

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

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 27th OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 41366 of 2023

BETWEEN:-

1. SHUBHAM S/O KISHORE TIWARI, AGED ABOUT 27 YEARS, OCCUPATION: I.T. PROFESSIONAL R/O PANVEL NAVI MUMBAI MAHARASHTRA (MAHARASHTRA)
2. VISHAL S/O KIRAN SHAH, AGED ABOUT 42 YEARS, OCCUPATION: IT PROFESSIONAL PANVEL NAVI MUMBAI MAHARASHTRA (MAHARASHTRA)

.....APPLICANTS

(BY SHRI YASH PAL RATHORE, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION KOTWALI DISTT. DHAR (MADHYA PRADESH)
2. AKHILESH S/O RAMESHWAR CHOUDHARY, AGED ABOUT 52 YEARS, OCCUPATION: BUSINESS NARENDRA CINEMA CAMPUS DHAR (MADHYA PRADESH)

.....RESPONDENTS

(BY MS. VINITA DWIVEDI, PANEL LAWYER)

(BY MS. JYOTI MAHESHWARI, ADVOCATE FOR OBJECTOR)

(BY SHRI GURUMET SINGH DANG, LEARNED COUNSEL FOR THE RESPONDENT [R-1][INT])

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This application coming on for hearing this day, the court passed the following:

ORDER

The applicants have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 seeking quashment of FIR bearing Crime

No. 422/2023 registered at Police Station-Kotwali District Dhar for the offence under Sections 420, 406, 409 read with 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and Section 6(1) of the M.P. Nikshepako Ke Hito Ka Sanrakshan Adhiniyam, 2000 (hereinafter referred to as "Adhiniyam, 2000") and all further proceedings.

2. As per prosecution case, the respondent No. 2/complainant has lodged a written complaint at Police Station Kotwali District Dhar against the applicants alongwith four other persons that they formed a chit fund company and obtained deposits from the depositors. In the meeting held at Shradha Garden, Dhar, co-accused Ritesh Panchal, Director of the Company alongwith co-accused Pankaj Solanki, Local Manager of the company explained the investment plan of the company. The said company offered huge profit on the investment. In its regular course of business of the company through its employees and workers contacted the public and made them believe that if they invest money in the scheme of company, they will be able to get three times profit of the invested money within nine months.

3. In course of that, the complainants have deposited money to the bank account of the said company. However, they have not returned their money as they were assured. Ritesh Panchal, Director of the company executed a written agreement for returning the principal amount with some benefits on 06.08.2023 and further they have also sent whatsapp message in this regard. All five directors are connected with the conference calling who have obtained the money but ultimately, they have denied it. Hence, the present FIR has been lodged against them.

4. Learned counsel for the applicants has submitted that Ritesh Panchal is Director of the company while Pankaj Solanki is Local Manager of the

company. The applicants have no concern with the company. There is no prima-facie case against them and no legally admissible evidence against them. They are only IT professionals supplying software to the clients. Under these circumstances, this criminal case in the Court will be a futile exercise and mere wastage of precious time of the Court. There is no chance of conviction of the applicant. Hence, counsel for applicants made request before this Court for quashing the FIR and all further proceedings in this regard by exercising the power enshrined under Section 482 of Cr.P.C.

5. Learned counsel for the respondent as well as Government Advocate have opposed the contentions of the applicants and submitted that the complainants have deposited money of Rs.10,00,000/- from the hard-earned income in the scheme of S M Trade Company in the year 2021, but they have not been returned the money with profit. The applicants are also two Directors of the company out of five Directors. Till now, neither the applicants have surrendered before the Court nor tried to cooperate with the criminal proceedings. Counsel for the respondent has also submitted some copies of the FIRs and an FIR bearing Crime No. 304/2023 dated 13.05.2023, names of the applicants Vishal and Shubham have been mentioned as accused. Therefore, the prayer for quashing the FIR and all further proceedings made by the applicants is liable to be dismissed.

6. In view of the aforesaid submissions, I have gone through the statements recorded under Sections 161 of Cr.P.C. of Vinod, Akhilesh, Roshan, Mahima, Anita, Praveen Kumar, Mohammadi, Suresh, Dharmendra, Sudhir, Vijay Patel, Deep Patel, Rajesh Joshi, Rajkumar, Nilesh Patel, Rajesh, Devendra, Hanif, Ravi, Charanjeet, Triloksingh and Aman and record available

herewith and found that all of these witnesses have made allegation against both of the applicants Shubham and Vishal. As per statements of these witnesses, they have tempted the investors to invest the money. As per FIR, present applicants Shubham and Vishal are also the directors of the said company and they are involved in cheating and forgery. They are yet to be arrested and also the investigation is pending against them.

7. On this aspect, the law laid down by Hon'ble Apex Court in the case of *Kamaladevi Agrawal Vs. State of W.B. (2002) 1 SCC 555*, Hon'ble Apex Court considered the scope and ambit of Section 482 of Cr.P.C. with regard to quashment of FIR, complaint and criminal proceedings, reads as under :-

"This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken it at the face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."

8. In the case of *R. Kalyani Vs. Janak C. Mehta, (2009) SCC 516*, Hon'ble Apex Court further observed that :-

Propositions of law which emerge from the said decisions are :

- (1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.
- (2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.
- (3) Such a power should be exercised very sparingly. If

the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

9. The aforesaid legal position has been reiterated in the case of ***Mahesh Chaudhary Vs. State of Rajasthan and another, (2009) 4 SCC 439.***

Relevant paragraphs of the judgment are condign to quote here :-

"13. The principle providing for exercise of the power by a High Court under [Section 482](#) of the Code of Criminal Procedure to quash a criminal proceeding is well known. The court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the Complaint Petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.

14. It is also well settled that save and except very exceptional circumstances, the court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or Complaint Petition fulfill the ingredients of the offences alleged against the accused."

10. Further, the Hon'ble Apex Court in the case of ***State of M.P. vs. Deepak [(2019) 13 SCC 62]***, reversing the order of discharging of the High Court, 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.***"

11. 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 ***Neeharika 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 hereinbelow 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."

12. 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.

13. 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, this M.Cr.C. is hereby dismissed.

14. 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.

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

Certified Copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE