1 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.40229/2021
Pankaj Karoriya Vs. The State of M.P. and others

Gwalior, Dated:12/08/2021

Shri DPS Bhadoriya, Advocate for applicant.

Shri MPS Raghuvanshi, Additional Advocate General with Shri Ravi Ballabh Tripathi, Panel Lawyer for respondents/State.

This application under Section 482 of Cr.P.C. has been filed for quashment of FIR in Crime No.251/2021 registered at Police Station University Gwalior for offence under Sections 420 and 409 of IPC.

According to the prosecution case, complainant-Chandrabhan Singh Jadon submitted a written report issued by the office of Collector, Gwalior (Food Department) alleging that the Salesmen of fair price shops functioning in Dabra informed the Collector that the co-accused Sushri Surbhi Jain, Junior Supply Officer had taken her own decision and had directed the shopkeepers to distribute the foodgrains issued under the PMGKA scheme on offline basis and had assured that such quantity would be reduced from the POS closing balance. Therefore, on the instructions of Sushri Surbhi Jain, foodgrains received under PMGKA scheme were distributed by them on offline basis, but the closing balance on POS portal was not reduced, therefore, the said officer is threatening that the FIR would be lodged against the Salesmen. Thereafter, the applicant and Sushri Surbhi Jain came to their shop on 9/3/2021 and instructed that the shopkeepers must pay 50% of the market value of the short stock,

otherwise the FIR would be lodged. When this fact came to the knowledge of the Collector, Sushri Surbhi Jain has been placed under suspension and the applicant at present is posted as Junior Supply Officer, District Tikamgarh.

Challenging the FIR, it is submitted by the counsel for the applicant that since the applicant is a government employee, therefore, a preliminary enquiry should have been conducted into the allegations made against the applicant, but without conducting any preliminary enquiry, the FIR has been lodged, therefore, the FIR is bad and vitiated. It is further submitted that even if the allegations made against the applicant are treated as true, but since the misconduct has been committed under the Special Act or scheme, therefore, preliminary enquiry was desirable and invocation of the provisions of IPC is unwarranted. It is further submitted that without verifying as to whether any actual loss or gain was caused or whether there is any shortfall in the stock or not, the FIR has been lodged, whereas except by physical verification, it cannot be said that there is any shortage in the stock. It is further submitted that there is no allegation that the applicant had ever taken any money. It is further submitted that there is no discrepancy in the record of POS machine because there is no difference in allotment / distribution as well as closing stock/balance on the POS portal. PMGKA scheme was

introduced in the month of April, 2020 and the applicant had remained at Dabra only upto 30/4/2020. It is further submitted that although this Court has already rejected the application for grant of anticipatory bail and the said order has not been challenged before the Supreme Court so far, however, the Court should have granted anticipatory bail and accordingly, it is prayed that this Court should issue notice, and interim order not to take any coercive action against the applicant should also be issued. Even otherwise, it was further submitted that in case if the petition is dismissed, still if protection from coercive action is given, then the applicant would not have any grievance and shall participate in the investigation.

Per contra, the application is vehemently opposed by the counsel for the State. It is submitted by Shri Raghuvanshi that the allegation against the applicant is that he alongwith Sushri Surbhi Jain had threatened the shopkeepers that they would lodge the FIR, otherwise they should pay 50% of the market value of the short balance. It is submitted that the applicant is unnecessarily relying upon the closing balance reflected on POS portal. As per PMGKA Scheme, the foodgrain was to be distributed on ONLINE BASIS only. However, the allegations are that the shopkeepers were instructed to distribute the foodgrains on offline basis also and the shopkeepers were assured that the quantity of foodgrains distributed

on offline basis will be reduced from the stock which will be reflected on POS portal, therefore, merely because the closing balance reflected on POS portal is in accordance with the allotment and the distribution which was done on ONLINE basis is not the crux of the matter, but the pivotal question is that when the shopkeepers were directed to supply the foodgrains on OFFLINE basis with an assurance that the quantity of the said distribution shall be reduced from closing balance reflected on POS portal. Although the foodgrains were distributed on OFFLINE basis, but the closing balance was not corrected by deducting the quantity of foodgrain distributed on OFFLINE basis. On the contrary, by extending a threat of lodging F.I.R., Sushri Surbhi Jain and the applicant demanded 50% of the market value of the short stock. Therefore, it is submitted that *prima facie* offence has been made out warranting investigation. It is further submitted that receipt of illegal gratification by itself is not sufficient to make out an offence and even if there is a demand of illegal gratification, then such demand itself would be an offence. It is submitted that in the FIR it has been specifically alleged against the applicant that he alongwith the co-accused Sushri Surbhi Jain had demanded 50% of the market value of the short stock and thus, it cannot be said that no offence is made out. It is further submitted that so far as the contention of the applicant

that he was relieved from Dabra on 1/5/2020 and the PMGKA scheme was floated in the month of April, 2020 is concerned, it is clear that when the said scheme came into existence, the applicant was posted in Dabra. Therefore, whether the applicant is actually involved or not, is the subject matter of investigation and the investigation is still at the initial stage and it is well established principle of law that the legitimate prosecution should not be stiffled in the midway.

In reply, it is submitted by Shri Bhadoriya that it is incorrect to say that any instruction was given to the shopkeepers to distribute the foodgrains on offline basis. It is submitted that in the month of May, 2020 an order was issued thereby directing the shopkeepers to distribute the foodgrains on offline basis also and, therefore, it cannot be said that any foodgrain was permitted to be distributed on offline basis during the tenure of the applicant at Dabra. It is further submitted that by order dated 13/4/2020 the applicant and Sushri Surbhi Jain were appointed as Nodal Officer and no complaint was received by the applicant during stay in Dabra.

Heard learned counsel for the parties.

Before adverting to the merits of the case, this Court would like to consider the scope of interference under Section 482 of Cr.P.C.

It is well established principle of law that the prosecution/FIR can be quashed, only when the un-controverted allegations do not make out a prima facie offence. The Supreme Court in the case of **Munshiram v. State of Rajasthan,** reported in **(2018) 5 SCC 678** has held as under :

> **10.** Having heard the learned counsel for both the parties and perusing the material available on record we are of the opinion that the High Court has prematurely quashed the FIR without proper investigation being conducted by the police. Further, it is no more res integra that Section 482 CrPC has to be utilised cautiously while quashing the FIR. This Court in a catena of cases has quashed FIR only after it comes to a conclusion that continuing investigation in such cases would only amount to abuse of the process. .....

The Supreme Court in the case of **Teeja Devi v. State of Rajasthan** reported in **(2014) 15 SCC 221** has held as under :

> **5.** It has been rightly submitted by the learned counsel for the appellant that 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.

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

> **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)

> "*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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> *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*."
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> (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)

> "*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 **XYZ v. State of Gujarat** reported in **(2019) 10 SCC 337** has held as under :

> **14.** Having heard the learned counsel for the parties and after perusing the impugned order and other material placed on record, we are of the view that the High Court exceeded the scope of its jurisdiction conferred under Section 482 CrPC, and quashed the proceedings. Even before the investigation is completed by the investigating agency, the High Court entertained the writ petition, and by virtue of interim order granted by the High Court, further investigation was stalled. Having regard to the allegations made by the appellant/informant, whether the 2nd respondent by clicking inappropriate pictures of the appellant has blackmailed her or not, and further the 2nd respondent has continued to interfere by calling Shoukin Malik or not are the matters for investigation. In view of the serious allegations made in the complaint, we are of the view that the High Court should not have made a roving inquiry while considering the application filed under Section 482 CrPC. Though the learned counsel have made elaborate submissions on various contentious issues, as we are of the view that any observation or findings by this Court, will affect the investigation and trial, we refrain from recording any findings on such issues. From a perusal of the order of the High Court, it is evident that the High Court has got carried away by the agreement/settlement

> arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the 2nd respondent was consensual. When it is the allegation of the appellant, that such document itself is obtained under threat and coercion, it is a matter to be investigated. Further, the complaint of the appellant about interference by the 2nd respondent by calling Shoukin Malik and further interference is also a matter for investigation. By looking at the contents of the complaint and the serious allegations made against 2nd respondent, we are of the view that the High Court has committed error in quashing the proceedings.
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> (Underline supplied)

The Supreme Court in the case of **S. Martin (Supra)** has held as under :

> **7.** In our view the assessment made by the High Court at a stage when the investigation was yet to be completed, is completely incorrect and uncalled for.....

The Supreme Court in the case of **S. Khushboo v. Kanniammal** reported in **(2010) 5 SCC 600** has held as under :

> **17.** In the past, this Court has even laid down some guidelines for the exercise of inherent power by the High Courts to quash criminal proceedings in such exceptional cases. We can refer to the decision in *State of Haryana* v. *Bhajan Lal* to take note of two such guidelines which are relevant for the present case: (SCC pp. 378-79, para 102)
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> "(*1*) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> * * *
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> (*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."

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*. … '*16*. … 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.'[*]"

The Supreme Court in the case of **Sangeeta Agrawal v. State of U.P.,** reported in **(2019) 2 SCC 336** has held as under :

8. In our view, the Single Judge ought to have first set out the brief facts of the case with a view to understand the factual matrix of the case and then examined the challenge made to the proceedings in the light of the principles of law laid down by this Court and then recorded his finding as to on what basis and reasons, a case is made out for any interference or not.

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

> **27.** Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:
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> **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.
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> **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.
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> **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.
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> **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.
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> **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.*; *Chunduru 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.

28. At this stage, we may also notice that the principle

stated by this Court in *Madhavrao Jiwajirao Scindia* was reconsidered and explained in two subsequent judgments of this Court in *State of Bihar* v. *P.P. Sharma* and *M.N. Damani* v. *S.K. Sinha*. In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent.

The Supreme Court in the case of **Ajay Kumar Das v. State of Jharkhand,** reported in **(2011) 12 SCC 319** has held as under :

12. The counsel appearing for the appellant also drew our attention to the same decision which is relied upon in the impugned judgment by the High Court i.e. *State of Haryana* v. *Bhajan Lal*. In the said decision, this Court held that it may not be possible to lay down any specific guidelines or watertight compartment as to when the power under Section 482 CrPC could be or is to be exercised. This Court, however, gave an exhaustive list of various kinds of cases wherein such power could be exercised. In para 103 of the said judgment, this Court, however, hastened to add that as a note of caution it must be stated that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases for the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or in the complaint and that the extraordinary or the inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

The Supreme Court in the case of **Mohd. Akram Siddiqui v. State of Bihar** reported in **(2019) 13 SCC 350** has held as under :

5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in *Yin Cheng Hsiung* v. *Essem Chemical*

Industries; *State of Haryana* v. *Bhajan Lal* and *Harshendra Kumar D.* v. *Rebatilata Koley* to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.

The Supreme Court in the case 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.

20. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires

care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that 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 inherent powers under Section 482.

The Supreme Court in the case of **Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy** reported in **(2012) 12 SCC 437** has held as under :

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* and *B.S. Joshi* v. *State of Haryana*). 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*; *Ganesh Narayan Hegde* v. *S. Bangarappa* and *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*.)

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*, *Janata Dal* v. *H.S. Chowdhary*, *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* and *Indian Oil Corpn.* v. *NEPC India Ltd.*

16. In the landmark case of *State of Haryana* v. *Bhajan Lal* this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarised the legal position by laying down the following guidelines to be followed by the High Courts in exercise of their inherent powers to quash a criminal complaint: (SCC pp. 378-79, para 102)

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

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

(*3*) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(*4*) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(*5*) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(*6*) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(*7*) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. In *Indian Oil Corpn.* v. *NEPC India Ltd.* a petition under Section 482 was filed to quash two criminal complaints. The High Court by a common judgment allowed the petition and quashed both the complaints. The order was challenged in appeal to this Court. While deciding the appeal, this Court laid down the following principles: (SCC p. 748, para 12)

1. The High Courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly

and with abundant caution.

2. The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.

3. It was held that a given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.

18. In *State of Orissa* v. *Saroj Kumar Sahoo* 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* 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*, 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* was reconsidered and explained by this Court in *State of Bihar* v. *P.P. Sharma* which reads as under: (SCC p. 271, para 70)

> "*70. Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre* 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* 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* 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 **M. Srikanth v. State of Telangana,** reported in **(2019) 10 SCC 373** has held as under :

17. It could thus be seen, that this Court has held, that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute a case against the accused, the High Court would be justified in quashing the proceedings. Further, it has been held that where the uncontroverted allegations in the FIR and the evidence collected in support of the same do not disclose any offence and make out a case against the accused, the Court would be justified in quashing the proceedings.

The Supreme Court in the case of **M.N. Ojha v. Alok Kumar Srivastav** reported in **(2009) 9 SCC 682** has held as under :

30. Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public

interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.

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.]"

(See *State of Karnataka* v. *L. Muniswamy*, SCC p. 703, para 7.)

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".

(See *Kurukshetra University* v. *State of Haryana*, SCC p. 451, para 2.)

The Supreme Court in the case of **CBI v. Arvind Khanna** reported in **(2019) 10 SCC 686** has held as under :

> **17.** After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 CrPC, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in

> this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 CrPC.
>
> **18.** In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for.

The Supreme Court in the case of **State of Madhya Pradesh Vs. Kunwar Singh** by order dated **30-7-2021** passed in **Cr.A. No. 709 of 2021** has held as under :

> 8. Having heard the submissions of the learned Counsel appearing on behalf of the appellant and the respondent, we are of the view tht the High Court has transgressed the limits of its jurisdiction under Section 482 of CrPC by enquiring into the merits of the allegations at the present stage. …. , the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal act after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia, particularly, in a matter involving financial irregularities in the course of the administration of a public scheme.....

Thus, it is clear that although this Court cannot make a roving enquiry at this stage, but if the un-controverted allegations do not make out any offence, only then this Court can quash the F.I.R.

<u>Whether Preliminary Enquiry is mandatory?</u>

The Supreme Court in the case of **Lalita Kumari Vs. Government of U.P. & Ors.** reported in **(2014) 2 SCC 1,** has held as

under:-

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(*a*) Matrimonial disputes/family disputes

(*b*) Commercial offences

(*c*) Medical negligence cases

(*d*) Corruption cases

(*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the

> accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.
>
> **120.8.** Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

In the case of **Lalita Kumari (Supra)** the Supreme Court has held that where the information discloses commission of cognizable offence, then FIR is to be lodged. Preliminary enquiry is to be conducted or not shall depend upon the facts and circumstances of every case. It has not been held that in case of a complaint against a public officer, a preliminary enquiry is mandatory and violation of such mandatory provision would make the FIR vitiated and bad in law. In case of a public servant, a preliminary enquiry is desirable. Accordingly, when a preliminary enquiry is desirable, then the FIR cannot be quashed only on the ground that since the FIR is not preceded by a preliminary enquiry. Under these circumstances, the first contention of the applicant that the FIR is bad as no preliminary enquiry was conducted is hereby rejected.

Furthermore, the FIR has not been lodged on the complaint of the shopkeepers, but it has been lodged on the basis of complaint by office of Collector (Food Branch)i.e., by Head of District

Department.

The next contention of the applicant is that since this offence has been committed under the Special Act, i.e. EC Act or under a scheme, therefore, invocation of provisions of IPC is unwarranted as well as the preliminary enquiry was desirable.

So far as the registration of offence in respect of offence committed under the Special Act is concerned, the question is no more *res integra.* The Supreme Court in the case of **State of M.P. Vs. Rameshwar** reported in **(2009) 11 SCC 424** has held as under:-

> **48.** Mr Tankha's submissions, which were echoed by Mr Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved.

Thus, in absence of any bar to the applicability of provisions of IPC, it cannot be said that since a separate procedure has been provided under the Special Act, therefore, invocation of provisions of IPC is unwarranted. Accordingly, the second submission made by the counsel for the applicant that when a separate procedure has been provided under the Special Act, then invocation of provisions of IPC is hereby rejected being misconceived.

The next submission of the counsel for the applicant is that the

allegation made by the shopkeepers is that they were compelled to distribute foodgrain on offline basis on the assurance that such stock would be reduced from the stock reflected on POS portal, but that was not done and now they are being extended threat that either they should pay 50% of the market value of the lesser stock, otherwise FIR would be lodged against them.

It is undisputed fact that the foodgrain allotted under the PMGKA Scheme is to be distributed on ONLLINE basis and every transaction would be reflected on POS machine/portal and the closing balance would also be reflected. The allegations are that in view of the peculiar situation on account of covid-19 pandemic, the shopkeepers were directed to distribute the foodgrains on OFFLINE basis, as the migrating people were not within the category of beneficiaries and ONLINE distribution was not possible. Whether there was any such instructions by the officials or not, is a matter of investigation. If the shopkeepers had distributed the foodgrains allotted under PMGKA Scheme on the assurance by the officers that the foodgrains so distributed on offline basis, would be reduced from their POS closing balance and now taking advantage of shortage in stock due to distribution of some of the stock on offline basis on the instructions of officers, if they are demanding 50% of value of shortage in closing balance, then prima facie offence would be made

out warranting investigation. Without understanding the real controversy involved in the case, the counsel for the applicant was again and again trying to impress upon the Court by saying that the record of POS machine clearly shows that after reducing the quantity of foodgrain distributed on ONLINE basis, the closing balance is in accordance with the total quantity of foodgrains allotted to a particular shopkeeper. It is always expected that before starting the arguments, the Lawyer must understand the real controversy involved in the case.

Be that whatever it may.

During the course of arguments, the counsel for the applicant again started submitting that this Court should have granted anticipatory bail. Again and again he was informed that if the applicant is aggrieved by the rejection of his application for grant of anticipatory bail, then he can assail the said order before the Supreme Court, however, in a petition under Section 482 of Cr.P.C, he cannot say that the application for anticipatory bail has been wrongly rejected. When the counsel for the applicant did not stop from arguing on that issue also, then this Court was left with no other option but to hear the arguments silently without any cross question.

Be that whatever it may.

The fact of the case is that the application for grant of

anticipatory bail has been rejected and in a petition under Section 482 of Cr.P.C for quashing of FIR, the arguments advanced by the applicant in respect of anticipatory bail cannot be considered. Furthermore, this Court had already come to a conclusion that the applicant is projecting different facts but in fact the controversy is that on the instructions of the officials, foodgrains were distributed on offline basis on the assurance that said distributed quantity on OFFLINE basis would be reduced from the closing balance which is being reflected on POS portal and now after extending threat for lodging FIR on account of such difference in closing balance, the applicant has demanded 50% of the value of the shortage in closing balance. Once again it is held that the allegation so made against the applicant *prima facie* make out an offence warranting investigation. Further, the FIR has not been lodged by the Police directly on the complaint made by the shopkeepers. In the FIR itself, it has been mentioned that the Collector has already placed Sushri Surbhi Jain under suspension and the complaint has been made by the office of Collector Gwalior.

Be that whatever it may.

So far as the contention of the applicant that before lodging the FIR, the complainant should have verified as to whether there is a shortage in the closing balance of the shopkeepers or not is

concerned, the same is misconceived. As already pointed out, the complaint has been made by the Collector Gwalior against his Junior Supply Officers. It is a matter of investigation which shall certainly be conducted by the investigating officer.

At this stage, it is submitted by Shri D.P.S. Bhadoriya that the applicant or the co-accused Sushri Surbhi Jain were incompetent to issue any directions on their own to the shopkeepers thereby asking them to distribute the foodgrains on offline basis and in fact said written directions were received in the month of May, 2020 and by that time, the applicant was already transferred to Gwalior is concerned, it is well established principle of law that the authority of a person demanding gratification is not important, but the impression in the mind of the bribe-giver is important. Undisputedly, the Junior Supply Officers are the Officers who come in direct contact with the salesman. Furthermore, according to the applicant himself, he was appointed as a Nodal Officer. If the shopkeepers were under a *bonafide* belief that the instruction given by the Officers to distribute the foodgrains on offline basis is an instruction by a competent person, then the impression in the mind of the bribe-giver is important and not the actual authority of the delinquent officer/accused.

It is next contended by the counsel for the applicant that during the course of arguments of application for grant of anticipatory bail, the Government Advocate as well as the counsel for the complainant had made false statement that a preliminary enquiry was conducted and that incorrect statement has not been mentioned by this Court in the order by which his application for grant of anticipatory bail, has been rejected.

Further, Shri M.P.S. Raghuvanshi also submitted that every *bonafide* mistake does not require any adverse remark from the court. If a Lawyer is guilty of suppression of fact(s) which goes to the root of the case and has obtained or is trying to obtain a favorable order by misleading the court, then his conduct can be reflected in the order, but each and every minor mistake should not be taken note of.

Heard learned counsel for the parties on this issue.

The Counsel for the applicant was again and again pressing hard that his application for grant of anticipatory bail has been wrongly rejected. Again and again, it was pointed out to Shri Bhadoriya that once an order on the application for grant of anticipatory bail has been passed, then this Court has become *functus officio* and in every case it is not desirable that the court should pass adverse remarks against the Advocates. The Supreme Court in the case of **S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar**

reported in **(2004) 7 SCC 166** has held as under :

> **13.** As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken.

Thus, the Suppression must be of material fact. If the Court comes to a conclusion that there is a suppression of a material fact, then the case can be dismissed on the ground of suppression of material fact. However, if the suppression is not of material fact and does not any effect on the outcome of the case, then such suppression cannot be made a basis for dismissing the case.

In the present case, it is the objection of the Counsel for the applicant that the State counsel as well as the counsel for complainant, while arguing the application for grant of anticipatory bail, had made a misleading statement before this Court that preliminary enquiry was made.

As already pointed out, holding of preliminary enquiry prior to lodging of FIR is desirable and not mandatory. Without entering into the controversy, as to whether the arguments made by the Government Advocate as well as the counsel for the complainant in the application for anticipatory bail were misleading or not, it is

sufficient to hold that even after coming to a conclusion that no preliminary enquiry was conducted, still this Court could not have held that registration of FIR is bad. Under these circumstances, a minor mistake which may be *bonafide* in nature should not be made a basis for criticizing a lawyer and that too at the instance of counsel for the opposite party. Further, the Supreme Court in the case of **Neeraj Garg Vs. Sarita Rani** by order dated **02-Aug-2021** passed in **Civil Appeal No. 4555-4559 of 2021** has held as under :

> 15. While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the Court.
>
> (Underline supplied)

So far as the submission with regard to giving a direction for not taking any coercive step against the applicant is concerned, it is sufficient to hold that not only the application for grant of anticipatory bail has been rejected, but it is never desirable to pass such a blanket order thereby hampering the investigation. The Supreme Court in the case of **M/s Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra** by order dated **13-4-2021** passed in **Cr.A. No. 330/2021** has held as under :

> 18. This Court in the case of Habib Abdullah Jeelani (supra), as such, deprecated such practice/orders passed by

the High Courts, directing police not to arrest, even while declining to interfere with the quashing petition in exercise of powers under Section 482 Cr.P.C. In the aforesaid case before this Court, the High Court dismissed the petition filed under Section 482 Cr.P.C. for quashing the FIR. However, while dismissing the quashing petition, the High Court directed the police not to arrest the petitioners during the pendency of the investigation. While setting aside such order, it is observed by this Court that such direction amounts to an order under Section 438 Cr.P.C., albeit without satisfaction of the conditions of the said provision and the same is legally unacceptable. In the aforesaid decision, it is specifically observed and held by this Court that "it is absolutely inconceivable and unthinkable to pass an order directing the police not to arrest till the investigation is completed while declining to interfere or expressing opinion that it is not appropriate to stay the investigation". It is further observed that this kind of order is really inappropriate and unseemly and it has no sanction in law. It is further observed that the courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of 49 a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is further observed that it is the obligation of the court to keep such unprincipled and unethical litigants at bay.

In the aforesaid decision, this Court has further deprecated the orders passed by the High Courts, while dismissing the applications under Section 482 Cr.P.C. to the effect that if the petitioner-accused surrenders before the trial Magistrate, he shall be admitted to bail on such terms and conditions as deemed fit and appropriate to be imposed by the Magistrate concerned. It is observed that such orders are de hors the powers conferred under Section 438 Cr.P.C. That thereafter, this Court in paragraph 25 has observed as under:

> "25. Having reminded the same, presently we can only say that the types of orders like the present one, are totally unsustainable, for it is contrary to the aforesaid settled principles and judicial precedents. It is intellectual truancy to avoid the precedents and issue directions which are not in consonance with law. It is the duty of a Judge to sustain the judicial balance and not to think of an order which can cause trauma to the

process of adjudication. It should be borne in mid that the culture of adjudication is stabilised when intellectual discipline is maintained and further when such discipline constantly keeps guard on the mind."

19. We are at pains to note that despite the law laid down by this Court in the case of Habib Abdullah Jeelani (supra), deprecating such orders passed by the High Courts of not to arrest during the pendency of the investigation, even when the quashing petitions under Section 482 50 Cr.P.C. or Article 226 of the Constitution of India are dismissed, even thereafter also, many High Courts are passing such orders. The law declared/laid down by this Court is binding on all the High Courts and not following the law laid down by this Court would have a very serious implications in the administration of justice.

20. In the recent decision of this Court in the case of Ravuri Krishna Murthy (supra), this bench set aside the similar order passed by the Andhra Pradesh High Court of granting a blanket order of protection from arrest, even after coming to the conclusion that no case for quashing was established. The High Court while disposing of the quashing petition and while refusing to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C. directed to complete the investigation into the crime without arresting the second petitioner – A2 and file a final report, if any, in accordance with law. The High Court also further passed an order that the second petitioner – A2 to appear before the investigating agency as and when required and cooperate with the investigating agency. After considering the decision of this Court in the case of Habib Abdullah Jeelani (supra), this Court set aside the order passed by the High Court restraining the investigating officer from arresting the second accused.

Thus, it has been found that despite absolute proposition of law laid down by this Court in the case of Habib Abdullah Jeelani (supra) that such a blanket order of not to arrest till the investigation is completed and the final report is filed, passed while declining to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C, as observed hereinabove, the High Courts have continued to pass such orders.

> Therefore, we again reiterate the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and we direct all the High Courts to scrupulously follow the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and the law laid down by this Court in the present case, which otherwise the High Courts are bound to follow. We caution the High Courts again against passing such orders of not to arrest or "no coercive steps to be taken" till the investigation is completed and the final report is filed, while not entertaining quashing petitions under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India.

No other argument on merits is advanced by the counsel for the applicant.

Considering the totality of facts and circumstances of the case, this Court is of the considered opinion that since the allegations made in the FIR discloses commission of cognizable offence, therefore, legitimate investigation cannot be stiffled in the midway and unborn baby cannot be killed.

Accordingly, the application fails and is hereby **dismissed.**

(G.S. Ahluwalia)
Judge

Arun*