

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No.: 87 of 2018

Reserved on: 29.04.2019

Date of Decision: 20.05.2019

Ravi Kapoor @ JeetendraPetitioner.

Vs.

State of Himachal Pradesh and anotherRespondents.

Coram:

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?¹ Yes.

For the petitioner: M/s D.P. Singh, Janesh Mahajan, Sonam Gupta and Anurag Tandon, Advocates.

For the respondents: M/s Dinesh Thakur & Sanjeev Sood, Additional Advocate Generals, with Mr. R.P. Singh, Deputy Advocate General, for respondent No. 1.

Mr. Rajiv Rai, Advocate, for 'X'.

Ajay Mohan Goel, Judge:

By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner has, *inter alia*, prayed for quashing of FIR No. 1/2018, registered under Section 354 IPC against the petitioner at Women Police Station, Shimla as well as other proceedings emanating therefrom.

¹***Whether the reporters of the local papers may be allowed to see the Judgment?***

2. Before proceeding further, I will at this stage refer to the contents of the FIR. The allegations contained in the said FIR are that the petitioner/accused was the son of the 'X's' father's sister. He was a professional Actor. 'X' saw the accused in family gatherings once or twice a year since she was a young child. They rarely interacted with each other directly and never without other relatives/parents. In January, 1971, when 'X' was about 18 years old, accused arranged with her father to have her join on the set of his movie. Accused had never spoken to her about the shooting of the film nor she had been invited personally to attend the same. These arrangements were made by the accused without 'X' being aware of the same. Accused arrived at her house in a Car with a driver and two male film industry colleagues. She joined the accused in the Car and they drove from New Delhi to Shimla. At Shimla, the group went directly to a hotel. There the accused took 'X' to a room, which had two separate beds. Being tired from the journey, she went to sleep in one of the beds, which was pushed against the Walll. Later, while she was sleeping, accused returned to the room. He joined the two beds together and therein he assaulted her with the intent to outrage her modesty, as narrated in the FIR. As per 'X', the accused had consumed alcohol. Thereafter, accused left her alone and both of them went to sleep silently

in the room that night. Further, as per 'X', next morning the accused asked his driver to buy some clothes for her and take her to New Delhi.

3. Quashing of the FIR has been sought, *inter alia*, on the grounds that as per the FIR, the alleged incident dates back to the month of January, 1971 and as there is an inordinate delay in filing the FIR and further as no explanation is there for such an inordinate delay in registration of the impugned FIR, the same deserves to be quashed and set aside, because inordinate delay in registration of FIR raises grave doubt about the truthfulness of allegations, as it loses the advantage of spontaneity and danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberations and consultations.

4. According to the petitioner, FIR has been registered with an oblique motive to harass him. The petitioner has alleged *mala fides* behind lodging of the complaint against him by 'X'. On oath, it has been mentioned in the petition that his family runs a big media house and daughter of 'X' had auditioned in the same and 'X' was enraged as to why her daughter was not adjusted for a role for which she had auditioned. As per the petitioner, the manner in which the incident stood narrated in FIR smacks of *mala fide*. The date of the alleged incident is not mentioned in the FIR nor it is mentioned therein as to in which hotel the alleged incident took place. The FIR does not mention the names of

two male actors, who allegedly accompanied the petitioner and 'X' in the Car. No explanation is offered by 'X' for delay of 47 years in lodging the FIR and thereafter the sudden to urge get the FIR registered through a lawyer by sending a copy from United States. There is no mention of the movie during the shooting of which the alleged incident took place. Petitioner being one of the busiest Actors of the Film Industry in the year 1971, was always made to stay either in a suite or most premium room in a hotel while his staff was given separate accommodation and the whole narration of room having two separate single beds and petitioner sharing the room with the complainant was false. He had no time to travel to Shimla by Car and the route usually taken by him was a flight from Mumbai to Delhi and then further flight from Delhi to Chandigarh and then Chandigarh to Shimla by road.

5. Petitioner's further case is that Section 468 of the Code of Criminal Procedure prescribes limitation for offences punishable up to three years. As per the unamended IPC, as it existed in 1971, Section 354 of the Indian Penal Code was a bailable offence and the same was punishable with a maximum sentence up to two years or with fine or with both. Limitation period for taking cognizance on a complaint under Section 354 of the Indian Penal Code was three years. As the FIR has been lodged after a lapse of 47 years, there is a clear bar on the Courts to

take cognizance of the alleged offence and therefore also, the FIR deserves to be quashed and set aside.

These are primarily the grounds on which the petitioner has sought quashing of the FIR.

6. State and 'X' have opposed the petition. Learned Additional Advocate General has argued that as the FIR stands registered, the matter should be allowed to be investigated by the Police.

7. 'X' has resisted the petition on the ground that it was incorrect that FIR was barred by limitation, as there is no time limit for lodging of an FIR prescribed in the Criminal Procedure Code. As per 'X', the issue is not barred by limitation, because since FIR stands lodged, now it is for the Police to carry out further investigation and the limitation will either accrue from the date when FIR was lodged or from the day when, post investigation, upon the report to be submitted by the Police under Section 173 of the Criminal Procedure Code, the appropriate Court of law would take cognizance of the offence. As per 'X', since the FIR has been lodged, therefore, the present petition is not maintainable and it is mandatory that investigation be carried out on the allegations contained in the FIR. On the issue of alleged vagueness in the allegations so levelled in the FIR, the contention of 'X' is that the FIR cannot be quashed on the ground of alleged vagueness in the allegations, because it is the job of the Police to make out a case and prosecute the petitioner and it is not for

the informant to give more details than mentioned in the FIR. As per 'X', her circumstances were such that it was not only her honour, but the honour of the family which was at stake. Initially, she was extremely reluctant to disclose the said fact to the Police and it was only with the efflux of time when she was able to get over of the trauma that she thought of lodging the FIR. It has also been argued on behalf of 'X' that after the death of her husband and parents, when she became normal, she first time narrated the incident to her daughter on 27th January, 2018 and thereafter, the complaint was made.

8. I have heard learned counsel for the parties at a considerable length and have also gone through the pleadings of the parties, including the documents placed on record.

9. The case of the petitioner is that he is a reputed Veteran Actor and is aggrieved by registration of a false and frivolous FIR against him under Section 354 of the Indian Penal Code, 1860, i.e., FIR No. 1/2018, dated 16.02.2018, registered at Women Police Station, Shimla, wherein false and frivolous allegations stand levelled against him by the complainant (referred to as 'X') (his cousin sister) on the basis of an alleged incident which allegedly took place 47 years back.

10. FIR in issue is based upon information received on 15.02.2018 from informant/victim. The complaint was sent by 'X' from United States of America by way of a Courier and a perusal of the First

Information Report demonstrates that a copy of the complaint earlier stood received on 08.02.2018 by post through the office of Superintendent of Police, Shimla. The allegations, as they find mention in FIR, have been enumerated by me hereinabove. It is apparent from the contents of the FIR that as per 'X', the alleged incident is of January, 1971. On the basis of the complaint, the FIR stands registered against the petitioner under Section 354 of the Indian Penal Code.

11. Section 354 of the Indian Penal Code provides as under:

“354. Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to give years, and shall also be liable to fine. “

The Section, as it stands today, was substituted by the Criminal Law (Amendment) Act, 2013, which came into force w.e.f. 03.02.2013. Before the said substitution, Section 354 provided as under:

“354. Assault or criminal force to woman with intent to outrage her modesty.-Whoever assaults or uses criminal force to any woman, intending to

outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.



12. Chapter XXXVI of the Code of Criminal Procedure, 1973 deals with limitation for taking cognizance of certain offences.

Section 468 of the same reads as under:

“468. Bar to taking cognizance after lapse of the period of limitation.-(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with



the more severe punishment or, as the case may be, the most severe punishment.”

13. Section 469, *inter alia*, provides that period of limitation, in relation to an offender, shall commence on the date of the offence, or where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier or where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

14. Before its substitution by the Act of 2013, an offence under Section 354 of the Indian Penal Code was punishable with imprisonment for a term which could extend to two years, or with fine, or with both. In terms of the provisions of Section 468 of the Code of Criminal Procedure, no Court shall take cognizance of an offence after the expiry of the period of limitation of three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

15. Though registration of FIR is mandatory under Section 154 of the Code of Criminal Procedure, if the information discloses commission of a cognizable offence and in such a situation, no

preliminary inquiry is permissible, however, still the fact of the matter remains that there is a specific bar under Section 468(2)(c) of the Code of Criminal Procedure that no Court shall take cognizance of an offence after the expiry of the period of limitation of three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

16. Hon'ble Supreme Court in **State of Haryana and others** Vs. **Bhajan Lal and others**, 1992 Supp. (1) Supreme Court Cases 335 has given certain illustrations, wherein, the High Court either in exercise of the extraordinary powers under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code of Criminal Procedure, can order the quashing of First Information Report. The same read as under:

“(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.

17. The illustrations/guidelines so laid down by the Hon'ble Supreme Court, *inter alia*, provide that an FIR can be quashed by the High Court where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused and also where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceedings 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.

18. As already mentioned above, the petitioner has alleged *mala fides* behind lodging of the complaint against him by 'X'. On oath, it has been mentioned in the petition that the petitioner's family runs a big media house and daughter of 'X' had auditioned in the same and complainant was enraged as to why her daughter could not be adjusted for some role for which she had auditioned. It is further mentioned in the petition that had there been any element of truthfulness in the

allegations, then 'X' would not have allowed her daughter to audition with the family of the petitioner.

19. In the synopsis submitted on behalf of 'X' dated 29.04.2019, the factum of the daughter of the complainant having auditioned for a role for Balaji Motion Pictures Limited, which is stated to be owned by the family of the petitioner, has not been denied. But, it is mentioned therein that though the daughter of 'X' initially auditioned for the role of a NRI girl, however, later on, when she was contacted by Balaji Motion Pictures for a film, she declined to audition for the film, because the script was extremely explicit. It is also mentioned in the synopsis that when her daughter auditioned with Balaji Motion Pictures Limited, she was not aware about the incident in issue and when 'X' came to know that her daughter was auditioning for Balaji Motion Pictures Limited, she had cautioned her to be careful.

20. Thus, one thing which is evident from the records is that the daughter of 'X' did audition for Balaji Motion Pictures Limited, which is owned by the family of the petitioner and though the 'X' states in the synopsis that she had warned her daughter to be careful during this time, however, it is not clear as to what kind of warning was given by 'X' to her daughter, because it is not her case that she asked her daughter not to audition for the Balaji Motion Pictures Limited.

21. This lends credibility to the contention of the petitioner that lodging of the FIR was an act of *mala fide* and was a result of the daughter of 'X' having been rejected by a media house owned by the petitioner's family. The complaint has been filed from the United States of America. 'X' is stated to be in the United States of America. She wants the Police to carryout investigation on the basis of allegations contained in the complaint which are cryptic, vague and stale.

22. Besides this, a perusal of the contents of FIR demonstrates that same are vague and lead to only one conclusion that the allegations which have been made therein 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.

23. There is no mention as to on the set of the shooting of which film, 'X' met the petitioner, which led to the occurrence of the alleged incident. 'X' has not stated as to who were the two male Film Industry colleagues who travelled alongwith the petitioner and 'X' from Delhi to Shimla in a Car. It is not mentioned therein that in which hotel, the petitioner and 'X' purportedly stayed.

24. It is not mentioned as to which movie was being shot in Shimla. It is hard to believe that if 'X' was subjected to assault with the

intent to outrage her modesty, why did she not raise any noise. The date on which the alleged incident took place in Shimla is not mentioned.

25. The events which stand narrated in the FIR post occurrence of the alleged incident are also quite unbelievable and no prudent person can even reach to a just conclusion on the basis of the allegations made in the FIR that there are sufficient grounds for proceeding against the petitioner. There is no cogent explanation whatsoever coming forth from 'X' as to why the complaint was filed at such a belated stage. The reasons given in the response/synopsis do not inspire confidence, because it is hard to believe that it is only after the death of her husband and parents, 'X' became normal so as to be in a position to make the complaint. This Court fails to understand that what 'X' intends to convey by stating the following in her synopsis:

“(17) That the husband of the complainant died on 26th of June, 2009, then the father of the complainant died on June, 2016 and then mother of the complainant died on 19th of November, 2017. Then after becoming normal, the complainant first time narrated the dreadful incident to her daughter on January 27, 2018 and then the complaint was has been made.”

Be that as it may, as already submitted above, said explanation does not inspire any confidence whatsoever.

26. No Court can probably proceed with the trial of the case in the present matter, as admittedly, in the year 1971, when the offence was alleged to have been committed, the maximum punishment for commission of the offence was imprisonment up to two years.

27. Learned counsel for 'X' by placing reliance on the judgment of Hon'ble Supreme Court in **Sarah Mathew** Vs. **Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and others**, (2014) 2 Supreme Court Cases 62, argued that there was no delay in lodging the FIR, as limitation has to be construed as from the date when the FIR is lodged. He further argued that as and when Court of competent jurisdiction shall take cognizance of the offence, in terms of Section 190 of the Code of Criminal Procedure, it is on the said date that it has to be seen whether the matter is within limitation as from the date of lodging of the FIR. In my considered view, said argument is totally misconceived and a result of wrong interpretation of the judgment of the Hon'ble Supreme Court. In Sarah Mathew's case, the five Judges Bench of the Hon'ble Supreme Court was dealing with the question whether for the purpose of computing the period of limitation under Section 468 of the Code of Criminal Procedure, the relevant date is the date of filing the complaint or the date of institution of the prosecution or whether the relevant date is the date on which the Magistrate takes cognizance of the offence. While answering this question, Hon'ble Supreme Court held that

for the purpose of computing the period of limitation under Section 468 of the Code of Criminal Procedure, the relevant date is the date of filing of the complaint or the date of issuance of prosecution and not the date on which the Magistrate takes cognizance. In the present case, the date of filing of the complaint is 08.02.2018, as the date of receipt of information which finds mention in the FIR is 08.02.2018. Limitation for the purpose of Section 468 of the Code of Criminal Procedure has to be seen as from the said date vis-a-vis the alleged date of commission of the offence. It is not to be seen from the date of receipt of information by the Police vis-a-vis the date on which cognizance may be taken by the Magistrate concerned in terms of Section 190 of the Code of Criminal Procedure. It is a matter of record that as from the date of alleged incident which as per the victim took place in January, 1971, the complaint is also not within limitation for the purpose of Section 468 of the Code of Criminal Procedure, as date of filing of the complaint is beyond three years as from the year and month when the alleged offence was committed.

28.

Hon'ble Supreme Court in **Kishan Singh** Vs. **Gurpal**

Singh, (2010) 8 SCC 775 with regard to the effect of delay in lodging FIR

has held as under:

"22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an

explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide : Chandrapal Singh & Ors. Vs. Maharaj Singh & Anr., AIR 1982 SC 1238; State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604; G. Sagar Suri & Anr. Vs. State of U.P. & Ors., AIR 2000 SC 754; and Gorige Pentaiah Vs. State of A.P. & Ors., (2008) 12 SCC 531).

29. Similarly, in **Jai Prakash Singh** Vs. **State of Bihar**, (2012) 4 SCC 379, Hon'ble Supreme Court has held as under:

“12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.

30. Relying upon the judgment of **Jai Prakash Singh** (supra), in **Manoj Kumar Sharma and others** Vs. **State of Chhattisgarh and another**, (2016) 9 SCC 1, Hon'ble Supreme Court has held that delay in lodging FIR often results in embellishment, which

is a creature of an afterthought and on account of delay, FIR not only gets bereft of advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. It further held that extraordinary delay in lodging FIR raises grave doubt about the truthfulness of allegations made therein.

31. While explaining the scope of exercise of powers under Section 482 of the Code of Criminal Procedure, Hon'ble Supreme Court in **Zandu Pharmaceutical Works Ltd. and others** Vs. **Mohd. Sharaful Haque and another**, (2005) 1 Supreme Court Cases 122 has held as under:

“10. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under [Section 482](#) of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and

judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under [Section 482](#) of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in [State of Haryana v. Bhajan Lal](#) (1992 Supp (1) 335). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.



(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.



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

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



As noted above, the powers possessed by the High Court under [Section 482](#) of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: [Janata Dal v. H. S. Chowdhary](#) (1992 (4) SCC 305), and [Raghubir Saran \(Dr.\) v. State of Bihar](#) (AIR 1964 SC 1). It would not be proper for the High Court to analyse



the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under [Section 482](#) of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.



When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: *Dhanalakshmi v. R. Prasanna Kumar* (1990 Supp SCC 686), *State of Bihar v. P. P. Sharma* (AIR 1996 SC 309), *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995 (6) SCC 194), *State of Kerala v. O. C. Kuttan* (AIR 1999 SC 1044), *State of U.P. v. O. P. Sharma* (1996 (7) SCC 705), *Rashmi Kumar v. Mahesh Kumar Bhada* (1997 (2) SCC 397), *Satvinder Kaur v. State (Govt. of NCT of Delhi)* (AIR 1996 SC 2983) and *Rajesh Bajaj v. State NCT of Delhi* (1999 (3) SCC 259).

In this judgment, Hon'ble Supreme Court has further held that though Section 473 of the Code of Criminal Procedure provides for extension of period of limitation in certain cases, however, said power can be exercised only when the Court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice.

32. Therefore, in these circumstances, where admittedly the FIR has been lodged after more than four decades as from the year

when the alleged incident took place and as admittedly the punishment for committing the offence alleged against the petitioner as in the year 1971 was a maximum of two years imprisonment and further as under Section 468 of the Code of Criminal Procedure, 1973, no Court shall take cognizance of an offence after the expiry of period of limitation of three years, if offence is punishable with imprisonment for term exceeding one year but not exceeding three years, this petition deserves to be allowed and the FIR in issue deserves to be quashed and set aside. In addition, I have already held above that even otherwise, the allegations mentioned in the FIR do not inspire any confidence and no prudent person, on the basis of allegations made in the FIR, can reach to a just conclusion that there are sufficient grounds for proceeding against the petitioner.

33. In view of the discussion held hereinabove, this petition is allowed and FIR No. 1/2018, dated 16.02.2018, registered under Section 354 of the Indian Penal Code at Women Police Station, Shimla is ordered to be quashed and set aside. Petition stands disposed of, so also pending miscellaneous applications, if any.

(Ajay Mohan Goel)
Judge

May 20, 2019
(bhupender)