IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 18th OF JULY, 2023

WRIT PETITION No. 12294 of 2023

BETWEEN:-

DHARAM DAS BHALEKAR S/O SHRI HARICHAND BHALEKAR,, AGED ABOUT 42 YEARS, OCCUPATION: U.D.T GOVERNMENT HIGH SCHOOL R/O TANTA TOLA, VIKASKHAND PARASWADA, DISTRICT BALAGHAT [M.P.] (MADHYA PRADESH)

.....PETITIONER

(BY SHRI RAJENDRA PRASAD GUPTA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY DEPARTMENT OF TRIBAL WELFARE DEPARTMENT R/O VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **THE DIVISIONAL COMMISSIONER TRIBAL AFFAIRS DEPARTMENT DIVISION JABALPUR (MADHYA PRADESH)**

3. **THE ASSISTANT COMMISSIONER TRIBAL AFFAIRS DEPARTMENT DISTRICT BALAGHAT (MADHYA PRADESH)**

4. **THE COLLECTOR BALAGHAT DISTRICT BALAGHAT (MADHYA PRADESH)**

5. **SUPERINTENDANT OF POLICE POLICE HEADQUARTERS DISTRICT BALAGHAT (MADHYA PRADESH)**

6. **THE TOWN INSPECTOR POLICE STATION**

SONBARRA DISTRICT BALAGHAT (MADHYA PRADESH)

7. ANAND MISHRA S/O SHRI G.P MISHRA, AGED ABOUT 50 YEARS, OCCUPATION: SUPENDED) ASSISTANT COMMISSIONER OFFICE OF TRIBAL WELFARE DEPARTMENT BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)

WRIT PETITION No. 12327 of 2023

BETWEEN:-

DHARAM DAS BHALEKAR S/O SHRI HARICHAND BHALEKAR, AGED ABOUT 51 YEARS, OCCUPATION: U.D.T. GOVERNMENT HIGH SCHOOL , TANTA TOLA VIKASKHAND PARASWADA DISTRICT BALAGHAT (M.P.) (MADHYA PRADESH)

.....PETITIONER

(BY SHRI RAJENDRA PRASAD GUPTA - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY DEPARTMENT OF HOME AFFAIRS DEPARTMENT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)

2. THE SUPERINTENDENT OF POLICE BALAGHAT DISTRICT BALAGHAT (MADHYA PRADESH)

3. THE TOWN INSPECTOR POLICE STATION LALBURRA DISTRICT BALAGHAT (MADHYA PRADESH)

4. RAHUL NAYAK (ASSISTANT COMMISSIONER) TRIBAL

DEPARTMENT DISTRICT BALAGHAT (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)

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

ORDER

1. By this common order, W.P.No.12294/2023 shall also be considered and decided.
2. **W.P.No.12327/2023** has been filed against FIR dated 29.5.2023 registered at Crime No.174/2023 at Police Station Lalbarra, District Balaghat for an offence under section 409 of the I.P.C. whereas **W.P.No.12294/2023** has been filed against order dated 2.5.2023 passed by Assistant Commissioner, Tribal Welfare Department, Balaghat by which the petitioner has been directed to immediately deposit Rs.50,000/- in the Treasury failing which a departmental action shall be taken against him.

Facts of the case.

3. It is the case of the petitioner that he is working on the post of Upper Division Teacher. In the year 2013 he was posted as Superintendent, Lalbarra Hostel. The office of respondents had sanctioned Rs.50,000/- for repairing of the hostel. Said amount was deposited in the account of the hostel. One Shri Anand Mishra, the then Assistant Commissioner, Welfare Tribal Department, was pressurizing the petitioner to withdraw and give the aforementioned deposited amount to him with a direction, that the petitioner shall prepare forged bills which will be passed by him. Since Shri Anand Mishra was pressurizing petitioner to do an illegal

work, therefore, petitioner made a complaint to the S.P.E. (Lokayukt). On the complaint of the petitioner FIR in Crime No.140/2013 was registered against Shri Anand Mishra by S.P.E. (Lokayukt). The petitioner withdrew the amount of Rs.50,000/- from the account of hostel and handed over the same to the Investigating Agency. A trap was laid. The petitioner was directed by Shri Anand Mishra to handover the illegal gratification to his subordinate Prakashraj Palewar and accordingly the said amount was given to Prakashraj Palewar who kept the same in the front left pocket of his pant. Prakashraj Palewar was apprehended red-handed. It was informed by Prakashraj Palewar that on the instructions of Shri Anand Mishra, Assistant Commissioner, he has taken the illegal gratification from the petitioner. The solution of phenolphthalein powder was prepared and the fingers of Prakashraj Palewar were dipped in the solution and colour of the solution turned into pink. An amount of Rs.50,000/- was also recovered from the pant of Prakashraj Palewar. The S.P.E. (Lokayukt) after concluding the investigation, has filed charge-sheet against Shri Anand Mishra, Assistant Commissioner, Tribal Welfare, Balaghat and Prakashraj Palewar, Assistant Grade II posted in the office of Assistant Commissioner, Tribal Welfare, Balaghat for offences under sections 7, 13(1)(d), 13(1)(a) and 13(2) of the Prevention of Corruption Act. The charge-sheet was filed on 12.7.2021. It is submitted that immediately after the charge-sheet was filed, Shri Anand Mishra started making all efforts to harass the petitioner. In the trial, the evidence of the petitioner is not being recorded and on one pretext or the other, recording of his evidence is being avoided. Although the petitioner had also made a request to the Presiding Judge of the trial court to record his evidence but still no heed has been paid. It is submitted that although

the Department was well aware of the fact that under the pressure of Shri Anand Mishra an amount of Rs.50,000/- was withdrawn from the account of the hostel and the same was handed over to the Investigating Agency, i.e. S.P.E. (Lokayukt) which was recovered from the possession of Prakashraj Palewar and the recovery memo is also a part of charge-sheet which has been filed against Shri Anand Mishra and Prakashraj Palewar but the Assistant Commissioner, Tribal Welfare Department, Balaghat issued a show cause notice dated 27.2.2023 to the petitioner that without carrying out any repairing work, an amount of Rs.50,000/- was withdrawn from the account of the hostel maintained in the Central Bank of India, Lalbarra, District Balaghat and by not utilizing the said amount for the repair work of hostel, the amount was utilized for other purposes and therefore, petitioner was called upon to produce written permission in this regard. It is submitted that the petitioner submitted his detailed reply along with copy of the charge-sheet filed by the S.P.E. (Lokayukt) as well as also informing about the pendency of criminal trial no.3/2021. In spite of that, order dated 2.5.2023 has been issued thereby directing that since an amount of Rs.50,000/- was withdrawn but the same was not utilized for carrying out the repair work of the hostel, therefore, the petitioner must immediately deposit the said amount in the Treasury otherwise a departmental action shall be taken against him.

4. Thereafter, by order dated 16.6.2023 notices of this writ petition were issued. However, it appears that the difficulties of the petitioner did not come to an end with passing of order dated 2.5.2023 only. Shri Rahul Nayak, respondent no.4 who is working as Assistant Commissioner, Tribal Welfare Department lodged an FIR against the petitioner for offence under section 409 of the I.P.C. which has been registered as

Crime No.174/2023 at Police Station Lalbarra, District Balaghat. In the said FIR it has also been mentioned that a show cause notice was issued to the petitioner on 27.2.2023 which was duly replied by him on 6.3.3023 and since the petitioner was being harassed and pressurised for payment of amount of Rs.50,000/- by Shri Anand Mishra, therefore, he had lodged the complaint with S.P.E. (Lokayukt) and on the trap organised by S.P.E. (Lokayukt), the said amount of Rs.50,000/- was recovered from the possession of Prakashraj Palewar and charge-sheet has also been filed. However, opinion of the Govt. Advocate was obtained and as per the opinion of the G.A., it appears that the petitioner had misappropriated the amount of Rs.50,000/- because instead of utilizing the same for repair works of the hostel, the same was used for other purposes and accordingly it was opined by the respondent no.4 that prima facie the petitioner has committed an offence under section 409 of the I.P.C.

5. Challenging the FIR on similar grounds, it is submitted by counsel for the petitioner that although the petitioner was posted as Hostel Superintendent and an amount of Rs.50,000/- was sanctioned for repair of the hostel. But Shri Anand Mishra, who was posted as Assistant Commissioner, Tribal Welfare was pressurizing the petitioner to handover the said amount of Rs.50,000/- to him with a further direction to the petitioner to prepare the forged bills with an assurance that such forged bills will be cleared. Therefore, the petitioner made a written complaint to the S.P.E. (Lokayukt), who not only registered the offence against Shri Anand Mishra but also organized a trap. On the instruction of Shri Anand Mishra, money was handed over to Shri Prakashraj Palewar. The tainted currency notes of Rs.50,000/- were recovered from the possession of Shri Prakashraj Palewar and charge-sheet has also been

filed against Shri Anand Mishra and Shri Prakashraj Palewar for offences under section 7, 13(1)(d), 13(1)(a) read with section 13(2) of the Prevention of Corruption Act and Special Sessions Trial No.2/2021 is pending before the trial court. Once again a complaint was made by the petitioner that he is being harassed at all levels. Even Shri Anand Mishra and Shri Prakashraj Palewar are not permitting the trial court to proceed further and all sorts of hurdles are being created for recording of evidence. Although charges have been framed on 9.11.2021 and more than one and half years have passed but evidence of the petitioner has not been recorded so far and accordingly apart from quashing of FIR, it is prayed that the Special Judge, (P.C.Act) Balaghat who is trying Special Sessions Trial no.2/2021 may be directed to immediately record the evidence of the petitioner so that his difficulties may come to an end. (In some of the papers sessions trial is mentioned as Special Lokayukt Case No.2/2021 and in some papers it has been mentioned as 3/2021).

6. Per contra, it is submitted by counsel for the respondent no.4 that even if Shri Anand Mishra was demanding Rs.50,000/- from the petitioner then he should have withdrawn the said amount from his own personal account and he cannot change the head of the amount which was received for maintenance of hostel. It is further submitted that from the note-sheets it is clear that it was nowhere mentioned by the petitioner that the amount of Rs.50,000/- is being withdrawn for the purpose of giving illegal gratification to Shri Anand Mishra. The withdrawal of amount by the petitioner from the account of hostel was without any authorization and it was not used for maintenance of the hostel, therefore, FIR has been rightly lodged.

7. Counsel for the State has also supported the FIR as well as the order of recovery dated 2.5.2023.
8. Considered the submissions made by counsel for the parties.
9. Before considering the submissions made by the counsel for the parties, this Court would like to consider the scope of interference under Sections 482 of Cr.P.C.
10. 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*. …
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> *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*."
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> (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. <u>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.</u> 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.
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> (Underline supplied)

The Supreme Court in the case of **State of Tamil Nadu Vs. S. Martin & Ors.** reported in **(2018) 5 SCC 718** 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)
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> "(*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.
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> * * *

> (*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."
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> **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.
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> **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.
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> **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)
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> "*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 Guha Madhavrao 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.
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> **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.
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> **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.

9.1 Further, the Supreme Court in the case of **State of MP Vs. Kunwar Singh** by order dated **30.06.2021** passed in **Cr.A. No.709/2021** has held that a detailed and meticulous appreciation of evidence at the stage of 482 of CrPC is not permissible and should not be done. In the case of **Kunwar Singh (supra)**, the Supreme Court held as under:-

> "8.....At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia…......"

11. Thus, it is clear that this Court while exercising power under Section 482 of Cr.P.C. cannot consider the correctness of the allegations as well as the reliability and credibility of the witnesses. If the un-controverted allegations do not make out an offence, only then this Court can quash the proceedings.

12. Therefore, the facts of the case shall be considered in the light of scope of interference by this Court at the stage of investigation.

W.P.No.12327/2022.

13. The facts regarding demand of illegal gratification by Shri Anand Mishra, making of written complaint to S.P.E. (Lokayukt), trap organized by the S.P.E. (Lokayukt) and recovery of tainted currency notes from Prakashraj Palewar have already been mentioned in detail in the previous paragraphs.

14. A seizure memo was also prepared by Investigating Agency. Thus, it is clear that after withdrawing an amount of Rs.50,000/- from the account of the hostel, the petitioner immediately handed over the said amount to the S.P.E. (Lokayukt) who organized the trap on the very same day and recovered the tainted currency notes from Shri Prakashraj Palewar. For the reasons best known to S.P.E. (Lokayukt), the investigation remained pending for eight long years and ultimately the charge-sheet was filed against Shri Anand Mishra and Shri Prakashraj Palewar on 12.7.2021 for offence under sections 7, 13(1)(d), 13(1)(a) read with section 13(2) of the P.C.Act. As per the documents which were filed along with the charge-sheet it is clear that the file relating to withdrawal of amount from the account of the hostel was also seized. The withdrawal form was also seized from the Central Bank, Lalbarra. The currency notes which were seized from the possession of Shri Prakashraj Palewar were also produced

by the S.P.E. (Lokayukt) along with the charge-sheet. Therefore, the currency notes of Rs.50,000/- which were withdrawn by the petitioner from the Central Bank, Lalbarra under the pressure of Shri Anand Mishra were initially lying with the Investigating Agency, i.e. S.P.E. (Lokayukt) and now the same are in the court custody. From the manner in which the events have taken place it is clear that the petitioner had not misappropriated the currency notes of Rs.50.000/- even for a minute. Immediately after withdrawing the amount from the Bank, he handed over the same to the S.P.E. (Lokayukt), who after making preparation for organizing a trap, investigated the matter and on the very same day, i.e. on 22.5.2013 trap was laid and according to the prosecution story at the instance of Shri Anand Mishra, illegal gratification of Rs.50,000/- was paid by the petitioner to Shri Prakashraj Palewar, Assistant Grade II and the said currency notes were recovered from the possession of Shri Prakashraj Palewar. It is really surprising that the State Govt. instead of taking action against the persons who were allegedly involved in demand of illegal gratification is trying to harass and punish the complainant who gathered courage to expose the system of demand of illegal gratification. Corruption is spreading like a cancer in the society and by harassing the complainant, the State agency must not discourage the people from exposing the corruption. It is really surprising that trial of Shri Anand Mishra and Shri Prakashraj Palewar is pending in Special Sessions Trial No.2/2021 (or 3/2021) before the court of Special Judge (P.C.Act) Balaghat but according to the petitioner his evidence is not being recorded. Why the Investigating Agency took 8 years long years to file charge-sheet is also a misery.

15. Although the proceedings in Special Sessions Trial No.2/2021 (or 3/2021) - S.P.E. (Lokayukt) Vs. Anand Mishra and another, is not the subject matter of this writ petition, but this Court in exercise of power under Article 227 of Constitution of India or under section 482 Cr.P.C. can issue directions to the District Judiciary to prevent the abuse of process of law. **Accordingly, the Special Judge (P.C.Act) Balaghat who is in sesin of Sessions Trial No.2/2021 (or 3/2021) S.P.E. (Lokayukt) Vs. Anand Mishra and another is directed to immediately record the evidence of the petitioner without any further delay. It shall be the duty of the S.P.E. (Lokayukt) to grant protection to the petitioner against any pressure. The Special Judge is directed to immediately fix the case for recording of evidence of the petitioner.**

16. So far as FIR in question is concerned, it is well established principle of law that this Court in exercise of power under Article 226/227 of the Constitution of India or under section 482 Cr.P.C. can interfere in the investigation if all the allegations made against the accused do not indicate the commission of cognizable offence. The only submission made by counsel for the State as well as counsel for the respondent no.4 is that since the petitioner had withdrawn an amount of Rs.50,000/- by mentioning that it is required for maintenance of hostel and converted it for different purpose, i.e. for handing over to the S.P.E. (Lokayukt) for laying down the trap, therefore, the petitioner has committed an offence under section 409 of the I.P.C. This Court has failed to understand the logic behind the allegations. It is the allegation of the petitioner that Shri Anand Mishra, Assistant Commissioner, Tribal Welfare had illegally demanded the amount of Rs.50,000/- which was deposited in the account of the hostel. Since the petitioner was not inclined to give illegal

gratification to Shri Anand Mishra, therefore, the very same amount, which was deposited for maintenance of hostel, was withdrawn by the petitioner and on the very same day, i.e. immediately thereafter he handed over the same to the S.P.E. (Lokayukt) and on the very same day a trap was laid and the said currency notes of Rs.50,000/- were recovered from the possession of co-accused Prakashraj Palewar. Thus, it is clear that the amount which had come in the account of hostel for maintenance purpose was allegedly demanded by Shri Anand Mishra, the then Assistant Commissioner, Tribal Welfare and the very same amount was withdrawn and was handed over to the S.P.E. (Lokayukt) for organizing the trap. How one can say that the petitioner had misappropriated the amount of Rs.50,000/- specifically when the said amount always remained in custody of State Investigating agency and at present it is in the safe custody of the trial court. The respondent no.4 who is also presently working as Assistant Commissioner, Tribal Welfare appears to be out and out to help Shri Anand Mishra, his colleague who was also working as Assistant Commissioner, Tribal Welfare. Without commenting more on this issue it is sufficient to mention that even if the entire allegations made in the FIR are accepted as gospel truth, still no offence is made out under section 409 of the I.P.C. or under any other section.

17. For the reasons mentioned above, FIR in Crime No.174/2023 registered at Police Station Lalbarra lodged by the respondent no.4 is **hereby quashed with the cost of Rs.25,000/- to be deposited by the respondent no.4 in the Registry of this Court within a period of two months from today**. The cost so deposited by the respondent no.4 shall not be reimbursed by the State and the petitioner shall be entitled to withdraw the said amount from the Registry of this Court. It is made

clear that in case if the cost is not deposited within a period of two months from today then the Registrar General shall not only initiate the proceedings for recovery of cost but shall also initiate the proceedings for the contempt of court.

18. With aforesaid observation, W.P.No.12327/2023 is **allowed**.

W.P.No.12294/2023.

19. This is yet another glaring example of harassing the complainant who had dared to lodge a complaint against the Assistant Commissioner, Tribal Welfare of demand of illegal gratification. Not only the petitioner had made a written complaint against Shri Anand Mishra, the then Assistant Commissioner to the S.P.E. (Lokayukt) but the conversation between the petitioner and Shri Anand Mishra, the then Assistant Commissioner was also recorded which according to the S.P.E. (Lokayukt) disclosed the commission of offence and accordingly, the petitioner was directed to arrange for Rs.50,000/- to be paid to Shri Anand Mishra and accordingly on 22.5.2013 the petitioner withdrew the said amount from the Bank account of Hostel and immediately handed over the same to the Investigating Agency on the very same day and on the very same day, i.e. on 22.5.2013 a trap was laid. According to the prosecution case at the instance of Shri Anand Mishra, the petitioner handed over the tainted currency notes to Shri Prakashraj Palewar from whose possession the same were seized. It is really surprising that the S.P.E. (Lokayukt) took eight long years to conclude the investigation.

20. The charge-sheet has been filed on 2021. From the list of properties it is clear that the currency notes of Rs.50,000/- have been deposited in the court along with the charge-sheet. Thus, at present the amount of Rs.50,000/- is in the custody of the court. It is really surprising that the

State Agency never made an application for release of the currency notes on Supurdginama. Even, at present it appears that no such application has been filed by the State Agency. The State Authorities are well aware of the fact that the amount of Rs.50,000/- which was received in the Bank account for the purpose of maintenance of hostel was being illegally demanded by Shri Anand Mishra, the then Assistant Commissioner and after making a written complaint to the S.P.E. (Lokayukt) the petitioner was compelled to withdraw the said amount from the account of hostel and the same was utilized for organizing the trap which was successfully done with recovery of tainted currency notes from the possession of Prakashraj Palewar. It is beyond understanding as to how the respondent can direct the petitioner to deposit Rs.50,000/- ? Why the respondents are not interested in seeking interim custody of the currency notes from the court.

21. Be that whatever it may be.

22. Making a complaint regarding demand of illegal gratification and withdrawal of the same amount which was being demanded by the then Assistant Commissioner and utilization of the same for conducting trap cannot be said to be misappropriation of funds or for any illegal purposes. Except for few minutes may be hours, the amount of Rs.50,000/- always remained in the custody of State authorities either the S.P.E. (Lokayukt) and after filing of the charge-sheet in the custody of the court. An amount of Rs.50,000/- which was withdrawn by the petitioner from the Bank account of the hostel was never utilized for his personal purpose. It is really surprising that the State authorities instead of protecting the petitioner by encouraging him for standing up against the corrupt

practices of his superiors, are out and out to harass the petitioner for exposing the corruption in the department.

23. Undisputedly, the amount of Rs.50,000/- was a Govt. amount which at present is lying with the Court in Special Sessions Trial No.2/2021 (or 3/2021) S.P.E. (Lokayukt) Vs. Anand Mishra and another, which is pending in the court of Special Judge, (P.C.Act) Balaghat. It is really surprising that although the trap was laid down in the year 2013 but the S.P.E. (Lokayukt) took eight long years to file the charge-sheet. But the difficulties of the petitioner have apparently started only after the charge-sheet has been filed and the case is fixed for recording of his evidence. According to the petitioner the recording of his evidence is being delayed on one pretext or the other. This Court while deciding W.P.No.12327/2023 has already directed the Special Judge, (P.C.Act) Balaghat who is in sesin of Special Lokayukt Sessions Trial No.2/2021 (or 3/21) - S.P.E. (Lokayukt) Vs. Anand Mishra, to immediately record the evidence of the petitioner, therefore, no further direction is required in the present case. But, one thing is clear that the difficulties of the petitioner started only when the case has come up for recording of his evidence.

24. Since the amount of Rs.50,000/- was withdrawn by the petitioner under compulsion and was utilized for legitimate purpose for exposing corruption in the Department, therefore, it is clear that the order dated 2.5.2023, by which the petitioner was directed to deposit the amount of Rs.50,000/- in the Treasury failing which a departmental action shall be taken against him, is unwarranted and smacks of malafide and arbitrary action with a solitary intention to protect the persons who are facing trial

for offences under sections 7, 13(1)(d) and 13(1)(a) read with section 13(2) of the Prevention of Corruption Act.

25. Accordingly, order dated 2.5.2023 is hereby **quashed**. The petition is **allowed** with cost of Rs.25,000/- to be deposited by the Assistant Commissioner, Tribal Welfare, Janjatiya Karya Vibhag, in the Registry of this Court within a period of two months from today failing which the Registrar General shall initiate recovery proceedings as well as shall register the case for contempt of Court. The amount so deposited shall be payable to the petitioner on his application for withdrawal of the same. The cost so deposited by Assistant Commissioner, Tribal Welfare shall not be reimbursed by the State. The Chief Secretary, State of M.P. is directed to look into the conduct of the present Assistant Commissioner, Tribal Welfare Department, Balaghat and to conduct necessary action against him for harassing the petitioner as he had exposed the corruption in the office.

26. The Chief Secretary of the State of M.P. is directed to take a decision in this regard within a period of two months from today and submit his report in the Registry of this Court within three months from today.

27. With aforesaid direction, the petition is **allowed**.

(G.S. AHLUWALIA)
JUDGE

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