

**The High Court Of Madhya Pradesh**  
**Bench Gwalior**

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**SB:- Hon'ble Shri Justice Rajeev Kumar Shrivastava**

**MCRC 35580 of 2021**

Shiv Singh and Ors. Vs. State of MP and Anr.

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Shri Romesh Pratap Singh, counsel for the petitioners.  
 Smt. Abha Misha, Public Prosecutor for respondent No.1/ State.  
 Shri DS 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 **20/01/2022**)

Present petition under Section 482 of CrPC has been filed by petitioners for quashment of FIR bearing Crime No.137/2020, registered at Police Station Shadora, Ashok Nagar for offences under Sections 452, 294, 323, 506, 34, added Section 324 IPC as well as charge sheet and other consequential criminal proceedings initiated against petitioners.

(2) Facts giving rise to present petition, in short, are that the complainant/ respondent No.2 along with her mother-in-law, father-in-law and *Jethani* submitted an oral complaint before Police Station Shadora, Ashok Nagar alleging that on the date of incident i.e. 02/07/2020 at about 08:30 pm, when she was alone in her home, all petitioners came along with deadly weapons and lathi and started beating complainant and abused her and also threatened her to kill. On seeing her father-in-law, all accused persons fled away from

spot. On the basis of said complaint, FIR has been lodged against petitioners. After recording statements of witnesses and other formalities, the police filed charge sheet before competent Court for the aforesaid sections as mentioned in paragraph No.1 of this order against petitioners. Hence, this petition.

(3) It is submitted by learned counsel for the petitioners that there is no direct or indirect evidence available against petitioners for commission of the alleged offence. A false and concocted FIR has been lodged. No free and fair investigation was conducted by police in the matter and investigation is completely shaky. It is submitted that a preliminary enquiry should have been conducted by police into the allegations made against petitioners, but without conducting it, FIR has been lodged, therefore, the FIR in question is bad and vitiated. Only omnibus allegations have been made against petitioners. It is further submitted that initially, an FIR was lodged by mother of applicants' Kapoor Bai and in order to take revenge, present FIR has been registered by police falsely as police authority of the police station concerned was punished with fine of Rs.10,000/- on the complaint made by applicants' mother, therefore, prosecution launched against petitioners is an abuse of process of Court. From perusal of FIR, it appears that there is *mala fide* intention of complainant in order to create pressure over petitioners and to take a revenge. In support of contention, petitioners have relied upon the judgment passed by Hon'ble Apex Court in the matter of **Lalita Kumari Vs. Government of U.P. & Ors.** reported in (2014) 2 SCC 1. Hence, it is prayed that the FIR as well as charge sheet & other subsequent criminal proceedings deserves to be quashed and petition deserves to be allowed.

(4) *Per contra*, the petition is opposed by State Counsel as well as counsel for respondent No.2. It is submitted that in FIR, it has been specifically alleged against petitioners that they had committed house-trespass having made preparation for causing hurt/injury to complainant and thus, it cannot be said that no offence is made out against them. Hence, prayed for dismissal of petition.

(5) Heard learned counsel for the parties at length and perused documents available on record.

(6) Before considering the matter on merits, this Court would like to consider scope of interference u/S. 482 of CrPC.

(7) In the matter of **Teeja Devi v. State of Rajasthan** reported in (2014) 15 SCC 221, the Hon'ble Supreme Court has held as under:-

"5.....ordinarily power under Section 482 CrPC should not be used to quash an FIR because that amounts to interfering with the statutory power of the police to investigate a cognizable offence in accordance with the provisions of CrPC. As per law settled by a catena of judgments, if the allegations made in the FIR prima facie disclose a cognizable offence, interference with the investigation is not proper and it can be done only in the rarest of rare cases where the Court is satisfied that the prosecution is malicious and vexatious."

(Emphasis supplied)

(8) The Hon'ble Apex Court in the case of **S. Khushboo v. Kanniammal** reported in (2010) 5 SCC 600 has held as under :-

"18. It is of course a settled legal proposition that in a case where there is sufficient evidence against the accused, which may establish the charge against him/her, the proceedings cannot be quashed. In *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* this Court observed that a

criminal complaint or a charge-sheet can only be quashed by superior courts in exceptional circumstances, such as when the allegations in a complaint do not support a prima facie case for an offence.

19. Similarly, in *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* this Court has held that criminal proceedings can be quashed but such a power is to be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves. It was further observed that superior courts “*may examine the questions of fact*” when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice.

20. In *Shakson Belthissor v. State of Kerala* this Court relied on earlier precedents to clarify that a High Court while exercising its inherent jurisdiction should not interfere with a genuine complaint but it should certainly not hesitate to intervene in appropriate cases. In fact it was observed: (SCC pp. 478, para 25)

“25..... One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.”

(Emphasis

supplied)

(9) The Supreme Court in the case of **Amit Kapoor v. Ramesh Chander** reported in (2012) 9 SCC 460 has held as under :-

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

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

interfere.

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

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

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

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

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

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

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

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

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

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

**27.13.** Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

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

**27.15.** Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist. [Ref. *State of W.B. v. Swapan Kumar Guha Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*; *Janata Dal v. H.S. Chowdhary*; *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*; *G. Sagar Suri v. State of U.P.*; *Ajay Mitra v. State of M.P.*; *Pepsi Foods Ltd. v. Special Judicial Magistrate*; *State of U.P. v. O.P. Sharma*; *Ganesh Narayan Hegde v. S. Bangarappa*; *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*; *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.*; *Shakson Belthissor v. State of Kerala*; *V.V.S. Rama Sharma v. State of U.P.*; *Chundururu Siva Ram Krishna v. Peddi Ravindra Babu*; *Sheonandan Paswan v. State of Bihar*; *State of Bihar v. P.P. Sharma*; *Lalmuni Devi v. State of Bihar*; *M. Krishnan v. Vijay Singh*; *Savita v. State of Rajasthan* and *S.M. Datta v. State of Gujarat*.]

**27.16.** These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the

premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

(10) The Hon'ble Supreme Court in the matter of **State of A.P. v.**

**Gourishetty Mahesh**, reported in **(2010) 11 SCC 226** has held as under :-

"18. While 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/Court. It is true that the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.*

19. Though the High Court may exercise its power relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, the power should be exercised sparingly. *For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. "*

(11) The Hon'ble Apex Court in the matter of **M.N. Ojha vs. Alok Kumar**

**Srivastav** reported in **(2009) 9 SCC 682** has held as under :-

"31. It is well-settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended 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. If such power is not conceded, it may even lead to injustice.

**32.** We are conscious 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 supplied)*

(12) In the present matter, from perusal of record, it appears that the complaint has been submitted by complainant before police station against petitioners alleging that 02/07/2020 at about 08:30 pm, when she was alone in her home, all petitioners- accused came there along with deadly weapons and *lathi* and started beating complainant and abused her and also threatened her to kill. On the basis of said complaint, FIR has been lodged and on the basis of allegations levelled against the petitioners, learned Court below has framed charges against petitioners. This Court would not ordinarily embark upon the inquiry conducted by the police authorities whether the evidence in question is reliable or not; or whether on a reasonable appreciation of it, accusation would not be sustained, it is the function of learned trial Judge/Magistrate. Where there is sufficient evidence available against petitioners when may establish charges against them, the proceedings cannot be quashed at this stage. If allegations made in FIR *prima facie* disclose a cognizable offence, interference with investigation by the police is not proper and it can be done only in the rarest of rare cases where the Court is satisfied that prosecution is malicious and vexatious. Ordinarily, the power under Section 482 CrPC should not be used to quash an FIR or charge sheet because that amounts to interfering with the statutory power of police to investigate a cognizable offence in accordance with provisions of CrPC. Considering the factual background of the case, as well as law laid down by



Hon'ble Supreme Court in above-mentioned cases, this Court is of the considered opinion that no interference is warranted in the order of framing charges. Truthfulness as well as veracity of statements or circumstances or documents of prosecution cannot be questioned at this stage by defence. It is well-established principle of law that at the time of framing of charges, there is no scope to appreciate entire evidence in details. The Court below has analyzed all the materials for the purpose of finding out whether or not, *prima facie* case against accused has been made out.

(13) As a consequence, this Court does not find it to be a fit case for quashment of FIR as well as charge sheet & other criminal proceedings initiated against petitioners. Petition fails and is hereby **dismissed**.

**(Rajeev Kumar Shrivastava)**  
**Judge**