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MCRC-53670-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

MISC. CRIMINAL CASE No. 53670 of 2024*HANSRAJ AND OTHERS**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Bhashkar Agrawal, learned counsel for the petitioner.

Shri H.S.Rathore, learned Government Advocate for the State.

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HEARD ON : 17.12.2024

PRONOUNCED ON : 08.01.2025

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ORDER

1.The petitioner has filed the present petition under Section 482 of CrPC/528 of BNSS for quashment of FIR bearing Crime No.193/2024, dated 13/10/2024 registered at P.S. Narayangarh, District Mandsaur, for offence u/s 296, 115(2), 351(3), 3(5), 117(2) of the BNS, 2023.

2. Prosecution story in nutshell is that on 28.9.2024, at about 01:19 pm, the complainant alongwith Sourabh and Pawan appeared in police station and reported that on the same day they have gone to talk with petitioner as to why he is talking against them on the issue of election. Thereafter, the petitioner has used filthy language and in the meantime another person Jitendra came and both have beaten the injured persons and



the complainant has received injury on his finger of right hand and he has also received other injury on his body. On the report filed by the complainant, FIR bearing Crime No.193/2024, dated 13/10/2024 has been registered at P.S. Narayangarh, District Mandsaur, for offence u/s 296, 115(2), 351(3), 3(5), 117(2) of the BNSS.

3. Learned counsel for the petitioner submitted that the complainant has neither beaten the injured persons nor abused them. Actually, it is the complainant party who has assaulted the applicant brutally. The petitioner himself has been made victim of mob lynching and in this regard, the applicant has also lodged FIR against the complainant party bearing crime No. 192/22024 and the present FIR was lodged thereafter for their defence only. Some photographs are also annexed with the file for showing the fact of mob lynching. It is also alleged that the FIR does not constitute cognizable offence and this case is filed only to take revenge. This Court is required to exercise the extra ordinary power predicated under Section 528 of BNSS and prays for quashment of FIR bearing Crime No.193/2024. He further placed reliance in the judgment passed by the Hon'ble Apex Court in the case of **Rukmini Narvekar Vs. Vijiya Satardekar** reported as (2008) 14 SCC and in the case of **State of Haryana Vs. Bhajanlal** reported in AIR 1992 SC 604.

4. On the other hand, learned counsel for the State has opposed the prayer and submitted that there is sufficient material available on record against the applicant. The contentions raised by the counsel for the applicant can be considered by the learned Trial Court. Hence, the FIR was correctly



lodged, therefore, he prays for rejection of this petition.

5. Heard learned counsel for the both the parties.

6. In view of the rival submissions, I have gone through the record.

7. In this case, MLC has also been conducted regarding injuries received by injured persons. There is a chance of cross-case between both the parties. In view of FIR, statement recorded under Section 161 of CrPC of injured persons and the MLC report of the injured persons, there is prima facie material available against the petitioner on the record, therefore, it cannot be envisaged at this stage that the cross FIR has been made only for creating defence or taking vengeance or revenge from the opposite party. it is pertinent to mention here that at this stage, this Court is not inclined to ponder upon chances of conviction or acquittal.

8. In so far as the powers conferred under Section 528 of BNSS (Section 482 of Cr.P.C) is concerned it is also well settled that Section 528 of BNSS 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."*



9. 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."

10. Learned Counsel for applicant also relied upon the case of **State of Haryana and another Vs. Bhajanlal 1992 SCC (CRI) 426** and others . The view of Hon'ble Apex Court is required to be quoted in this regard.

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under [Art. 226](#) or the inherent powers under [Section 482](#) of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid



formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

(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 NEUTRAL CITATION R/CR.MA/9092/2024 ORDER DATED: 09/05/2024 undefined 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 noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [sec. 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 NEUTRAL CITATION R/CR.MA/9092/2024 ORDER DATED: 09/05/2024 undefined with a view to spite him due to private and personal grudge."

11. In view of the aforesaid guidelines, the matter has been



considered. At this stage, it cannot be assumed that if the allegations made in the FIR for the complaint are taken at their face value and accepted in their entirety, they do not prima facie constitute any offence under Sections 296, 115(2), 351(3), 3(5), 117(2) of the BNS, 2023. In this regard, the following observation of the aforesaid case is also worth to mention here:-

"109... We also give a note of caution to the effect 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; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or other wise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

12. So far as the authority cited by the counsel for the petitioner in the case of **Rukmini Narvekar (supra)** is concerned, the facts and circumstances of the case are completely different from the present case and the case is related to the relation between husband and wife and no prima facie case was made out against the petitioner of that case. hence, no benefit can be afforded to the petitioner in this regard.

13. It is also well established that when the case is prima facie established from the material available on record it would not apposite for the High Court to quash the criminal proceedings considering the chances of conviction or acquittal. Where material evidence is available against the applicant it should be left to be decided by the trial Court which is the appropriate forum for the evaluation of the said materials



and evidences. On this aspect the view of Hon'ble Apex Court recently held in the case of *Just Rights for Children Alliance & Anr. vs. S. Harish & Ors.*, reported in *2024 Law Suit(SC) 847* is condign to quote here as under:-

189. Once the foundational facts are prima facie established from the materials on record, it would be improper for the High Court in a quashing petition to conduct an intricate evidentiary inquiry into the facts and ascertain whether the requisite mental elements are present or not. All these aspects should be left to be decided by the trial court which is the appropriate forum for the evaluation of the same, especially where the statutory presumption has been attracted prima facie from the material on record.

190. When the High Court quashes any criminal proceedings without considering the legal effect of the statutory presumption, it effectively scuttles the process of trial and thereby denies the parties the opportunity to adduce appropriate evidence and the right to a fair trial. This would not only defeat the very case of the prosecution but would also thwart the very object of a particular legislation and thereby undermine the public confidence in the criminal justice system.

14. The aforesaid law has already been followed by this Court in the recent judgments rendered in *Indrajeet Singh Vs. State of Madhya Pradesh and others*, 2024 MPHC (IND) 32243, *Milan and others Vs. State of Madhya Pradesh and others*, 2024 MPHC (IND) 30672 and *Raju Khan Vs. State of Madhya Pradesh*, 2024 Law Suit (MP) 683.



15. In view of the same, this Court is not inclined to quash the FIR or the consequential criminal proceedings arising out of the same. Accordingly, the petition being devoid of merits is hereby dismissed. Before parting, it is clarified that trial Court shall not be influenced by the observations of this Court made in this order, during trial.

Certified copy, as per Rules.

(PREM NARAYAN SINGH)
JUDGE

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