

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

ON THE 04th OF JANUARY, 2024

WRIT PETITION No.31336 of 2023

BETWEEN:-

JITENDRA MAKHIJA S/O LATE SHRI G. C. MAKHIJA, AGED ABOUT 40 YEARS, OCCUPATION: JOURNALIST (INDENPENDENT), SECRETARY JABALPUR SINDHI SAMAJ R/O 303 GOOD WILL APARTMENT NAPIER TOWN NEAR ANAND TALKIES, JABALPUR (MADHYA PRADESH)

.....PETITIONER

(IN PERSON THROUGH VIDEO CONFERENCING)

AND

- 1. STATE OF MADHYA PRADESH THROUGH DIRECTOR GENERAL OF POLICE HEAD OFFICE POLICE HEAD QUARTER JAHANGIRABAD BHOPAL (MADHYA PRADESH)**
- 2. THE STATE OF M.P. THROUGH INSPECTOR GENERAL OF POLICE, CIVIL LINES JABALPUR (MADHYA PRADESH)**
- 3. THE STATE OF M.P. THROUGH SUPERINTENDENT OF POLICE INDIRA MARKET ROAD MALLGODOWN CHOWK JABALPUR (MADHYA PRADESH)**
- 4. THE STATE OF MADHYA PRADESH THROUGH POLICE STATION OMTI INCHARGE, DISTRICT JABALPUR (MADHYA PRADESH)
A. SHO NEERAJ VERMA
B. SHO SPS BAGHEL**
- 5. NANDLAL S/O LATE SHRI RELUMAL KUNGANI R/O PLOT NO 2447- 2552,**

GHANTAGHAR NEAR OMTI THANA
JABALPUR 482002
ADDRESS 2 SADHURAM BEEJ BHANDAR
FRONT OF GURUDWARA BHARTIPUR
GALGALA ROAD JABALPUR 482001
ADDRESS 3 1032, KACHNAR CITY ROAD
VIJAY NAGAR JABALPUR (MADHYA
PRADESH)

.....RESPONDENTS

(STATE BY SHRI SWAPNIL GANGULY - DEPUTY ADVOCATE GENERAL)

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

ORDER

This petition under Article 226 of Constitution of India has been filed for quashment of FIR in Crime No.365/2019 registered at Police Station Omti, District Jabalpur for offence under Sections 294, 506, 384 of IPC.

2. It is submitted that complainant is running a business in the name and style "*Sadhuram Beej Bhandar*" and with the help of people, *Sindhi Dharmashala* is being run near clock tower and complainant is the General Secretary. On 30/08/2019, a *Pagdi Rasm* program was scheduled in the *Dharmashala*. Those rituals were in respect of Late Karamchand Pahuja. After rituals were over, some office bearers and members of the society were talking in the office of *Dharmashala* about future works. At that time, petitioner unauthorizedly entered inside the office and started abusing him filthily on the question of possession. When the complainant and the members of the association objected to it, then he extended a threat that they should give him an amount of Rupees Fifty Lakhs otherwise, he would get the *Dharmashala* locked and also extended a threat that he would kill the complainant. He also extended a

threat that by spreading fake videos, he would defame them in the Society. The incident was witnessed by Kartar Singh Bhatija, Gopaldas Kaishwani, Ramesh Purushbani, Motilal Parwani. After having consultation with the members of the Society, he has come to lodge FIR.

3. It is submitted by petitioner himself that the Police after completing investigation has already filed the charge-sheet and the trial is pending before the Trial Court. It is submitted by petitioner that in fact he was threatened by Superintendent of Police. Petitioner had made a complaint to the Inspector General of Police, Jabalpur, Director General of Police, Divisional Commissioner, Superintendent of Police Jabalpur on 22/10/2019 on the ground that on earlier occasions, Shri Amit Singh, Superintendent of Police had also threatened him to put him in jail and complaint in respect of same was made on 09/10/2019 and 21/10/2019 to the senior officers on which an enquiry is being conducted by DIG as well as by the Grievance Redressal Department of Union of India. Since he had made a complaint against Superintendent of Police, therefore Additional Superintendent of Police issued a notice to him on 28/09/2019 and directed him to appear before him on 30/09/2019. On 22/10/2019, he came to know that a false FIR has been lodged by Nandlal Kungani against him alleging that petitioner had demanded an amount of Rupees Fifty Lakhs and had also abused him, whereas on the said date, he was in the SP Office. When the petitioner talked to SHO, Police Station Omti, then he informed that offence has already been registered and he also insisted the petitioner should withdraw the complaints. It is further submitted that the Investigating Officer Shri Neeraj Verma and Shri Rajesh Tripathi, Additional S.P. City Jabalpur have collusion with criminals and they misuse their

official positions. In one case, CJM has directed to register FIR against Neeraj Verma. In an order issued by Additional District and Sessions Judge, Katni in CNR MP 2101-004238-2015 on 30/12/2022, a statement was made that Shri S.P.S. Baghel lacks investigating experience and requires training. It is submitted that in spite of repeated requests to take action against respondent No.3, nothing was done. It is submitted that petitioner is being threatened to withdraw the complaint made against the corrupt activities of office bearers of the Society. Accordingly, it is prayed that the petitioner is the victim of malafide and arbitrary action of the Police Authorities namely, Shri Amit Singh, Superintendent of Police, Shri Rajesh Tripathi, Additional Superintendent of Police, Shri Neeraj Verma, SHO Police Station Omti, Shri S.P.S. Baghel, SHO Police Station Omti.

4. Heard the petitioner who has argued the matter through video conferencing.

5. Before considering the submissions made by petitioner, this Court would like to consider the scope of jurisdiction of this Court under Section 482 of Cr.P.C/ under Article 226/227 of Constitution of India to quash the proceedings.

6. 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.

7. 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.

8. 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.”

9. 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)

10. 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"

11. 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 Belhissor 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.”

12. 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.

13. 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.; Chundururu 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.)

20. 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.”

21. 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....."

22. 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 uncontroverted allegations do not make out an offence, only then this Court can quash the proceedings.

23. So far as the *malafides* are concerned, Supreme Court in the case of **Renu Kumari Vs. Sanjay Kumar and others** reported in **(2008) 12 SCC 346** has held that if the complaint discloses commission of cognizable offence, then the *malafide* of the complainant loses its effect. In the case of **Renu Kumari (supra)** it has been held as under:-

9. “8. Exercise of power under Section 482 CrPC in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under CrPC, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with

caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur v. State of Punjab* [AIR 1960 SC 866 : (1960) 3 SCR 388] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (AIR p. 869)

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations

made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, 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. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows : (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.'

11. As noted above, the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court

of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See *Janata Dal v. H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and *Raghubir Saran (Dr.) v. State of Bihar* [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] 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. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See *Dhanalakshmi v. R. Prasanna Kumar* [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *State of Kerala v. O.C. Kuttan* [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , *State of U.P. v. O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , *Rashmi Kumar v. Mahesh Kumar*

Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415], *Satvinder Kaur v. State (Govt. of NCT of Delhi)* [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]”

The above position was again reiterated in *State of Karnataka v. M. Devendrappa* [(2002) 3 SCC 89 : 2002 SCC (Cri) 539] , *State of M.P. v. Awadh Kishore Gupta* [(2004) 1 SCC 691 : 2004 SCC (Cri) 353] and *State of Orissa v. Saroj Kumar Sahoo* [(2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272] , SCC pp. 547-50, paras 8-11.

24. Thus, if the allegations made in the FIR make out a cognizable offence, then the *malafide* of the informant becomes secondary. Furthermore, a lot of disputed facts are involved in the present case, which cannot be decided by this Court while exercising powers under Section 482 of Cr.P.C./ Article 226 or 227 of Constitution of India.

25. Thus, it is clear that whenever a petition is filed may be under Section 482 of Cr.P.C. or under Article 226/227 of Constitution of India, this Court cannot consider the defence of the person who is facing trial or who is suspect in the FIR, but this Court has to consider the allegations made in the FIR on their face value and only if this Court comes to a conclusion that even after accepting the allegations no case is made out, only then the FIR/ proceedings can be quashed.

26. There is another aspect of the matter. Petitioner during his course of arguments and even in the petition under Article 226 of Constitution of India, has leveled several allegations against Shri Amit Singh, IPS, the then Superintendent of Police but he has not been impleaded in his personal capacity. Further, the State of Madhya Pradesh has been impleaded through Neeraj Verma and S.P.S. Baghel, SHOs of Police

Station Omti. Under these circumstances, it cannot be said that petitioner has impleaded Neeraj Verma and S.P.S. Baghel in their personal capacity but one thing is clear that Shri Amit Singh has not been impleaded as respondent in the present case at all.

27. It is further submitted by petitioner that entire thing is being done at the instance of local MLA of Cantt area who wants to have his control over *Sindhi Dharmashala*. However, MLA from Cantt area has also not been impleaded as respondent.

28. It is well established principle of law that if any allegation of biases or malafide actions are made against an Authority or person, then he is necessarily required to be impleaded because no one can be condemned behind their back without giving any opportunity of hearing.

29. The Supreme Court in the case of **State of Punjab and others Vs. Chaman Lal Goyal** reported in (1995) 2 SCC 570 has held asunder:

“8. Be that as it may, in the absence of any clear allegation against any particular official and in the absence of impleading such person *eo nomine* so as to enable him to answer the charge against him, the charge of malafides cannot be sustained.”

30. The Supreme Court in the case of **Indian Railway Construction Co. Ltd. Vs. Ajay Kumar** reported in (2003) 4 SCC 579 has held asunder:-

“23. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established

except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that malafides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See *S. Partap Singh v. State of Punjab* [AIR 1964 SC 72:(1964) 4 SCR 733].) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in *E.P. Royappa v. State of T.N.* AIR 1974 SC 555 courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.”

31. The Supreme Court in the case of **State of Bihar and Another Vs. P.P. Sharma**, reported in **(1992) Supp (1) SCC 222** has held asunder:-

“**55.** It is a settled law that the person

against whom mala fides or bias was imputed should be impleaded *eo nomine* as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them...”

32. The Supreme Court in the case of **Federation of Railway Officers Association Vs. Union of India** reported in **AIR 2003 SC 1344** has held as under:

“20.....Allegations regarding malafides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations.”

33. The Supreme Court in the case of **J.N. Banavalikar Vs. Municipal Corporation of Delhi**, reported in **AIR 1996 SC 326** has held as under:

“21.....Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of malafide action in fact i.e. malice in fact should not be countenanced by the Court.”

34. The Supreme Court in the case of **All India State Bank Officers' Federation and Others Vs. Union of India and others**, reported in (1997) 9 SCC 151 in para 22, has held that where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. The relevant observation of the Apex Court areas under:-

“22. There is yet another reason why this contention of the petitioners must fail. It is now settled law that the person against whom mala fides are alleged must be made a party to the proceeding. The allegation that the policy was amended with a view to benefit Respondents 4 and 5 would amount to the petitioners contending that the Board of Directors of the Banks ought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of malafides, which allegations, in fact, are without merit.”

35. Thus, it is clear that the burden is heavy on the person who alleges malafides and in absence of a person against whom charge of malafides have been levelled, the same cannot be considered or looked into.

36. During the course of arguments, petitioner did not utter single word with regard to the allegations made against him in the FIR. In the petition under Article 226 of Constitution of India, it has been pleaded that on the date of incident, petitioner was in the S.P. Office. Thus, it is clear that petitioner is trying to take the defence of plea of alibi.

37. It is well established principle of law that plea of alibi is required to be proved by the accused in the trial by leading cogent evidence.

38. This Court in the case of **Prashant Kumar Nimgani vs. State of MP & Anr.** by order dated 20/09/2018 passed in **M.Cr.C. No.7480/2016 (Gwalior Bench)** has held as under:-

"So far the plea of alibi is concerned, it is well-established principle of law that it has to be proved beyond reasonable doubt by leading cogent evidence. According to the prosecution case, the applicant had committed rape on the prosecutrix for three-four months. Undisputedly, the prosecutrix was the tenant of the father of the applicant. Whether the applicant had any occasion to visit the house of his father or not; and whether during this period he was at Seondha only; and what is the distance between Seondha and Datia; and whether the applicant can frequently visit the house of his father even by remaining on duty, are certain aspects which can be taken into consideration by the trial Court.

Plea of alibi is nothing, but a defence taken by an accused to rule out the possibility of presence of the accused on the place of incident. Thus, the said aspect cannot be taken into consideration by this Court while exercising power under Section 482 of CrPC."

39. Furthermore, incident took place in *Sindhi Dharmashala* which according to the petitioner is situated near clock tower Jabalpur whereas S.P. Office Jabalpur is situated at a nearby place within a distance of 2-3 Kms. A person from S.P. Office can reach to clock tower within 5 minutes or soon. Therefore, it cannot be said that even if petitioner had attended the S.P. Office on 30/08/2019, then he cannot reach to the spot. In case if the allegations made in the complaint makes out a cognizable

offence, then in the light of judgment passed by Supreme Court in the case of **Lalita Kumari Vs. State of U.P.** reported in **(2014) 2 SCC 1**, FIR has to be registered.

40. The allegations against the petitioner are that not only he unauthorizedly entered in the office of *Dharmashala* but filthily abused the complainant, extended a threat to his life and demanded an amount of Rupees Fifty Lakhs. Not a single whisper was made by petitioner to point out as to how the aforesaid allegations would not make out a cognizable offence.

41. Furthermore, it is the case of petitioner that police has already filed the charge-sheet. Now it is a matter between petitioner and the Court.

42. The Supreme Court in the case of **H.N. Rishbud and Another Vs. State of Delhi** reported in **AIR 1955 SC 196** has held as under:-

“9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal

Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading “Conditions requisite for initiation of proceedings”. The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

“Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice.”

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an

illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in *Prabhu v. Emperor* [AIR 1944 Privy Council 73] and *Lumbhardar Zutshi v. King* [AIR 1950 Privy Council 26] .

These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.”

43. Considering the totality of facts and circumstances of the case, this Court is of the considered opinion that no case is made out warranting interference.

44. Petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

S.M.