IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PRAMOD KUMAR AGRAWAL

ON 07th of August, 2024

M.Cr.C. No.2625 OF 2024

BETWEEN:-

AMIR KHAN S/O SHRI MOHD. SHAHZAD KHAN, AGED ABOUT 32 YEARS, OCCUPATION PRIVATE JOB R/O MAHARANA PRATAP NAGAR MALKHEDI DISTRIC NARMADAPURAM (MP)

.....PETITIONER

(SHRI P.S.TOMAR - ADVOCATE)

AND

1. STATE OF MADHYA PRADESH THROUGH POLICE STATION HOSHANGABAD KOTWALI DISTRICT NARMADAPURAM (MP)

2. GOPAL AHIRWAR S/O BHAGIRATH AHIRWAR PERMANAT R/O VILLAGE JUNA SAGAR TEHSIL REHLI DISTT. SAGAR M.P AT PRESENT R/O SUNCITY COLONY CHAKKAR ROAD NARMADAPURAM DISTRICT NARMADAPURAM (M.P)

.....RESPONDENTS

(SHRI AMIT PANDEY – PANEL LAWYER FOR STATE, MS. ARZOO ALI – ADVOCATE FOR RESPONDENT NO.2)

Reserved on : 13.05.204

Pronounced on: 07.08.2024

This petition having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 990/2023 registered at Police Station, Hoshangabad, Kotwali District Narmadapuram for the offence punishable under Section 304 of the Indian Penal Code.

2. To resolve the controversy involved in the present case and to answer the rival submissions made by the counsel for the parties, it is necessary to mention relevant facts of the case, which are as under:-

3. An FIR got registered against the petitioner at Police Station, Hoshangabad, Kotwali District Narmadapuram vide FIR No. 990/2023 for the offence punishable under Section 304 of the Indian Penal Code.

4. As per prosecution, allegation against the petitioner is that he injected the injection of monocef to the son of the respondent no.2 due to which son of the respondent no.2 namely Prince aged about 11 years, died.

5. Learned counsel for the petitioner submitted that both the parties have arrived into compromise and complainant does not want to prosecute this case against the petitioner. The compromise arrived at between the parties has been verified by the Registrar J-II on 06.02.2024. He further submitted that the incident took place on 11.10.2023 and FIR has been registered against the present applicant on 01.12.2023 after due delay and there is no proper explanation regarding the same. Police has unnecessarily registered the case under Section 304 of IPC against the present applicant, which is not sustainable under the law. On the basis of compromise also, the FIR as well as criminal proceeding deserves to be quashed.

6. It is further submitted that the overt act is alleged against the present petitioner does not fall within the definition of Section 299 of IPC and therefore, no offence under Section 304 of IPC is made out against the applicant. The basic ingredients of Section 299 of IPC are totally missing. There is no mensrea alleged in the FIR against the applicant/accused. Even the intention or knowledge of the act is also missing in this case. Hence, he cannot be implicated in the crime in question. In support of his submissions, counsel for the petitioner has placed reliance on the ***decisions*** in the case of **Mahadev Prasad Kaushik Vs. State of U.P and another (Cr.A.No.1625/2008 decided on 17.10.2008)** in which Supreme Court has held has under:

> 29. There is thus distinction between Section 304 and Section 304A. Section 304A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder u/s 300, IPC. In other words, Section 304A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is the motivating force' of the act complained of, Section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.

7. He further placed reliance in the case of State of **Rajasthan Vs. Chhittarmal (2007) 10 SCC 792,** it is held that in absence of intention to cause death, the offence under Section 302 of IPC is not attracted and converted for offence under section 304-A of IPC.

8. In the case of **Shiji @ Pappu and Others Vs. Radhika and another (Criminal Appeal No.2094/2011 decided on 14.11.2011)** whereby, it is held as under:

> 13. It is manifest that simply because an offence is not compoundable u/s 320 IPC is by itself no reason for the High Court to refuse exercise of its power u/s 482 Code of Criminal Procedure. That power can in our opinion be exercised in cases where there is no chance of recording a conviction

against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial Court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution u/s 482 Code of Criminal Procedure, on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable u/s 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court u/s 482 Code of Criminal Procedure. are not for that purpose controlled by Section 320 Code of Criminal Procedure. Having said so, we must hasten to add that the plenitude of the power u/s 482 Code of Criminal Procedure. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power u/s 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume

the role of an appellate court while dealing with a petition u/s 482 of the Code of Criminal Procedure. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.)

9. Learned counsel for the petitioner has further placed reliance in the case of **Raju @ Rajkumar Vs. The State of Madhya Pradesh (M.Cr.C.No.3623/2015 decided on 04.01.2016), Vikram Gupta Vs. State of M.P (M.Cr.C.No.51426/2018 decided on 25.02.2019)** in which due to compromise, criminal proceeding has been quashed. Thus, it is prayed that this Court may quash FIR dated 01.12.2023, so far as the present petitioner is concerned.

10. On the other hand, learned Panel Lawyer and the counsel appearing for the respondent no. 2 has vehemently opposed the contentions raised on behalf of the petitioner. It is further contended there is material available against the petitioner, therefore, he has rightly been implicated in the present case. It is further submitted that earlier a criminal case bearing crime number 242/2014 under Sections 452, 376, 511, 294, 323/34 of IPC and Section 8 of POCSO Act has been registered against the applicant and by ST.No.207/14, he has been acquitted on 30.10.2014.

11. Heard learned counsel for the parties and perused the documents.

12. While dealing with the scope of exercise of power provided under Section 482 Cr.P.C. the Supreme Court in the case of **2022 SCC Online SC 820- State of Uttar Pradesh and another vs. Akhil Sharda & others**, has observed as under:

> "18. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482 Cr.P.C., it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C. As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., the High Court cannot get into appreciation of evidence of the particular case being considered. (See Pratima (supra); Thom (supra); Rajiv (supra)and Niharika (supra).
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> 19. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the manner in which the High Court has allowed the petition under Section 482 Cr.P.C., we are of the opinion that the impugned judgment and order passed by the High Court quashing the criminal proceedings is unsustainable. The High Court has exceeded in its jurisdiction in

quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.

20. It is also required to be noted that even the High Court itself has opined that the allegations are very serious and it requires further investigation and that is why the High Court has directed to conduct the investigation by CB-CID with respect to the FIR No. 227 of 2019. However, while directing the CB-CID to conduct further investigation/investigation, the High Court has restricted the scope of investigation. The High, Court has not appreciated and considered the fact that both the FIRs namely FIR Nos. 260 of 2018 and 227 of 2019 can be said to be interconnected and the allegations of a larger conspiracy are required to be investigated. It is alleged that the overall allegations are disappearance of the trucks transporting the beer/contraband goods which are subject to the rules and regulations of the Excise Department and Excise Law."

13. Further in the case of **(2022) 2 SCC 129- Mahendra K.C. Vs. State of Karnataka & another**, the Supreme Court while entertaining the petition under Section 482 of Cr.P.C. seeking quashing of FIR has held as under:

"18. In this backdrop, it is impossible on a judicious purview of the contents of the complaint and the suicide note for a judicial mind to arrive at a conclusion that a case for quashing the FIR had been established. In arriving at that conclusion, the Single Judge has transgressed the well-settled limitations on the

exercise of the powers under Section 482 CrPC and has encroached into a territory which is reserved for a criminal trial.

19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In **State of Orissa v. Saroj Kumar Sahoo,** a two-Judge Bench of this Court, observed that : (SCC pp. 547-48, para 8)

"8. ... 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 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." Emphasis supplied

20. These principles emanate from the decisions of this Court in **State of Haryana v. Bhajan Lal and State of M.P. v. Surendra Kori. In Surendra Kori** , this Court observed : (Surendra Kori case, SCC p. 163, para 14)

"14 . The High Court in exercise of its powers under Section 482 CrPC does not function as a court of appeal or revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 CrPC, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 CrPC, 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 wide magnitude and cannot be seen in their true perspective without sufficient material."

21. In Bhajan Lal, this Court laid down the principles for the exercise of the jurisdiction by the High Court in exercise of its powers under Section 482 CrPC to quash an FIR. Ratnavel Pandian, J. laid down the limits on the exercise of the power under Section 482 CrPC for quashing the FIR and observed: (SCC pp. 378-79. para 102) "102. In the backdrop of the interpretation of the

various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 CrPC which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) CrPC except under an order of a Magistrate within the purview of Section 155(2) CrPC.

(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) CrPC.

(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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

judgment in Bhajan Lal has been recently relied on by this Court in State Telangana v. Managipet.

22. Based on the above precedent, the High Court while exercising its power under Section 482 CrPC to quash the FIR instituted against the second respondent-accused should have applied the following two tests :

(i) whether the allegations made in the complaint, prima facie constitute an offence; and

(ii) whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint. Before proceeding further, it is imperative to briefly discuss the law on the abetment of suicide to determine if a *prima facie* case under Section 306 IPC has been made out against the respondent-accused."

14. In the case of **1994 SCC (Cri) 63 – State of Bihar and another vs. K.J.D. Singh** the Supreme Court in paragraphs 3 and 4 observed as under:-

"3. After going through the record and hearing Mr Goswami, learned senior counsel for the State and Mr Ranjit Kumar, learned counsel for the respondent, we are of the view that it is not a case in which the High Court should have cut short the normal process of the criminal trial. The exercise of the powers by the High Court under Section 482 CrPC to quash the prosecution launched against the respondent at the stage when the trial had not even commenced was not proper. In view of the series of decisions of this Court starting with the judgment in R.P. Kapur case [R.P.Kapur v. State of Punjab, (1960) 3 SCR 388 : AIR 1960 SC 866 : 1960 Cri LJ 1239] up to Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] the inherent power under Section 482 has to be exercised for the ends of the justice and should not be arbitrarily exercised to cut short the normal process

> of a criminal trial. After a review of catena of authorities, Pandian, J. in Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] has deprecated the practice of staying criminal trials and police investigations except in exceptional cases and the present case is certainly not one of these exceptional cases.
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> 4. We are, therefore, of the opinion that the High Court was not justified in quashing the prosecution launched against the respondent for offences under Sections 420, 468, 471 and 120-B IPC. The judgment of the High Court cannot, thus be sustained. This appeal is consequently allowed and the judgment of the High Court is set aside. The case shall proceed to trial expeditiously. "

15. In **Arun Singh Vs. State of Uttar Pradesh Through its Secretary 2020(3) SCC 736**, this Court held as under:

> 14. In another decision in **Narinder Singh Vs. State of Punjab (2014) 6 SCC 466** it has been observed that in respect of offence against the society it is the duty to punish the offender. Hence, even where there is a settlement between the offender and victim the same shall not prevail since it is in interests of the society that offender should be punished which acts as deterrent for others from committing similar crime. On the other hand, there may be offences falling in the category where the correctional objective of criminal law would have to be given more weightage than the theory of deterrent punishment. In such cases, the court may be of the

> opinion that a settlement between the parties would lead to better relations between them and would resolve a festering private dispute and thus may exercise power under Section 482 CrPC for quashing the proceedings or the complaint or the FIR as the case may be.
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> 15. Bearing in mind the above principles which have been laid down, we are of the view that offences for which the appellants have been charged are in fact offences against society and not private in nature. Such offences have serious impact upon society and continuance of trial of such cases is founded on the overriding effect of public interests in punishing persons for such serious offences. It is neither an offence arising out of commercial, financial, mercantile, partnership or such similar transactions or has any element of civil dispute thus it stands on a distinct footing. In such cases, settlement even if arrived at between the complainant and the accused, the same cannot constitute a valid ground to quash the FIR or the charge-sheet.
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> 16. Thus, the High Court cannot be said to be unjustified in refusing to quash the charge-sheet on the ground of compromise between the parties.

16. On several occasions, the Supreme Court has observed that the power of 482 Cr.P.C. should be exercised sparingly to secure the ends of justice. Although the Supreme Court has observed that the High Court under Section 482 Cr.P.C. is having a very wide and plenitude power but that has to be

exercise after great caution and the court must be careful to see that its decision in exercise of this power should be based on sound principle and it should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a premature decision in a case wherein the entire facts are incomplete and hazy. The criteria laid down by the Supreme Court for quashing the FIR that if the contents of FIR are considered to be true at their face value, even though offence is not made out, then only it can be quashed, but if there are material collected by the prosecution and it requires re-appreciation of those material and evidence adduced by the prosecution, the said exercise is not proper on the part of the court dealing with the petition under Section 482 of Cr.P.C.. If cognizable offences are made out on the basis of contents of FIR then it cannot be quashed by the High Court.

17. In the present case, not only the allegations contained in the FIR but also in the statements of witnesses recorded under Section 161 of Cr.P.C. are enough to constitute the offences as registered, therefore, at this stage forming an opinion about the testimony of the witnesses or their statements, does not appear to be proper. The trial is going on, the petitioner will get full opportunity to defend their case and if prosecution fails to prove the guilt of the petitioners beyond all reasonable doubt, they will be acquitted, but at the initial stage of the trial it is not proper for this Court to appreciate the

evidence and form any opinion about its correctness. I do not find that it is a fit case in which power of Section 482 of Cr.P.C. can be exercised for quashing the FIR. The petition, in my opinion, is without any substance and is hereby **dismissed** accordingly.

18. However, in the facts and circumstances of the case, there shall be no order as to costs.

(PRAMOD KUMAR AGRAWAL)
JUDGE

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