MCRC.57/2016

Amit Chaturvedi & ors.

v.

State of M.P & anr.

24/01/2017

Shri A.S. Bhadouriya, Counsel for the applicants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent no.1/State.

Shri Rajeev Sharma, Counsel for the respondent no.2

Heard on the question of Admission.

With the consent of the parties, the case is finally heard.

This petition under Section 482 of Cr.P.C. has been filed for quashing the F.I.R. No. 578/2015 and all other consequential proceedings.

The necessary facts for the disposal of this application in short are that on 18-8-2015, a F.I.R. was lodged on the information of the complainant/injured Smt. Deepti Chaturvedi against the applicants for offences punishable under Sections 498A,452,324,323,294,506/34 of I.P.C. It was alleged by the complainant Smt. Deepti Chaturvedi that the husband and in-laws of the complainant forcibly entered in her parents' house and started demanding Rs. 5 lacs and also started abusing the complainant and also assaulted the complainant as a result of which She sustained several injuries. She was admitted in the hospital and in the M.L.C., total four injuries including one incised penetrating wound was also found. On the statements of the complainant Smt. Deepti Chaturvedi and the statements of other witnesses, the police registered the offence.

It is submitted by the Counsel for the applicant that the applicants have been falsely implicated. The applicants had made a complaint to the higher authorities about their false

implication and accordingly, an enquiry was conducted by Additional Superintendent of Police, City (East) Gwalior, who had come to the conclusion that the entire incident appears to be suspicious. However, inspite of the enquiry report given by the Additional Superintendent of Police, the investigating officer has filed the charge sheet. It was further pleaded that in fact under the pressure of Shri Saket Tiwari, Advocate, who is the real brother of the complainant, a false report has been lodged. The applicant no.1 had also filed a petition under Section 9 of Hindu Marriage Act and in fact it is the complainant who does not wish to reside with the applicant no.1.

The complainant had objected the bail application filed by the applicants by making false allegations, which clearly show that the sole intention of the complainant is to some how send the applicants behind the bars. The case diary statements of the witnesses were recorded and they have not stated about the demand of dowry by the applicants on the date of incident. If the applicants had come to the house of the father of the complainant and they had assaulted the complainant, then why they were allowed to leave the house. Why they were not stopped and confined. The fact that the applicants were not apprehended on the spot and they were allowed to go scot free after committing the incident is a circumstance which leads to only one inference, that in fact no incident did take place and the entire allegations are false and baseless. It is further submitted that in fact the family dispute is being given the color of Criminal offence. He further submitted that the report given by the Additional Superintendent of Police, Gwalior can be considered by this Court while exercising powers under Section 482 of Cr.P.C. It is further submitted that only that part of the report of the

Additional Superintendent of Police can be taken into consideration which is in favor of the accused persons and if this Court comes to a conclusion that any part of the report of the Additional Superintendent is not worth reliance or it is against the accused persons, then that part of the report of the Additional Superintendent of Police cannot be taken into consideration against the applicants and in such a situation, the appellants should be allowed to lead defence evidence in the Trial.

In nutshell the contention of the Counsel for the applicants is that the Court can consider the report of the Additional Superintendent of Police only in favor of the accused and if that report is not acceptable, then the matter should be left to the Trial. It is further submitted that the applicant no. 1 and applicant no. 4 were on their duties and they have been falsely implicated. It was further submitted by the Counsel for the applicants that even the Additional Superintendent of Police, Gwalior, in his report has found that the Mobile location of the applicants no.1 and 4 was at different places, therefore, *prima facie* it is proved that the applicants no.1 and 4 were not present on the spot at the time of incident. It was also submitted by the Counsel for the applicants that the scope of powers under Section 482 of Cr.P.C. is much wider then that of under Section 397,401 of Cr.P.C. While considering the Criminal Revision against the order framing charges, the High Court has to see that whether there is *prima facie* evidence against the applicants/accused for the purposes of framing charges or not, but while exercising powers under Section 482 of Cr.P.C., the High Court has to consider that whether the evidence which is available on record is sufficient to convict the accused or not. If the High Court comes to a conclusion that

the material available on record is not sufficient to record conviction, then the criminal proceedings against the applicants/accused should be quashed as if there is no possibility of conviction then, there is no reason as to why, the accused persons are forced to face the agony of trial. It is further submitted that if the circumstances which are available on record prima facie show that the incident which is alleged to have been committed is improbable and no prudent man can accept the allegations, then the F.I.R. and the consequential proceedings should be quashed.

To buttress his contentions, the Counsel for the applicants relied upon **State of Orissa v. Devendra Nath Padhi [(2005) SCC (Cri) 415], Bharat Parikh v. Central Bureau of Investigation & anr. [(2008) 3 SCC (Cri) 609], 2010 Cr.L.r. 180, Suryanarayan Tamrakar & ors. v. State of Chattisgarh & anr. [2009 (2) Crimes 233], 2010(2) Crimes 116, In Reference v. Vijay Kesharwani [(2010) Cr.L.R. 821], 2014 Cr.L.R. 174, 2014 Cr.L.R. 162, 2016 (20) Crimes 140 and State of Haryana Vs. Bhajanlal [AIR 1992 SC 604].**

Per contra, the Counsel for the State submitted that the report given by the Additional Superintendent of Police, Gwalior has not been filed along with the Charge Sheet and the prosecution do not rely on the said report, therefore, at this stage, the prosecution is not bound by the said report of the Additional Superintendent of Police, Gwalior. It was further submitted that even if the report is read in its entirety, then it would be clear that the findings recorded by the Additional Superintendent of Police, Gwalior are not based on proper appreciation of facts. Without verifying the documents from the authorities who had issued those documents, the Additional Superintendent of Police, Gwalior, came to the

conclusion that the applicants no.1 and 4 were on their duty. Further, it was submitted by the Counsel for the respondent/State that it is clear that the Mobile Nos. on which the applicants no. 1 and 4 have placed reliance were not issued in their names, therefore, on the basis of the location of such Mobile Numbers, *prima facie* it cannot be held that the applicants no.1 and 4 were at different places at the time of the incident. It is further submitted that merely in exercise of powers under Section 36 of the Criminal Procedure Code, if the Superior Officer had conducted any investigation, then its report by itself would not be of much importance and the accused persons are under obligation to prove their defence in accordance with law.

The Counsel for the respondent no.2 submitted that it is well established principle of law that at the initial stage of quashing the F.I.R. or the charge sheet or even at the stage of framing of charges, the defence of the accused persons is not required to be taken into consideration. Further it was submitted that the medical evidence fully corroborates the Oral Evidence. A penetrating wound was found in the abdominal region of the victim and it cannot be said by no stretch of imagination that the said injury was self inflicted. Further, it was submitted that there was no delay in lodging the F.I.R. as the complainant was admitted in the hospital and when the information was sent by the Hospital to the Police Station, then her statements were recorded in the Hospital itself. It is further submitted that the findings recorded by the Additional Superintendent of Police Gwalior are not correct and are based on surmises and conjectures and since, the said report has not been relied upon by the prosecution therefore, at this stage, the same cannot be read in favor of the accused. Further, if the applicants submit that the report

of the Additional Superintendent of Police, Gwalior, be taken into consideration, then the entire report should be considered and it is incorrect to say that only that part of the report which favors the accused should be considered and the remaining party should be ignored. Further it is submitted that even the Additional Superintendent of Police, Gwalior, has not given any specific finding and has stated that it would be appropriate to send the case for trial.

Heard the learned Counsel for the parties and perused the documents filed along with the application.

Before adverting to the facts of the case, it would be appropriate to consider the scope of the powers of High Court under Section 482 of Cr.P.C.

The Supreme Court in the case of **Homi Rajvansh v. State of Maharashtra,** reported in **(2014) 12 SCC 556,** held as under:

> "19. Though the High Court possesses inherent powers under Section 482 of the Code, these powers are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court. This Court, time and again, has observed that extraordinary power should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the said power when it is imperative to exercise the same in order to prevent injustice."

In the case of **Vinod Raghuvanshi v. Ajay Arora,** reported in **(2013) 10 SCC 581,** it has been held by Supreme Court as under :

> **"30.** It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the

> allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage."

In the case of **State of Rajasthan v. Rajkumar Agarwal,** reported in **(2012) 8 SCC 616,** it has been been held by Supreme Court as under **:**

> **"11.** How far the evidence collected by the investigating agency is credible can be decided only when the evidence is tested by cross-examination during the trial. But, in our opinion, in view of the contents of the FIR and nature of evidence collected by the investigating agency, this is certainly not a case where the FIR can be quashed. If we examine the instant FIR in the light of the principles laid down by this Court in *Bhajan Lal* it is not possible to concur with the High Court that the allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any offence.
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> **12.** There is yet another and a very sound reason why we are unable to quash the instant FIR. It is risky to encourage the practice of filing affidavits by the witnesses at the stage of investigation or during the court proceedings in serious offences such as offences under the PC Act. If such practice is sanctioned by this Court, it would be easy for any influential accused to procure affidavits of witnesses during investigation or during court proceedings and

> get the FIR and the proceedings quashed. Such a practice would lead to frustrating the prosecution of serious cases. We are, therefore, wary of relying on such affidavits. So far as the judgment cited by Mr Shishodia in *V.P. Shrivastava* [(2010) 10 SCC 361] is concerned, it is purely on facts and can have no application to this case. *Shiji* [(2011) 10 SCC 705] also does not help Respondent 1. That case involved a civil dispute. The parties had settled their civil dispute and therefore, the complainant was not ready to proceed with the proceedings. It is against this background that in *Shiji* this Court held that exercise of power under Section 482 of the Code was justifiable. However, this Court added that the plenitude of the power under Section 482 of the Code by itself makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. We feel that in the instant case, the High Court failed to appreciate that the wholesome power vested in it under Section 482 of the Code has to be exercised with circumspection and very sparingly. It is not possible for us, on the facts of this case, to come to a conclusion that no offence is made out at all against Respondent 1 and continuance of proceedings would be abuse of the process of court."

In the case of **Umesh Kumar v. State of Andhra Pradesh,** reported in **(2013) 10 SCC 591**, it has been held by Supreme Court as under:-

> **"20.** The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for

> the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide *Pepsi Foods Ltd.* v. *Judicial* Magistrate [((1998) 5 SCC 749], *Ashok Chaturvedi* v. *Shitul H. Chanchani [(1998) 7 SCC 698]*, *G. Sagar Suri* v. *State of U.P. [(2000) 2 SCC 636]* and *Padal Venkata Rama Reddy* v. *Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437]*.)
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> **26.** Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.

In the case of **Rajiv Thapar v. Madan Lal Kapoor**' reported in **(2013) 3 SCC 330**, the Supreme Court has held as under:-

> "*30*. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a

prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one: Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

22. In State of Bihar v. P.P. Sharma [AIR 1991 SC 1260], this Court dealt with an issue of whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under: (SCC pp. 269-70, para 68)

"*68*. … Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to '*killing a stillborn child*'. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial *amounts to pre-trial of a criminal trial*…. It is not to suggest that under no circumstances a writ petition should be

> entertained. … The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report."
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> (emphasis supplied)
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> **23.** The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In *Sheonandan Paswan* v. *State of Bihar* this Court held as under: (SCC p. 318, para 16)
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> "*16*. … It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."
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> **24.** In *Parkash Singh Badal* v. *State of Punjab* this Court held as under: (SCC p. 43, para 74)
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> "*74*. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained."
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> **25.** In *State of A.P.* v. *Golconda Linga Swamy* this Court held as under: (SCC p. 529, para 8)
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> "*8*. … 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."
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> (See also *K. Karunakaran* v. *State of Kerala*.)

The Supreme Court in the case of **Taramani Parakh v. State of M.P.,** reported in **(2015) 11 SCC 260** *has held as under :*

> **"10.** The law relating to quashing is well settled. If the allegations are absurd or do not make out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but

if there is a triable case the court does not go into reliability or otherwise of the version or the counter-version. In matrimonial cases, the courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple. We may refer to the decisions of this Court dealing with the issue.

11. Referring to earlier decisions, In the case of *Amit Kapoor* v. *Ramesh Chander*, it was observed: (SCC pp. 482-84, para 27)

"27.1 Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5 Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6 The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7 The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8 Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10 It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11 Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12 In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed herewith by the prosecution.

27.13 Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of

prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie.*

27.14 Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15 Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.
{Ref. *State of W.B.* v. *Swapan Kumar Guha (1982) 1 SCC 561*; *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre (1988) 1 SCC 692*; *Janata Dal* v. *H.S. Chowdhary (1992) 4 SCC 305*; *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill (1995) 6 SCC 194*; *G. Sagar Suri* v. *State of U.P. (2000) 2 SCC 636*; *Ajay Mitra* v. *State of M.P. (2003) 3 SCC 11*; *Pepsi Foods Ltd.* v. *Special Judicial Magistrate (1998) 5 SCC 749*; *State of U.P.* v. *O.P. Sharma (199*6) 7 SCC 705; *Ganesh Narayan Hegde* v. S*. Bangarappa* (1995) 4 SCC 41; *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque (2005) 1 SCC 122*; *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd. (2000) 3 SCC 269*; *Shakson Belthissor* v. *State of Kerala* (2009) 14 SCC 466; *V.V.S. Rama Sharma* v. *State of U.P.* [(2009) 7 SCC 234; Chunduru Siva Ram Krishna v. *Peddi Ravindra Babu* (2009) 11 SCC 203; *Sheonandan Paswan* v. *State of Bihar (1987) 1 SCC 288*; *State of Bihar* v. *P.P. Sharma 1992 Supp (1) SCC 222*; *Lalmuni Devi* v. *State of Bihar* (2001) 2 SCC 17; *M. Krishnan* v. *Vijay Singh* (2001) 8 SCC 645; *Savita* v. *State of Rajasthan* (2005) 12 SCC 338 and *S.M. Datta* v. *State of Gujarat* (2001) 7 SCC 659.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an

offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence."

12. In *Kailash Chandra Agrawal* v. *State of U.P.*, it was observed (SCC p. 553, paras 8-9):

"*8*. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In *Kans Raj* v. *State of Punjab* it was observed (SCC p. 217, para 5):

"*5*. … A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their overenthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in the absence of any specific role and material to support such role.

9**.** The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court's process, quashing jurisdiction can be exercised. Reference may be made to *K. Ramakrishna* v. *State of Bihar*, *Pepsi Foods Ltd.* v. *Judicial Magistrate*, *State of Haryana* v. *Bhajan Lal*

and *Asmathunnisa* v. *State of A.P*

In the case of **R.P. Kapur v. State of Punjab (AIR 1960 SC 866)**, it has been observed by the Supreme Court as under: (SCC p. 553, paras 8-9):

> "The inherent power of High Court under S. 561A, Criminal P. C. cannot be exercised in regard to 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 otherwsie 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. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.
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> Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are:
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> (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.
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> (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.
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> (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 S. 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.

In the case of **State of Haryana v. Bhajanlal, (AIR 1992 SC 604)**, it has been observed by the Supreme Court as under:

> "108. 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 formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> 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.
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> 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.

4. Where, the allegations in the F.I.R. 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 F.I.R. 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."

Thus, it is clear that while exercising powers under Section 482 of Cr.P.C., the High Court is not required to consider that whether the allegations made against the accused are sufficient for his conviction or not? If the triable issues are involved and the allegations made in the F.I.R. or complaint *prima facie* disclose the commission of cognizable offence, then, the investigation or the prosecution cannot be quashed merely on the ground that there does not appear to be the possibility of conviction. The High Court is also not required to marshal and appreciate the evidence. The

marshaling of evidence is not permissible under Section 482 of Cr.P.C. and it has to be left to the Trial Court. The acceptability of evidence cannot be considered while exercising powers under Section 482 of Cr.P.C. and it is a matter of evidence. Similarly, if the allegations *prima faice* make out a case involving civil and criminal liability, then the prosecution cannot be quashed only because of the fact that allegations also involve civil dispute. Further, the affidavits of complainant or the witnesses cannot be considered for quashing the proceedings. The statements of the witnesses are to be tested by cross-examination and only then the Trial Court should decide the acceptability of the evidence of the witnesses. Thus, in the considered opinion of this Court, it is not open at this stage to consider the possibility of the conviction without the evidence of the witnesses is tested by cross-examination. Thus, the contention of the applicants that as there is no possibility of conviction, therefore, the statements of the witnesses should be discarded at this stage itself cannot be accepted and hence it is rejected.

The next contention of the Counsel for the applicants is that since, the Additional Superintendent Of Police, City (East), Gwalior by its report dated 4-10-2015 has also come to a conclusion that the allegations made by the complainant appears to be suspicious, therefore, on that ground also, the proceedings are liable to be quashed. Before considering the contention of the Counsel for the applicants that the report of the Additional Superintendent Of Police should be relied upon to quash the proceedings, it would be appropriate to consider Section 36 of Cr.P.C. which reads as under :

> **36. Powers of Superior Officers of Police :** Police Officers superior in rank to an officer-in-charge of a Police Station may

> exercise the same powers, through out the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Thus, it is clear that any investigation or enquiry done by a Superior Officer will have to be placed at the same platform with the investigation done by the Officer-in-charge of the Police Station or the investigation officer. Merely the officer is superior in rank would not make his report binding on the investigation of the investigating officer. As a person cannot be convicted or acquitted merely on the basis of the Charge sheet which is ultimately filed by the investigating officer after completing the investigation and the allegations as contained in the charge sheet are to be tested on the touchstone of the cross examination before the Trial Court, and the Court is not bound by the findings or opinion formed by the investigating officer, similarly it would be the same case with the enquiry report or investigation report submitted by the Superior officer in exercise of powers under Section 36 of Cr.P.C. The report prepared by the Superior Officer in exercise of power under Section 36 of Cr.P.C. do not place the said report at a higher pedestral. The said report is also required to be proved beyond reasonable doubt. As a person cannot be convicted merely on the basis of report submitted by the Superior Officer in exercise of powers under Section 36 of Cr.P.C., similarly, the criminal proceedings cannot be quashed or a person cannot be discharged merely on the basis of the report submitted by the Superior Officer. As the Court is not bound by the charge sheet submitted by the investigation officer, similarly, the Court is not bound by the enquiry report submitted by the Superior Officer in exercise of powers under Section 36 of Cr.P.C. Section 36 of Cr.P.C. merely empowers the Superior Officer to exercise the powers

of the Officer-in-Charge of the Police Station, and it does not make the report of the Superior Officer, binding on the Court. Thus, it is held that the criminal proceedings cannot be quashed merely on the basis of the enquiry report submitted by the Superior Officer in exercise of Powers under Section 36 of Cr.P.C.

It is further submitted by the Counsel for the applicants that however, the enquiry report of the Superior Officer can be taken into consideration while considering the allegations made in the F.I.R. But, he further submitted that the enquiry report can only be considered in favor of the accused persons and if the Court comes to a conclusion that the enquiry report is not based on cogent evidence or if the enquiry report is against the accused persons, then the matter should be left to the discretion of the Trial Court and this Court should not give any findings/observations against the accused persons.

The submissions of the Counsel for the applicants cannot be accepted. If the Court is required to consider the enquiry report of a Superior Officer, then the accused cannot say that the said report should be appreciated only in favor of the accused for quashing the criminal proceedings and in case if the Court comes to a conclusion that the enquiry report given by the Superior Officer is either bad or it is against the accused persons, then the same should not be relied upon and the matter should be left for determination by the Trial Court after full Trial.

However, the situation would be different, where the Prosecution itself relies upon the enquiry report submitted by the Superior Officer, by filing the same along with the charge sheet.

The Supreme Court in the case of **State of M.P. Vs.**

Sheetla Sahai and others reported in **(2009) 8 SCC 617** has held as under :

> "52**.** In this case, the probative value of the materials on record has not been gone into. The materials brought on record have been accepted as true at this stage. It is true that at this stage even a defence of an accused cannot be considered. But, we are unable to persuade ourselves to agree with the submission of Mr Tulsi that where the entire materials collected during investigation have been placed before the court as part of the chargesheet, the court at the time of framing of the charge could only look to those materials whereupon the prosecution intended to rely upon and ignore the others which are in favour of the accused.
>
> The question as to whether the court should proceed on the basis as to whether the materials brought on record even if given face value and taken to be correct in their entirety disclose commission of an offence or not must be determined having regard to the entirety of materials brought on record by the prosecution and not on a part of it. If such a construction is made, sub-section (5) of Section 173 of the Code of Criminal Procedure shall become meaningless."

Thus, if the prosecution chooses to rely upon some document by filing the same along with the Charge sheet, then the prosecution at a later stage cannot say that although the said document has been filed by it along with the charge sheet but it does not want to rely on the said document. All the documents filed along with the charge sheet are binding on the prosecution. Even otherwise, if the prosecution chooses not to prove any document filed by it, during the trial, and if the said document favors the accused, then even without formal proof and even if the said document remain un-exhibited, the accused can always take advantage of the said document. Thus, where the prosecution files the copy of

the enquiry report along with the charge sheet, then it would not be open for the Prosecution to resile from the said document, however, the Court after considering the entire material available on record, may or may not rely on the said report of the Superior Officer for quashing the criminal proceedings.

However, the submission made by the Counsel for the applicants that the enquiry report of the Superior Officer should be relied upon only in favor of the accused cannot be accepted. If the applicants want to rely upon any document, then they must be ready to face the consequences of the same. They cannot say that if the Court is of the prima facie opinion that either the enquiry report is not worth reliance or is against the accused persons, then no findings should be recorded against the applicants.

The Counsel for the applicants even then heavily relied upon the enquiry report submitted by the Additional Superintendent Of Police in support of his contention that they were not present on the spot. This Court has gone through the enquiry report given by the Additional Superintendent Of Police and as the Counsel for the applicants have heavily relied upon the said report, therefore, it is necessary for this Court to give certain observations with regard to the said report. This Court is aware of the fact that the Superior Courts must avoid in giving any observation at an earlier stage, however, in order to consider the arguments advanced by the Counsel for the applicants, it is necessary to mention in brief, the reasons for rejecting the enquiry report given by the Additional Superintendent Of Police. The Additional Superintendent of Police in its report has come to a conclusion that on the basis of the location of the mobiles of

the applicants, it is clear that they were not present on the sport. However, it is also clear from the enquiry report itself that the SIMS on the basis which the Additional Superintendent of Police had come to a conclusion that the presence of the applicants on the spot appears to be doubtful, have not been issued in the name of the applicants. The SIMS have been issued in the names of different persons other than the applicants. Why the applicants are not using the SIMS which have been issued in their names has not been clarified in the report. Thus, for the above mentioned reasons, merely on the basis of the mobile locations, it cannot be said that the applicants were using those Mobile at the time of the incident. Further, the mobile locations merely show the location of the mobiles and it does not mean that the person who is alleged to be using those Mobile Numbers was also present on that location. In a given case, with a view to create false defence, an accused may give his mobile to a third person with a direction to go to a distant place so as the mobile location may be recorded at a different place. Thus, the mobile location merely shows the location of the mobile and not the location of the owner of the mobile. Therefore, even otherwise, merely on the basis of the mobile location, it cannot be said that the owner of the said mobile was also at the same place, where the location of his mobile was being recorded. Another reason to support the plea of alibi in the enquiry report is the certificates issued by the employers. Admittedly, those certificates cannot be termed as Public Documents and the statements of the employers have not been recorded by the Additional Superintendent Of Police. Thus, it cannot be said that the certificates issued by the employers were found proved in accordance with law. Thus, the reliance on such documents without any formal

proof cannot be said to be in accordance with law, thus, the findings recorded by the Additional Superintendent of Police cannot be said to be based on sound reasoning.

Further, it is a well-established principle of Law that the Plea of Alibi is to be proved at the Trial by leading cogent and reliable evidence. The burden of proof has to be proved with absolute certainty.

The Supreme Court in the case of **Sk. Sattar v. State of Maharashtra,** reported in **(2010) 8 SCC 430 has** held as under :

> "35. Undoubtedly, the burden of establishing the plea of alibi lay upon the appellant. The appellant herein has miserably failed to bring on record any facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond reasonable doubt. The plea of alibi had to be proved with absolute certainty so as to completely exclude the possibility of the presence of the appellant in the rented premises at the relevant time. When a plea of alibi is raised by an accused it is for the accused to establish the said plea by positive evidence which has not been led in the present case. We may also notice here at this stage the proposition of law laid down in *Gurpreet Singh* v. *State of Haryana reported in (2002) 8 SCC 18* as follows:
>
> > "*20*. … This plea of alibi stands disbelieved by both the courts and since the plea of alibi is a question of fact and since both the courts concurrently found that fact against the appellant, the accused, this Court in our view, cannot on an appeal by special leave go behind the abovenoted concurrent finding of fact."
>
> 36. But it is also correct that, even though the plea of alibi of the appellant is not established, it was for the prosecution to prove the case against the appellant. To this extent, the submission of the learned counsel for the appellant was correct. The failure of the plea of

> alibi would not necessarily lead to the success of the prosecution case which has to be independently proved by the prosecution beyond reasonable doubt. Being aware of the aforesaid principle of law, the trial court as also the High Court examined the circumstantial evidence to exclude the possibility of the innocence of the appellant."

Thus, it is clear that the plea of alibi is to be proved by the applicants at the trial by leading cogent and reliable evidence so as to completely exclude the possibility of their physical presence on the spot.

Further even otherwise, it is clear that the report given by the Additional Superintendent of Police is not clear in itself. The Additional Superintendent of Police has merely said that the mobile locations indicate that the allegations are suspicious, however, at the same time, has held that the injuries found on the body of the victim finds corroboration with the medical evidence. The Additional Superintendent of Police has also mentioned that as all the accused persons have been arrested and the offence punishable under Section 498-A of I.P.C. is a continuous offence, therefore, it would be proper to get a decision from the Court. Thus, even otherwise, the report of Additional Superintendent of Police cannot be relied upon.

Now the question is that whether the evidence available on record is sufficient to proceed against the applicants or the prosecution is liable to be quashed.

Smt. Deepti Chaturvedi, the injured has stated in her case diary statement that She was married to the applicant no.1 on 11-2-2010. At the time of marriage, sufficient dowry in accordance with financial capacity was given by her father. But after the marriage, all the applicants started demanding

dowry and started harassing her for want of dowry. On several occasions, She was beaten and was turned out of the house. On 5-7-2015, the applicants turned out the complainant along with her 4 years old son from her matrimonial house, and from thereafter She is residing in the house of her father. On 17-2-2015 at about 9:30 A.M., all the applicants came to the house of the father of the complainant and started pressurizing the complainant to withdraw her case which She has filed under the Protection of Women from Domestic Violence Act and the complainant should go with them after taking Rs. 5 lacs from her father because less dowry was given by her father at the time of marriage. When the complainant refused to accept the demands of the applicants, then all the applicants got annoyed. The father-in-law caught hold both the hands of the complainant and the brother in law (Applicant no. 4) tried to strangulate her with the help of her Chunni. Then the applicant no. 2 instigated the applicant no.1 to assault the complainant. The applicant no. 1 took out a knife and assaulted the complainant in her abdomen. When the complainant raised an alarm, her mother and brother immediately came rushing to the room and thereafter, the applicant flew away from the spot and while fleeing away, they extended the threat that in case if a police report is lodged, then She will be killed. The complainant was immediately rushed to the hospital and in M.L.C. following injuries were found :

1. Red Contusion over right side of Neck 4.5 cm X 2.5 cm placed traversly;
2. Red Contusion over left side of neck 3 cm x 2.5 cms placed traversly;

3. Red Contusion
4. Incised penetrating wound present over the anterior aspect of Right Side of lower Abdomen 2 x 0.5 cms muscle deep blood oozing out.
5. Red Contusion over left scapular region 5 x 4 cm.

Thus, it is clear that the ocular evidence of the complainant finds full corroboration with the medical evidence.

It was further submitted by the Counsel for the applicants that Saket Kumar Tiwari, Ashok Dikshit and Smt. Kusum Tiwari have not stated anything about demand of Rs. 5 lacs. On going through the case diary statements of Saket Kumar Tiwari, Ashok Dikshit and Smt. Kusum Tiwari, it is clear that they had not seen the entire incident and they went inside the room only after hearing the alarm raised by the complainant. If the in-laws of the complainant had come and if they were talking to the complainant in the room and the other family members had decided to leave the complainant alone with her in-laws then such a conduct of the family members of the complainant cannot be said to unnatural. Thus, where the family members have partially witnessed the incident, then it cannot be said that no demand of Rs. 5 lacs was made by the applicants.

It is further submitted by the Counsel for the applicants that since, Saket Kumar Tiwari is a practising Lawyer, therefore, in connivance with the local police a false case has been lodged against the applicants. Suffice it to say that merely the brother of the complainant is a practising lawyer, therefore, it cannot be inferred that the

police must have registered a false case against the applicants. Even otherwise, in the present case, there is a specific allegation that a injury was caused in the abdomen of the complainant by means of a knife and an attempt was made to strangulate her. The Doctors had also found corresponding injuries on the body of the complainant. Thus, at this stage, it cannot be held that the applicants have been falsely implicated or that there is no material available on record to hold that there is no *prima facie* evidence available on record against the applicants. The Charge sheet has already been filed. The contention of the Counsel for the applicants cannot be accepted that a matrimonial dispute has been given the colour of criminal act. Every offence under Section 498-A of I.P.C. is necessarily a matrimonial dispute. Therefore, the proceedings cannot be quashed merely on the ground that it is a matrimonial dispute and therefore, criminal prosecution for offence under Section 498-A of I.P.C. is unwarranted or bad.

Thus, this Court is of the considered opinion that looking to the case diary statement of the complainant along with her M.L.C. and the statements of other witnesses, there is sufficient material available on record against the applicants, and the F.I.R. Or the charge sheet or the criminal prosecution of the applicants cannot be quashed in exercise of Powers under Section 482 of Cr.P.C.

However, it is made clear that the observations made by this Court in this case are only confined to this early stage only. The evidence of the witnesses is yet to be tested by Cross-examination and the Trial Court is directed

to decide the Trial without getting prejudiced by any of the observations made by this Court in the case. The observations became necessary to consider the submissions made by the Counsel for the applicants.

Consequently, this Petition fails, and is hereby **Dismissed.**

(G.S.Ahluwalia)
Judge

AKS