**HIGH COURT OF MADHYA PRADESH**
**MCRC No.8230/2017**
**Dalveer Singh vs. State of MP. & Anr.**

**Gwalior, dtd. 09/05/2018**

Shri Ashish Singh, Counsel for the applicant.

Shri S.S. Dhakad, Public Prosecutor for respondent No. 1/State.

Shri Nitin Sharma, Counsel for respondent no.2.

Heard on the question of admission.

This application under Section 482 of Cr.P.C. has been filed for quashing the F.I.R. and investigation in crime no. 293/2017 registered at Police Station Bhind Dehat, Distt. Bhind, for offence under Sections 498-A,323,34 of I.P.C.

The necessary facts for the disposal of the present application in short are that the complainant/respondent no.2 is the widow of Late Indrajeet Singh Jatav. Respondent no.2 lodged a report that she was married to late Indrajeet Singh Jatav on 1-6-2013, as per Hindu Rites and Rituals. Her husband expired in a Rail Accident on 30-10-2016. Thereafter, the applicant and the parents-in-law of respondent no.2 started harassing her physically and mentally, and ultimately, She has been turned out of her matrimonial house along with her children on 29-5-2017 and prior to that she was beaten by the applicant and her parents-in-law. On this complaint, the police has registered the offence under Sections 498-A,323,34 of I.P.C.

Challenging the F.I.R., it is submitted by the Counsel for the applicant, that the applicant is not the real brother-in-law of respondent no.2, but he is the cousin brother-in-law of respondent no.2. The applicant is residing separately at a distance of 30 Kms from the matrimonial house of the respondent no.2. The applicant is not on visiting terms with

the parents-in-law of respondent no.2. It is further submitted that since, the applicant is running M.P. Online Franchisee, and since, he is financially well, therefore, he has been falsely implicated. It is further submitted that day by day, a tendency is increasing in the society to falsely implicate the near and dear relatives of the husband.

Per contra, it is submitted by the Counsel for the State that there are specific allegations against the applicant, and when the F.I.R. discloses the commission of cognizable offence, then in the light of the judgment passed by the Supreme Court in the case of **Lalita Kumari Vs. State of U.P.** reported in **(2014) 2 SCC 1**, the police is under obligation to register the F.I.R. The investigation is still going on.

It is further submitted by the Counsel for the complainant, that considering the allegations made against the applicant, his application for grant of anticipatory bail has also been rejected and in order to avoid his arrest, this present application has been filed with ulterior motive.

Heard the learned Counsel for the parties.

In the present application, the basic contention of the applicant is that he is residing separately at a distance of 30 Kms. and is not on a visiting terms with the parents-in-law of respondent no.2 and has been falsely implicated because he is running a M.P. Online Franchisee and is financially well.

The Supreme Court in the case of **Satvinder Kaur Vs. State (Govt. Of NCT of Delhi)** reported in **(1999) 8 SCC 728**, has held as under :

> "**14.** Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an

investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations.

**15.** Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(*c*) of the Criminal Procedure Code, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having

territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction.

**16.** Lastly, it is required to be reiterated that while exercising the jurisdiction under Section 482 of the Criminal Procedure Code of quashing an investigation, the court should bear in mind what has been observed in the *State of Kerala* v. *O.C. Kuttan reported in (1999) 2 SCC 651* to the following effect: (SCC pp. 654-55, para 6)

> "Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage, it is not possible for the court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of *State of U.P.* v. *O.P. Sharma reported in*

> *(1996) 7 SCC 705* a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. The same view was reiterated by yet another three-Judge Bench of this Court in the case of *Rashmi Kumar* v. *Mahesh Kumar Bhada reported in (1997) 2 SCC 397* where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against society as a whole.""

The Supreme Court in the case of **Padal Venkata Rama Reddy Vs. Koveuri Satyanarayana Reddy** reported in **(2011) 12 SCC 437** has held as under:

> **"8.** Section 482 of the Code deals with inherent power of the High Court. It is under Chapter 37 of the Code titled "Miscellaneous" which reads as under:
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> "**482.** *Saving of inherent powers of High Court*.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."
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> This section* was added by the Code of Criminal Procedure (Amendment) Act of 1923 as the High Courts were unable to

render complete justice even if in a given case the illegality was palpable and apparent. This section envisages three circumstances in which the inherent jurisdiction may be exercised, namely:

*1*. to give effect to any order under CrPC,

*2*. to prevent abuse of the process of any court,

*3*. to secure the ends of justice.

**9.** In *R.P. Kapur* v. *State of Punjab AIR 1960 SC 866* this Court laid down the following principles:

(*i*) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(*ii*) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;

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

(*iv*) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

**10.** In *State of Karnataka* v. *L. Muniswamy (1977) 2 SCC 699* this Court has held as under: (SCC p. 703, para 7)

"*7*. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding

ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

**11.** Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

**12.** In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below.

Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

**13.** It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita* v. *State 2000 Cri LJ 315* and *B.S. Joshi* v. *State of Haryana (2003) 4 SCC 675*). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

**14.** The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Dhanalakshmi* v. *R.*

*Prasanna Kumar 1990 Supp SCC 686*; *Ganesh Narayan Hegde* v. *S. Bangarappa (1995) 4 SCC 41* and *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque (2005) 1 SCC 122*.)

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide *State of Haryana* v. *Bhajan Lal 1992 Supp (1) SCC 335*, *Janata Dal* v. *H.S. Chowdhary (1992) 4 SCC 305*, *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill (1995) 6 SCC 194* and *Indian Oil Corpn.* v. *NEPC India Ltd. (2006) 6 SCC 736*.

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**18.** In *State of Orissa* v. *Saroj Kumar Sahoo (2005) 13 SCC 540* it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCC p. 550, para 11)

"*11*. … 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."

**19.** In *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre (1988) 1 SCC 692* this Court held as under: (SCC p. 695, para 7)

"*7*. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be

applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

**20.** This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692*, has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

**21.** The said judgment in *Madhavrao case (1988) 1 SCC 692* was reconsidered and explained by this Court in *State of Bihar* v. *P.P. Sharma 1992 Supp (1) SCC 222* which reads as under: (SCC p. 271, para 70)

"*70. Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre (1988) 1 SCC 692* also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own

contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. … Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet."

**22.** Thus, the judgment in *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692* does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692* is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal".

The Supreme Court in the case of **State of Orissa v. Ujjal Kumar Burdhan** reported in **(2012) 4 SCC 547** has held as under :

> **"8.** It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.
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> **9.** In *State of W.B.* v. *Swapan Kumar Guha*, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)
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> "*65*. … *An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large*. Justice requires that a person who commits an

> offence has to be brought to book and must be punished for the same. *If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed*.
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> …
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> *66*. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. … *If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence*."

(emphasis supplied)

> **10.** On a similar issue under consideration, in *Jeffrey J. Diermeier* v. *State of W.B.*, while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)
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> "*20*. … The section itself 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. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and

> cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

The Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora,** reported in **(2013) 10 SCC 581** has held 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."

The Supreme Court in the case of **Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & Ors.** reported in **AIR 1976 SC 1947** has held as under:-

> "6. …..... The High Court appears to have gone into the whole history of the case, examined the merits of the evidence, the contradictions and what it called the improbabilities and after a detailed discussion not only of the materials produced before the Magistrate but also of the documents which had been filed by the defence and which should not have been looked into at the stage when the matter

> was pending under Section 202, has held that the order of the Magistrate was illegal and was fit to be quashed.....
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> 7. For these reasons, therefore, we are satisfied that the order of the High Court suffers from a serious legal infirmity and the High Court has exceeded its jurisdiction in interfering in revision by quashing the order of the Magistrate. We, therefore, allow the appeal, set aside the order of the High Court dated December 16, 1975 and restore the order of the Magistrate issuing process against respondents No.1 and 2."

In the case of **Mosiruddin Munshi Vs. Md. Siraj** reported in **AIR 2014 SC 3352**, the Supreme Court has held as under :

> "**6.** Yet again in *Mahesh Chaudhary* v. *State of Rajasthan (2009) 4 SCC 439* this Court stated the law thus:
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> "*11*. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence."

The Supreme Court in the case of **Sushil Suri Vs. CBI** reported in **(2011) 5 SCC 708** has held as under :

> "**18.** In *Dinesh Dutt Joshi* v. *State of Rajasthan*—(2001) 8 SCC 570, while explaining the object and purpose of Section 482 CrPC, this Court had observed thus: (SCC p. 573, para 6)
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> "*6*. … The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the

> law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

**19.** Recently, this Court in *A. Ravishankar Prasad* (2009) 6 SCC 351, relied upon by the learned counsel for CBI, referring to several earlier decisions on the point, including *R.P. Kapur* AIR 1960 SC 866, *State of Haryana* v. *Bhajan* Lal 1992 (Supp) 1 SCC 335, *Janata Dal* v. *H.S. Chowdhary,* (1992) 4 SCC 395 *B.S. Joshi,* (2003) 4 SCC 675 *Nikhil Merchant,* (2008) 9 SCC 677 etc. has reiterated that the exercise of inherent powers would entirely depend on the facts and circumstances of each case.

**20.** It has been further observed that: (*A. Ravishankar Prasad case*—(2009) 6 SCC 351

> "*23*. … The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the 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 such magnitude that they cannot be seen in their true perspective without sufficient material."

In the case of **State of A.P. Vs. Vengaveeti**

**Nagaiah** reported in **AIR 2009 SC 2646,** it has been held as under :

> **''4**.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 recognizes 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 alicui aliquot concedere, conceditur 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 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 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.

**5**.In R.P. Kapur v. State of Punjab (AIR 1960 SC 866) this Court summarized 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 its 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.

**6**.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. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 (Supp)(1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

The illustrative categories indicated by this Court are as follows:

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

(2) Where the allegations in the first

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

(3) Where the uncontroverted allegations made in the F.I.R. 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 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.

**7**.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. 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 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/F.I.R. 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 F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. 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 itself be the basis for quashing the proceeding."

The Supreme Court in the case of **Rajiv Thapar Vs. Madan Lal Kapoor** reported in **(2013) 3 SCC 330** 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 CrPC:
>
> **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?
>
> **30.5.** If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

In the case of **R. Kalyani Vs. Janak C.Mehta**, reported in **(2009) 1 SCC 516**, it has been held by Supreme Court as under :

> "**15.** Propositions of law which emerge from the said decisions are:
>
> (*1*) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.
>
> (*2*) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.
>
> (*3*) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same

> and pass an order in favour of the accused to hold absence of any mens rea or actus reus.
>
> (4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

The Supreme Court in the case of **Tilly Gifford Vs. Michael Floyd Eshwar and another** reported in **(2018) 11 SCC 205** has held as under:

> **"3**. A perusal of the order of the High Court released on 21-5-2015 would indicate that the High Court has gone far beyond the contours of its power and jurisdiction under Section 482 of Cr.P.C. to quash a criminal proceeding, the extent of such jurisdiction having been dealt with by this Court in numberous pronouncements over the last half century. Time and again, it has been emphasised by this Court that the power under Section 482 Cr.P.C. Would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tained by clear malafides, should not be forclosed by a Court of law."

Thus, it is clear that the disputed question of fact cannot be decided while exercising power under Section 482 of CrPC. The Court has to accept all the allegations as true and thereafter, has to come to a conclusion that whether the allegations so made against the accused persons, *prima facie*, make out any offence or not. The defence raised by the accused persons cannot be

considered at the stage of exercising power under Section 482 of CrPC and the legitimate prosecution should not be stifled at such an early stage.

Although in several cases, the Supreme Court as well as this Court has taken note of the fact that there is an increasing tendency in the Society to falsely implicate the near and dear relatives of the husband, and the near and dear relative of the husband should not be compelled to face the ordeal of trial, unless and until there are specific allegations against them but, there cannot be a straight jacket formula that in no case, the near and dear relative cannot be prosecuted for offence under Section 498-A of I.P.C. The only requirement is that for prosecuting the near and dear relative of the husband, the allegations must be specific and should not vague and omnibus. Further, the investigation is pending, and it is well established principle of law that stillborn baby should not be killed and legitimate prosecution should not be stifled, unless and until, there are compelling circumstances to do so.

If the facts and circumstances of the present case are considered, then it is clear that, there is a specific allegation against the applicant that, after the death of her husband, he along with the parents-in-law of respondent no.2, was harassing and treating respondent no.2 with cruelty. It is also specifically alleged that on 29-5-2017, she was beaten by the applicant and other co-accused persons and has been turned out of her matrimonial house, along with her children. Whether the applicant is on visiting terms with the parents-in-law of respondent no.2 or not, is a disputed question of fact, and primarily is a defence of the applicant. Further, the applicant is residing at a distance

of 30 Kms only from the matrimonial house of respondent no.2, and thus, it cannot be said that the applicant could not have interfered with the day to day family affairs of respondent no.2. Separate living would not include a separate house either in the same vicinity or at a nearby place. Separate Living would mean, where the person is not in a position to interfere with the day to day family affairs of the complainant.

Considering the facts and circumstances of the case, this Court is of the considered opinion, that in view of the allegations made against the applicant, the F.I.R. in crime no. 293/2017 registered at Police Station Bhind Dehat Distt. Bhind, for offence under Sections 498-A,323,34 of I.P.C. cannot be quashed.

However, before parting with the order, this Court feels it appropriate to mention that the facts of the case have been considered in the light of the limited scope of interference under Section 482 of Cr.P.C. The Trial Court is requested to decide the Trial, strictly in accordance with the evidence, which would come on record, without getting prejudiced by any of the observation made in this order.

The application fails and is hereby **dismissed.**

**(G. S. Ahluwalia)**
**Judge**

AKS