# IN THE HIGH COURT OF MADHYA PRADESH

## AT INDORE

**BEFORE**

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI**

**&**

**HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

**MISC. CRIMINAL CASE No. 32331 of 2021**

**BETWEEN:-**

1. NARENDRA JAIN S/O LATE SHRI CHANDMAL JAIN, AGED ABOUT 60 YEARS, 105, MANI TRADE CENTER 8/3 SHANKU MARG FREEGANJ (MADHYA PRADESH)
2. NEERAJ JAIN S/O NARENDRA JAIN, AGED ABOUT 38 YEARS, 105, MANI TRADE CENTER 8/3 SHANKU MARG FREEGANJ (MADHYA PRADESH)

**.....PETITIONERS**

*(BY SHRI VIVEK DALAL, LEARNED COUNSEL FOR THE PETITIONERS )*

**AND**

1. LOKAYUKTA POLICE ESTABLISHMENT F-BLOCK OLD SECRETARIAT BHOPAL (MADHYA PRADESH)
2. INSPECTOR. LOKAYUKTA POLICE ESTABLISHMENT DIVISION. UJJAIN (MADHYA PRADESH)
3. JITENDRA BHAI S/O LATE SHRI SHIVA BHAI PATEL A-23/13, VED NAGAR NANAKHEDA, UJJAIN (MADHYA PRADESH)

**.....RESPONDENTS**

*(BY SHRI RAGHVENDRA SINGH RAGHUVANSHI, LEARNED COUNSEL FOR THE RESPONDENT )*

***Reserved on:- 23.02.2023***
***Pronounced on:- 16.06.2023***

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*This petition coming on for admission this day,* ***JUSTICE SUSHRUT ARVIND DHARMADHIKARI*** *passed the following:*

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**ORDER**

**1-** The petitioners have filed the present petition under section 482 of The Criminal Procedure Code for quashing the first information report bearing crime number 141/2012 dated 21/07/2012 registered by Special police establishment office of lokayukt Ujjain and to quash all other consequential proceedings arising out of the same FIR.

**2**- Before evaluating the merits of the case, the facts of the present case as per FIR, in nutshell are-

(i) The petitioners had purchased a plot bearing Municipal number 96 and 96 admeasuring 1050 square metres or 11298 square feet situated at Lal Bahadur Shastri Marg sanver Road District Ujjain (hereinafter referred as disputed property) from Jitendra bhai son of late Shri Shiv bhai Patel for a consideration of Rs. 1 crore on 11th January 2010. In order to get the same sale as a registered contract, petitioners booked a registration slot at the Sub Registrar Office, District Ujjain M.P by paying a stamp duty of rupees 7.5 lakh, Municipal duty of rupees 1 lakh, Panchayat duty of rupees 1 lakh, registration fee of rupees 37,450/-, Consent fee of rupees 10, total rupees 9,87,500/- was deposited by the petitioners for the registration of sale deed.

(ii) The police while investigating has recorded the statement of sub registrar Mr. Girish Chaurasia who in his statement has stated that, "the petitioner paid the duty of Rs 9,87,500/- to get the sale deed registered but on the contrary when Mr. Girish Chaurasiya did the inspection of the disputed property he found out that the disputed property is of commercial nature and the petitioners while booking the slot has neither calculated the stamp duty properly nor paid the proper stamp duty according to the collector guidelines of year 2009-2010. Mr. Girish Chaurasiya asked petitioners to pay the adequate stamp duty as per the Collector Guidelines but the petitioners refused to pay the extra stamp duty therefore the sale deed was not registered and Mr. Girish Chaurasiya vide his letter no. 21 dated 04/02/2010 brought this matter to the knowledge of Senior District Registrar and Collector of Stamps, District, Ujjain.

(iii) The Office of Senior District Registrar and Collector of Stamps District Ujjain by taking cognizance upon the above mentioned letter has filed a case number 45/V/105-2009-10 against the petitioners and in the same case the Court of Senior District Registrar and Collector of Stamps District Ujjain vide order dated 21-05- 2012 it was directed to the petitioner to deposit the amount of Rs. 21,76,250 in the district treasury within next 30 days for the registration of unregistered sale deed.

(iv) The petitioners, being aggrieved by the order dated 21/05/2012 passed by the Court of Senior District Registrar and Collector of Stamps District Ujjain filed an appeal No. 202/2011-12/Appeal before the Court of Divisional Commissioner, Ujjain Division, District Ujjain. The Court of Divisional Commissioner, Ujjain Division, District Ujjain, rejected the said appeal and affirmed the order dated 22/10/2012 passed by the Court of Senior District Registrar and Collector of Stamps, District Ujjain.

(v) The petitioner being aggrieved by the order dated 22/10/2012 passed by the Court of Commissioner Ujjain Division District Ujjain, filed an appeal No. 4100/PBR/2012 before The Revenue Board of Madhya Pradesh at Gwalior, which was rejected vide order dated 25/06/2013 and the Order dated 22/10/2012 passed by the Court of Commissioner Ujjain Division District Ujjain was affirmed. However, the petitioner being aggrieved by the order dated 25/06/2013 passed by the Revenue Board, Gwalior has filed a WP/10530/2013 which is still pending for the final disposal before this Court.

(vi) During the ongoing process of litigation before various quasi-judicial courts, the Petitioner approached his advocate Shri Umesh R Chaurasia to get the true copy of the unregistered sale deed. Deputy registrar Shree M.L. Patel who is the head of the copying section of the District registrar office, District Ujjain upon the application of petitioner's advocate to provide the true copy of the sale deed, provided the copy of the unregistered sale deed as per the existing provisions of law although no such tip or instruction was made upon the true copy of the sale deed that it was unregistered document.

(vii) It is alleged that the petitioners after obtaining the true copy of the unregistered sale deed from the office of Sub-Registrar District Ujjain filed an application before the municipal corporation for mutating the said disputed property in their name by engaging in the criminal conspiracy with the other co accused namely Ramkumar Sarvan and Ramesh Chandra Raghuvanshi. It is further alleged that, the co accused Ramkumar Sarwan and Mr Ramesh Chandra Raghuvanshi without examining the true copy of the sale deed, whether it was registered or not had mutated the disputed

property in name of the petitioners and made the relevant revenue entries in the municipal records.

(viii) It is further alleged that the petitioners upon the basis of the unregistered sale deed had filed an application in the Office of Municipal Corporation, Ujjain dated 23-11-2010 with challan No. 11 of Rs 44,03,000/- for granting permission to construct a Commercial Complex upon the disputed property. Acting upon the said application, co-accused in the present case Ramkumar Sarwan and Mr Ramesh Chandra Raghuvanshi without examining the sale deed that whether it is registered or not, had called for the site plan from the Directorate of Town and Country Planning District Ujjain vide its letter dated 20-12-2010.

(ix) It is further alleged that acting upon the letter dated 20-12-2010 and upon the petitioner's application dated 30-11-2010 to provide no objection for raising residential cum commercial complex upon the disputed property, the co-accused (Darshan Lal) i.e. Director of Directorate of Town and Country Planning District Ujjain, with the aid of his office employees forwarded the letter dated 26/11/2010 No. 972 to the office of Ujjain Municipal Corporation by which it was expressed that the office of Directorate of Town and Country Planning District Ujjain has no objection if petitioner construct residential cum commercial complex over the disputed property. Thereafter, the co-accused Arun Jain i.e. Incharge of Department of Colony Cell Ujjain Municipal Corporation granted the permission to petitioner to construct a residential cum commercial complex upon the disputed property vide his letter 11/02/2011. In consequence of which, the petitioner is on verge of completing the construction of the said residential cum commercial complex.

(x) The Special Police Establishment District Bhopal registered the

FIR No. 141/2012 dated 21/07/2012 against the petitioners and other co-accused under Section 13(1)(D) and Section 13(2) of the Prevention of Corruption Act & Section 120-B of the Indian Penal Code. The Special Police Lokayukt, District Ujjain has also produced the charge sheet dated 25-08-2022 against the petitioners and other co-accused before the Special Court constituted under Prevention of Corruption Court Act, District Ujjain (hereinafter referred as the Trial Court). The Learned Trial Court has also framed the charges against the petitioner and co-accused on 15/09/2022 under Section 13(1)(D) and Section 13(2) of the Prevention of Corruption Act & Section 120-B of the Indian Penal Code and being aggrieved by the same, the petitioners have filed the present petition to quash the FIR and the consequential proceedings arising thereby.

**3**- The learned counsel for the petitioner has categorically argued that the impugned FIR is lodged after the delay of approximately two years by Special Police Lokayukt upon a complaint of a private individual i.e. Mr Ajay Gupta who is in the habit of filing frivolous petitions/complaints to harass the officers/employees of state government and municipal corporation. To buttress the submission, the counsel for the petitioner relied upon the order dated 06/04/2016 passed in WP/6610/2015 and order dated 14/01/2015 passed in WP/5107/2013 in which this Court has formed the opinion that Mr Ajay Gupta who is a practicing lawyer at Ujjain Civil Court is in habit of filing complaints against the officers/employees of state government and municipal corporation to harass them. Therefore the impugned FIR is lodged with a malicious intention to harass the petitioners and other co-accused which deserves to be quashed.

**4**- The counsel for the petitioners also submitted that the present case is of purely civil in nature and has travelled to various courts for the

adjudication over the issue and currently the same civil issue is pending for adjudication before this Court in WP/10530/2013. In the present case, a matter of civil wrong which is subjudice and is pending for final adjudication is being given a criminial color with an ulterior motive to harass and torture the petitioner. The counsel for the petitioner further brought to the notice of this Court that the petitioner in compliance of order dated 12/08/2014 passed in WP/10530/2013 by this Court, has deposited the amount of Rs 21,76,300/- in District Treasury and in the same order dated 12/08/2014, this Court has directed the state to register the unregistered sale deed if the petitioners successfully deposits the amount of Rs 21,76,300/- which is subject to the final outcome of WP/10530/2013. The counsel of the petitioner further submitted that the public exchequer has incurred no loss therefore also no offence is made out against the petitioner.

**5**- The learned counsel for the petitioners submits that the petitioners are private persons and are not public servants. The petitioners have been implicated in the present case because the Special Police Lokayukta has leveled charge of Section 120-B of IPC against the petitioners alleging that the petitioners with an ulterior motive to get benefitted by the illegal gains has conspired with other co-accused but on the contrary in the present case essential ingredients of the Section 120 –B of I.PC & Section offence 13(1)(d) and 13(2) of the Prevention of Corruption Act are direly missing and despite of it, the Special Police Lokayukta lodged impugned FIR against the petitioners and even the Learned Trial Court framed charges against the petitioners. Therefore the impugned FIR needs to be quashed as it is the abuse of process of the Court.

**6**- That the counsel for the state has vehemently argued that there is

no adversity in the FIR and the Special Police Lokayukta has rightly presented the charge sheet against the petitioners under Section 120 –B of I.PC & Section offence 13(1)(d) and 13(2) of the Prevention of Corruption Act and placing reliance upon the same, the Learned Trial Court also has rightly framed charges against the petitioners. Therefore the present petition deserves to be dismissed with the heavy cost.

**Analysis of the case**

**7**- Before considering the allegations against the petitioner, this Court would like to consider the law laid down by the Supreme Court, governing the powers of the High Court to quash the F.I.R.

**8**. 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.

**9**. 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.

**10.** 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)*
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> *"65. ... An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed. ...*
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> **66.** Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. … *If on a consideration of the*

*relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence."*

(emphasis supplied)

10. On a similar issue under consideration, in Jeffrey J. Diermeier v. State of W.B., while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (*D.K. Jain, J.*) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)

"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."

**11.**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)

**12.** 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.....

**13**. 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."
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> **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.
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> **19.**
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> 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.
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> 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)
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> "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."

**14**. 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.
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> **9.**

**15**. 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:

**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 itsquashing 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 GuhaMadhavrao 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.]*
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> **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.
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> **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.
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> **29.**

**16.** 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.

**17.** 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.

**18**. 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.
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> **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.
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> **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.

**19**. 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 privateand 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.

**20**. 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.

**21.** 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.*)

**22.** 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.
>
> **19.**
>
> Thus, it is clear that although this Court cannot make a roving enquiry at this stage, but if the uncontroverted allegations do not make out any offence, then this Court

can quash the F.I.R.

**23.** The Supreme Court in the case of **Usha Chakraborty & Anr. versus State of West Bengal & Anr** reported in2023 liveLaw (SC) 67 has held that

> *4. Before adverting to the rival contentions with reference to application under Section 156(3), Cr.P.C. within the parameters, we think it only appropriate to refer to the following decisions of this Court in respect to the scope of exercise of power under Section 482, Cr.P.C.*
>
> *5.1 In Paramjeet Batra v. State of Uttarakhand & Ors.1 , this Court held:- "12. Whil()e exercising its jurisdiction under Section 482 of the Code of the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."*
>
> *5.2 - In **Vesa Holdings Private Limited and Anr. v. State of Kerala and Ors**. , it was held that: - "13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion*

*in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings."*

*5.3* ***In Kapil Aggarwal and Ors. v. Sanjay Sharma and Ors****. , this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.*

*5.4- In the decision in* ***State of Haryana v. Bhajan Lal*** *, a two Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under: -*

*(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. 1 (2013) 11 SCC 673 2 (2015) 8 SCC 293 3 (2021) 5 SCC 524 4 AIR 1992 SC 604 7*

*(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.*

*5.5- In* ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others*** *, a three Judge Bench of this Court laid down the following principles of law:- "*

*57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:*

*i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*

*ii) Courts would not thwart any investigation into the cognizable offences;*

*iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*

*iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);*

*v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

*vi) Criminal proceedings ought not to be scuttled at the initial stage;*

*vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*

*viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by*

*Section 482 Cr.P.C.*

*ix) The functions of the judiciary and the police are complementary, not overlapping; 2021 SCC OnLine SC 315 8*

*x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

*xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

*xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

*xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;*

*xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and*

*xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."*

**24**- The Supreme Court in the case of **Veena Mittal Vs State of Uttar Pradesh reported in 2022 Live Law (SC) 110** has held that,

> *" At the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the Cr.P.C, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash."*

**25**- The Supreme Court in the case of ***Hasmukhlal D. Vora v. State of Tamil Nadu*** reported in *2022 LiveLaw (SC) 1033* has held that,

> **28.** *It must be noted that the High Court while passing the impugned judgment, has failed to take into consideration to the facts and circumstances of the case. While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice. The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law.*
> **29.**

**26**- In light of the above mentioned judgments, this court has to view whether the contents as stated in FIR constitutes the crime of Section 13(2)(d) and 13(2) of Prevention of Corruption Act and Section 120-B of Indian Penal Code against the petitioners. Therefore it is pertinent to reproduce section 13(2)(d) and 13(2) of Prevention of Corruption Act which is as follows-

> **13. Criminal misconduct by a public servant.—**
>
> (1)A public servant is said to commit the offence of criminal misconduct,—
>
> (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal

remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,—

(I) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public

servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

**27**- In the present case, the Police has produced the charge-sheet against the petitioner under Section 13(2)(d) and 13(2) of Prevention of Corruption Act and Section 120-B of Indian Penal Code and the Learned Trial Court also framed the charges against the petitioners under the same sections. It is undisputed that the petitioners are not public servant and are implicated in the present case because of the charge of Criminial Conspiracy committed by them. It is alleged that the petitioners with an intent to get benefitted by illegal gains has conspired with other co-accused so that the petitioner could construct residential cum residential complex on the disputed property. Therefore it is sine qua non to come on a finding whether the act of petitioners as stated in the FIR constitutes a crime of Section 120-B or not?

**28**- The Supreme Court in the case of **R.VENKATKRISHNAN v. CBI** - reported in **(2009)11 SCC 737** has held that:-

> "*criminal conspiracy in terms of Section 120B of the Code is an independent offence. It is punishable separately. Prosecution, therefore, must prove the same by applying the legal principles which are applicable for the purpose of proving a criminal misconduct on the part of an accused. A criminal conspiracy must be put to action and so long a crime is merely generated in the mind of the criminal, it does not become punishable. Thoughts, even criminal in character, often involuntary, are not crimes but 49 when they take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal but by illegal means then even if nothing further is done, the agreement would*

*give rise to a criminal conspiracy.*
***The ingredients of the offence of criminal conspiracy are:***
***(i) an agreement between two or more persons;***
***(ii) the agreement must relate to doing or causing to be done either (a) an illegal act; (b) an act which is not illegal in itself but is done by illegal means.***
*Condition precedent, therefore, for holding accused persons guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of a fact which must be established by the prosecution, viz., meeting point of two or more persons for doing or causing to be done an illegal act or an act by illegal means. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that 50 a conspiracy is hatched in secrecy and it is, thus, difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the level of involvement of the accused persons therein are relevant factors. For the said purpose, it is necessary to prove that the propounders had expressly agreed to or caused to be done the illegal act but it may also be proved otherwise by adduction of circumstantial evidence and/or by necessary implication. [MohammadUsman Mohammad Hussain Maniyar & Ors. v. State of Maharashtra (1981) 2 SCC 443]"*

**29.** The Supreme Court in the case of **RAM SHARAN CHATURVEDI** *versus* **THE STATE OF MADHYA PRADESH** reported in **2012 LiveLaw (SC) 709** has held that- **RA M SHARAN CHAHYA PRADESH** reported in **2022 LiveLaw (SC) 709** has held that -

> **22.** the principal ingredient of the offence of criminal conspiracy under Section 10 of the IPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. Court has to necessarily ascertain whether there was an agreement between the Appellant and A-1 and A-2. In the decision of State of Kerala v. P. Sugathan and Anr.2, this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation:
>
> "**12.** ...As in all other criminal offences, the prosecution has to discharge its onus of proving the

case against the accused beyond reasonable doubt. ...A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy...

**13.** ...The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient..." (emphasis supplied)

**23.** The charge of conspiracy alleged by the prosecution against the Appellant must evidence explicit acts or conduct on his part, manifesting conscious and apparent concurrence of a common design with A-1 and A-2. In State (NCT of Delhi) v. Navjot Sandhu3, this Court held:

"**101**. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution." (emphasis supplied)

**24.** In accepting the story of the prosecution, the Trial Court, as well as the High Court, proceeded

> on the basis of mere suspicion against the Appellant, which is precisely what this Court in Tanviben Pankajkumar Divetia v. State of Gujarat, had cautioned against:
> "**45**. The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt.

**30.** In the light of above-said judgments of the Hon'ble Apex Court as well as in the light of allegations made in the complaint/FIR, it appears that no ingredients of alleged offence are made out against the petitioners. If the contents made in the FIR are assumed to be true in its true perspective, it does not appear that the petitioners have committed any illegal act as alleged in FIR. If in the present case, even it is presumed that the petitioners deliberately or fraudulently produced the true copy of unregistered sale deed to mutate the disputed property and to take permission for constructing the residential cum commercial complex upon

the disputed property does not constitute an offence under Section 120-B of Indian Penal Code. The act of petitioners where they produced the true copy of the unregistered sale deed before various authorities to mutate the disputed property and to take permission for constructing the residential cum commercial complex upon the disputed property is neither an illegal act nor an act which is not illegal in itself but is done by illegal means. Therefore, in absence of, the essential ingredients of Section 120-B of the penal code, this Court is of the view that no offence under Section 120-B of the penal code constitutes against the petitioners and in consequence of such finding, the charges under Section 13(2)(d) and 13(2) of Prevention of Corruption Act are wrongly leveled by the Special Police Lokayukta and the Learned Trial Court against the petitioners.

**31.** Similarly, the Hon'ble Apex Court in case of **Jayahari vs. State of kerala,** reported in **2022 LiveLaw (SC) 106** has**Jayahari v. State of Kerala, reported in** 2022 LiveLaw (SC) 106**re** held that:-

> "*When the dispute in question is purely civil in nature, the adoption of remedy in a criminal court would amount to abuse of the process of Court.*"

**32.** Upon perusal of the facts and documents annexed with the petition, it is apparent that this case is of purely civil in nature where the question that whether the petitioner has properly calculated and paid the stamp duty and was under obligation to pay the remaining stamp duty of Rs 21,76,250 in the district treasury for the registration of unregistered sale deed is still pending for adjudication in WP/10530/2013 before this Court. However the petitioner has already deposited the amount of Rs 21,76,250

in the district treasury though the said deposit is subject to the final disposal of the said writ petition. The controversy in the present case would be finalised after the disposal of the WP/10530/2013. Therefore, this Court is of the view that Special Police Lokayukta has wrongly registered the impugned FIR against the petitioners by converting a civil wrong into a criminal one.

**33.** In view of the forgoing conspectus of the matter, the petition filed by the petitioners namely Narendra Jain and Neeraj Jain deserves to be and is hereby allowed. The continuation of prosecution of the petitioners would be nothing but an abuse of process of Court, calling for exercise of inherent powers under Section 482 of the Code. Resultantly, the FIR registered at Crime No. 141 of 2012 dated 21.07.2012 registered at Special Police Establishment, Lokayukt Ujjain, and all consequential proceedings, so far as they relates to the petitioners, are hereby quashed. However, it is made clear that in respect of other accused persons, the trial shall continue.

The petition, accordingly, stands **allowed**.

**(S.A. DHARMADHIKARI)**
**JUDGE**

**(PRAKASH CHANDRA GUPTA)**
**JUDGE**

**Vatan**

VATAN SHRIVASTAVA
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