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

**BEFORE
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)**

ON THE 22nd OF JUNE, 2023

MISC. CRIMINAL CASE No. 25467 of 2023

BETWEEN:-

**NARESH RAJPUT S/O BHAGWAT RAJPUT, AGED ABOUT
40 YEARS, OCCUPATION: LABOUR R/O VILLAGE
BARMASA P.S. DAMOH DEHAT DISTRICT DAMOH
(MADHYA PRADESH)**

.....APPLICANT

(BY SHRI SHISHIR KUMAR VERMA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
POLICE STATION DAMOH DEHAT DISTRICT
DAMOH (MADHYA PRADESH)**
- 2. RAJKUMAR AHIRWAR S/O GOPAL AHIRWAR,
AGED ABOUT 30 YEARS, R/O VILLAGE BARWASA,
P.S. DAMOH DEHAT, DISTRICT DAMOH (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI KAMALNATH NAYAK - PANEL LAWYER FOR STATE)

**(NONE FOR RESPONDENT NO.2 THOUGH REPRESENTED THROUGH HIS
COUNSEL)**

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

ORDER

The instant petition under Section 482 of Cr.P.C. has been preferred by the applicant for quashing the FIR registered vide Crime No.692/2022 at Police Station-Damoh Dehat, District Damoh for the offence punishable under Sections 341, 294, 323, 307 all read with Section 34 of IPC & Section 25, 27 of Arms Act as well as Section 3(1)(r), 3(1)(s), 3(2)(va) and 3(2)(v) of SC/ST

(Prevention of Atrocities) Act, 1989.

As per prosecution case, on 31.10.2022, at about 07:00 PM, when complainant Rajkumar Ahirwar along with Naresh Ahirwar and Rakesh Ahirwar were going towards Damoh by motorcycle, one Sunil Ahirwar obstructed the way and started abusing them. Sunil Ahirwar assaulted Naresh Ahirwar and Rakesh Ahirwar with wooden stick. Thereafter, present applicant and Dharamveer Rajput came over there and started abusing the complainant on his caste while Dharamveer assaulted the complainant with wooden stick. Thereafter, a gunshot fire was made by the accused persons which caused injury to the complainant on his right shoulder. Police investigated the matter and registered the FIR against the present applicant and three other co-accused persons. It is pertinent to mention herein that the charge-sheet has also been filed in the case wherein co-accused persons have been exonerated by the police.

Learned counsel for the applicant submits that the allegations made against the applicant do not constitute the offence as alleged by the prosecution. The complainant has filed the complaint with malafide intention. The investigation carried out by the police itself shows that the complainant lodged concocted and false complaint. He submits that the brother of present applicant lodged the FIR against the complainant party for the offence punishable under Sections 325, 326 and 307 of IPC at the same Police Station, in which, the applicant is one of the witness. The complainant party wanted to compromise in the matter and when the compromise could not take place, this false case has been registered by them against the present applicant. The brother of applicant has also filed a writ petition bearing W.P. No.14430/2022 seeking direction to

respondent No.3 to take appropriate action against the complainant party regarding threat given by the complainant party. The Hon'ble Court was pleased to dispose off the said writ petition directing the petitioner to file an application before the Competent Authority under the provision of Witness Protection Scheme, 2018. The criminal proceedings initiated by the prosecution suffer from malafide intention with an ulterior motive of complainant party. There is no evidence so as to indicate that the present applicant was involved in the alleged crime. He has relied upon the pronouncement of the Hon'ble Apex Court in the case of **State of Hariyana Vs. Bhajan Lal** reported in **(1992) 1 SCC 335** saying that when a criminal proceeding is manifestly tainted with malafide intention, same deserves to be quashed. With the aforesaid, he prays to allow the petition.

On the other hand, learned Panel Lawyer for the State opposes the prayer made by the counsel for the applicant submitting that there is sufficient evidence available against the present applicant to constitute the alleged offence against him. At his initial stage, FIR may not be quashed. The present applicant is habitual offender and 25 cases are registered against him. The complainant is a member of SC/ST community and the present applicant abused him on his caste which is serious offence not even against the complainant but against the society as well. With the aforesaid, he prays for dismissal of the present petition.

Heard and perused the case-diary.

On perusal of case-diary, prima-facie, it appears that allegation against the present applicant is that he abused the complainant on his caste and he might be a person who made a gunshot fire on him. Initially, the police registered the FIR against 04 accused persons and out of them, except the present applicant, all

have been exonerated by the police on the basis of CCTV footage and other material collected during the investigation. The complainant himself is not in position to disclose the fact that who was the person who made gunshot fire on him and he made general allegation against all the accused persons. It is also reveals from the case-diary that although police recorded the memorandum of present applicant wherein he accepted that he made a gunshot fire on the complainant but police failed to recover said weapon from the possession of present applicant, infact, no weapon has been recovered in the case. The Investigating Officer himself found that the story narrated by the complainant is not completely true and he suggests that the other co-accused persons should be exonerated as they were not available on the spot. The said conduct of complainant makes him doubtful. In the criminal prosecution there is no room for probability and it is unnatural to see that complainant was not able to identify the person who opened gunshot fire on him.

On perusal of evidence collected by the Investigating Officer, prima-facie, it appears that the FIR suffers from serious infirmities and malafide intention of the complainant. The existence of old enmity has been brought by the applicant by producing the certain documents and it cannot be denied that the said enmity might be a reason for ulterior motive of the complainant.

The Hon'ble Apex Court in the case of **Bhajan Lal (supra)** has issued some guidelines in pursuant to exercise of powers under Section 482 of the Cr.P.C. to prevent abuse of the process and also to secure the ends of the justice. In Para-108, the Hon'ble Apex Court has held as under :-

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary

power under Article 226 or 9 the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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 F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

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

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a

specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

This Court has no hesitation to say that the instant case falls under category Nos.1, 3, 5 and 7 and this Court has to exercise its inherent power under Section 482 of Cr.P.C to prevent abuse of the process of law and to secure the ends of justice.

Therefore, the instant petition is **allowed**.

Resultantly, the FIR registered vide Crime No.692/2022 at Police Station-Damoh Dehat, District Damoh for the offence punishable under Sections 341, 294, 323, 307 all read with Section 34 of IPC & Section 25, 27 of Arms Act as well as Section 3(1)(r), 3(1)(s), 3(2)(va) and 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989 is hereby quashed so far it relates to present applicant.

(RAJENDRA KUMAR (VERMA))
JUDGE