Judge, No.1, Jodhpur, in Criminal Revision No. 7 of 2009 are set aside and it is directed that the trial which is pending before the learned Additional District and Sessions Judge, No. 3, Jodhpur, shall proceed in accordance with law".

A perusal of the above would show that the Hon'ble Supreme Court had come down heavily on the litigants/persons who are guilty of suppression of facts. In the said case, the accused while challenging the summoning order under Section 319 Cr.P.C., had not brought to the notice of the Court that the charges had been framed against him and was successful in getting the order under Section 319 Cr.P.C. set aside, which was reversed by the Hon'ble Supreme Court. While reversing the said order, the factum with respect to suppression of material fact, was considered to be one of the primary grounds to be held against the accused therein, and it was observed that anyone who takes recourse to the method of suppressing information in a court of law, is, in actuality, playing fraud with the court, and the maxim supressio veri, expression faisi, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted.

A coordinate bench of this court in ***Kuldip Raj Mahajan's case (supra)*** had observed that the High Court cannot be a helpless spectator when it is made out that the criminal prosecution is mala fide and an abuse of the process of the court and that the High Court has inherent power and corresponding duty to prevent the abuse of the process of the court or otherwise to secure the ends of justice and in the said case, the petition under Section 482 was allowed on grounds which are akin to the present case inasmuch as, there was concealment by the complainant in the said case as he did not disclose in his complaint about the cancellation of the FIR despite having knowledge of the same and the same was considered to be an

indicator of *mala fide* on the part of the complainant and was considered as one of the primary grounds for quashing the proceedings therein

The Hon'ble Supreme Court in ***Priyanka Srivstava* case *(supra)*** has also held as under: -

> *"26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.*
>
> *27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The*

warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case."

Perusal of the above judgment would show that it was observed by the Hon'ble Supreme Court that the exercise of power under Section 156(3) Cr.P.C. warrants application of judicial mind as a court of law is involved and the said proceedings are on a higher footing than the proceedings under Section 154 Cr.P.C. It was further observed that in the application under Section 156(3)Cr.P.C., it was necessary to spell out that the application under Sections 154(1) and 154(3) Cr.P.C. has been filed before filing the petition under Section 156(3) Cr.P.C. Even supporting affidavit was required to be submitted. The copy of the said judgment was circulated to all the High Courts for further circulation to the Sessions Judges and to the Magistrates. Once, in the application under Section 156(3)Cr.P.C., it was found incumbent to mention about the filing of application before the police, it would be equally incumbent, rather, the higher duty of the complainant to mention about the application under Section 156(3) Cr.P.C. filed and the orders thereof, in the complaint before the police on the basis of which the FIR has been registered, when the complaint before the police is subsequent to the application filed

under Section 156(3) Cr.P.C. In the present case, the same has admittedly not been done and the same amounts to suppression of a material fact. As earlier noticed hereinbefore, vide order dated 20.07.2020, it had been noticed by the Judicial Magistrate, 1st Class, Moonak in the application under Section 156(3) Cr.P.C. that the allegations made in the complaint did not warrant registration of an FIR and thus, the subsequent registration of the present FIR is in violation of the order passed by the Judicial Magistrate, 1st Class, Moonak. In fact, both the applications under Section 156(3) Cr.P.C. have been dismissed as withdrawn. In the first application under Section 156(3) Cr.P.C. observations had come against respondent No.2 and thus, it seems that instead of pursuing his complaint or challenging the order dated 20.07.2020, respondent No.2 had got the present FIR registered. The said act of Respondent no.2 amounts to forum shopping. Moreover, police officials cannot be permitted to act in violation of judicial orders or judicial proceedings. The registration of the present FIR is thus, illegal on the said account also in addition to there being active concealment of suppression of material facts and thus, deserves to be quashed on each of the said grounds.

Another important aspect of the present case is that the allegations in the FIR are to the effect that in the FIR registered in the year 2019 with respect to the prosecutrix 'R', the respondent No.2 had been found to be innocent by the police and thus, the said FIR is false as far as respondent No.2 is concerned, also would have no legs to stand on inasmuch as, the said prosecutrix 'R' has appeared in the

witness box in the proceedings in FIR No.263 dated 10.10.2019 as PW1 on 17.08.2021 and has levelled allegations against respondent No.2 and an application dated 24.08.2021 had been filed under Section 319 Cr.P.C. against respondent No.2 on the basis of the evidence given by the prosecutrix 'R'. The said application has been allowed vide order dated 01.12.2021. The relevant portion of the said order (Annexure P-9) is hereinunder: -

"IN THE COURT OF SESSIONS JUDGE, SANGRUR

State

Versus

Gurpreet Singh and others

FIR No. 263 dt. 10.10.2019
U/S 365/376-D/376 [2] [n]/384 IPC
R/W 6 Prevention of Children from Sexual Offences Act 2012
PS Lehra

Application U/s 319 Cr.P.C. for summoning Jagdeep Singh @ Jolly son of Hargopal Singh, R/o Bakhora Khurd to face trial along with the present accused

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8. Keeping in view the observation, made above, this Court is satisfied that the evidence on record against the accused, proposed to be summoned, is too strong and cogent to make out more than prima facie case required for framing of charge but short of satisfaction to the extent that if it goes unrebutted, would lead to conviction. Accordingly, the application is allowed. ***Accused Jagdeep Singh @ Jolly*** *son*

of Hargopal Singh resident of Bakhora Khurd is ordered to be summoned to face trial under sections 363, 376 (D), and 384 Indian Penal Code, along with the other accused for 23.12.2021.

Pronounced in open Court.
Dated: 01.12.2021
Rajiv Kumar, Stenographer-I.

Sd/-
Harpal Singh
Sessions Judge, Sangrur
(Unique Identification No.PB0036).”

Perusal of the above order would show that respondent No.2 has been summoned in order to face trial under Sections 363, 376(D) and 384 of the IPC along with the other accused. Since respondent No.2 has been summoned under Section 319 Cr.P.C. after considering the evidence of the prosecutrix and also the fact that respondent No.2 had been given a clean chit by the police, the clean chit given by the police loses its significance and thus, the foundation laid down by respondent No.2 for the registration of the said FIR would have no legs to stand on.

A Coordinate Bench of this Court in “***Ramesh Chand*** Vs. ***State of Haryana***”, ***reported as 2006 (4) RCR (Cr) 718*** had observed as under: -

“Petitioner Ramesh Chand has filed this petition under Section 482 of the Code of Criminal Procedure for quashing of the kalandra submitted by the police of Police Station

Nissang, District Karnal, against him under Section 182 Indian Penal Code and the consequent proceedings.

2. In this case, on a complaint made by the petitioner, FIR No. 31 dated 1.2.1999 was registered at Police Station Nissang under Section 379 Indian Penal Code against Sona Devi and her son Balbir alias Dalbir. In the complaint, it was alleged that Smt. Sona Devi, the then Sarpanch of Gram Panchayat, Village Amunpur, with the help of certain persons have cut trees standing on the panchayat land. Subsequently, during the investigation, the police found the allegations to be false. Consequently, the aforesaid FIR was got cancelled. Thereafter, the police submitted impugned kalandra under Section 182 Indian Penal Code against the petitioner for initiating proceeding against him for giving false information to the police.

3. It is the case of the petitioner that after cancellation of the aforesaid FIR, he filed a private complaint under sections 379, 201, 467, 468, 471 and 120B Indian Penal Code against Sona Devi and others, wherein, after recording preliminary evidence, the trial Court has summoned the accused persons to face trial under Section 379 Indian Penal Code. Copies of the complaint and the summoning order have been placed on record as Annexures P-2 and P-3. The said complaint is still pending. In view of this fact, counsel for the petitioner submits that once on the complaint filed by the petitioner on the same allegations, the accused have been summoned, the proceedings initiated against him by the police under Section 182 Indian Penal Code for giving them false information are abuse of process of law and are liable to be quashed.

4. Counsel for the respondent-State has not disputed the filing of the private complaint by the petitioner against the accused on the similar allegations as well as the summoning of the accused in the said complaint by the trial Court. The pendency of the complaint is also not disputed.

5. This Court in Crl. Misc. No. 18769-M of 2005, decided on September 13, 2006, while following the judgments of the Supreme Court in ***Gopal Vijay Verma v. Bhuneshwar Prasad Sinha, 1982(3) SCC 510 and H.S. Bains v. State (Union Territory of Chandigarh), AIR 1980 Supreme Court 1883*** *and a Division Bench decision of the Patna High Court in* ***Munilal Thakur and others v. Nawal Kishore Thakur and another, 1985 Criminal Law Journal 437****, has held that a Magistrate, even after accepting the final report after hearing the complainant, can still take cognizance of the offence upon a complaint on same or similar allegations of fact.*

6. In view of the admitted facts that in the private complaint filed by the petitioner, the accused have been summoned, though they were found innocent by the police in the FIR and keeping in view the aforesaid settled proposition of law, at this stage it cannot be said that the allegations levelled by the petitioner in the FIR are false. Therefore, in my opinion, the proceedings initiated by the police against the petitioner under Section 182 Indian Penal Code are liable to be quashed.

7. Resultantly, the instant petition is allowed. The kalandra submitted by the police of Police Station Nissang, District Karnal, against the petitioner under Section 182 Indian Penal Code and the consequent proceedings are quashed."

A perusal of the above judgment would show that a petition under Section 482 was allowed and the proceedings under Section 182 CrPC were quashed on the ground that after the police had found the case registered by the petitioner therein to be false and submitted a cancellation report and initiated proceeding under Section 182 IPC against the petitioner therein, on a complaint filed by the

complainant/petitioner therein the accused person had been summoned and it was thus, observed that since the complaint was pending, thus, the proceeding under Section 182 IPC were liable to be quashed. The law laid down in the above-said judgment would apply on all fours to the present case.

This Court has also considered the fact, as highlighted by learned counsel for petitioner, that respondent No.2 has been filing one application after the other in order to influence the prosecutrix 'R' in the case and in order to pressurize her not to give statement against respondent No.2. Initially, the proceedings under Section 182 Cr.P.C. were sought to be initiated against prosecutrix 'R', which was not initiated against her on account of the opinion given by the Deputy DA, Sangrur, which has been annexed as Annexure P-4 with the present petition. The second attempt was made by moving an application under Section 156(3) Cr.P.C. dated 07.07.2020 (the relevant portion of which has been reproduced hereinabove), in which the said prosecutrix was arrayed as accused No.1 and the present petitioner was also made accused No.5 and in the said case, the Judicial Magistrate, 1st Class, Moonak had observed on 20.07.2020 (relevant portion has been reproduced hereinabove) that the same did not warrant registration of an FIR. Third attempt has been made, in which, an application was sought to be filed through the said prosecutrix, in which certain averments were made in favour of respondent No.2 (Annexure R-2/4), even contrary to the evidence which had been given by the prosecutrix before the Court on

17.08.2021 (Annexure P-7). The said application/complaint was withdrawn on 18.11.2021. Learned counsel for the petitioner has highlighted that the registration of the present FIR on 15.09.2021 was the fourth attempt made, as respondent No.2 had an understanding that the present petitioner might be able to influence the prosecutrix in withdrawing the application under Section 319 Cr.P.C. in the proceeding of FIR No.263 dated 10.10.2019. To support this argument, it was highlighted that on 17.08.2021, the prosecutrix 'R' had given her evidence against respondent No.2 on the basis of which, an application dated 24.08.2021 was filed under Section 319 Cr.P.C. for summoning respondent No.2 and it is thereafter, the present FIR has been registered on 15.09.2021. The said act and conduct of respondent No.2 also shows that registration of the FIR is an abuse of the process of the Court and respondent No.2 has indulged in forum shopping and has got present FIR registered with the mala-fide intent and with an ulterior motive of taking vengeance on the petitioner with whom even as per his own version he has enmity. The present petition thus, deserves to be quashed.

Certain other factors are also sought to be highlighted as the same would also substantiate the reasons detailed above for allowing the present petition for quashing the FIR.

The present FIR has been registered under Sections 384, 506 and 511 IPC. The allegations on the basis of which Section 506 IPC has been sought to be added in the FIR is to the effect that the petitioner in connivance with other persons were demanding Rs.14

lakhs from the complainant and threatened that if the said amount was not given, then, a false rape case will be got registered against respondent No.2. Apparently it seems that it is the said alleged threat which as per respondent No.2 and the police, constitutes the offence under Section 506 IPC. A Co-ordinate Bench of this Court in the case titled "***Surinder Suri*** Vs. ***State of Haryana and others***, ***reported as 1996(2) R.C.R. (Criminal) 701***, has held as under: -

> *"This is a petition under Section 482 of the Criminal Procedure Code filed by Surinder Suri and Ramesh Kumar sons of Kimti Lal whereby they have prayed for the quashing of FIR No. 297 dated 4.8.1995 under Sections 506/34 of the Indian Penal Code, P.S. City Jagadhri and the resultant proceedings thereof pending before Ms. Sarita Gupta, Judicial Magistrate Ist Class, Jagadhri.*
>
> *xxx xxx xxx xxx xxx xxx*
>
> *14. According to the allegations set out in FIR No. 297 dated 4.8.1995 under section 506/34 of the Indian Penal Code by Pawan Kumar, on 2.8.1995 at about 7.00 P.M., he alongwith Bhusan and Ajit Kumar were passing through HUDA Colony, Jagadhri. He was driving scooter ahead of Bhusan and Ajit Kumar. They were behind him. Surinder Suri and his brother Ramesh came there all of sudden. Surinder Suri was driving scooter and his brother Ramesh Kumar was sitting on the pillion.* ***They slowed down their scooter and came there. They threatened to kill him and abused him. They further threatened that in future if he published any news against them, he would be eliminated.*** *In the meantime, Bhusan and Ajit also came near him. Thereupon, Surinder Suri and Ramesh Kumar sped away their scooter. Pawan Kumar is a Press Reporter feeding news to Punjab Kesri. Pawan Kumar, Bhusan and Ajit went to their house and narrated the occurrence to Pawan Kumar's brother. They reached police Station, City Jagadhri at 10.00 P.M. where*

ASI Amarnath met them. He was in civilian dress. He told them that if they reported the matter at the police station, they would have to face the consequences.

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16. ***Court while considering the question of quashing of the first information report, has to see the malafides of the complainant, if there be any. If dominant purpose in filing the first information report is malafide, FIR would have to be quashed. This view was taken by the Full Bench of the Delhi High Court in M/s Neelam Mahajan Singh v. Commissioner of Police and others, 1994(2) CLR 181. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue appropriate writ, order or direction as may be necessary in the administration of justice. This is a wide discretionary power. Similarly, the High Court has wide inherent powers under Section 482 of the Code of Criminal Procedure.*** *This power is, however, to be exercised with certain amount of circumspection and with utmost care and caution. Section 503 of the Indian Penal Code defines criminal intimidation as follows:-*

"Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation - A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

17. If we carefully go through the provisions of Section 503 of the Indian Penal Code, I do not think the allegations made by Pawan Kumar on the basis of which FIR No. 297 dated 4.81995 was registered will satisfy the ingredients of

Section 503 of the Indian Penal Code. The gist of the offence is the effect which the threat is intended to have upon the mind of the person threatened. The threat must be one which can be put into execution by the person threatening. A threat, in order to be indictable must be made with intent to cause alarm to the complainant. ***As for instance mere vague allegation by the accused that he is going to take revenge by false complaints cannot amount to criminal intimidation.***

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I am equally alive that criminal prosecution should be quashed in exercise of these powers by this Court if the intention of the complainant is malicious and is to wreak vengeance on the accused and to spite him due to private and personal grudge and not to vindicate the law for the good of the society.

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19. For the reasons given above, this petition is accepted and FIR No. 297 dated 4.8.1995 under section 506/34 of the Indian Penal Code registered at Police Station City Jagadhri together with the proceedings consequential thereto pending before the Judicial Magistrate Ist Class, Jagadhri is quashed."

A perusal of the above judgment would show that in the said case, petitioner/accused therein had come close to the complainant while riding the scooter and threatened to kill him and abused him and further threatened that in future if the complainant therein, would publish any news article against them, the said complainant would be eliminated. Even in the said situation, a Co-ordinate Bench held that the mere vague allegations by the accused that he was going to take revenge by filing false complaints cannot amount to criminal intimidation. It was further observed that in case,

the dominant purpose in filing the FIR is malafide then the FIR would have to be quashed and reliance had been placed upon the judgment of a Full Bench of the Delhi High Court in ***M/s Neelam Mahajan Singh vs. Commissioner of Police and others, 1994(2) CLR 181.*** In ***Kuldeep Raj Mahajan's case (supra),*** the reproduction of the relevant portion of which has been made hereinbefore, the petitioner therein had extended threat to the life of the respondent and a Co-ordinate Bench of this Court had noticed in para No.11 of the judgment that an alleged empty threat, to implicate the respondent in false cases or to get him removed from service, would not constitute the offence of criminal intimidation punishable under Section 506 IPC. It was further observed that the allegations in the complaint therein would not make out a case of criminal intimidation and accordingly, the proceedings were quashed. Another Co-ordinate Bench of this Court in case titled as "***Makam H.A. Vs. State of Haryana and another, 2013(11) R.C.R. (Criminal) 370,*** has held as under: -

> *"xxx xxx xxx xxx xxx xxx*
>
> *5.* ***Counsel for the petitioner had made reference to the Section 384 I.P.C. to urge that it would not at all be attracted. Counsel would also contend that even if it is accepted that some threatening call is made to the complainant, it would not reveal an offence as such threat was not advanced in the immediate presence of the complainant or on face to face basis.***
>
> *xxx xxx xxx xxx xxx xxx*
>
> *As per the allegation, the petitioner had threatened the complainant that he had links with LTTE and will get his house blasted by putting RDX. He is alleged to have used some filthy abuses, which of course are not mentioned in the*

complaint or the FIR. He has made Anirudh Aggarwal as his witness as the other call was received in his presence.

8. Whether a call given on telephone from such a remote place with potential threat would attract Section 506 I.P.C. is a question and out of blew the police has added offence under Section 384 I.P.C. making the case of extortion against the petitioner, which is without any justification.

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10. Section 384 I.P.C. provides punishment for extortion. The extortion is defined in Section 383 I.P.C. as under :-

" Whosoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits extortion".

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Accordingly, no offence under Section 384 I.P.C. would be made out against the petitioner, from the perusal and even reading of FIR in a best possible manner, I wonder how the trial Court has framed the charge under Section 384 I.P.C. To an extent, it would reflect non-application of mind.

12. The other offence alleged against the petitioner is under Sections 504 and 506 I.P.C. Section 504 I.P.C. punishes an intentional insult with intent to provoke breach of the peace. As per the State counsel, Section 504 I.P.C. would be attracted to the facts of the case as the petitioner had used abusive language on telephone call that he gave to the respondent. The Section, however, apparently is providing for some different situation. This Section provides that, whosoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to breach of the public peace, would be guilty of offence under this Section. It

is not even alleged that the word, which was used by the petitioner, was with intention to provoke the complainant to indulge in breach of peace. In my view, the offence under Section 504 I.P.C. would also not be attracted as per the allegations made in the FIR.

13. So far as the charge of criminal intimidation is concerned, this also, apparently, is too remote. The person giving telephone call from Mumbai would hardly be in any position to advance any effective threat at such a far off place. Apparently, there was business transaction between the petitioner and complainant and mere receipt of call would not mean that use of words as alleged in the FIR stands proved. In this regard, except for the evidence of the complainant, nothing else would be there to support the allegation. The submission that the conversation was in the presence of other witness would again be not worthy of reliance as telephonic call between two persons can hardly be heard by any person even if he is present in vicinity. In my view, the allegations against the petitioner have been stretched. No offence against the petitioner for the offences alleged is made out.

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15. The present petition is, accordingly, allowed. FIR No. 1099 dated 21.10.2009 registered under Sections 384, 504 and 506 I.P.C. at Police Station City Panipat and all subsequent proceedings arising therefrom are hereby quashed."

A perusal of the above judgment would show that in the said case the FIR had been registered under Sections 384, 504 and 506 IPC. As per the allegations in the FIR therein, the petitioner/accused therein had threatened the complainant therein by stating that he had links with LTTE and would get his house blasted by putting RDX and also used filthy language against him. It was further alleged that the

telephonic call, which was made was in the presence of one witness. It was observed by the Co-ordinate Bench, that a call given on telephone from a remote place, would not give rise to the offence under Section 506 IPC as the person giving a telephonic call, is hardly in a position to advance any effective threat. Even with respect to the offence under Section 384 IPC, it was observed that the said offence was not made out.

In the present case, there is no overt act alleged in the FIR and it has only been vaguely stated that the petitioner is threatening to implicate respondent No.2 in a false rape case and thus, as per the law laid by the above-said judgments and also, as per the settled principles of law, the provision of Section 506 IPC would not be attracted even in case, the allegations levelled in the FIR are taken on its face value. Even with respect to the offence of extortion/attempt to extort, it is apparent that the allegations are far-fetched and with respect to the second incident, no alleged false case has been registered even till date and thus, the question of seeking money is too far-fetched. In case on the basis of such allegations, an FIR is registered, then, it would be very easy for any person to implicate another person by merely making vague allegations, moreso, when there is previous enmity between the parties. Thus, as per the opinion of this Court, the present FIR registered under Sections 506, 384 and 511 IPC has no legs to stand on. It would be relevant to mention that while deciding the present case and holding that the present FIR deserves to be quashed, the entire material, which was required for the

adjudication of the present case, was before this Court and it could not be said that the facts were incomplete so as to await the report under Section 173 Cr.P.C.

Accordingly, the present petition is allowed and the FIR No.236 dated 15.09.2021 (Annexure P-1), under Sections 384, 511 and 506 IPC, registered at Police Station Lehra, District Sangrur as well as subsequent proceedings emanating therefrom, are quashed qua the petitioner.

(**VIKAS BAHL**)
JUDGE

January 07, 2022
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes