HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

SB : Justice G.S. Ahluwalia

(Nominated by Hon'ble The Chief Justice by order dated 3-9-2020, passed under Rule 11 of Chapter IV of the High Court of M.P. Rules, 2008)

Writ Petition No. 27734 of 2019

Kavindra Kiyawat

Vs.

State of M.P., through Special Police Department and Ors.

Shri Vinay Gandhi, Counsel for the petitioner.

Shri Satyam Agrawal, Counsel for the respondent No. 1.

Shri Anand Barnard, Counsel for respondent no.2.

Shri R.K. Verma, Add. Advocate General for respondent no.3.

Date of hearing : 14.09.2020

Date of order : 21.09.2020

Whether approved for reporting : Yes

O r d e r

(Passed on 21/09/2020)

1. On account of difference of opinion between the Hon'ble Judges comprising Division Bench on 28-7-2020, this matter has been listed before this Bench after obtaining Administrative Sanction of

Hon'ble the Chief Justice by order dated 3-9-2020, passed under Rule 11 of Chapter IV of the High Court of M.P. Rules, 2008.

2. The facts of this case have already been mentioned in detail in order dated 28-7-2020. Therefore, in order to avoid repetition, only those facts would be referred in short, which are necessary for disposal of this case.

3. By this writ petition, the petitioner has sought the quashment of impugned F.I.R. dated 24-11-2019 lodged against him seeking the following relief(s):

> (a) Allow this Petition and quash the F.I.R. bearing No. 0282 of 2019 dated 24-11-2019 (**Annexure A/1)** and all actions pursuant thereto, and;
>
> (b) Grant any other relief which this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

4. The necessary facts in short are that an F.I.R. has been registered by Special Police Establishment (Lokayaut), Bhopal bearing Crime No. 0282 of 2019 against 16 persons, including the petitioner for offence under Section 7 of Prevention of Corruption Act, 1988 and Section 120-B of Indian Penal Code.

5. The facts leading to the registration of the impugned F.I.R. are that by order dated 18th Aug 2006 issued by the Aviation Ministry, State of M.P., permission was granted to enter into an agreement with M/s Yash Air Ltd. for the use of Datana Air Strip (Ujjain) on the conditions that M/s Yash Air Ltd. would maintain the air strip with all

the security equipments, Taxi Track, Boundary Wall etc. under the supervision and control of Collector, Ujjain, through State P.W.D. Department. The order dated 18-8-2006 by which permission was granted on certain conditions reads as under :

मध्यप्रदेश शासन

विमानन विभाग

मंत्रालय

—: आदेश :—

भोपाल दिनांक—18 अगस्त, 2006

क्रमांक—एफ 9—6/2005/पैंतालीसः— राज्य शासन एतद् द्वारा मेसर्स यश एयर लिमिटेड, इंदौर को उज्जैन स्थित हवाई पट्टी पर अभिरूचि प्रदर्शन/प्रशिक्षण उड़ान संचालित करने हेतु, केवल 7 (सात) वर्ष के लिये हवाई पट्टी के उपयोग की अनुमति निम्नांकित शर्तों पर प्रदान करता हैः—

1. मेसर्स यश एयर लिमिटेड, इंदौर द्वारा उड़ान संचालन हेतु महानिदेशक नागर विमानन भारत सरकार नई दिल्ली की आवश्यक अनुमति प्राप्त की जावेगी तथा उनके द्वारा निर्धारित शर्तों का पालन किया जावेगा।

2. मेसर्स यश एयर लिमिटेड, इंदौर की संस्था म0प्र0 में पंजीबद्ध हो तथा उसका कार्यालय म0प्र0 में स्थित हो संस्था महानिदेशक नागर विमानन से संबद्ध हो।

3. हवाई पट्टियों की सुरक्षा पर व्यय मेसर्स यश एयर लिमिटेड, इंदौर द्वारा किया जाएगा एवं सुरक्षा पर कोई भी व्यय राज्य शासन द्वारा वहन नहीं किया जावेगा एवं हवाई पट्टियों की सुरक्षा की पूर्ण जिम्मेदारी मेसर्स यश एयर लिमिटेड, इंदौर की होगी। सुरक्षा व्यवस्था की समीक्षा/निरीक्षण जिला कलेक्टर द्वारा समय—समय पर की जावेगी तथा कलेक्टर द्वारा दिये गये सुझावों को मेसर्स यश एयर लिमिटेड, इंदौर द्वारा मान्य किया जावेगा।

4. मेसर्स यश एयर लिमिटेड, इंदौर आवश्यक संचार के लिये व्ही.एच.एफ. उपकरण के क्रय तथा संधारण का व्यय स्वयं वहन करेंगी।

5. राज्य शासन हवाई पट्टियों पर अन्य किसी भी संस्था को प्रशिक्षण उड़ाने संचालित करने की अनुमति जारी कर सकेगा।

6. राज्य शासन के विमान/हेलीकाप्टर की उड़ानें निर्बाध रूप से हवाई पट्टियों पर संचालित होगी और मेसर्स यश एयर लिमिटेड, इंदौर द्वारा स्थापित / संधारित व्ही.एच.एफ. उपकरण का नि :शुल्क उपयोग किया जा सकेगा।

7. मेसर्स यश एयर लिमिटेड, इंदौर को न्यूनतम 2.50 करोड़ की परिसम्पत्ति होने के संतोषजनक दस्तावेज राज्य शासन, संचालक विमानन एवं संबंधित जिला कलेक्टर को प्रस्तुत करना होगा।

8. मेसर्स यश एयर लिमिटेड, इंदौर को प्रत्येक वर्ष 1.50 लाख (रू. एक लाख पचास हजार मात्र) (शुल्क) शासकीय कोष में संचालक विमानन को देय बैंक ड्राफट के माध्यम से जमा करना होगा। इस राशि का 25 प्रतिशत अग्रिम के रूप में एक मुश्त संचालक विमानन से अनुबंध के पूर्व जमा करना होगा। शेष राशि संचालक, विमानन के साथ अनुबंध समाप्त होने के पश्चात शासकीय कोष में जमा की जाएगी।

9. हवाई पट्टी के उपयोग हेतु निर्धारित शुल्क में प्रतिवर्ष 5 प्रतिशत की वृद्धि स्वमेव हो जायेगी, यह राशि मेसर्स यश एयर लिमिटेड, इंदौर को भुगतान करना होगी। इसके लिये पृथक से कोई आदेश जारी नहीं होगे। राज्य शासन द्वारा समय–समय पर इस शुल्क में और वृद्धि भी की जा सकेगी।

10. हवाई पट्टी के संधारण कार्य को पूर्ण दायित्व मेसर्स यश एयर लिमिटेड, इंदौर का होगा, और इस हेतु कार्यपालन यंत्री (भ./सं.) लोक निर्माण विभाग के पास मेसर्स यश एयर लिमिटेट, इंदौर द्वारा अग्रिम राशि जमा करनी होगी। कार्यपालन यंत्री (भ./सं.) लोक निर्माण विभाग द्वारा संधारण कार्य कलेक्टर के नियंत्रण एवं निर्देशन पर किया जावेगा।

11. मेसर्स यश एयर लिमिटेड, इंदौर को विमान/हैलीकाप्टर के संधारण की सुविधा स्वयं उपलब्ध कराना होगी।

12. मेसर्स यश एयर लिमिटेड, इंदौर को परिसम्पत्ति के आकलन के लिये सम्पत्तियों के संबंध में अंकेक्षित अंतिम खाते, आडिट रिपोर्ट, चार्टर्ड एकाउंट का प्रमाण पत्र, लाभ हानि खाता एवं बैलेंस शीट आदि प्रत्येक वर्ष संचालक विमानन के समक्ष प्रस्तुत करना होंगे।

13. राज्य शासन द्वारा निर्धारित लायसेंस फीस (शुल्क) राज्य शासन को अदा करने की बैंक गारंटी मेसर्स यश एयर लिमिटेड इन्दौर द्वारा देनी होगी।

14. मेसर्स यश एयर लिमिटेड, इंदौर को शासन द्वारा बनाये गये नियमों एवं मापदण्डों के अनुसार बी.ओ.टी. के आधार पर अपने स्वयं के लागत एवं खर्चों से महानिदेशक, नागर विमानन, भारत सरकार के मापदण्डों का पूर्णतः पालन करते हुये हैंगर,

डिस्परसल, टैक्सी ट्रेक, बाउण्ड्री वाल इत्यादि का निर्माण एवं विकास कार्य कार्यपालन यंत्री लोक निर्माण विभाग के माध्यम से जिला कलेक्टर के नियंत्रण एवं निर्देशन में करना होगा, जिस पर राज्य शासन का पूर्ण स्वामित्व होगा। मेसर्स यश एयर लिमिटेड, इंदौर को कोई स्वामित्व प्राप्त नहीं होगा। इस सम्पत्ति के विरूद्ध मेसर्स यश एयर लिमिटेड, इंदौर द्वारा कोई ऋण इत्यादि प्राप्त नहीं किया जा सकेगा। तथा इस संपत्ति को मेसर्स यश एयर लिमिटेड, इंदौर द्वारा विक्रय/बंधक, गिरवी इन्यादि नहीं रखा जा सकेगी। साथ ही किसी अन्य व्यक्ति/कम्पनी/संस्था को स्थानांतरित या उपयोग करने की अनुमति मेसर्स यश एयर लिमिटेड, इंदौर द्वारा नहीं दी जा सकेगी। आवश्यक निर्माण एवं विकास कार्यों तथा हवाई पट्टी के जिस भाग का उपयोग मेसर्स यश एयर लिमिटेड, इंदौर द्वारा किया जानेा है, उसकी अनुमति कलेक्टर की अनुशंसा पर संचालक विमानन द्वारा दी जावेगी। मेसर्स यश एयर लिमिटेड, इंदौर द्वारा यह अनुमति संचालक विमानन से अनुबंध से पूर्व प्राप्त करना होगी।

15. मेसर्स यश एयर लिमिटेड, इंदौर को विमान की सुरक्षा एवं बचाव, पर्यावरण, अग्नि, चिकित्सा आदि के संबंध में बनाए गए वैधानिक नियमों का कड़ाई से पालन करना होगा।

16. मेसर्स यश एयर लिमिटेड, इंदौर द्वारा यह सुनिशिचत किया जावेगा कि किसी अन्य संस्था द्वारा हवाई पट्टी का उपयोग किये जाने में कोई बाधा उत्पन्न नहीं हो।

17. मेसर्स यश एयर लिमिटेड, इंदौर द्वारा संचालित गतिविधियों, संधारण, निर्माण संबंधी कार्यों का निरीक्षण महानिदेशक, नागर विमानन, भारत सरकार, राज्य शासन, संचालक विमानन तथा संबंधित जिले के कलेक्टर द्वारा समय–समय पर किया जा सकेगा।

18. राज्य शासन किसी भी समय यह अनुमति दो माह की सूचना देकर निरस्त करने को सक्षम होगा। इसके लिये किसी भी न्यायालयीन अथवा अन्य वैधानिक नियम/पावंदियॉ आदि लागू नही होगी।

19. मेसर्स यश एयर लिमिटेड, इदौर द्वारा उक्त शर्तो पर अपनी सहमति का शपथ पत्र एवं विधिवत अनुबंध संचालक विमानन के साथ निष्पादित किये जाने के उपरांत ही हवाई पट्टी का उपयोग किया जा सकेगा।

20. मेसर्स यश एयर लिमिटेड, इंदौर द्वारा हवाई पट्टी का उपयोग 7 (सात) वर्ष तक किऐ जाने हेतु संचालक विमानन के साथ अनुबंध किया जाना होगा। राज्य शासन द्वारा इसमें वृद्धि/नवीनीकरण की जा सकेगी।

21. रात्रिकालीन पार्किंग व्यवस्था के लिये पार्किंग–वे का व्यय मेसर्स यश एयर लिमिटेड, इंदौर को वहन करना होगा ताकि मुख्य हवाई पट्टियॉ संचालन हेतु मुक्त रहे।

22. रात्रि में विमान के सुरक्षा व्यवस्था के संबंध में कलेक्टर से समन्वय कर भुगतान आधारित पुलिस की व्यवस्था मेसर्स यश एयर लिमिटेड, इंदौर को स्वयं करना होगी।

23. विमान की रात्रिकालीन पार्किंग हेतु प्रत्येक रात्रिकालीन पार्किंग के लिये रूपये 200/– (रूपये दो सौ केवल) प्रति रात्रि की दर से ऐसे विमान जिनका वजन 5700 किलोग्राम से अधिक हो और 5700 किलोग्राम से कम वजन वाले विमान हेतु रूपये 100/– (रूपये सौ केवल) प्रति रात्रि की दर से भुगतान करना होगा। यह राशि शासकीय कोष में संचालक विमानन को देय बैंक ड्राफ्ट के माध्यम से संबंधित जिले के कलेक्टर के पास जमा करना होगी। यह राशि समय पर जमा हो यह संचालक विमानन एवं जिला कलेक्टर द्वारा सुनिश्चित किया जायेगा।

24. राज्य शासन उक्त निर्धारित शर्तों में बिना किसी पूर्व सूचना के किसी भी समय परिवर्तन, संशोधन एवं नवीनीकरण करने हेतु सक्षम होगा, जो मेसर्स यश एयर लिमिटेड, इंदौर को मान्य करना होगा।

25. उपरोक्त शर्तो में से किसी भी शर्त का पालन मेसर्स यश एयर लिमिटेड, इंदौर द्वारा नही किए जाने पर अथवा राज्य शासन को आवश्यकता होने पर, यह अनुमति बिना किसी पूर्व सूचना के स्वमेव निष्प्रभावी हो जायेगी।

मध्यप्रदेश के राज्यपाल के नाम से तथा

आदेशानुसार

–हस्ताक्षर–

14/8/06

(डी0पी0तिवारी)

सचिव,

मध्यप्रदेश शासन, विमानन विभाग

पृ0क्र.–एफ 9–6/2006/पैंतालिस भोपाल दिनांक 18–8–2006

1. महानिदेशक, नागर विमानन, भारत सरकार, नई दिल्ली।

2. प्रमुख सचिव, म0प्र0शासन, वित्त विभाग, मंत्रालय भोपाल।

3. प्रमुख सचिव, म0प्र0शासन, गृह विभाग, मंत्रालय, भोपाल।

4. प्रमुख सचिव, म0प्र0शासन, लोक निर्माण विभाग, मंत्रालय, भोपाल।

5. पुलिस महानिदेशक, पुलिस मुख्यालय, भोपाल।

6. प्रमुख अभियंता, लोक निर्माण विभाग, म0प्र0भोपाल।

7. संचालक विमानन्, विमानन संचालनालय, भोपाल।

8. आयुक्त, उज्जैन संभाग, उज्जैन।

9. अपर सचिव, मुख्य सचिव कार्यालय भोपाल।

10. कलेक्टर, उज्जैन (म0प्र0)।

11. पुलिस अधीक्षक, उज्जैन (म0प्र0)।

12. कार्यपालन यंत्री, लोक निर्माण विभाग, उज्जैन (भ./स.) म0प्र0।

13. मेसर्स यश एयर लिमिटेड, 36–सी, झाबुआ टावर, 9वी मंजिल, 170, आर.एन.टी. मार्ग, इंदौर (म0प्र0)।

की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित।

–हस्ताक्षर–

(डी0पी0तिवारी)

सचिव,

मध्यप्रदेश शासन, विमानन विभाग

6. Accordingly, the State of Madhya Pradesh entered into an agreement dated 31-8-2006 with M/s Yash Air Ltd. thereby granting permission to M/s Yash Air Ltd. (Which is a private body) to use the Datana Air Strip situated at Ujjain on the conditions mentioned in the agreement itself. It is not out of place to mention here that originally

the agreement was executed for a period of 7 (Seven years) on payment of yearly license fee of Rs. 1.50 Lacs only (Rs. One Lac Fifty Thousand Only) with incremental enhancement of 5% per year.Thereafter, the State of M.P., by its letter dated 17-10-2008, issued a corrigendum that it has been decided that the period of agreement should be read as 10 (Ten) years in place of 7 (Seven) years. Thus, it is clear that M/s Yash Air Ltd. was granted permission for using the Datana Air Strip of Ujjain (M.P.) for a period of 10 years from the year 2006**.** The agreement was signed by the Director, Aviation, on behalf of the State Govt. The copy of the agreement reads as under :

प्रशिक्षण उड़ान संचालित करने हेतु अनुबंध

यह अनुबंध आज दिनांक 31.08.2006 को मैसर्स यश एयर लिमिटेड, 36–सी, झाबुआ टावर, 8 वीं मंजिल, 170, आर.एन.टी. मार्ग, इंदौर (जिन्हें आगे चलकर ''यश एयर'' कहा गया है) एवं म.प्र.शासन, विमानन विभाग, भोपाल (जिन्हें आगे चलकर ''राज्य शासन'' कहा गया है) के मध्य निष्पादित किया गया है।

जैसा कि राज्य शासन की अभिरूचि प्रदर्शन विज्ञपित दिनांक 24–3–2006 द्वारा प्रदेश की हवाई पटिटयों पर उड्डयन गतिविधियों के संचालक हेतु निविदा अभिरूचियां आमंत्रित की गई।

एवं

जैसा कि यश एयर द्वारा राज्य शासन से उज्जैन स्थित हवाई पट्टी पर प्रशिक्षण उड़ान संचालित करने हेतु हवाई पट्टी के उपयोग के संबंध में अभिरूचि प्रदर्शित की गई है, एवं जैसा कि राज्य शासन उन्हें यह अनुमति देने हेतु सहमत है।

यह कि राज्य शासन ''यश एयर'' को उज्जैन स्थित हवाई पट्टी पर प्रशिक्षण उड़ान संचालित करने हेतु हवाई पट्टी के उपयोग की अनुमति निम्नांकित शर्तों पर 07 वर्ष (केवल सात वर्ष) के लिये प्रदान करता हैः–

1. यह कि यश एयर द्वारा उड़ान संचालन हेतु महानिदेशक नागर विमानन भारत सरकार नईदिल्ली की आवश्यक अनुमति प्राप्त की जावेगी तथा उनके द्वारा निर्धारित शर्तों का पालन किया जावेगा।

2. यह कि यश एयर संस्था म.प्र.में पंजीबद्ध हो तथा उसका कार्यालय म.प्र. में स्थित हो संस्था महानिर्देशक नागर विमानन से संबंद्ध हो।

3. यह कि हवाई पट्टियों की सुरक्षा पर व्यय यश एयर द्वारा किया जावेगा एवं सुरक्षा पर कोई भी व्यय राज्य शासन द्वारा वहन नहीं किया जावेगा एवं हवाई पट्टियों की सुरक्षा की पूर्ण जिम्मेदारी यश एयर की होगी। सुरक्षा व्यवस्था की समीक्षा/निरीक्षण कलेक्टर द्वारा समय–समय पर की जावेगी तथा कलेक्टर द्वारा दिये गये सुझावों को यश एयर द्वारा मान्य किया जावेगा।

4. यह कि यश एयर आवश्यक संचार के लिये व्ही.एच.एफ. उपकरण के क्रय तथा संधारण का व्यय स्वयं वहन करेगी।

5. यह कि राज्य शासन हवाई पट्टियों पर अन्य किसी भी संस्था को प्रशिक्षण उड़ाने संचालित करने की अनुमति जारी कर सकेगा।

6. यह कि राज्य शासन के विमान/हैलीकॉप्टर की उड़ाने निर्बाधरूप से हवाई पट्टियों पर संचालित होगी और यश एयर द्व ारा स्थापित/संधारित व्ही.एच.एफ.उपरकण का निःशुल्क उपयोग किया जा सकेगा।

7. यह कि यश एयर न्यूनतम रू. 2.50 करोड़ की परिसंपत्ति होने के संतोषजनक दस्तावेज राज्य शासन संचालक विमानन एवं संबंधित जिला कलेक्टर को प्रस्तुत करेगा।

8. यह कि यश एयर प्रत्येक वर्ष रू. 1.50 लाख (रू. एक लाख पचास हजार मात्र) किराया (शुल्क) शासकीय कोष में संचालक विमानन को देय बैंक ड्राफ्ट के माध्यम से जमा करेगा। यश एयर इस राशि का 25 प्रतिशत रू.37,500/– अग्रिम के रूप में एक मुश्त संचालक विमानन को अनुबंध पूर्व सेंचुरियन बैंक ऑफ पंजाब लि0 के बैंकर्स चैक क्रमांक 021272 दिनांक 21.07.2006 के द्वारा जमा की तथा शेष राशि संचालक विमानन के साथ अनुबंध संपादित होने के पश्चात शासकीय कोष में जमा की जावेगी।

9. यह कि हवाई पट्टी के उपयोग हेतु उक्त निर्धारण शुल्क में प्रतिवर्ष 5 प्रतिशत की वृद्धि स्वमेव हो जाएगी जो यश एयर द्वारा भुगतान की जावेगी जिसके लिये प्रथक से कोई अनुबंध/आदेश जारी नहीं होगा तथा राज्य शासन समय–समय पर इस शुल्क में वृद्धि कर सकेगा।

10. यह कि हवाई पट्टी के संधारण कार्य का पूर्ण दायित्व यश एयर का होगा और इस हेतु यश एयर द्वारा कार्यपालन यंत्री,(भ./स.)लोक निर्माण विभाग के पास अग्रिम राशि जमा करेगा। कार्यपालन यंत्री,(भ./स.) लोक निर्माण विभाग द्वारा संधारण कार्य कलेक्टर के नियंत्रण एवं निर्देशन पर किया जावेगा।

11. यह कि यश एयर को विमान/हेलीकॉप्टर के संधारण की सुविधा स्वयं उपलब्ध करानी होगी।

12. यह कि यश एयर संपत्तियों के संबंध में अंतिम खाते, आडिट रिपोर्ट, चाटर्ड एकाउन्टेन्ट का प्रमाणपत्र, लाभ हानि खाता एवं बेलेन्स–शीट आदि संचालक विमानन के समक्ष परिसंपत्तियों के आकलन हेतु प्रतिवर्ष प्रस्तुत करेगी।

13. यह कि यश एयर निर्धारित लाईसेन्स फीस (शुल्क) राज्य शासन को अदा करने के संबंध में बैंक गारंटी प्रस्तुत करेगी।

14. यह कि यश एयर,शासन द्वारा बनाये गये नियमों एवं मापदण्डों के अनुसार बी.टी.ओ. के आधार पर अपने स्वयं की लागत एवं खर्चों से महानिर्देशक नागर विमानन,भारत सरकार के मापदण्डों का पूर्णतः पालन करते हुये हैंगर, डिस्परसल, टैक्सी ट्रेक, बाउन्ड्री वॉल इत्यादि का निर्माण एवं विकास कार्य पालन यंत्री लोक निर्माण विभाग के माध्यम से जिला कलेक्टर के नियंत्रण एवं निर्देशन में करायेगी जिस पर राज्य शासन का पूर्ण स्वामित्व होगा। यश एयर को इसका कोई स्वामित्व प्राप्त नहीं होगा, न ही उनके द्वारा इस संपत्ति के विरूद्ध कोई ऋण इत्यादि प्राप्त किया जा सकेगा और न ही उनके द्वारा इसे विक्रय/बंधक, गिरवी आदि रखा जा सकेगा, न ही वे किसी अन्य व्यक्ति/कंपनी/संस्था को इसके उपयोग या स्थानान्तरित करने की अनुमति दे सकेंगे। आवश्यक निर्माण एवं विकास कार्य तथा हवाई पट्टी के जिस भाग का उपयोग यश एयर द्वारा किया जाना है, उसकी अनुमति कलेक्टर की अनुशंसा पर, संचालक विमानन द्वारा प्रदान की जावेगी जो वे संचालक विमानन से अनुबंध पूर्व प्राप्त करेंगे।

15. यह कि यश एयर द्वारा विमान की सुरक्षा, पर्यावरण, अग्नि, चिकित्सा आदि के संबंध में बनाए गये वैधानिक नियमों का कड़ाई से पालन किया जावेगा एवं उनके द्वारा यह सुनिश्चित किया जावेगा कि अन्य संस्था द्वारा हवाई पट्टी का उपयोग किये जाने में कोई बाधा उत्पन्न न हो।

16. यह कि यश एयर द्वारा संचालित गतिविधियों, संधारण, निर्माण कार्यों आदि का निरीक्षण, महानिर्देशक, नागर विमानन, भारत सरकार, राज्य शासन, संचालक विमानन तथा संबंधित जिले के कलेक्टर द्वारा किया जा सकेगा।

17. यह कि राज्य शासन किसी भी समय यह अनुमति दो माह की पूर्व सूचना देकर निरस्त कर सकेगा अथवा इसमें वृद्धि/नवीनीकरण कर सकेगा। इस संबंध में कोई न्यायालयीन अथवा अन्य वैधानिक नियम/पाबधियां लागू नहीं होगी।

18. यह कि रात्रिकालीन पार्किंग व्यवस्था के लिए पार्किंग–वे का व्यय मैसर्स यश एयर लिमिटेड इंदौर को वहन करना होगा ताकि हवाई पट्टियॉ संचालन हेतु मुक्त रहे। साथ ही रात्रि व्यय विमानों की सुरक्षा व्यवस्था के संबंध में कलेक्टर से समन्वय कर भुगतान आधारित पुलिस की व्यवस्था भी उन्हें स्वयं के व्यय पर करनी होगी।

19. यह कि विमान की रात्रिकालीन पार्किंग हेतु प्रत्येक रात्रिकालीन पार्किंग के लिये रूपये 200/– (रूपये दो सौ केवल) प्रति रात्रि की दर से ऐसे विमान जिनका वनज 5700 किलोग्राम से अधिक हो और 5700 किलोग्राम से कम वजन वाले विमान हेतु रूपये 100/– (रूपये सौ केवल) प्रति रात्रि की दर से भुगतान करना होगा। यह राशि शासकीय कोष में संचालक विमानन को देय बैंक ड्राफट के माध्यम से संबंधित जिले के कलेक्टर के पास जमा करना होगी। यह राशि समय पर जमा हो यह संचालक विमानन एवं जिला कलेक्टर द्वारा सुनिश्चित किया जायेगा।

20. यह कि राज्य शासन को यह अधिकार होगा कि वह उक्त निर्धारित शर्तो में समय–समय पर परिवर्तन, संशोधन एवं नवीनीकरण कर सकेगा साथ ही राज्य शासन को यह भी अधिकार है कि उपरोक्त शर्तो में से किसी शर्त का पालन यश एयर द्वारा न किये जाने की स्थिति में अथवा राज्य शासन को आवश्यकता होने पर यह अनुमति बिना किसी पूर्व सूचना के निरस्त की जा सकेगी अथवा स्वमेव निष्प्रभावी हो जावेगी, जिसके लिये यश एयर सहमत है।

21. यह कि किसी भी प्रकार के विवाद की स्थिति में न्यायाधिकार क्षेत्र भोपालहोगा।

अतः हम पक्षकारों ने उक्त अनुबंध पर साक्षियों के समक्ष बिना किसी दबाव के हस्ताक्षर कर दिये है जो सनद रहे एवं वक्त पर काम आवे।

गवाहः–

1. (D.P.Motwani)

2. (TARUN YARMO)

हस्ताक्षर

31/8/06

मैसर्स यश एयर लिमिटेड,

6–सीझाबुआ टावर, 8वी मंजिल

170, आर.एन.टी.मार्ग इंदौर

गवाहः–

1. (D.P.Motwani)

2. (TARUN YARMO)

हस्ताक्षर

संचालक विमानन,

विमानन संचालनालय,

राजाभोज एरोडम,

बैरागढ़, भोपाल

7. It is not out of place to mention here that, the name of M/s Yash Air Ltd., Indore was subsequently changed to M/s Centaur Aviation Academy Ltd. (In short Aviation Academy). By letter dated 27-11-2012, M/s Centaur Aviation Academy Ltd. informed the Director Aviation Department, State of M.P., about the change in name. The Director, Aviation Department by its letter dated 21-1-2013, sought opinion from the Deputy Secretary, Aviation Department, State of M.P., as to whether, the name of M/s Yash Air Ltd can be changed in the record or not? Accordingly, the Deputy Secretary, Department of Aviation, State of M.P., by its letter dated 4-10-2013, informed the Director, Aviation, that there is no obstruction in permitting the change of name of M/s Yash Air Ltd. in the records. Accordingly, The Director Aviation by its letter dated 8-10-2013 informed the Vice President, Aviation Academy, that in the agreement which was

executed between M/s Yash Air Ltd. and the State Govt. for use of Datana Air Strip, Ujjain, the name of M/s Yash Air Ltd. would be read as M/s Centaur Aviation Limited. Thus, it is clear that M/s Centaur Aviation Academy Ltd. became liable to fulfill all the conditions which were mentioned in the agreement dated 31-8-2006.

8. It is the case of the prosecution, that the S.P.E. (Lokayukt) received one complaint dated 12-3-2015 from One Piyush Jain and another complaint dated 6-7-2015 from Bharat Bamane, wherein allegations were made that a huge embezzlement has taken place and apart from other allegations, it was also alleged that Aviation Academy was allowed to use the Air Strip without depositing rent.

9. Thereafter, a preliminary enquiry was registered on 22-7-2015and the Enquiry Officer, submitted its preliminary enquiry report, on the basis of which the impugned F.I.R. has been lodged.

10. The F.I.R. has already been reproduced in order dated 28-7-2020. There is a difference of opinion as to whether any offence is made out against the petitioner or not? There is no difference of opinion on the question of maintainability of F.I.R. in view of amended provisions of Prevention of Corruption Act. However, the Counsel for the respondent no. 3, once again argued at length with regard to the bar as contained in Para 17-A of Prevention of Corruption Act and submitted that in absence of approval, no enquiry or investigation can take place, whereas the Counsel for the petitioner

didnot raise that issue in the light of the fact that there is no difference of opinion on this issue between the two Hon'ble Judges.

11. It is submitted by the Counsel for the petitioner, that by order dated 7-8-2014, the petitioner was posted as Collector, Ujjain and was transferred by order dated 27-8-2016. It is submitted that as per the F.I.R., M/s Yash Air Ltd./Aviation Academy had not deposited the license Fee from the year 2007 till 2013. It is submitted that since, the petitioner was posted at Ujjain in the year 2014, therefore, he cannot be made liable for any default which had taken place prior to his posting. Further more, it is incorrect to say that there was any default in payment of license fee. The petitioner has drawn the attention of this Court to the Covering letters/drafts starting from the year 2006 till Aug 2016 which have been filed as Annexure A/8, A/9,A/11,A/12, A/13,A/14,A/16,A/17, and A/18, to show that the license fee was deposited well within time without any default. It is further submitted that after the year 2016, the Aviation Academy filed W.P. No. 7411/2016 for renewal of lease which was allowed by the Writ Court by order dated 26-4-2017 (Indore Bench), against which W.A. No 356/2017 was filed by the State which was dismissed by order 25-7-2017.Civil Appeal No. 8243/2018 was preferred by the State Govt., which was allowed by the Supreme Court by order dated 13-8-2018 and the orders passed by the Writ Court as well as Writ Appeal Court were set aside and the petition filed by the Aviation Academy was dismissed with a direction to vacate the Airstrip within a period of 9

months. Since, various aircrafts of the Aviation Academy were parked, therefore by order dated 27-5-2019, the Aviation Academy was directed to deposit the outstanding License fee (From 2016-2019) after adjusting the Earnest Money (of Ujjain and Ratlam Airstrips) and accordingly, the Aviation Academy deposited the outstanding amount of Rs. 1,64,526 on 15-6-2019. Thus, it is submitted that there is no default on the part of the Aviation Academy in depositing the license fee. It is further submitted that according to the F.I.R., the Aviation Academy was required to bear the expenses of maintenance which was not done, and accordingly, the maintenance was done by the State Govt. by spending Rs. 292.32 lacs. It is submitted that the decision to carry out the maintenance work was taken by the State and work order was issued on 23-1-2014 and the work was completed on 15-7-2014. Thus, it is submitted that even if it is presumed that there was a default on the part of the Aviation Academy in maintaining the Airstrip, then the decision was taken by the State Govt. to ugrade the Airstrip and the work of maintenance was already completed before his joining as Collector, Ujjain. It is further submitted that there is no allegation in the F.I.R. to the effect that the agreement or any default on the part of the Aviation Academy was ever brought to the knowledge of the Petitioner. Even if there is some default in making payment of dues, then it would not involve any mens rea on the part of the petitioner, unless and until, a specific allegation is made that the petitioner had joined hands with the Aviation Academy and had obtained some pecuniary advantage. It is further submitted that the

allegations made by the respondent no.1 in para 24 of its return were duly replied by the petitioner in para 10 of his rejoinder. Further, it is incorrect to say that outstanding license fee was deposited by the Aviation Academy on 24-12-2019, but in fact the earnest money which was already with the State Govt. was got encashed/adjusted. It is further submitted that the preliminary enquiry has a legal sanctity in the light of the Judgment passed by the Supreme Court in the case of **Lalita Kumari Vs. State of U.P.** reported in **(2014) 2 SCC 1.** It is further submitted that the enquiry officer in its enquiry report has specifically mentioned that the airstrip was operational till 2013 only, whereas the petitioner had joined on 7-8-2014. The Counsel for the Petitioner also submitted that in para 34,35 of the order dated 28-7-2020, the facts of the case have been properly appreciated by Hon'ble Shri Justice B.K. Shrivastava. To buttress his contentions, the Counsel for the petitioner has relied upon the judgment passed by the Supreme Court in the case of **State of Haryana Vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335.**

12. Per contra, the Counsel for respondent no.1 submitted that the F.I.R. is not an encyclopedia. The F.I.R. was lodged on 24-11-2019 and the petition was filed on 16-12-2019 and thereafter, the interim order was passed on 18-12-2019, thus, no breathing time was given to the answering respondent to investigate the matter. It is further submitted that it is well established principle of law that any additional evidence, which would come on record during the

investigation, can be taken note of by the investigating agency. It is submitted that in para 37 of the order dated 28-7-2020, it has been observed by Hon'ble Shri Justice B.K. Shrivasatva, “that no allegations were made by both the complainants against the Petitioner, and in fact the name of the petitioner was not mentioned at all in their complaints”. It is submitted that the investigation cannot be confined to the allegations made in the complaint and if the investigating agency comes to a conclusion that some more persons are also involved in the commission of offence, then they can also be implicated. It is further submitted that as per the agreement, the maintenance work of the airstrip was to be done by the Aviation Academy, but that was not done, therefore, the State Govt. was compelled to undertake the maintenance work by spending Rs. 292.39 lacs, which is recoverable from the Aviation Academy but that has not been done by the Petitioner. It is further submitted that as per the agreement, Night Parking Charges were payable by the Aviation Academy, but that was not done. It is submitted that it is incorrect to say that the Aviation Academy was not operating or using the airstrip, because in WP No. 7411/2016, it has been specifically claimed by the Aviation Academy, that 13 aircrafts are parked and operational and had sought renewal of agreement. Thus, it is incorrect to say that the Datana Air Strip became non-operational from the year 2013. It is further submitted since, the investigation is at the intial stage, therefore, unborn baby should not be killed. It is further submitted that no malafide has been alleged against the investigating agency, and the

allegations are required to be investigated in detail. To buttress his contentions, the Counsel for the respondent no.1 has relied upon the judgments passed by the Supreme Court in the case of **State of T.N. Vs. S. Martin,** reported in **(2018) 5 SCC718,Mahavir Prasad Gupta Vs. State of National Capital Territory of Delhi** reported in **(2000) 8 SCC115,** and **State of Telangana Vs. Habeeb Abdullah Jeelani** reported in **(2017) 2 SCC 779.**

13. The Counsel for respondent no. 2 submitted that a detailed return and additional return have been filed and his arguments are confined to the pleadings and documents filed along with return/Add. return.

14. The Counsel for respondent no. 3 submitted that an opinion from the Law Department was obtained and in the light of amended provisions of Section 17-A of Prevention of Corruption Act, no investigation can be done, in absence of approval by the competent authority.

15. In reply, it is submitted by the Counsel for the Petitioner, that the respondent no.1 cannot add or subtract any additional allegation in the F.I.R. When there is no allegation of non-recovery of Night Parking Charges, then the petitioner cannot be made an accused in the F.I.R. It is further submitted that in case of a contractual breach, the F.I.R. should not be lodged. It is further submitted that the petitioner is not a signatory to the agreement and he has specifically pleaded that

he was not informed about the agreement. So far as the question of non-recovery of maintenance amount is concerned, in fact, the amount of Rs. 292.39 lac was spent by the State for the maintenance of the airstrip, and if the same has not been recovered so far, then, all his successor Collectors, should have been made an accused. It is further submitted that the petitioner is a decorated officer, and has been awarded various certificates of appreciation.

16. Heard the learned Counsel for the parties.

17. As already pointed out that there is no difference of opinion, between the Hon'ble Judges on the question of maintainability of F.I.R. However, as the maintainability of F.I.R. in the light of Section 17-A of Prevention of Corruption Act, 1988 has been once again attacked by the Counsel for the respondent no.3, therefore, this Court apart from the reasoning which has already been given by my esteemed brothers in order dated 28-7-2020, would like to add certain more reasons to hold that the F.I.R. and the investigation is maintainable.

18. Section 17-A of Prevention of Corruption Act, 1988 reads as under :

> **17-A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties**.— (1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any

> recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—
>
> (*a*) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;
>
> (*b*) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;
>
> (*c*) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:
>
> Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:
>
> Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

19. It is well settled principle of law that where the language of a Statute is plain and unambigous, then the Court must give literal meaning to the words used in the statute.

20. The Supreme Court in the case of **Nathi Devi Vs. Radha Devi Gupta,** reported in **(2005) 2 SCC 271** has held as under :

> **13.** The interpretative function of the court is to discover the true legislative intent. It is trite that in interpreting a statute the court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction

> only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.
>
> **14.** It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See *State of U.P.* v. *Dr. Vijay Anand Maharaj*, *Rananjaya Singh* v. *Baijnath Singh*, *Kanai Lal Sur* v. *Paramnidhi Sadhukhan*, *Nyadar Singh* v. *Union of India*, *J.K. Cotton Spg. and Wvg. Mills Co. Ltd.* v. *State of U.P.* and *Ghanshyamdas* v. *CST*.)
>
> **15.** It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity.

21. From the plain reading of Section 17-A of Prevention of Corruption Act, 1988, it is clear that an officer can claim protection from "enquiry" or "investigation" only when he has made any "recommendation" or "decision". The general meaning of word *“decision”* means, the action or process of deciding something or resolving a question.

22. Thus, it can be said that a “decision” means an act by which an Executive or Authority decides to act in a particular manner in a given set of facts or problems. Therefore, in order to apply the provisions of Section 17-A of Prevention of Corruption Act, 1988, there must be

“decision” or “recommendation” by an authority against which an enquiry or investigation is under contemplation.

23. Maintaining silence on a particular issue cannot be said to be a "recommendation" or "decision". Further, it is the defence of the petitioner himself, that he was not aware of the agreement which was executed between the State Govt. and M/s Yash Air Ltd. Thus, it is not the case of the petitioner, that he had taken any “decision” or made any “recommendation” in the matter.

24. Thus, in the present investigation, neither the "decision" nor "recommendation" of the petitioner is under scanner, therefore, in the considered opinion of this Court, the requirement of approval before “enquiry” or “investigation” as required under Section 17-A of Prevention of Corruption Act, would not apply.

In the case of **Manoj Prasad Vs. CBI**, the **High Court of Delhi**, by **Judgment dated 11-1-2019** passed in **W.P. (Cri) 3292/2018** has held as under :

> 36…….. The bar to enquiry or investigation under Section 17A of the PC Acct is apropos such alleged offence as may be relatable to any recommendation made or decision taken by a public servant in discharge of his official functions or duties. In the present case, there is no recommendation or decision on record by a Public Servant in the discharge of his official functions. ……..The purpose of Section 17A can be read to be only to provide protection to officers/public servants who discharge their official functions and/or duties with diligence, fairly, in an unbiased manner and to the best of their ability and judgment, without any motive for their personal advantage or favour. A public servant cannot be

possibly left to be under the constant apprehension that bonafide decisions taken by him/her would be open to enquiry or inquiry or investigation, on the whimsical complaint of a stranger. Section 17A as it reads and the legislative intent in its enactment can only be to protect public servants in the bonafide discharge of official functions or duties. However, when the act of a public servant is ex-facie criminal or constitutes an offence, prior approval of the Government would not be necessary.

25. Further, the **Telangana High Court** in the case of **Katti Nagaseshanna Vs. State of Andhra Pradesh** by judgment dated **16-11-2018** passed in **Cr.Petition No. 9044 of 2018** has held as under :

The facts of the case are distinguishable as the petitioner claiming immunity from the prosecution on the ground of failure to obtain sanction for prosecuting him taking advantage of explanation by Act 16 of 2018, which came into force with effect from 26.07.2018, but such amendment created/imposed new obligation or duty on the prosecution to obtain sanction to prosecute even retired government servant. Earlier sanction is required only to prosecute the public servant, and when a person (1966) 1 All ER 524 (1894) 1 QB 725 MSM,J Crl.P_9044_2018 retired from service, no sanction is required. On account of change of law due to addition of explanation to Section 19 (1) of the P.C.Act, now sanction is required even to prosecute retired government servant. If this provision is given retrospective effect, all retired government servants, against whom prosecutions are pending will sneak out from the prosecutions, it is nothing but accommodating retired Government Servant to escape from pending prosecution under the P.C.Act irrespective of seriousness of offence. The intention of the legislature is to prevent bribery among the public servants, which is a serious threat to the society now and increasing day by day. Therefore, amendment to Section 19 (1) of the P.C. Act though deals with procedure, which cannot be given retrospective effect as it created or imposed new obligation or duty on the prosecution to obtain sanction after more than 7 years from the date of filing charge sheet and taking cognizance against the petitioner. Therefore, I find that such interpretation as sought for by the learned counsel for the petitioner is against the intendment of the Statute.

26. In the present case, the preliminary enquiry was already initated in the year 2015 and was pending on the date when Section 17-A of Prevention of Corruption Act, 1988, came into force, accordingly, it is held that the benefit of Section 17-A of Prevention of Corruption Act, 1988 is not available to the petitioner.

27. Now, the question for consideration is that whether the impugned F.I.R. discloses cognizable offence against the petitioner or not?

28. 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.

29. The Supreme Court in the case of **Munshiram v. State of Rajasthan,** reported in **(2018) 5 SCC 678** has held as under :

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

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

> **5.** It has been rightly submitted by the learned counsel for the appellant that ordinarily power under Section 482 CrPC should not be used to quash an FIR because that

amounts to interfering with the statutory power of the police to investigate a cognizable offence in accordance with the provisions of CrPC. As per law settled by a catena of judgments, if the allegations made in the FIR prima facie disclose a cognizable offence, interference with the investigation is not proper and it can be done only in the rarest of rare cases where the court is satisfied that the prosecution is malicious and vexatious.

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

9. In *State of W.B.* v. *Swapan Kumar Guha*, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)

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

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."

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.
>
> (Underline supplied)

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

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

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

> **17.** In the past, this Court has even laid down some guidelines for the exercise of inherent power by the High Courts to quash criminal proceedings in such exceptional cases. We can refer to the decision in *State of Haryana* v. *Bhajan Lal* to take note of two such guidelines which are relevant for the present case: (SCC pp. 378-79, para 102)
>
> > "(*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.

* * *

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

18. It is of course a settled legal proposition that in a case where there is sufficient evidence against the accused, which may establish the charge against him/her, the proceedings cannot be quashed. In *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.* this Court observed that a criminal complaint or a charge-sheet can only be quashed by superior courts in exceptional circumstances, such as when the allegations in a complaint do not support a prima facie case for an offence.

19. Similarly, in *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque* this Court has held that criminal proceedings can be quashed but such a power is to be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves. It was further observed that superior courts "*may examine the questions of fact*" when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice.

20. In *Shakson Belthissor* v. *State of Kerala* this Court relied on earlier precedents to clarify that a High Court while exercising its inherent jurisdiction should not interfere with a genuine complaint but it should certainly not hesitate to intervene in appropriate cases. In fact it was observed: (SCC pp. 478, para 25)

> "*25*. … '*16*. … One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.'[*]"

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

> **8.** In our view, the Single Judge ought to have first set out the brief facts of the case with a view to understand the factual matrix of the case and then examined the challenge made to the proceedings in the light of the principles of law laid down by this Court and then

recorded his finding as to on what basis and reasons, a case is made out for any interference or not.

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

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

quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

> [Ref. *State of W.B.* v. *Swapan Kumar 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*.]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

28. At this stage, we may also notice that the principle stated by this Court in *Madhavrao Jiwajirao Scindia* was reconsidered and explained in two subsequent judgments of this Court in *State of Bihar* v. *P.P. Sharma* and *M.N. Damani* v. *S.K. Sinha*. In the subsequent judgment, the Court held that, that judgment did not declare a law of

universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent.

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

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

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

5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in *Yin Cheng Hsiung* v. *Essem Chemical Industries*; *State of Haryana* v. *Bhajan Lal* and *Harshendra Kumar D.* v. *Rebatilata Koley* to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.

The Supreme Court in the case of **State of A.P. v. Gourishetty Mahesh** reported in **(2010) 11 SCC 226**has held as under :

> **18.** While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.
>
> **19.** Though the High Court may exercise its power relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in.
>
> **20.** Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482.

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

> **11.** Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.
>
> **12.** In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.
>
> **13.** It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita* v. *State* and *B.S. Joshi* v. *State of Haryana*). If an effective alternative remedy is available, the High Court will not exercise its powers

under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Dhanalakshmi* v. *R. Prasanna Kumar*; *Ganesh Narayan Hegde* v. *S. Bangarappa* and *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*.)

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide *State of Haryana* v. *Bhajan Lal*, *Janata Dal* v. *H.S. Chowdhary*, *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* and *Indian Oil Corpn.*v. *NEPC India Ltd.*

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

> "(*1*) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (*2*) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (*3*) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (*4*) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only

a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

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

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

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

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

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

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

3. It was held that a given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a

> criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.

18. In *State of Orissa* v. *Saroj Kumar Sahoo* it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCC p. 550, para 11)

> "*11*. … It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

19. In *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre* this Court held as under: (SCC p. 695, para 7)

> "*7*. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

20. This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia*, has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in *Madhavrao case* was reconsidered and explained by this Court in *State of*

Bihar v. *P.P. Sharma* which reads as under: (SCC p. 271, para 70)

> "*70. Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre* also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. … Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet."

22. Thus, the judgment in *Madhavrao Jiwajirao Scindia* does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of *Madhavrao Jiwajirao Scindia* is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal.

The Supreme Court in the case of **M. Srikanth v. State of Telangana,** reported in **(2019) 10 SCC 373** has held as under :

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

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

> **30.** Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.
>
> **31.** It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose
>
> > "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. [If such power is not conceded, it may even lead to injustice.]"

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

32. We are conscious that

"inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases".

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

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

17. After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 CrPC, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 CrPC.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for.

Thus, it is clear that although this Court cannot make a roving enquiry at this stage, but if the uncontroverted allegations donot make out any offence, then this Court can quash the F.I.R.

30. The next question for consideration is that whether this Court while exercising power under Section 482 of Cr.P.C. can consider the documents put forward by the petitioner or not?

31. The Supreme Court in the case of **State of Orissa Vs. Debendra Nath Padhi**, reported in **(2003) 2 SC 711** has held as under :

> **11.** From the above judgments referred to by the learned counsel for the appellant, it is clear that all that the court has to do at the time of framing a charge is to consider the question of sufficiency of ground for proceeding against the accused on a general consideration of the materials placed before it by the investigating agency. There is no requirement in law that the court at that stage should either give an opportunity to the accused to produce evidence in defence or consider such evidence the defence may produce at that stage.

32. The Supreme Court in the case of **Prashant Bharti Vs. State (NCT of Delhi)** reported in **(2013) 9 SCC 293** has held as under :

> **22.** The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "CrPC") has been dealt with by this Court in *Rajiv Thapar* v. *Madan Lal Kapoor* wherein this Court inter alia held as under: (SCC pp. 347-49, paras 29-30)
>
> > "*29.* The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences, inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such

that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

> *30.4. Step four*: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?
>
> *30.5.* If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

33. In the light of the judgments of the Supreme Court, this Court shall now consider the allegations against the petitioner.

34. The petitioner has made representations to the Chief Minister, Lokayukt, Chief Secretary, State of M.P., Principal Secretary, Department of General Administration, and Director General of Police, S.P.E. (Lokayukt). The petitioner in his representation has relied upon condition no. 8 and 9 of the agreement to plead that the Aviation Academy was required to pay yearly license fee of Rs. 1.50 lac (Rs. One Lac Fifty Thousand Only) with yearly incremental increase by 5%. It was further pleaded that the Aviation Academy had deposited the license fee regulary. It was also pleaded that the Collector was not a party to the agreement and as per Clause 8 of the agreement, the license fee was to be deposited with Director, Aviation and only in case of non-deposit of license fee, the Director, Aviation was required to inform the Collector, and since in the present case, there was no default on the part of Aviation Academy, therefore, the

Director, Aviation never informed the Collector. It was also pleaded that even according to the F.I.R., the default of the Aviation Academy was of the period from 2006-2007 to 2012-2013, whereas the petitioner was posted in Ujjain as Collector on 12-8-2014 to 29-7-2016. Thus, it was pleaded that by no stretch of imagination, it can be said that the petitioner is guilty of any criminal act.

35. Further, it has been pleaded in the rejoinder that so far as the question of non-maintenance of Datana Air Strip by the Aviation Academy is concerned, the proposal to upgrade the Datana Air Strip was given on 1-2-2013 and the work order for upgradation was issued in favor of Himmat Singh on 28-1-2014 and was completed on 15-7-2014, whereas the petitioner was posted as Collector, Ujjain on 07-8-2014, therefore, the petitioner cannot be made responsible for the things which had already taken place prior to his posting.

36. This petition has been filed by the petitioner seeking quashment of F.I.R. registered against him, therefore, in the considered opinion of this Court, only the investigating agency was the necessary party. However, for the reasons best known to the petitioner, he also impleaded Department of Aviation as well as Department of General Administration, as respondents no. 2 and 3. The Counsel for the respondent no. 3 also expressed that in the present case, it is a dispute between the petitioner and the respondent no.1. Be that as it may.

37. The agreement which was executed between the State Govt and M/s Yash Air Ltd has already been reproduced earlier. It is the case of the petitioner, that Collector was not a signatory to the agreement. However, the conditions in the agreement were incorporated in the light of the sanction order dated 18-8-2006, issued by the Aviation Department, State of Madhya Pradesh. Further, the recital of the agreement clearly says, that the agreement was executed between M/s Yash Air Ltd and the State Govt. Merely because the agreement was signed by Director, Aviation, on behalf of the State Govt., it would not mean, that it was an agreement between the Director, Aviation and M/s Yash Air Ltd. Further, all the conditions which were approved by the State Govt. in its order dated 18-8-2006, were incorporated and being the functionary of the State, the Collector, cannot say that since, he was not a signatory to the agreement, therefore, he was not under obligation to enforce the conditions of the agreement. Further, it is clear from the agreement dated 31-8-2006, a copy of the said agreement was also endorsed to the Collector, Ujjain.

Clause 23 of the order dated 18-8-2006 reads as under :

> 23. विमान की रात्रिकालीन पार्किंग हेतु प्रत्येक रात्रिकालीन पार्किंग के लिये रूपये 200/– (रूपये दो सौ केवल) प्रति रात्रि की दर से ऐसे विमान जिनका वजन 5700 किलोग्राम से अधिक हो और 5700 किलोग्राम से कम वजन वाले विमान हेतु रूपये 100/– (रूपये सौ केवल) प्रति रात्रि की दर से भुगतान करना होगा। यह राशि शासकीय कोष में संचालक विमानन को देय बैंक ड्राफ्ट के माध्यम से संबंधित जिले के कलेक्टर के पास जमा करना होगी। यह राशि समय पर जमा हो यह संचालक विमानन एवं जिला कलेक्टर द्वारा सुनिश्चित किया जायेगा।

Thus, it is clear that it was the duty of the Collector, Ujjain to ensure that night parking charges are duly paid by the Aviation

Academy. The contract between the State Govt. and Yash Air Ltd (Subsequently, the name was changed to M/s Centaur Aviation Academy Ltd.) was for a period of 10 years, i.e., upto the year 2016 and undisputedly, the petitioner was posted as Collector, Ujjain from 07-8-2014 to 27-8-2016. Therefore, during his tenure as Collector, Ujjain, it was the duty of the petitioner to ensure that night parking charges are duly deposited by the Aviation Academy. But in the present case, the undisputed fact is that the Aviation Academy never deposited the Night Parking Charges. The respondent no.2 has filed a copy of letter dated 1-2-2020 along with its return, which was addressed to Inspector, S.P.E., Lokayukt Office, Ujjain and the relevant portion of the said letter reads as under :

> संस्था एवं राज्य शासन के मध्य हुये अनुबंध छायाप्रति संलग्न दिनांक 31/8/2006 के बिन्दु कमांक 18 एवं 19 के अनुकम मे इस कार्यालय को संस्था की ओर से विमानों की रात्रि कालीन पार्किंग की व्यवस्था के पार्किंग वे व्यय/रात्रि पार्किंग के रूप के कोई राशि जमा नही की गई है।

The respondent no.2 has also filed its Additional Return and has raised additional pleadings. It is pleaded that since, the agreement dated 31-8-2006 was for a period of 10 years, therefore, the Aviation Academy filed a writ petition for renewal of agreement, which was registered as W.P. No. 7411 of 2016 (Indore Bench) and was allowed by order dated 26-4-2017. Being aggrieved by the order passed by the Single Judge, the State of Madhya Pradesh filed a Writ Appeal which

was registered as W.A. No. 356 of 2017 and the said Writ Appeal was also dismissed by order dated 25-7-2017. Accordingly, Civil Appeal No. 8243 of 2018 was filed by the State Govt., which was allowed by the Supreme Court by order dated 13-8-2018, and the Aviation Academy was directed to vacate and hand over the vacant possession within a period of 9 months. However, the Aviation Academy sought permission to park its aircrafts in the Ujjain Airport, therefore, by order dated 27-5-2019, the Aviation Academy was permitted to park its aircrafts, till new agreement is executed. A Panchnama dated 27-3-2019 has also been placed on record by the respondent no.2 along with its Additional Return, from which it is clear that on 27-3-2019, 11 (Eleven) Aircrafts of the Avaiation Academy were parked in the Ujjain airport. Further, it is clear from the order dated 26-4-2017 which was passed in W.P. No. 7411/2016 (Indore Bench), that a categoric statement was made by the Aviation Academy that its 13 aircrafts are parked in the airport. Thus, it is clear that the Aviation Academy was using the Datana Airstrip Ujjain and was parking its number of aircrafts during night, but didnot pay Night Parking Charges. It is the stand of the respondent no.1 that even if it is presumed that on an average, 10 aircrafts were parked on daily basis every night, then the Aviation Academy was liable to pay Rs. 95 lacs which was not done. In fact not a single penny was paid towards Night Parking Charges. The Aviation Academy has already claimed in W.P. No. 7411/2016 (Indore Bench) about its operations and had claimed that at least 400 pilots were trained by it. Thus, it is clear that

during the contract period, the Aviation Academy was using the Datana Air Strip extensively, but didnot pay the Night Parking Charges, and since, the Collector, Ujjain was under obligation to ensure that Night Parking Charges are regularly paid by the Aviation Academy and as, that was not done by the petitioner during his posting as Collector Ujjain, therefore, it cannot be said that the petitioner is not liable for his omissions at all. So far as the preliminary enquiry report is concerned, it appears that above mentioned facts have been completely ignored by the Enquiry Officer. Further, the fact regarding non-payment of Night Parking Charges has been put forward by the respondent no. 2 itself, therefore, the petitioner cannot claim that although there are material against him to show that he did not make any attempt to recover the Night Parking Charges, but since, this allegation is not mentioned in the F.I.R., therefore, no investigation can be done in this respect.

38. So far as the question of non-recovery of maintenance amount is concerned, it is clear that the Aviation Academy was using the Airstrip extensively and didnot care to maintain the same inspite of the clear stipulation in the agreement. From the averments made in W.P. 7411/2016 (Indore Bench), it is clear that the Aviation Academy was using the airstrip till 2016 and continued to use the same after the writ petition was allowed. Therefore, it is incorrect on the part of the enquiry officer to say that the airstrip became non-operational after 2013. Further, it is clear from the Panchnama dated 27-3-2019, as

many as 11 aircrafts belonging to the Aviation Academy were found parked in the taxi bay. Thus, it is clear that the airstrip was being used by the Aviation Academy regularly and extensively even after the year 2013.

39. So far as the submission made by the Counsel for the Petitioner that the earnest money which was already lying with the State Govt. was got encashed/adjusted on 24-12-2019 is concerned, it is clear that even after the agreement had lapsed in the year 2016, the Aviation Academy was extensively using the air strip and not a single penny was paid towards the maintenance charges, license fee etc. and only after letter dated 27-5-2019 was issued, the licensee fee was deposited on 15-6-2019. Thus, it is clear that the Aviation Academy was using the Datana Airstrip without fulfilling the conditions as mentioned in the agreement. Thus, it is a matter of investigation, which cannot be throttled at the initial stage. In a given set of facts, subsequent deposit of outstanding amount may not be sufficient to quash the criminal proceedings.

The Supreme Court in the case of **State of Maharashtra Vs. Vikram Anantrai Doshi,** reported in **(2014) 15 SCC 29** has held as under :

> **25.** In this context, we may usefully refer to a two-Judge Bench decision in *CBI* v. *Jagjit Singh* wherein the Court being moved by CBI had overturned the order of the High Court quashing the criminal proceeding and in that backdrop had taken note of the fact that accused persons had dishonestly induced delivery of the property of the bank and had used forged documents as genuine.

Proceeding further the Court opined as follows: (SCC p. 692, para 15)

> "*15*. … The offences when committed in relation with banking activities including offences under Sections 420/471 IPC have harmful effect on the public and threaten the well being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank is the victim in such cases but, in fact, the society in general, including customers of the bank is the sufferer. In the present case, there was neither an allegation regarding any abuse of process of any court nor anything on record to suggest that the offenders were entitled to secure the order in the ends of justice."

26. We are in respectful agreement with the aforesaid view. Be it stated, that availing of money from a nationalised bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the charge-sheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kinds of benefits it cannot be regarded as a case having overwhelmingly and predominatingly civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skilfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no dues certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article

226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kinds of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The Court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinise the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible.

The Supreme Court in the case of **CBI Vs. Jagjit Singh,** reported in **(2013) 10 SCC 686** has held as under :

14. In the present case, the specific allegation made against the respondent-accused is that he obtained the loan on the basis of forged document with the aid of officers of the Bank. On investigation, having found the ingredients of cheating and dishonestly inducing delivery of property of the Bank (Section 420 IPC) and dishonestly using as genuine a forged document (Section 471 IPC), charge-sheet was submitted under Sections 420/471 IPC against the accused persons.

15. The debt which was due to the Bank was recovered by the Bank pursuant to an order passed by the Debts Recovery Tribunal. Therefore, it cannot be said that there is a compromise between the offender and the victim. The offences when committed in relation with banking activities including offences under Sections 420/471 IPC

have harmful effect on the public and threaten the well-being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank is the victim in such cases but, in fact, the society in general, including customers of the bank is the sufferer. In the present case, there was neither an allegation regarding any abuse of process of any court nor anything on record to suggest that the offenders were entitled to secure the order in the ends of justice.

16. In the instant case, the High Court has not considered the above factors while passing the impugned order. Hence, we are of the opinion that the High Court erred in addressing the issue in right perspective.

The Supreme Court in the case of **State of T.N. Vs. R. Vasantjhi Stanley** reported in **(2016) 1 SCC 376** has held as under :

8. Resisting the aforesaid submissions it is canvassed by Mr Tankha, learned Senior Counsel for the first respondent that when the High Court, considering the controversy from all the requisite angles has quashed the proceedings, this Court should not interfere with the impugned order in exercise of its jurisdiction under Article 136 of the Constitution. The learned Senior Counsel would contend that when the respondent has already paid the amount due to the Bank from her own savings and settled the matter with grieved financial institutions, continuance of the criminal proceeding is not desirable as it is unlikely to serve any fruitful purpose. That apart, submits Mr Tankha, continuation of the proceeding would unnecessarily load the criminal justice dispensation system as there is likelihood of an order of acquittal at the end of the trial.

9. To appreciate the submissions advanced at the Bar, we may straightaway refer to the authority in *State of Maharashtra* v. *Vikram Anantrai Doshi*. In the said case, the accused was charged for the offences punishable under Sections 120-B, 406, 420, 467, 468 and 471 IPC. The allegation in the said case was that Accused 1 had obtained letters of credit from State Bank of India and Dena Bank in favour of fictitious companies formed by the accused and used the said letters of credit to siphon off the funds from the banks. During the pendency of the case, the accused settled the dispute with the Bank by

paying the amount and the Bank in turn had issued no-dues certificate. The Court referred to case in *CBI* v. *A. Ravishankar Prasad*, wherein the pronouncements in *CBI* v. *Duncans Agro Industries Ltd.* and *Nikhil Merchant* were distinguished. It is necessary to note that the Court in *Ravishankar Prasad case* referred to *Inder Mohan Goswami* v. *State of Uttaranchal* and stated thus: (*A. Ravishankar Prasad case*, SCC pp. 362-63, paras 38-40)

> "*38.* Let us consider the facts of this case and apply the ratio of *Goswami case* where facts are as follows:
>
> (*I*) The allegations are that the accused have committed serious offences such as forgery, fabrication of documents and used those documents as genuine.
>
> (*II*) The allegations are that the respondent-accused herein A. Ravishankar Prasad and A. Manohar Prasad have entered into a conspiracy with the Chairman and Managing Director and other officials of Indian Bank, Chennai with the object of cheating Indian Bank in the matter of recommending, sanctioning, disbursing huge credit facilities running over hundreds of crores.
>
> (*III*) Trial of all four cases are at an advanced stage in which 92 witnesses have already been examined.
>
> While applying the ratio of *Goswami case*[12], how can any court in its legitimate exercise of power under Section 482 CrPC quash the proceedings against accused A. Ravishankar Prasad and A. Manohar Prasad in the face of the aforesaid allegations? In the instant case, wrong application of the ratio of the said judgment has led to grave miscarriage of justice.
>
> *39.* Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice.
>
> *40.* Both English and the Indian courts have consistently taken the view that the inherent powers can be exercised in those exceptional cases where the allegations made in the first information report or the complaint, even if are taken on their face value and accepted in their entirety do not

prima facie constitute any offence or make out a case against the accused. When we apply the settled legal position to the facts of this case it is not possible to conclude that the complaint and the charge-sheet prima facie do not constitute any offence against the respondents."

Being of this view, the Court in *A. Ravishankar Prasad* allowed the appeal preferred by CBI.

10. Apart from above, in *Vikram Anantrai Doshi* the Court referred to *Gian Singh* v. *State of Punjab*, with regard to the power of the High Court as regards the quashing of the criminal proceedings on the basis of a compromise. This Court also referred to *Narinder Singh* v. *State of Punjab*, *Dimpey Gujral* v. *UT, Chandigarh* and *State of Rajasthan* v. *Shambhu Kewat* and thereafter dwelt upon the ratio in *CBI* v. *Narendra Lal Jain* wherein the charges were framed under Section 120-B read with Section 420 IPC. A passage from the said judgment was reproduced which is to the following effect: (*Vikram Anantrai Doshi case*, SCC p. 40, para 22)

"*22.* … '*14.* … The offences are certainly more serious; they are not private in nature. The charge of conspiracy is to commit offences under the Prevention of Corruption Act. The accused has also been charged for commission of the substantive offence under Section 471 IPC. Though the amounts due have been paid the same is under a private settlement between the parties unlike in *Nikhil Merchant* and *Narendra Lal Jain* where the compromise was a part of the decree of the Court. There is no acknowledgment on the part of the Bank of the exoneration of the criminal liability of the appellant-accused unlike the terms of compromise decree in the aforesaid two cases. In the totality of the facts stated above, if the High Court has taken the view that the exclusion spelt out in *Gian Singh* (para 61) applies to the present case and on that basis had come to the conclusion that the power under Section 482 CrPC should not be exercised to quash the criminal case against the accused, we cannot find any justification to interfere with the said decision.'[*]"

11. After distinguishing many a decision, the Court relied upon *CBI* v. *Jagjit Singh* wherein the Court being moved by CBI had overturned the order of the High Court quashing the criminal proceeding and in that backdrop

had taken note of the fact that the accused persons had dishonestly induced delivery of the property of the bank and had used forged documents as genuine. Thereafter, the Court proceeded to state that: (*Vikram Anantrai Doshi case*, SCC p. 42, para 26)

> "*26.* … availing of money from a nationalised bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the charge-sheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kinds of benefits it cannot be regarded as a case having overwhelmingly and predominatingly civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skilfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a 'no-dues certificate' and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kinds of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The Court's principal duty, at that juncture, should be to scan

> the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence."

12. Recently, in *CBI* v. *Maninder Singh*, the allegation against the accused was that bill of lading presented by the proprietors of the accused firms were found forged and cases were registered under Section 120-B IPC read with Section 420 IPC and Section 5(2) read with Section 5(1)(*d*) of the Prevention of Corruption Act, 1947 and further substantive offences under Sections 420, 467, 468 and 471 IPC. The accused person arrived at a settlement with the Bank and thereafter moved the High Court under Section 482 CrPC for quashing of the FIR. The High Court placed reliance on the decision in *Nikhil Merchant* and allowed the petition and directed for quashing of the criminal proceedings. This Court placed reliance on *Vikram Anantrai Doshi* and came to hold as follows: (*Maninder Singh case*, SCC p. 394, paras 16-17)

> "*16.* The allegation against the respondent is 'forgery' for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication, science and technology, etc. has led to an enormous increase in economic crimes viz. phishing, ATM frauds, etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at the public at large.
>
> *17.* The inherent power of the High Court under Section 482 of the Code of Criminal Procedure should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences the Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned was

> well planned and was committed with a deliberate design with an eye on personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy."

The Supreme Court in the case of **CBI Vs. Maninder Singh** reported in **(2016) 1 SCC (Cri) 292** has held as under :

> **16.** The allegation against the respondent is "forgery" for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication, science and technology, etc. has led to an enormous increase in economic crimes viz. phishing, ATM frauds, etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at the public at large.
>
> **17.** The inherent power of the High Court under Section 482 CrPC should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, the Court would quash the proceedings. In economic offences the Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned was well planned and was committed with a deliberate design with an eye on personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecutions against the economic offenders are not allowed to continue, the entire community is aggrieved.

40. So far as the contention of the Counsel for the Petitioner, that the agreement was not within his knowledge, therefore, silence on his

part is bonafide is concerned, ignorance about the agreement as expressed by the Counsel for the Petitioner cannot be considered at this stage and it will be for the petitioner to prove his defence in the trial. Clause 16 of the agreement reads as under :

> 16. यह कि यश एयर द्वारा संचालित गतिविधियों, संधारण, निर्माण कार्यों आदि का निरीक्षण, महानिर्देशक, नागर विमानन, भारत सरकार, राज्य शासन, संचालक विमानन तथा संबंधित जिले के कलेक्टर द्वारा किया जा सकेगा।

Therefore, in view of specific role assigned to the Collector, Ujjain in the agreement which was executed between the State Govt. and M/s Yash Air Ltd., the petitioner cannot claim that he was not liable to ensure the compliance of the conditions mentioned in agreement. So far as the contention of the Petitioner that since, he was not aware of the agreement between the State and M/s Yash Air Ltd., therefore, his silence was bonafide is concerned, it is suffice to mention here that "good faith" has been defined under Section 52 of Indian Penal Code, which reads as under :

> 52. Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

It is for the petitioner to prove in the Trial that he had acted with due care and attention. However, in the light of the fact that the copy of the agreement was also endorsed to the Collector, Ujjain, as well as he is a functionary of the State, it is difficult to hold that the petitioner had acted in "good faith" or bonafidely by claiming that he was not aware of the agreement between the State of M.P. and M/s

Yash Air Ltd. Thus, this contention of the petitioner is hereby rejected.

41. It is next contended by the Counsel for the Petitioner, that in case of non-deposit of dues, the remedy is available to the State Govt. to recover the amount, therefore, the criminal prosecution is unwarranted and should not be launched.

42. The submission made by the Counsel for the petitioner is misconceived and is liable to be rejected. The Supreme Court in the case of **Amit Kapoor (Supra)** has held as under :

> **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.

The Supreme Court in the case of **Vijayander Kumar Vs. State of Rajasthan** reported in **(2014) 3SCC 389** has held as under :

> 12. The learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/ complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not. This proposition is supported by several judgments of this Court as noted in para 16 of the judgment in Ravindra Kumar Madhanlal Goenka v. Rugmini Ram Raghav Spinners (P) Ltd.

The Supreme Court in the case of **V.Ravi Kumar Vs. State** reported in**(2019) 14 SCC 568** has held as under :

> 23. There can be no doubt that a mere breach of contract is not in itself a criminal offence, and gives rise to the

civil liability of damages. However, as held by this Court in Hridaya Ranjan Prasad Verma v. State of Bihar, the distinction between mere breach of contract and cheating, which is a criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In this case, in the FIR, there were allegations of fraudulent and dishonest intention including allegations of fabrication of documents, the correctness or otherwise whereof can be determined only during trial when evidence is adduced.

24. Exercise of the inherent power of the High Court under Section 482 of the Criminal Procedure Code would depend on the facts and circumstances of each case. It is neither proper nor permissible for the Court to lay down any straitjacket formula for regulating the inherent power of the High Court under Section 482 CrPC.

25. Power under Section 482 CrPC might be exercised to prevent abuse of the process of law, but only when, the allegations, even if true, would not constitute an offence and/or were frivolous and vexatious on their face.

26. Where the accused seeks quashing of the FIR, invoking inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. Reference may be made to the decision of this Court, inter alia, in State of Punjab v. Subhash Kumar and Janata Dal v. H.S. Chowdhary.

27. In Vesa Holdings (P) Ltd. v. State of Kerala, this Court observed: (SCC p. 297, paras 12-13)

> "12. … The settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. …
>
> 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."

28. In Vesa Holdings (P) Ltd., this Court found that there was nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat, which was a condition precedent for an offence under Section 420 IPC. The complaint was found not to disclose any criminal offence at all.

> 29. It is well settled that a judgment is a precedent for the issue of law which is raised and decided. Phrases and sentences in a judgment are to be understood in the context of the facts and circumstances of the case and the same cannot be read in isolation.
>
> 30. As observed above, every breach of contract does not give rise to an offence of cheating. The language and tenor of Vesa Holdings (P) Ltd., particularly, the observation that breach of contract would give rise to an offence of cheating only in those cases where there was any deception played at the very inception, is to be understood in the context of the facts of that case and accordingly construed. The phrase "in those cases where there was any deception played at the very inception" cannot be read out of context. This is not a case of breach of contract simpliciter but there are serious allegations of forgery of documents, use of blank letterhead, papers and cheque leaves of the appellant.

Thus, it is clear that where the allegations discloses the commission of offence, then the prosecution cannot be quashed only on the ground that it also involves Civil ingredients.

In the present case, the Aviation Academy was permitted to use the Datana Air Strip, Ujjain subject to various conditions mentioned in the agreement. The Aviation Academy used the Datana Airstrip regularly and extensively without fulfilling the conditions mentioned in the agreement as a result of which the State Govt. was required to undertake the maintenance work of worth Rs. 292.39 Lacs. Further due to non-payment of Night Parking Charges, a huge loss has been caused to the State Govt., which is a matter of investigation. However, the respondent no.1 has apprehended that a loss of Rs. 95 lacs approximately has been caused to the State Govt. At this stage, this Court is not required to conduct a roving enquiry or to enter into

the factual arena to adjudge the correctness of the allegations.It is well established principle of law that the investigation at the intial stage should not be quashed. The Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora,** reported in **(2013) 10 SCC 581** has held as under :

> 30. It is well settled proposition that while considering the case for quashing of the criminal proceedings, the court should not "kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the Court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the Court judge the probability, reliability or genuineness of the allegations made therein.

43. So far as the contention of the petitioner, that he is a decorated officer is concerned, it is suffice to mention that the Counsel for the petitioner could not point out any provision of law, under which he can seek any exemption from criminal prosecution only on the ground that he is a decorated officer.

44. So far as the submission of the Counsel for the petitioner, that if it was the duty of the petitioner to recover the maintenance amount of Rs. 292.39 lacs , then all his successor Collectors are also equally guilty because the maintenance amount incurred by the State has not been recovered so far, is concerned, it is suffice to hold that merely because some of the persons have not been arrayed as an accused in

the F.I.R., would not make the petitioner entitled to seek quashment of the F.I.R. Not only the investigating agency can implicate other persons also as an accused, but even the Trial Court can exercise its power under Section 190,193 and 319 of Cr.P.C. However, the F.I.R. cannot be quashed on the ground that some of the persons have not been implicated as an accused.

45. So far as the submission made by the Counsel for the petitioner, that since, the name of the petitioner is not mentioned in the complaint lodged by Bharat Bamne and Piyush Jain, therefore, he should not have been impleaded as an accused is concerned, it is suffice to say that FIR or complaint is not an encyclopedia and the investigation cannot be confined to the allegations made in the complaint/FIR only. If the facts discovered during enquiry/investigation warrants implication of other persons also as an accused, then there is no bar. Further in the present case, the Petitioner himself has impleaded Aviation Department and Department of General Administration as respondent no.2 and 3 respectively. The respondent no. 2 has filed its Return and Additional Return and has also filed a copy of the letter dated 1-2-2020 which was written to the Inspector, S.P.E. (Subsequent to the registration of F.I.R.), from which it is clear that the Aviation Academy has not deposited the Night Parking Charges. Thus, when the State itself has come forward with a case that Night Parking Charges were never deposited by the Aviation Academy and as per the agreement, it was the duty of the Collector, Ujjain to ensure

the recovery of Night Parking Charges, then the Petitioner cannot claim that there is no *prima facie* material against him. Further, it is the stand of the Respondent no.1 that if it is presumed that on average basis, daily 10 aircrafts were parked during night, then a total loss of Rs. 95 lacs has been caused to the State. Thus, the non-recovery of Night Parking Charges is an allegation which requires thorough investigation and the F.I.R. cannot be quashed.

46. So far as the defence of absence of mens rea on the part of the petitioner is concerned, it is a matter of trial. While exercising the limited scope of powers under Section 482 of Cr.P.C. or under Article 226/227 of the Constitution of India, this Court cannot go into the defence and in the light of the judgment passed by the Supreme Court in the case of **Lalita Kumari (Supra),** if the complaint discloses the commission of cognizable offence, then the FIR has to be registered. Further in the previous paragraphs, this Court has already held that it is for the petitioner to prove in trial that he had acted with due care and attention as required under Section 52 of Indian Penal Code.

47. So far as the question of preliminary enquiry is concerned, it is merely an enquiry to verify the correctness of the allegations. This Court has already considered the allegations on the basis of the documents filed by the respondent no. 2, as well as the stand taken by the respondent no.1. As already pointed out, FIR is not an encyclopedia and therefore, if an offence is made out from the allegations as well as from the material available on record, then, the

FIR cannot be quashed and in the present case, it is the case of the respondent no.2 itself, that no Night Parking Charges were deposited. Thus, in view of specific stand taken by the respondent no.2 with regard to non-deposit of Night Parking Charges, as well as other allegations including that of non-recovery of maintenance amount, the FIR cannot be quashed

48. In the present case, the F.I.R. has been lodged on the basis of Preliminary Enquiry Report given by the Inspector, S.P.E. (Lokayukt). It is clear from the documents filed by the respondent no.2 itself, that Night Parking Charges were not deposited by the Aviation Academy, therefore, it is for the Lokayukt or D.G.P. (Lokayukt) to find out as to whether this material omission in the preliminary enquiry report on the part of the Enquiry Officer was intentional or bonafide?

49. Accordingly, this Court is of the considered opinion, that since, the FIR lodged against the petitioner discloses commission of cognizable offence, therefore, it cannot be quashed.

50. This Court would have restrained itself from giving any observations on facts, but since, the matter was argued at length by the Counsel for the petitioner pleading interalia that the FIR doesnot disclose commission of cognizable offence, therefore, for the limited purpose of appreciating the submissions of the parties, the facts have been discussed. However, it is clarified that any observation made in

this order, is limited for the purpose of considering as to whether the allegations made against the petitioner discloses the commission of cognizable offence or not.

51. In the present case, the complaints were made in the year 2015 and the FIR has been lodged only in the year 2019 because the preliminary enquiry remained pending for more than 4 long years. Corruption is a menace to the civilized society and if the enquiries are kept pending for no good reasons, then it would certainly frustrate the objects of Anti Corruption Laws. Therefore, it is directed that the respondent no.1 shall conclude the investigation as early as possible preferrably within a period of 9 months from today and the investigation shall not be kept pending for no reason.

52. *Ex consequenti,* the petition filed under Article 226 of the Constitution of India for quashing the F.I.R dated 24-11-2019, is hereby **dismissed.**

53. Accordingly, I concur with the view taken by my esteemed brother Hon'ble Shri Justice Sanjay Yadav and respectfully differ with the view taken by Hon'ble Shri Justice B.K. Shrivastava.

(G.S.Ahluwalia)
Judge