(Ramnaresh & Ors. vs. State of M.P. & Anr.)

18.05.2017

Shri V.D. Sharma, Counsel for the applicants.

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

Shri Rajesh Kumar Shukla, Counsel for the respondent No.2.

This criminal revision under Section 397, 401 of Cr.P.C. has been filed against the order dated 28.11.2016 passed by 5th Additional Sessions Judge, Bhind in S.T.No. 357/2015 by which the charges against the applicants have been framed under Section 147, 302/14 of IPC.

Challenging the correctness and propriety of the order dated 28.11.2016, it is submitted by the counsel for the applicants that the respondent No.2 has filed a criminal complaint under Section 200 of Cr.P.C. for offence under Section 302/149, 218 of I.P.C. alleging that the marriage of Alpna, the daughter of the respondent No.2 was performed with Shiv Kumar S/o Rajaram in the year 1991. It was alleged that the husband of the applicant No.2 Rambeti expired and she developed illicit relations with the applicant No.4 Hakim Singh. It was further alleged that the applicant No.4 Hakim Singh persuaded the applicant No.2 to assist him to develop illicit relations with Alpna, the daughter of the respondent No.2 but Alpna, the daughter of the respondent No.2 refused to do so as a result of which they started harassing and treating the daughter of the respondent No.2 with cruelty. On 2.12.1994, Alpna the daughter of the respondent No.2 sent an information and requested the respondent No.2 to

come to her matrimonial house and in reply the respondent No.2 sent his son Ajit and younger daughter Anita to the matrimonial house of his daughter Alpna so that they can bring Alpna from her matrimonial house. On 5.12.1994 the respondent No.2 was in Amayan and his servant Prahlad came there to call him back and when he reached his house then he was informed by his daughter Anita and his son Ajit Hind that Alpna has been killed by the applicants. They also informed that when they requested the in-laws of Alpna then the applicant No.2 and accused Ashok (now dead) refused to send Alpna back to her parents home and when Alpna requested them to send her to her parents home, on this issue the co-accused Ashok (dead), applicant No.2 and co-accused Devki said that Alpna has to abide by their decision. At that time, the accused No.2 Ramnaresh and accused No.5/applicant No.3 Ramnarayan were also there. Thereafter Alpna did not eat food. On 4.12.1994 at about 12:00 in the night during the altercation the applicant No.2 caught hold the deceased Alpna and the accused No.4 Devki sprinkled kerosene oil on Alpna whereas the co-accused Ashok and Hakim Singh pointed a gun on the chest of the deceased and when their sister Alpna shouted at that time Ajit Hind and Anita tried to save her. The accused No.4 Devkibai set the deceased Alpna on fire. The applicant No.3 Ramnarayan and co-accused Ram Naresh locked both the brother and sisters/Ajit and Anita in a room. By that time as a lot of hue and cry had raised in the village, therefore, somebody opened the lock from the outside and they found that their sister was not in the house and thereafter they came back

to their home on their feet and sent the information to the respondent No.2 through the servant Prahlad. After receiving the information from Ajit and Anita, the respondent No.2 went to Gwalior where he came to know about the death of Alpna. The respondent No.2 also came to know that till her death the deceased Alpna was in an unconscious state and was not in a position to speak.

The police on the basis of the Merg No.365/1994 registered the offence under Section 302, 147, 148, 149 against the accused persons No.1, 3 to 6. As the police did not take any action even inspite of the fact that eight months had passed, therefore, the respondent No.2 filed a writ petition before the High Court, Gwalior Bench which was registered as W.P.No. 1104/1995 and this Court by order dated 16.8.1995 directed the Collector, Bhind, Superintendent of Police, Bhind, SHO Mehagaon and CID Department to conclude the investigation. However, it was alleged that the police did not take any action as the accused No.7 was trying to save the accused persons and, therefore, it was alleged that the accused No.7 has committed an offence under Section 218 of IPC. This complaint was filed on 28.12.1995. The statements of the witnesses were recorded under Section 200 and 202 of Cr.P.C. The statement of Anita and Ajit wre also recorded under Section 202 of Cr.P.C. who specifically stated about the manner in which the incident took place.

It appears that during the pendency of the criminal complaint, the police filed a charge sheet under Section 306 of IPC against Shiv Kumar, the husband of the deceased Alpnabai. It further appears that by judgment

dated 5.8.1998 Shiv Kumar was acquitted by 1st ASJ, Bhind in S.T.No.111/1996 for the offence under Section 306 of IPC by giving a specific finding that the dying declaration of deceased Alpna is a suspicious document and further held that even if the said document is taken into consideration then it cannot be said that Shiv Kumar abetted the deceased to commit suicide.

Paragraph 13 and 14 of the judgment dated 5.8.1998 passed in S.T.No.111/1996 reads as under:-

> "13. अभियोग पत्र के साथ प्रस्तुत प्र0पी9 तथा डॉ0एम0एल0 जैन की मूल एम0एल0सी0 रिपोर्ट तथा डॉक्टर जैन द्वारा थाना प्रभारी सिटी कोतवाली को प्रेषित पत्र में अंकित तथ्यों से तथा मृतिका के चाचा सतीश (अ0सा0 11) की साक्ष्य से स्थापित है कि घटना दिनांक को भिण्ड अस्पताल में अल्पना बोलने में असमर्थ थी अतः उसी दिनांक को बाद में डॉक्टर बंसल द्वारा अभिलिखित किया गया अल्पना का प्र0पी 11 का मरणासन्न कथन अत्यधिक शंकास्पद प्रकट होता है। इसके अतिरिक्त पक्षान्तर में विपरित दृष्टिकोण से विचार किये जाने पर भा0दं0सं0 की धारा 107 के प्रावधान के अनुसार वह व्यक्ति किसी बात किये जाने का दुष्प्रेरण करता है, जो–
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> पहला उस बात को करने के लिए किसी व्यक्ति को उकसाता है
>
> अथवा
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> दूसरा उस बात को करने के लिए किसी षडयंत्र में एक या अधिक अन्य व्यक्ति या व्यक्तियों के साथ सम्मिलित होता है,यदि उस षडयंत्र के अनुसरण में और उस बात को करने के उददेश्य से कोई कार्य या अवैध लोप घटित हो जाये अथवा
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> तीसरा उस बात के किये जाने के किसी कार्य से अवैध लोप द्वारा साश्य सहायता करता है।
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> 14. प्र0पी11 के कथित मरणासन्न कथन में अंकित तथ्यों अनुसार अल्पना ने पति द्वारा उसे मार डालने का कहे जाने पर स्वयं को आग लगाकर जला लिया था। उक्त मरणासन्न कथन तथा डॉ0 बंसल की साक्ष्य से यह स्पष्ट नहीं है कि कथित रूप से अल्पना को उसके पति ने मार डालने का कब कहा था। अतः उक्त अस्पष्ट तथा अनिश्चायक तथ्य के आधार पर यह निष्कर्ष प्राप्त नहीं किया जा सकता है कि अभियुक्त ने आत्म हत्या करने के लिए अपनी पत्नी को उकसाया था और पत्नी द्वारा आत्म हत्या करने के लिए किसी षडयंत्र में सम्मिलित होकर कोई कार्य या अवैध लोप कारित किया था अथवा पत्नी को आत्म हत्या करने में किसी कार्य या अवैध लोप

द्वारा साशय सहायता की थी। दुष्प्रेरण का कोई भी आवश्यक तत्व अभिलेख पर प्रस्तुत साक्ष्य द्वारा संशय से परे प्रमाणित नहीं है। कथित रूप से पति द्वारा पत्नी को मार डालने की धमकी दिये जाने का यह अर्थ नहीं लगाया जा सकता है कि उसने अपनी पत्नी को आत्म हत्या करने के लिए किसी रीति से उकसाया था। अभियोजन के प्रकरण अनुसार पति द्वारा अपनी पत्नी से विवाहोपरांत किसी कारण से क्रूरतापूर्वक व्यवहार किये जाने के बारे में अभिलेख पर कोई साक्ष्य अधिनियम की धारा 113ए की उपधारणा का आश्रय नहीं लिया जा सकता है। मृतिका के पिता अमर सिंह (अ0सा01) के कथन में पति द्वारा उसकी पुत्री अल्पना से विवाहोपरांत क्रूरतापूर्वक व्यवहार किये जाने के बारे में अभिलेख पर कोई साक्ष्य नहीं है अतः अल्पना की मृत्यु विवाह से करीब तीन वर्ष के भीतर ही हुई होने के प्रमाणित स्थिति में भी उक्त तथ्यों एवं परिस्थितियों में साक्ष्य अधिनियम की धारा 113ए की उपधारणा का आश्रय नहीं लिया जा सकता है। मृतिका के पिता अमर सिंह (अ0सा01) के कथन में पति द्वारा उसकी पुत्री अल्पना से विवाहोपरांत क्रूरतापूर्वक व्यवहार किये जाने के बारे में कोई तथ्य नहीं है तथा इस बारे में अभिलेख पर अन्य कोई साक्ष्य भी नहीं है। अतः उक्त तथ्यों एवं परिस्थितियों में डॉ0 बंसल द्वारा अभिलिखित प्र0पी11 का मरणासन्न कथन विश्वसनीय तथा कार्य योग्य प्रकट नहीं होता है। अतः स्पष्ट है कि अभिलेख पर प्रस्तुत अभियोजन साक्ष्य द्वारा उक्त विचारणीय प्रश्न तथा आरोपित अपराध अभियुक्त के विरूद्ध संदेह से परे प्रमाणित नहीं है। मृतिका के पिता अमर सिंह (अ0सा01) की साक्ष्य को देखते हुए ही अभियुक्त संदेह के लाभ का अधिकारी प्रकट होता है।''

Thus, it is clear that a specific finding was given by the Trial Court while acquitting Shiv Kumar that the dying declaration on which the prosecution had placed reliance was a suspicious document but at the same time also gave a finding that in case the dying declaration is considered even then no offence under Section 306 of IPC would be made out. Thereafter, it appears that the Magistrate by order dated 14.9.1999 dismissed the complaint under Section 203 of Cr.P.C.

Being aggrieved by the order dated 14.9.1999 passed by the Magistrate, the applicant filed a criminal revision which was registered as Criminal Revision No.

139/1999.

It is submitted that the 4th ASJ, Bhind by passing judgment dated 10.3.2000 in Criminal Revision No.139/1999 allowed the revision and remanded the matter back to the Magistrate to decide the question of taking cognizance afresh after taking into consideration the orders dated 7.10.1996 and 16.6.1997 passed by the Trial Court in S.T.No. 111/1996.

It appears that against the order dated 10.3.2000 the applicants filed a criminal revision before this Court which was registered as Criminal Revision No. 99/2000. The said revision was dismissed by order dated 18.11.2003 and the order dated 10.3.2000 passed by the Revisional Court was maintained. It is submitted that thereafter the Magistrate by order dated 6.11.2006 registered the complaint against the applicants and other co-accused persons. Being aggrieved by the order dated 6.11.2006 the applicants filed a criminal revision before the Sessions Court. The 1st ASJ to the Court of 1st ASJ, Bhind. By order dated 26.10.2007 passed in Criminal Revision No. 208/2006, the Revisional Court allowed the revision and remanded the case back to the Magistrate to reconsider the entire evidence which has come on record and to decide the question on taking cognizance afresh. Being aggrieved by order dated 26.10.2007, the respondent No.2 filed a Criminal Revision No. 32/2008 before the High Court which was dismissed as withdrawn by order dated 30.3.2009 with liberty to raise all the points before the Trial Court. It is further submitted that thereafter the Magistrate by order dated 6.1.2014 took

cognizance of offence against the applicants under Section 302/149 of IPC and against the co-accused Arun Saxena for offence under Section 218 of IPC.

Being aggrieved by the order dated 6.1.2014 passed by JMFC, Mehagaon in Criminal Case No.5/2014 (old Case No. 519/2006), the applicants filed a petition under Section 482 of Cr.P.C. before this Court which was registered as M.Cr.C.No. 2317/2014. However, during the pendency of the said petition as the charges were framed, therefore, the M.Cr.C.No.2317/2014 was withdrawn on 22.12.2016 with liberty to challenge the order framing charge against the applicants. Hence, this revision.

It is submitted by the counsel for the applicants that the police after investigating the matter thoroughly, had filed the charge sheet under Section 306 of IPC against Shiv Kumar, the husband of the deceased Alpna on the basis of the dying declaration and, therefore, it is clear that the police itself was of the view that the deceased Alpna had committed suicide by pouring kerosene oil on her and, therefore, the allegations of setting the deceased on fire cannot be accepted. The evidence of the child witnesses Ajit and Anita cannot be accepted for the simple reason that they were under the pressure of the respondent No.2 and since these two witnesses are the tutored witnesses, therefore, in the light of the charge sheet which was filed by the police against Shiv Kumar under Section 306 of IPC the court below could not have framed charges against the applicants and should have discharged them. It is further submitted that the entire complaint is a product of malafides of the respondent No.2

and where the proceedings have been initiated out of malafides then the same are liable to be quashed. To buttress his contentions the counsel for the applicants has relied upon the judgments of the Supreme Court passed in the case of **State of Haryana vs. Bhajan Lal** reported in **AIR 1992 SC 604** as well as the judgment of the Supreme Court passed in the case of **Vinit Kumar & Ors. vs. State of U.P. & Anr.** passed in **Criminal Appeal No.577/2017**. It is further submitted by the counsel for the applicants that at the stage of framing of charge if two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion as to the guilt of the accused, then the Trial Judge would be empowered to discharge the accused and at this stage the Trial Judge is not required to see that whether the trial will result in conviction or acquittal. It is further submitted that the Trial Judge is not a mere Post Office to frame the charge at the behest of the prosecution but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution or not.

Per contra, it is submitted by the counsel for the respondent as well as the State that so far as the trial of Shiv Kumar under Section 306 of IPC is concerned, it was nothing but a product of perverted mind of accused Arun Kumar Saxena against whom also the Magistrate had taken cognizance under Section 218 of IPC. It is further submitted that the Trial Court has also framed charge under Section 218 of IPC against Arun Kumar Saxena, therefore, it cannot be said that the prosecution of Shiv

Kumar under Section 306 of IPC was the result of a bonafide and proper investigation by the co-accused Arun Kumar Saxena. It is further submitted that even the Trial Court in S.T. No.111/1996 had come to a conclusion that the dying declaration of the deceased Alpna is a suspicious document. It is further submitted that the respondent No.2 is fighting for justice from the year 1995 and right from day one he had not made any allegations against Shiv Kumar and he was specifically alleging against the applicants and other co-accused persons for killing his daughter Alpna. It is further submitted that the Trial Court has to frame charge on the basis of evidence which has come on record and accordingly the Trial Court did not commit any mistake in framing charge under Section 147, 302/149 of IPC against the applicant.

Heard the learned counsel for the parties.

Before adverting to the submissions made by the counsel for the applicant it would be necessary to consider the facts of the case.

According to the respondent No.2, his daughter Alpna was killed by the applicants on 4.12.1994 and the entire incident was witnessed by minor children of the respondent No.2 namely Anita and Ajit Hind. Even the police had initially registered the offence under Section 302 of IPC. However, it appears that subsequently the matter was transferred to CID and ultimately the charge sheet under Section 306 of IPC was filed against Shiv Kumar, the husband of the deceased. It is submitted by the counsel for the respondent No.2 that in fact the police was investigating under Section 302 of IPC but the

applicants by taking advantage of their influential position managed to get the case transferred to CID where the entire scenario was changed and by creating a concocted and forged dying declaration the charge sheet for offence under Section 306 of IPC was filed against Shiv Kumar and the case of murder was given the colour of suicide. The Trial Court in S.T.No. 111/1996 had also come to a conclusion by its judgment dated 5.8.1998 that the dying declaration Ex.P/11 is a suspicious document because on the basis of the original MLC report, the letter sent by Dr. Jain to SHO City Kotwali, the evidence of the uncle of the deceased it is clear that the deceased Alpna was not in a position to speak at the time when she was admitted in the hospital. Thus, it was held that the recording the dying declaration Ex.P/11 by Dr. Bansal on the very same day is suspicious and unnatural. Thus, it is clear that even the Trial Court in S.T.No. 111/1996 had found that the dying declaration on which the prosecution had placed reliance was a suspicious document as the deceased Alpna was not in a position to speak when she was brought to the hospital. The respondent No.2 prior to the filing of the complaint had approached this Court by filing a Writ Petition No.1104/1995 making allegations that the police is not making free, fair and impartial investigation inspite of the fact that eight months have passed. Accordingly the said writ petition was disposed of by this Court by order dated 16.8.1995 directing the police authorities as well as the other respondents to complete the investigation as per their statutory duty. It appears that the complaint was filed on 28.12.1995 and in the complaint also it is

specifically alleged that Arun Kumar Saxena who was investigating the matter had demanded money from the complainant to investigate the matter and to take action against the applicants and as the respondent No.2 could not fulfill his illegal demand, therefore, accused No.7 Arun Kumar Saxena investigated the matter in a wrong manner and saved the real culprits. The complaint was filed on 28.12.1995. The statements of the witnesses were recorded on 8.1.1997 and 7.2.1997. However, it appears that in the meanwhile the charge sheet was filed against Shiv Kumar and he was acquitted by judgment dated 5.8.1998. There is nothing on record to show as to why no action was taken by the Magistrate under Section 210(2) of Cr.P.C. because at the time when the complaint was filed or even during pendency of the complaint, the S.T.No. 111/1996 was pending against Shiv Kumar. However, it appears that even otherwise as the allegations were self contradictory in the charge sheet filed against Shiv Kumar and the complaint filed by the respondent No.2 against the applicants, therefore, the S.T.No. 111/1996 as well as the complaint case filed by the respondent No.2 could not have been tried together.

Be that as it may but the fact is that no order under Section 210(2) of Cr.P.C. was passed in the complaint proceedings and no prayer was made by any of the parties at any point of time for consolidating the complaint as well as the sessions trial together. However, even otherwise in the present case as this Court had already come to a conclusion that the Trial Court in S.T.No.111/1996 had given a finding that the dying declaration Ex.P/11 filed by

the prosecution was a suspicious document.

It is submitted by the counsel for the applicants that as in an unfortunate incident the daughter of the respondent No.2 had expired, therefore out of malafides he had filed a criminal complaint. To buttress his contentions, the counsel for the applicants has relied upon a judgment of the Supreme Court passed by two judges in **Vinit Kumar & Ors. (supra)** and by referring to paragraph 39 of the said judgment has submitted that the malafides of the informant can be a ground to quash the proceedings.

The Supreme Court by a three judges Bench judgment passed in the case of **Renu Kumari Vs. Sanjay Kumar and Others** reported in **(2008) 12 SCC 346** has held as under :

> **"9.** "8. Exercise of power u/s. 482 of CrPC 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 Cr.P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under Cr.P.C., (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. The 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 the course of administration of justice on the principle of "quando lex aliquid alicui concedit, concedere videtur 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 the 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 the 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 the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In R.P. Kapur V/s. State of Punjab, 1960 3 SCR 388 this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

•(i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

•(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

•(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. 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 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any

court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335). A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp.378-79, para 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 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."

11. As noted above, the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The 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. 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 the 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".
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> (See Dhanalakshmi v. R. Prasanna Kumar (1990 Supp SCC 686), State of Bihar v. P.P. Sharma (1992 Supp (1) SCC 222), Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995(6) SCC 194) , State of Kerala v. O.C. Kuttan (1999(2) SCC 651), State of U.P. v. O.P. Sharma (1996 (7) SCC 705), Rashmi Kumar v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) (1999 (8) SCC 728) and Rajesh Bajaj v. State NCT of Delhi (1999 (3) SCC 259).
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> The above position was again reiterated in State of Karnataka v. M. Devendrappa (2002) 3 SCC 89, State of M.P. v. Awadh Kishore Gupta (2004) 1 SCC 691 and State of Orissa v. Saroj Kumar Sahoo (2005) 13 SCC 540, SCC pp. 547-50, paras 8-11."

Thus, it is clear that if the allegations made against the applicants prima facie make out an offence then malafides of an informant are of secondary importance and the legitimate prosecution cannot be quashed only on the ground of malafides of the informant.

Considering the judgment passed by the Supreme Court in the case of **Renu Kumari (supra)**, this Court is of the view that merely because the applicants have alleged that the complaint has been filed by the respondent No.2 out of malafides, the charges framed against the applicants cannot be quashed. The submission

made by the counsel for the applicants for quashing the order framing charge on the ground of malafide of the respondent No.2 is misconceived and it is hereby rejected.

It is next contended by the counsel for the applicants that when two views are possible then the Trial Court should not have framed the charges.

At the stage of framing of charges the judge is merely required to shift the evidence in order to find out that whether or not there is sufficient ground for proceeding against the accused. If the judge comes to a conclusion that there is sufficient ground to proceed then he has to frame the charge under Section 228 of Cr.P.C. If the allegations made in the present case are considered then it would be clear that Anita and Ajit have stated before the Court as an eyewitnesses of the incident. At this stage it cannot be said that the evidence of these two witnesses were either tutored or were given under the pressure of the respondent No.2. The respondent No.2 is also fighting against the applicants right from day one on the basis of the information given by his minor children Anita and Ajit that the applicants and other co-accused persons had killed his daughter Alpna. It is important to mention here that the respondent No.2 never alleged anything against Shiv Kumar who happens to be the husband of the deceased Alpna. If the respondent No.2 was prosecuting the complaint out of malafides then he would not have certainly spared the husband of the deceased but not making any allegation against the husband of the deceased and making allegations of committing murder against the applicants and other co-

accused persons on the basis of the eyewitness account of minor child witnesses Anita and Ajit, it cannot be said that there is no evidence available on record warranting framing of charges under Section 302/149, 147 of IPC. Accordingly, this Court is of the considered opinion that the order under challenge cannot be quashed either on the ground of malafides or on the ground of non-availability of sufficient evidence on record. Under these circumstances the order dated 28.11.2016 passed by the 5th ASJ, Bhind in S.T.No. 357/2015 is affirmed.

Before parting with this case, it is appropriate for this Court to mention specifically, that any observation made by this Court in this order should not prejudice the mind of the Trial Court because these observations have been made considering the limited scope of powers under Section 397, 401 of Cr.P.C. at the stage of framing of charges. Whether the evidence of Anita and Ajit and other witnesses is reliable or not has to be decided by the Trial Court after recording the evidence of the witnesses in the trial, therefore, it is directed that the Trial Court should not get prejudiced by any of the observations made in the order and shall decide the trial on the basis of the evidence which would ultimately come on record.

With aforesaid observations this revision fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

(alok)