

The High Court Of Madhya Pradesh
Bench Gwalior

SB:- Hon'ble Shri Justice Rajeev Kumar Shrivastava

MCRC 26747 of 2020

Gurupreet Singh
 Vs.
 State of MP and Anr.

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Shri Rohit Dubey, learned counsel for the petitioner.
 Smt. Abha Mishra, learned Public Prosecutor for respondent No.1/ State.
 Shri ML Tomar, counsel for the respondent No.2/ complainant.

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Reserved on	04/01/2022
Whether approved for reporting	Yes../.....

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O r d e r
 (Passed on 19/01/2022)

This petition under Section 482 of CrPC has been filed by petitioner for quashment of FIR and other consequential criminal proceedings initiated in connection with Crime No.245 of 2020 registered at Police Station Kotwali, District Shivpuri for offenses punishable under Sections 420, 120-B, 406 of IPC.

(2) Facts giving rise to present petition, in short, are that complainant Ravendra Kumar Sharma, Branch Manager, Shriram Transport Finance Company Shivpuri filed an application for taking action regarding registration of FIR alleging therein that petitioner without re-paying the loan amount, which was taken for purchasing Vehicle no.MP33H1193 and Chain Mountain Machine Hitachi Hyundai 220 has committed a cheating and criminal breach of trust.

(3) It is submitted by learned counsel for the petitioner that no cheating has been committed against respondent No.2 and *prima facie*, no evidence is available against the petitioner. Respondent No.2 has been simply trying to impact criminal colour to a civil dispute. Respondent No.2 allured the petitioner for purchase of machine in low rate of interest and which were, total amount with interest was stated, more than that the loan amount, has been repaid to respondent No.2. Alleged crime has been got registered after around 09-10 years by respondent No.2 and the said situation shows that it has been got registered to harass the petitioner. Petitioner has already repaid entire loan amount and now, no any loan amount has remained due with the petitioner and it has also been stated that the evidence produced by respondent No.2 is incorrect. It is alleged that respondent No.2 has already sold the vehicles and is using the amount on hire taken from running of the said vehicles. It is further alleged that the relevant documents on record show that respondent No.2 is denying to issue "No Objection Certificate". Respondent No.2 has concealed the said fact and in collusion with the police authorities has got registered a false FIR, under Sections 420, 406, 120-B of IPC in which, the time of incident has been shown from 14/09/2010 to 18/07/2020 and the said matter is of civil nature. Under the Indian Limitation Act, it is prohibited to file any recovery suit old than three years. Therefore, respondent No.2 has deliberately registered offence due to being barred under the civil procedure. Earlier, one complainant was also lodged before the Magistrate concerned under Section 138 of the Negotiable Instruments Act which has been turned down by the Court below. Therefore, there is no basis to implicate the

petitioner and, therefore, FIR as well as other consequential criminal proceedings initiated in pursuance of FIR be quashed. An attempt has been made by respondent No.2 to cloak a civil dispute with a criminal nature despite the absence of ingredients necessary to constitute a criminal offence. FIR registered against the petitioner constitutes an abuse of process of Court and is liable to be quashed. In support of his contention, the learned counsel for the petitioner has relied upon the judgments passed by Hon'ble Supreme Court in the case of **Mitesh Kumar J. Sha vs. State of Karnataka & Others**, decided on 26th October, 2021 in **Criminal Appeal No.1285 of 2021**. It is further submitted by the counsel for the petitioner that the motive of the respondent No.2 shows to create pressure on the petitioner and to put him under harassment. There is no inducement or fraudulent or dishonest intention on the part of the petitioner right from the beginning of loan transaction. Any civil liability cannot be allowed to be executed through criminal case by exerting pressure. It is submitted that mere failure on the part of the petitioner to keep his promise at a later stage would not bring the case within the meaning of "cheating". Respondent No.2 has tried to give colour of criminal case which is not permissible. Unless and until, there is an intention to cheat respondent No.2 on the day one, no offence can be said to be made against petitioner. In support of his contention, the learned counsel for the petitioner has relied upon the judgment of Patna High Court in the case of **Hemant Kumar Das vs. State of Bihar**, decided on 21st August, 2018 in **Criminal Miscellaneous No.905 of 2018**, Calcutta High Court decision in the matter of **Tapan Kumar Ghosh and Others vs. State of WB and Another**, decided on

12th May, 2006 [(2006) 3 CALLT 181 HC] and Allahabad High Court decision in the case of **Komal and others vs. State of UP & Another**, decided on 29th May, 2018 in **Application under Section 482, No.40955 of 2011**.

(4) The petition is opposed by the State Counsel as well as counsel for the respondent No.2 and prayed for its dismissal. It is submitted on behalf of respondent No.2 that the outstanding amount including interest is due on the petitioner and he stopped to repay the loan amount and when respondent No.2 demanded to pay the amount, the petitioner misplaced both the vehicles and such act on the part of petitioner amounts to cheating and criminal conspiracy and, therefore, a criminal complaint has been filed against petitioner and in consequence thereof, FIR in question has been lodged. It is further submitted that it is well-established principle of law that merely because the dispute may involve civil transaction, would not *ipso facto* mean that the dispute is predominantly of civil in nature and the prosecution cannot be quashed merely on the said ground. In support of his contention, the counsel for the respondent No.2 has relied upon the judgment passed by Hon'ble Supreme Court in the case of **Md.Allauddin Khan vs. The State of Bihar and Others**, decided on 15th April, 2019 in **Criminal Appeal No. 675 of 2019** and the judgment passed by a Coordinate Bench of this Court in the case of **Jagdish Valecha vs. State of MP and Others**, decided on 16th July, 2018 in **MCRC No. 10333 of 2016**.

(5) Heard the learned counsel for the parties and perused the documents

available on record.

(6) Before considering the submissions made by counsel for the parties, it would be appropriate to consider the scope of powers u/S. 482 of CrPC.

(7) In the matter of **Pearl Beverages Ltd. And Ors. vs. State of Andhra Pradesh**, reported in **2000 CrLJ 5044**, it has been held as under:-

"25. The question as to whether this Court in exercise of its jurisdiction Under Section 482 of the Code can quash the first information report itself is integrally and inexorably intertwined with the jurisdiction and power of the police officer to investigate into commission of a cognizable case. Catena of decisions are referred by the learned Senior Counsel appearing on behalf of the petitioners and as well by the learned Public Prosecutor. The distinction in law between the powers of the Court to take cognizance of a case and their powers of inquiry and trial on the one hand and the powers of a police officer to investigate into a case relating to commission of a cognizable offence on the other hand are too well recognized. It has been observed by higher Courts that function of the judiciary and the police are complementary not overlapping. It has been clearly held that the Court's functions begin when a charge is preferred before it and not until then."

(8) In the matter of **Emperor vs. Khwaja Nazir Ahmad**, reported in **AIR (32)1945 P.C.18**, the Privy Council speaking through Lord Porter, has observed that:-

"In their Lordships' opinion however, the more serious aspect of the case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if

it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course-subject to the right of the Court to intervene in an appropriate case when moved under Section 491. Criminal P.C. to give directions in the nature of habeas corpus. In such a case as the present-however, the Court's functions begin when a charge is preferred before it and not until then (emphasis of mine). It has sometimes been thought that Section 561-A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act. No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation and for this reason Newsam, J. may well have decided rightly in *AIR 1938 Mad. 129.*"²⁶.

- (9) In the matter of **RP Kapur vs. State of Punjab**, reported in **1960 CrLJ 1239**, it has been held as under:-

"The inherent power by the High Court under Section 561-A if the Code (present Section 482) cannot be exercised in regard to matters specifically covered by the other provision of the Code. It is however, observed that cases may also arise 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. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused. The Supreme Court having laid down the law refused to quash the proceedings."

- (10) In the matter of **Kurukshetra University v. State of Haryana**, reported in **AIR 1977 SC 2229**, it has been held by Hon'ble Supreme Court as

under:-

"The very same question came up for consideration before the Supreme Court. In the said case an application under Section 482 Cr.P.C. was filed in Punjab and Haryana High Court for quashing the first information report registered against the petitioners therein under Section 442 and 452 I.P.C. on filing of the first information report by the University. The High Court quashed the same at the instance of the accused. On appeal by the University to the Supreme Court, it is held that (para 2):-

"It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any Court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases." *(Emphasis is of mine)*

(11) In the matter of **State of UP vs. RK Srivastava**, reported in **AIR 1989**

SC 2222, the Hon'ble Supreme Court has observed in paragraph 3 as under:-

"It is a well settled principle of law that if the allegations made in the FIR are taken at their face value and accepted in their entirety do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed." But it is required to notice that in the said case on the basis of the F.I.R. Police registered a case against the named persons for the offence punishable under Sections Section 120-B, 420, 468 and 471 I.P.C. And Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. The criminal proceedings being Crime Case No. 40 of 1983 in the Court of Special Judge, Anti-Corruption was pending against the accused and that proceedings were sought to be quashed. The Supreme Court observed that the allegations made either in the F.I.R. or in the charge sheet do not show that the accused had acted dishonestly, that is to say, acted with a deliberate intention to cause wrongful gain or wrongful loss. In the

circumstances, the Judgment of the High Court quashing the criminal proceedings was upheld by the Supreme Court. It was a case of quashing the proceedings on the file of the criminal Court. It was not a case of quashing the first information report even before the investigation of the case."

(12) In the matter of **Mrs. Dhanalakshmi vs. R. Prasanna Kumar**, reported in **AIR 1990 SC 494**, the Hon'ble Supreme Court has observed as under:-

"Section 482 empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases 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 is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482."

(13) In the matter of **Central Bureau of Investigation vs. KM Sharan** reported in **(2008) 2 SCC (Cri) 430** it has been held by the Supreme Court as under:-

"24. In Bhajan Lal case (supra), this court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. 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 of the Constitution of India or the inherent powers under Section 482 of CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. This court in the said judgment made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised. According to this judgment, the High Court would be justified in exercising its power in cases of following

categories:-

"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 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."

25. This court in *Janata Dal v. H. S. Chowdhary & Ors. (1992)* 4 SCC 305 observed thus:

"132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real

and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

26. This court in *Roy V.D. v. State of Kerala (2000) 8 SCC 590* observed thus:-

"18. It is well settled that the power under Section 482Cr.P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482Cr.P.C.to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

27. This court in *Zandu Pharmaceutical Works Ltd. & Ors. v. Mohd. Sharaful Haque & Anr. (2005) 1 SCC 122* observed thus:-

"8.....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/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."

28. In *Indian Oil Corporation v. NEPC India Ltd. & Ors. (2006) 6 SCC 736*, this court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The court further observed that "any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

29. This Court in the case of *Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS & Anr. (2006) 7 SCC 188* has reiterated the legal position. The Court observed that 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 the decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.

30. Now, the crucial question which arises for our adjudication is whether the case of the respondent falls under any of the categories as enumerated in the celebrated case of *Bhajan Lal (supra)*. On the basis of the material available on record and the allegations levelled against the respondent in the FIR and the charge-sheet, it cannot be concluded that no ingredients of offence under section 120B read with section 193 IPC are present in the instant case.

31. At this stage, the High Court in its jurisdiction under section 482 Cr.P.C. was not called upon to embark upon the enquiry whether the allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the concerned court after the entire material is produced before it on a thorough investigation and evidence is led.

32. In the impugned judgment, according to the settled legal position, the High Court ought to have critically examined whether the allegations made in the First Information Report and the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the accused (respondent herein)."

(14) In the matter of **Medchal Chemicals and Pharma (P) Ltd. Vs. Biological E. Ltd.**, reported in **2000 SCC (Cr) 615**, the Hon'ble Supreme Court reversed the decision of High Court quashing the complaint and set aside the impugned order has observed as under:-

"Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgment of First Information Report the bail is set to roll and thenceforth the

law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount."

It is further observed by the Supreme Court that:

"In a proceeding under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegations made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness." Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same."

It is further observed that:

"Be it noted that in the matter of exercise of the High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of Court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and in the event, the High Court is desirous of putting a stop to the known procedure of law, the care and caution to quash the complaint in exercise of its inherent jurisdiction."

(15) 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:

"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."

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.”

(16) Thus, it is clear that where complaint discloses the criminal ingredients also, then the criminal prosecution cannot be quashed only because of the fact that civil dispute is also involved and the matter is a loan transaction. Once a case which is predominantly of civil in nature, cannot be allowed to be given a colour of criminal nature. In the light of above, it is clear that at this stage, correctness and genuineness of FIR/Complaint could not be considered. Powers under Section 482 of CrPC can be exercised in order to prevent abuse of process of Court, to give effect to an order under the Code and to secure the ends of justice. If a case does not fall within any of the above-mentioned categories, then the exercise of power under Section 482 of CrPC may be declined by the High Court. Great care should be taken by the High Court before embarking to scrutinize FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. In the present matter, it is undisputed fact that petitioner has taken loan amount for purchasing Vehicle No.MP33H1193 and Chain Mountain Machine Hitachi Hyundai 220 financed by Shriram Transport Finance Company Ltd. Till date, the documents produced by petitioner reflect that he has not repaid the outstanding of loan amount.

(17) Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that FIR/complaint lodged by respondent No.2 *prima facie* discloses commission of offence and, therefore, FIR as well

as other consequential criminal proceedings initiated in connection with Crime No.245 of 2020 registered at Police Station Kotwali, District Shivpuri for offences punishable under Sections 420, 120-B, 406 of IPC cannot be quashed.

(18) Petition fails and is hereby **dismissed**. Observations in this order have been made, considering the limited scope of interference.

(Rajeev Kumar Shrivastava)
Judge