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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 15th OF MARCH, 2024

MISC. CRIMINAL CASE No. 43560 of 2022

BETWEEN:-

**JAGDISH MANDLOI S/O BADRILAL MANDLOI,
AGED ABOUT 45 YEARS,
OCCUPATION: SERVICE
R/O FOREST RANGE OFFICE
CHORAL (MADHYA PRADESH)**

.....APPLICANT

(SHRI HARSHVARDHAN PATHAK - ADVOCATE)

AND

**1. THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION SIMROL
(MADHYA PRADESH)**

**2. PADAM S/O ASHARAM BHABAR,
AGED ABOUT 52 YEARS,
OCCUPATION: NOT KNOWN
RASKUNTHIYA, MHOW
SIMROL (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SURENDRA GUPTA - GOVT. ADVOCATE)

MISC. CRIMINAL CASE No. 43565 of 2022

BETWEEN:-

**CHANDRAKANT S/O MADANLAL CHOUHAN,
AGED ABOUT 46 YEARS,
OCCUPATION: SERVICE
FOREST RANGE OFFICE
CHORAL, DISTRICT INDORE
(MADHYA PRADESH)**

.....APPLICANT

(SHRI HARSHVARDHAN PATHAK - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION SIMROL
DISTRICT INDORE (MADHYA PRADESH)**
2. **PADAM S/O ASHARAM BHABAR,
AGED ABOUT 52 YEARS,
OCCUPATION: NOT KNOWN
R/O. RASKUNTHIYA, MHOW SIMROL
DISTRICT INDORE. (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SURENDRA GUPTA - GOVT. ADVOCATE)

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These applications coming on for admission this day, the court passed the following:

ORDER

This order shall govern the disposal of these miscellaneous criminal cases as they have arisen out of the same crime number of the same police station, hence, they are heard analogously and are being decided by this common order.

2. The applicants have preferred these present petitions under Section 482 of the Code of Criminal Procedure, 1973 seeking quashment of FIR bearing Crime No.294/2022 registered at Police Station-Simrol District Indore for the offence under Sections 323, 294, 506, 342, 34 of the Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s), 3(2)(va), 3(2)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the consequential proceedings.

3. Prosecution story in nutshell is that on 01.07.2022 complainant Ramkanya lodged complaint that a meeting regarding worshiping program of Mataji Temple (Ashadi Pooja) was going on in the village. The Temple is situated near the farm of complainant. At that time dry garbage was being burnt

in his farm by his wife due to which a tree also got burnt a little bit. Upon which the accused persons Forest Ranger Ravikant Jain, Nakedar Ramesh Katare, Chandrakant Chouhan and Jagdish Mandloi came and enquired about the incident and when the complainant stated that he did not burn the tree then the accused persons, knowing that the complainant is member of Adiwasi community, hurled abuses by using caste remark "Bhilda" and used filthy language.

4. On being opposed by the complainant they took him to Choral Range Office where ranger Ravikant Jain and Jagdish Mandloi assaulted the complainant with wooden sticks 'danda' due to which he sustained injuries on his left eye and right hand. Other accused persons Ramesh Katare, Chandrakant Chouhan assaulted the complainant with kicks and fists due to which he sustained injuries on both the legs and other parts of the body. It is further alleged that the accused persons threatened the complainant with dire consequences if he again burns a tree. The accused persons also took away the tractor bearing registration number MP 10 AB 5355. On the basis of which FIR was registered against the accused persons for the aforesaid offences.

5. Learned counsel for the applicants submitted that on 01.07.2022 Range Forest Officer Ravikant Jain received information from Senior Officials that some encroachers are trying to plough the Reserve Forest Land in the Range Choral Beat Utar Raskundiya, Reserve Forest compartment 113 and 114 Indore damaging the forest trees by girdling and burning them with intention to encroach the reserve forest land. The applicants immediately seized the tractor and cultivator under custody and registered case no. 695/2025 against respondent no.2. He was taken into custody and he was interrogated who accepted the commission of offence, he was taken to hospital for medical

checkup and at that time some unknown persons came, hurled abuses and took away the respondent no.2 with them without completing the legal formalities.

6. Learned counsel also submitted that Forest Range Officer tried to approach the respondent no.1 for registration of FIR against the miscreants who along with respondent no.2 obstructed and precluded the applicants and other public servants to perform their official duty as per law, however, no FIR was being registered against the miscreants by Respondent no.1. Therefore, it is evident that the instant FIR has been lodged as a counter blast against the offence which has been registered against him under Forest Act for illegal deeds of encroaching the Government Land by the miscreants.

7. Learned counsel also submitted that complainant has also signed on the statement recorded by Forest Department in which he has admitted that he has already encroached the land of forest department and he want to compromise with the department and he is ready to suffer the punishment and fine that may be imposed against him. It is also contended that as per provisions of Section 74 of Indian Forest Act, 1927, no suit, legal proceedings/ criminal prosecution shall lie against any public servant for anything done by him in good faith, while discharging their official duties, under this Act. Hence counsel prayed that this application may be allowed and FIR No.294/2022 registered at P.S. Simrol and the consequential proceedings be quashed.

8. Per contra, learned Govt. Advocate opposed the prayer submitting that there are specific allegations against the applicants and other accused persons in the FIR. An eye injury and injury on the wrist of the right hand were also mentioned in the FIR and in the MLC report. The applicants being the public servant have used filthy language and made remarks regarding the caste of the complainant being known that he belong to tribal community, their act being public servant cannot be justified and the sanction

under Section 197 of Cr.P.C is only limited to official duties and not for beating or committing offence. Therefore, counsel submitted that no case is made out for quashing of FIR and prayed for dismissal of these applications.

9. Having heard learned counsel for the parties and perused the record.

10 So far as the sanction under Section 197 of Cr.P.C is concerned the law is well settled that the sanction is only limited to the Official duties and not for beating and committing offence. Before dwelling upon the contentions of learned counsel for the parties, it will be appropriate to refer to the relevant part of Section 197 of Cr.P.C here, which reads as under:

When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government :

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.] [Added by Act 43 of 1991, Section 2 (w.e.f. 2-5-1991).]

[Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB,] [Inserted by Criminal Law (Amendment) Act, 2013] or section 509 of the Indian Penal Code.] [Inserted by Act 63 of 1980, Section 3 (w.e.f. 23.9.1980).]

11. In view of the aforesaid provisions it can be envisaged that every

offence committed by a public servant does not require sanction for prosecution under these section nor even every act done by him while he is actually engaged in the purpose of his official duties. Acutally, sanction under Section 197 of Cr.P.C applies to Act committed by a public servant in the cloak of his official position in the colour of Office although these acts were not part of his duties.

12. In the case at hand, allegations are pertaining to beating and making remarks of caste and wrongful confinement and these acts cannot be regarded as official acts, hence on the basis of not getting sanction under Section 197 of Cr.P.C this FIR cannot be quashed at this stage.

13. Now the question arises as to whether the proceedings initiated against the petitioners are liable to be quashed by using extraordinary power under Section 482 of Cr.P.C?

14. The Hon'ble Apex Court in the case of *State of M.P. vs. Deepak [(2019) 13 SCC 62]*, reversing the order of discharging from charges under Section 306 of IPC, has enunciated the principles which the High Courts must keep in mind while exercising their jurisdiction under the provision. In this case, endorsing another case of Hon'ble Apex Court in the case of *Amit Kapoor vs. Ramesh Chander [(2012) 9 SCC 460]* has quoted as under:-

“27. .. 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:

27.2. 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.

27.9. 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.

27.13. 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.*

15. It is also well settled that Section 482 of Cr.P.C can only be exercised sparingly in the in rarest of the rare cases where ends of justice demands. It can be used only to prevent the abuse of process of law and to secure the ends of justice. In the case of State of *W.B. vs. Narayan K. Patodia [AIR 2000 SC 405]* the Hon'ble Apex Court ordained that "Inherent powers of the High Court as recognized in Section 482 of the Code are reserved to be used "to give effect to any orders under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

16. In the case of *Janata Dal vs H.S. Chowdhary And Ors.* reported in *(1992) 4 SCC 305* the Hon'ble Apex Court held as under:

"132 The criminal Courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such **power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae** to do real and substantial justice for the administration of which alone the Courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the

power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

135 This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. **The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material.** Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction to quashing the proceedings at any stage."

17. Again, on this aspect, the verdict of Hon'ble the Apex Court in a recent judgment of *Directorate of Enforcement Vs. Niraj Tyagi and Ors.* reported in *2024 LawSuit (SC) 112* decided on *13.02.2024*, is significant. Paras 22, 23 & 24 are worth to be referred to the context of this case :-

"22. Recently, a Three-Judge Bench in *Nehaarika Infrastructure (supra)* while strongly deprecating the practice of the High Courts in staying the investigations or directing not to take coercive action against the accused pending petitions under Section 482 of Cr.P.C., has issued the guidelines, which may be reproduced herein below for ready reference:-

"Conclusions

33. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482CrPC 4 2017 (2) SCC 779 and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173 CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1. 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 a cognizable offence.

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the “rarest of rare cases” (not to be confused with the formation in the context of death penalty).

33.5. 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.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

33.8. 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 and one ought not to tread over the other sphere.

33.9. The functions of the judiciary and the police are complementary, not overlapping.

33.10. 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.

33.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

33.12. The first information report is not an encyclopaedia 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. 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.

33.13. The power under Section 482CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.

33.14. 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 *R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866]* and *Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]*, has the jurisdiction to quash the FIR/complaint. 33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India. 33.17. Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

33.18. Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters,

the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

23. The impugned orders passed by the High Court are in utter disregard and in the teeth of the said guidelines issued by the Three-Judge Bench of this Court. It was sought to be submitted by the Learned Counsels for the respondents-accused that the allegations made in the FIRs are of civil nature, and have been given a colour of criminal nature. According to them, as discernible from the record, number of proceedings had ensued between the parties pursuant to the actions taken by the IHFL against the complainant-borrower for the recovery of its dues under the SARFAESI Act, and the borrower M/s Shipra after having failed in the said proceedings had filed the complaints with ulterior motives. We do not propose to examine the merits of the said submissions as the writ petitions filed by the concerned respondents-accused seeking quashing of the FIRs on such grounds are pending for consideration before the High Court. It would be open for the High Court to examine the merits of the petitions and decide the same in accordance with law.

24. Without elaborating any further, suffice it to say that judicial comity and judicial discipline demands that higher courts should follow the law. The extraordinary and inherent powers of the court do not confer any arbitrary jurisdiction on the court to act according to its whims and caprice."

18. On due consideration this Court is of the view that the documents i.e. written statement of complainant, his confession regarding commission of offence and his readiness to compromise the matter and suffer the punishment imposed upon him (being signed by him) as referred by the counsel for the applicant (annexed at page 14 & 15 of the petitions) shall be taken into consideration only at the time of defence. Now considering the sanctity of the FIR this Court is required to examine the contentions of FIR and statement of other witnesses which has been recorded under Section 161 of Cr.P.C. FIR has been well corroborated with the statement of complainant and other witnesses recorded under Section 161 of Cr.P.C.

19. In conspectus of the aforesaid settled legal position, extraordinary

power conferred under Section 482 of Cr.P.C. for quashing the criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It does not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry with regard to the reliability or genuineness of the allegations made in the FIR or the complaint. Such arbitrary use of this extraordinary inherent power enshrined under Section 482 of Cr.P.C. will be disheartening and menacing for the whole criminal judicial system of India.

20. In this case the allegation against the applicants is to beat the complainant, to abuse him with caste remarks and also to make wrongful confinement of the petitioner. Certainly these points can be raised at the time of defence, however, at this stage only on the basis of not getting sanction FIR cannot be quashed.

21. On due consideration of the above, legal propositions and looking to the statement of witnesses, the facts mentioned in First Information Report and other circumstances of the case, this Court is of the considered opinion that the request for quashing the FIR by using extraordinary powers of this Court, cannot be accepted. Accordingly, these M.Cr.Cs. are hereby dismissed.

22. Before parting, this Court clarifies that any view or observation made herein would not be binding in any manner on the merits of the case for the concerned trial Court while adjudicating the matter in accordance with law.

23. A copy of this order be sent to the concerned trial court for information.

Certified Copy, as per rules.

sumathi

