IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

WRIT PETITION No. 6622 of 2020

SUDHIRDAS AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Anil Khare –Senior Advocate with Shri Vaibhav Jain and Ms. Gurneet Chawla for the petitioners.

Shri Rahul Sethi –A.A.G with Ms.Bhagyashri Sugandhi –GA for the respondents/State.

Reserved on : 11/03/2026

Post on : 14/05/2026

ORDER

W.P. No. 6622/2020

This Writ Petition under Article 226 of the Constitution of India has been filed challenging the alleged high-handed, illegal, and arbitrary actions of the Respondents, who purportedly attempted to dispossess the petitioners from the subject property without any prior notice or opportunity of hearing.

2. During the pendency of the petition, by way of an amendment, the petitioners have additionally prayed for the issuance of a writ in the nature of certiorari or mandamus for the quashment of the FIR registered against them at Crime No. 142 at Police Station Naugaon, District Dhar. The petitioners further seek an appropriate writ, order, or direction commanding the Respondents to restore the possession of the property, alleging that the Respondents have illegally claimed to have taken possession thereof and have obstructed the course of justice.

Facts of the Case

3. The subject matter of the dispute is the land bearing Survey No. 770 (old No. 748), admeasuring 0.493 hectare, situated in village Naugaon, District Dhar. The petitioners assert that this land has been owned and recorded as "Abadi, Masih (Mission) Hospital" in the revenue records since at least the year 1927-28.

4. The petitioners claim that ownership rights were granted by the Ruler of the erstwhile Dhar State in 1895. It is asserted that the ancestors of Petitioner No. 1 constructed buildings, including a hospital and residential quarters, in 1897, with further reconstruction carried out in the year 1925.

5. The village Naugaon was included in the municipal area of Dhar vide notification dated 02.07.1965. The property was subsequently recorded as Municipal No. 203, Bakhtawar Marg, Dhar, initially in the name of Mission Hospital through Dr. E.P. Das, and after her death, through Petitioner No. 1.

6. By an order dated 22.07.2008, the Sub-Divisional Officer (Nazul), Dhar, terminated proceedings initiated against Petitioner No. 1 under Section 248 of the M.P. Land Revenue Code. A subsequent notice for dispossession issued in 2018 was also dropped by the SDO (Revenue) vide an order dated 13.05.2019.

7. Asserting ownership rights, Petitioner No. 1 executed a registered lease deed on 23.02.2008 and a registered agreement to sell on 29.01.2009 in favor of Petitioner No. 2. However, on 20.12.2019, the Respondents allegedly attempted to forcibly dispossess the petitioners by placing locks on parts of the premises.

8. Subsequently, on 25.03.2022, an FIR bearing Crime No. 142 was registered against the petitioners under Sections 409, 420, 467, 468, 471, and 120B of the IPC, based on a complaint made by the Tahsildar, Dhar, alleging fraudulent alienation of Government property.

Contentions of the Petitioner

9. The petitioners contend that the property has been undisputedly private land for over 123 years, and the impugned action of dispossession without notice is wholly illegal, without jurisdiction, and violative of constitutional rights under Article 300-A of the Constitution of India.

10. It is submitted that the orders passed by the SDO on 22.07.2008 and 13.05.2019 categorically held that the land is private and not Government land. The petitioners argue that since these orders were never challenged by the State, they have attained finality and are binding upon the Respondents.

11. The petitioners further highlight that in earlier civil litigations involving the Church of North India Trust Association, the State of M.P. was a party but never claimed ownership. Therefore, the sudden claim of the land being Government property is perverse and unsustainable in law.

12. Assailing the FIR, the petitioners argue that “the registration of the aforesaid F.I.R against the petitioners is mala-fide as the same has been registered vindictively only with a view to preclude the petitioners from pursuing legal remedy” in respect of the arbitrary actions of the Respondents.

13. The petitioners emphasize that the FIR merely gives a criminal contour to a civil dispute. They contend that “a bare perusal of the FIR would establish that no offence u/s 409, 420, 467, 468, 471 and 120-B of IPC is made out and the necessary ingredients for constituting such offences are totally absent.”

Contentions of the Respondents

14. *Per-Contra*, the Respondents vehemently deny the petitioners' claim of ownership, asserting that the land was never granted in ownership rights by the Ruler of Dhar State. They contend that the revenue records classify the land as an "Aabadi Land" given on lease/license to the Canadian Presbyterian Mission.

15. It is specifically argued that an institutional entity like a Mission cannot legally be an ancestor of Petitioner No. 1. The Respondents assert that Dr. E.P. Das and Dr. Ratnakar Das only arrived in Dhar in 1972 as employees appointed by the Masihi Sewa Mandal of the Malwa Church Council.

16. The Respondents contend that the mere mutation of names in municipal records and the payment of property taxes do not confer any legal title upon the petitioners. They maintain that Petitioner No. 1 is an encroacher who is fraudulently attempting to usurp highly valuable Government land.

17. It is submitted that Petitioner No. 1 possessed absolutely no right, title, or authority to execute the registered lease deed in 2008 or the agreement to sell in 2009 in favor of Petitioner No. 2. The execution of these documents in respect of State property constitutes a grave economic fraud.

18. Defending the FIR, the Respondents state that it is based on a detailed written complaint by the Tahsildar disclosing cognizable offences. They assert that the FIR cannot be quashed in writ proceedings as it represents a separate cause of action requiring thorough police investigation into the illegal sale of Government land.

Analysis and Conclusion

19. This Court has meticulously perused the record and heard the rival submissions. The scope of judicial review under Article 226 is circumscribed, especially where complex facts are involved. Precisely two questions arise for adjudication: first, whether the

petitioners are legal and rightful owners of the said land, and second, whether the FIR registered is liable to be quashed.

20. Regarding the first question of ownership, a perusal of the khasra entries reveals that initially, only the word “Abadi” was written. Subsequently, the words “Abadi Isai Dawakhana” and then “Abadi Maseet Oswal” were recorded in the revenue documents. However, there is no documentary evidence on record which legally proves how the classification of “Abadi” was systematically converted.

21. Furthermore, there is absolutely nothing on record to establish how such revenue entries functioned to transfer substantive title to the petitioners or their ancestors. The petitioner has heavily asserted that he has been paying municipal taxes for the property and his name is recorded in the municipal registers, which allegedly fortifies his claim of absolute ownership and possession.

22. However, it is a settled principle of law that mutation entries or payment of taxes do not confer or extinguish title. The Hon'ble Supreme Court in **Jitendra Singh v. State of Madhya Pradesh, 2021 SCC OnLine SC 802,** categorically held that mutation of property in revenue records does not create or extinguish title, nor

does it have any presumptive value on title. The Apex Court held as under that-

> *"Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made."*

23. One of the main arguments of the petitioner to prove ownership is that the SDO (Nazul), Dhar passed an order dated 22.07.2008. The SDO held that the said land is neither Nazul nor Government land, and terminated proceedings under Section 248 of the MPLRC. This order was fundamentally based upon the ratio held by the Division Bench in M.P. No. 180/1981 (Chhunnilal Sharma vs. State of M.P & 2 others).

24. Upon a careful perusal of the original record of M.P. No. 180/1981, it is evident that the petition was filed by one Chunnilal, president of the "Dhar nagar makan malik sangarsg samiti". Crucially, there is no name of the petitioner or his ancestors

reflected as being the signatory of the said samiti, nor the land bearing Survey No. 770 (Old No. 748), admeasuring 0.493 hectare explicitly mentioned.

25. Thus, the order of M.P. No. 180/1981, by which the owners of the *makan* were given ownership, does not explicitly declare the petitioner or their ancestors to be the rightful owners of the subject property. Even the SDO order dated 22.07.2008 specified that initially, the building was operated by the Christian Missionary Press Britain.

26. The SDO order further notes that the hospital was later operated by the Malwa Church Council. The records indicate that in 1972, Dr. R.P. Das and his wife, Mrs. E.P. Das, were merely appointed as hospital superintendents. After their deaths, Dr. Sudhir Das was appointed as the superintendent, strongly suggesting a caretaker capacity.

27. There is no document on record to establish whether their rights legally included the power to lease out or sell the property to third parties. These are all highly disputed questions of fact which necessitate the proper appreciation of oral and documentary evidence. Such complex factual determinations cannot be undertaken in summary writ proceedings.

28. In **Roshina T. V. Abdul Azeez K.T., (2019) 2 SCC 329,** the Hon'ble Supreme Court held that a writ petition under Article 226 is not the proper remedy for adjudicating complex disputed questions of property title. Unless the petitioner establishes a pure legal right to sell the property, such declarations cannot be granted here. They must approach a civil court. The Apex Court held that-

> ***"14.*** *It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. (See Mohan Pandey v. Usha Rani Rajgaria [Mohan Pandey v. Usha Rani Rajgaria, (1992) 4 SCC 61] and Dwarka Prasad Agarwal v. B.D. Agarwal [Dwarka Prasad Agarwal v. B.D. Agarwal, (2003) 6 SCC 230] ."*

29. Moving to the second question, whether the FIR registered is liable to be quashed under Article 226, it is imperative to examine its contents. The FIR notes:

> "तहसील कार्यालय धार के तहसीलदार श्री विनोद राठौर पिता मदनलाल जी राठौर... द्वारा थाना नौगांव पर स्वयं उपस्थित होकर एक कम्प्युटराईज्ड टाईपिंग लेखी आवेदन पत्र... प्रस्तुत किया गया।"
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> "...सर्वे नं. 770 रकबा 0.493 है. मद शासकीय वर्तमान में राजस्व अभिलेख में अंकित है। उपरोक्त भूमि पर मिशन अस्पताल संचालित हो रहा था। उपरोक्त शासकीय भूमि व उस पर बने भवन (मिशन अस्पताल) को एक वृहद् षडयंत्रपूर्वक योजनाबद्ध तरीके से बिना किसी वैध अनुमति के कूटरचित एवम मिथ्या दस्तावेजों के आधार पर..."
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> "...सुधीरदास... अंकित... एवं अन्य ने संगनमत हो खुर्द-बुर्द कर दी है । वर्ष 2008 में सुधीरदास... व्दारा अंकित... के पक्ष में उपरोक्त भूमि के सम्बन्ध में 50,000/- रुपये में लीज डीड क्र.3817 दिनांक 23.02.2008 से 29 वर्ष की लीज का निष्पादन उप पंजीयन कार्यालय, धार व्दारा किया गया।"
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> "जबकि सुधीर दास या उसके परिवार का उपरोक्त संपत्ति में कोई भी अधिकार कभी भी नहीं रहा है । वर्ष 2009 में 11 लाख रूपये में उक्त भूमि व भवन का विक्रय अनुबंध पत्र क्रं. 3309 दिनांक 29.01.2009 के द्वारा... निष्पादन उप पंजीयन कार्यालय धार में किया गया है ।"
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> "बिना वैध दस्तावेजों के एवं विधि के प्रावधानों के विरुद्ध आकर उक्त शासकीय भूमि को नगर पालिका के अभिलेख में ई.पी.दास व सुधीरदास द्वारा अपना नाम दर्ज करवाया गया। इनके द्वारा मिथ्या एवं

फर्जी दस्तावेज तैयार करवा कर बेशकिमती शासकीय भूमि पर लीज डीड... निष्पासदित किया..."

"...तथा वहाँ पर दुकानदारो से मासिक किराया प्राप्त कर अवैध लाभ अर्जित किया गया एवं शासन को सदोष हानि कारित की... अपराध धारा 409,420,467, 468, 471, 120-बी भादवि सुसंगत धाराओं में अपराध पंजीबद्ध करे।"

30. While it may not be definitively established in these summary proceedings whether the property exclusively belongs to the government, any doubt regarding ownership triggers the State's role. The State is the ultimate custodian empowered to preserve such property from illegal alienation by unauthorized caretakers.

31. This principle was firmly held by the Hon'ble Apex Court in **Pierce Leslie & Co. Ltd. v. Miss Violet Ouchterlony Wapshare, (1969) 39 Comp Cas 808 : 1968 SCC OnLine SC 33,** where it was observed:

> *"The right of the Government to take by escheat for want of an heir or successor or as bona vacantia for want of a rightful owner has been recognised in our country for a long time. Statute 16 and 17 Victoria, c. 95, section 27, an Act to provide for the Government of India asserted that*
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> *"all real and personal estate within the said territories escheating or lapsing for want of an heir or successor, and all property within the said territories*

devolving, as bona vacantia for want of a rightful owner, shall (as part of the revenues of India) belong to the East India Company in trust for Her Majesty for the service of the Government of India."

By section 54 of the Government of India Act. 1858, the existing provision was continued in force and was construed as referring to the Secretary of State in Council in place of the company. Section 20(3)(iii) of the Government of India Act, 1915, provided that the revenues of India received for His Majesty would include,

"all movable or immovable property in British India escheating or lapsing for want of an heir or successor, and all property in British India devolving as bona vacantia for want of a rightful owner."

Section 174 of the Government of India Act, 1935, provided:

"Subject as hereinafter provided, any property in India accruing to His Majesty by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a Province, vest in His Majesty for the purposes of the Government of that Province, and shall in any other case vest in His Majesty for the purpose of the Government of the Federation. .. . "

Article 296 of the Constitution now provides:

"Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia

for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union..."

These enactments show that in this country the Government takes by escheat immovable as well as movable property for want of an heir or successor. In this country escheat is not based on artificial rules of common law and is not an incident of feudal tenure. It is an incident of sovereignty and rests on the principle of ultimate ownership by the State of all property within its jurisdiction. "Private ownership not existing, the State must be owner as ultimate lord": see Collector of Masulipatam v. C. Vencata Narainapah [(1860) 8 M.I.A. 500, 525.] . The rules of English feudal law relating to mesne lords are not applicable, and consequently the Zamindar could not take by escheat the land of a tenant dying without heirs. The right of escheat belongs to the Government only: see Ranee Sonet Kowar v. Mirza Himmut Bahadoor [[1876] L.R. 3 I.A. 92, 101; I.L.R. 1 Cal. 391.] . The Government has the right to take all property within its jurisdiction by escheat for want of an heir or successor and as bona vacantia for want of a rightful owner: see Bombay Dyeing and Manufacturing Co. v. State of Bom- bay [[1958] S.C.R. 1122, 1146.] ; Legal Remembrancer v. Corporation of Calcutta [(1967) 2 S.C.R. 170, 204; A.I.R. 1967 S.C. 997.] . Consequently the property of an intestate dying without leaving lawful heirs, and the property of a dissolved corporation passes to the Government by escheat or as bona vacantia. The property taken by escheat or as

bona vacantia belongs to the Government, subject to trusts and charges, if any, previously affecting it."

32. Moreover, Regarding the quashing of the FIR, the law is definitively settled in the landmark case of **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426,** where the Hon'ble Apex Court laid down strict parameters for exercising extraordinary power under Article 226 of the Constition of India or Section 482 of the Code. The Court comprehensively held as under:-

"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 have given 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."

33. Furthermore, in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, (2021) 19 SCC 401,** the Hon'ble Supreme Court cautioned High Courts against stifling legitimate investigations at the threshold. The police have a statutory right and an absolute duty to investigate cognizable offences, which must not be casually thwarted. The Apex Court held that-

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

***10.1.** The first case on the point which is required to be noticed is the decision of this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] . While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is in pari materia*

with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the abovestated rule, which are as under : (AIR p. 866)

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

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

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of

the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

(emphasis supplied)

10.2. *In Kurukshetra University [Kurukshetra University v. State of Haryana, (1977) 4 SCC 451 : 1977 SCC (Cri) 613] , this Court observed and held that inherent powers under Section 482CrPC do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In the case before this Court, the High Court quashed the first information report filed by the Kurukshetra University through Warden and that too without issuing notice to the University, in exercise of inherent powers under Section 482CrPC. This Court noticed and observed that the High Court was not justified in quashing the FIR when the police had not even commenced*

investigation into the complaint filed by the Warden of the University and no proceedings were at all pending before any Court in pursuance of the FIR.

10.3. *Then comes the celebrated decision of this Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . In the said decision, this Court considered in detail the scope of the High Court powers under Section 482CrPC and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:*

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

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

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

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

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

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

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

10.4. *In Golconda Linga Swamy [State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522 : 2004 SCC (Cri) 1805] , after considering the decisions of this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992*

Supp (1) SCC 335 : 1992 SCC (Cri) 426] and other decisions on the exercise of inherent powers by the High Court under Section 482CrPC, in paras 5, 7 and 8, it is observed and held as under : (Golconda Linga Swamy case [State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522 : 2004 SCC (Cri) 1805] , SCC pp. 526-29)

"5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely : (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alique concedit, conceditur et id sine quo res ipsa esse non

potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent such abuse. It would be an abuse of the process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

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7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the

accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. ...

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. 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 [Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Raghubir Saran v. State of Bihar [Raghubir Saran v. State of Bihar, 1963 SCC OnLine SC 102 : 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 cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides

of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."

10.5. *In Zandu Pharmaceutical Works Ltd. [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283] , in para 11, this Court has observed and held as under : (SCC pp. 129-30)*

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

10.6. *In Sanapareddy Maheedhar Seshagiri [Sanapareddy Maheedhar Seshagiri v. State of A.P., (2007) 13 SCC 165 : (2009) 1 SCC (Cri) 170]*

, in para 31, it is observed and held as under : (SCC p. 180)

"31. A careful reading of the abovenoted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations

simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482CrPC."

10.7. *In Arun Gulab Gawali [State of Maharashtra v. Arun Gulab Gawali, (2010) 9 SCC 701 : (2010) 3 SCC (Cri) 1459] , this Court set aside the order [Arun Gulab Gawali v. State of Maharashtra, 2006 SCC OnLine Bom 1524] passed by the High Court quashing the criminal complaint/FIR which was even filed by the complainant. In the case before this Court, prayer for quashing the FIR before the High Court was by the complainant himself and the High Court quashed the FIR/complaint in exercise of the powers under Section 482CrPC. Quashing and setting aside the judgment and order passed by the High Court quashing the FIR, this Court in paras 13 and 27 to 29 has observed as under : (Arun Gulab Gawali case [State of Maharashtra v. Arun Gulab Gawali, (2010) 9 SCC 701 : (2010) 3 SCC (Cri) 1459] , SCC pp. 706 & 710)*

"13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it "soft-pedal the course of justice" at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "CrPC") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide State of W.B. v. Swapan Kumar Guha [State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561 : 1982 SCC (Cri) 283] , Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Ajay Mitra v. State of M.P. [Ajay

Mitra v. State of M.P., (2003) 3 SCC 11 : 2003 SCC (Cri) 703])

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27. The High Court proceeded [Arun Gulab Gawali v. State of Maharashtra, 2006 SCC OnLine Bom 1524] on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Session is empowered to discharge an accused under Section 227CrPC even before initiating the trial. The accused can, therefore, move the trial court itself for such a relief and the trial court would be in a better position to analyse and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction under Section 482CrPC for the quashing of a prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial. The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion.

28. A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police. If the prosecution is quashed, then neither the trial court nor the investigating agency has any

opportunity to go into this question, which may require consideration. The State is the prosecutor and all prosecution is the social and legal responsibility of the State. An offence committed is a crime against society and not against the victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.

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

(emphasis in original)

34. Applying these settled principles to the present factual matrix, even if the absolute title of the land remains a subject of

civil dispute, the petitioner was functioning merely as the superintendent or manager. He possessed no inherent, verified, or established legal right to lease out or sell the property.

35. Having full knowledge of his limited administrative capacity, the petitioner proceeded to execute a registered lease deed (Annexure P/5) and an agreement to sell (Annexure P/7). These substantive acts of alienating disputed property, prima facie, form the basis of the criminal allegations of forgery, cheating, and conspiracy.

36. Moreover, the petitioner was, at best, functioning in an administrative or caretaker capacity. Yet, the petitioner knowingly, without valid documents and in contravention of the law, had his name mutated in the municipal records. Subsequently, he executed a registered lease deed and an agreement to sell, which form the basis of the impugned FIR. In a proceeding under Article 226 of the Constitution of India, this Court does not possess the jurisdiction to delve into the merits of the charges. Consequently, this Court refrains from commenting on the validity or veracity of the allegations.

37. Consequently, a plain reading of the allegations contained in the FIR, taken in their entirety, *prima facie* discloses the

commission of cognizable offences necessitating a comprehensive police investigation and trial, if required. The present case does not fall within the ambit of any of the established parameters for the quashing of an FIR as enunciated in ***Bhajan Lal (supra)*****.** Accordingly, the relief sought by the petitioners is hereby rejected.

38. In view of the detailed analysis, the cited jurisprudence, and the explicit directives evaluated above, this Court finds no merit in the petition. The extraordinary reliefs sought by the petitioners, involving fiercely disputed questions of title and the stifling of a valid criminal probe, cannot be granted under writ jurisdiction.

39. Accordingly, the writ petition is **dismissed.** The petitioners are, however, granted the absolute liberty to file a properly constituted civil suit before a competent court of civil jurisdiction to adduce evidence and prove their ownership, title, and the substantive right to sell or lease the property.

40. Pending applications, if any, shall be **disposed of** accordingly.

No order as to costs.

(Jai Kumar Pillai)
Judge

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