IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE APRIL, 2025

MISCELLANEOUS CRIMINAL CASE NO. 4367 OF 2025

MINY RAJ MODI

Versus

STATE OF MADHYA PRADESH AND ANOTHER

Appearance :

Shri Amit Dave – Advocate for the petitioner.

Shri B.K. Upadhyay – Government Advocate for the respondent No.1-State.

Shri Vikas Mahawar – Advocate for the respondent No.2.

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MISCELLANEOUS CRIMINAL CASE NO. 46701 OF 2024

PRAKASH SINGH RAJPUT

Versus

STATE OF MADHYA PRADESH AND ANOTHER

Appearance :

Shri Eshaan Datt – Advocate for the petitioner.

Shri B.K. Upadhyay – Government Advocate for the respondent No.1-State.

Shri Vikas Mahawar – Advocate for the respondent No.2.

Reserved on : 18/03/2025

Pronounced on : 02/05/2025

O R D E R

Since both the petitions are having common factual background and reliefs claimed by the petitioners in both the petitions are same, therefore, this common order is being passed governing disposal of both the petitions.

2. In both the cases, filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS'), petitioners have claimed that a crime has been registered against them vide Crime No.0155/2024 at Police Station Misrod, District Bhopal on 30.04.2024 for commission of offence punishable under Sections 376, 376(3) and Section 190 of the Indian Penal Code, 1860 (hereinafter referred as 'IPC') and Sections 5(f), 5(m) and 6 of the Prevention of Children against Sexual Offences Act, 2012 (for brevity 'POCSO Act'). However, the role of the petitioners in both the petitions is different but the basic challenge is same, therefore, for the purpose of convenience, facts of M.Cr.C. No.4367/2025 are being taken for consideration to resolve the controversy involved in case.

3. Petitioner in M.Cr.C. No.4367/2025 is alleged to have committed aggravated penetration sexual assault whereas in M.Cr.C. No.46701/2024, it is alleged against the petitioner that he threatened the prosecutrix and her mother so as to refrain/desist them from making any complaint against him.

4. As per the prosecution story, in Police Station Misrod, an undated written complaint was made by the mother of the prosecutrix mentioning that she is a home maker and her husband is a businessman. The prosecutrix is her only child aged about 08 years and studies in Gyan

Ganga School and resides in the school hostel. The child got admitted in the school around 15 days prior to the incident and as per the policy of the school, she was permitted to meet and speak to her child on every Sunday and as per the mother of the prosecutrix, when she visited school to meet her child, school management asked her to take the prosecutrix for outing then she took her to The Ashima Mall and dropped her back to the school.

4.2 It is also mentioned in the complaint that on 28.04.2024 i.e. Sunday, in the afternoon she madc a phone call to the school to speak to her child. However, she could not talk to her child as she was informed that she is sleeping and at around 5 P.M., when she again attempted to talk to her child (prosecutrix) then only the Warden of the hostel arranged a short conversation of about two minutes. During this period, the prosecutrix started crying and when she made a video call then the prosecutrix wanted to tell her something but the Wanden immediately disconnected the call and the mobile was switched off.

4.3 It is further mentioned in the undated complaint that the mother left for Bhopal from Indore on 29.04.2024 and reached school on the same day. She picked her child and took her to Ashima Mall. In the car, the prosecutrix informed her mother that around 04-05 days back when she finished her meal in the mess, one Warden aunty took her to a room on the ground floor and forcefully fed her *dal chawal* and after eating the same, she did not remember anything. However, when she woke up in the night, she found one uncle lying over her and she was not in her room but lying on the floor of some other room and her hands and legs were held by the said uncle. The prosecutrix also described the face of that person and further informed that one uncle was also standing near her and informing

that uncle lying over her ‘Modi Sir the girl is gaining consciousness’ and he repeated the same 03-04 times. Thereafter, the person who was lying over her, closed her eyes with his hand. According to the prosecutrix, as she informed her mother, she felt severe pain in her abdomen and private parts and then she dozed off and when she got up in the morning, she was feeling unbearable pain in her abdomen and blood was oozing out from her private parts which soiled her underwear then when she informed the Warden about this, Warden applied Vicks on her abdomen and applied some ointment on her private parts from where blood was oozing and then she was made to take a bath and the Warden washed her soiled underwear. Thereafter, when she requested the Warden to allow her to talk to her mother, she was told to go to the school and not discuss these facts with anybody and only after returning from school, they would make arrangement for her to talk to her mother but after returning from school when she requested for a call to her mother, she was told that it could be done only on Sunday. When on Sunday her mother called, only two minutes was given to talk to her mother and when she was telling her mother about the incident, bleeding and sufferance, the phone was disconnected by the Warden. As per the mother of the prosecutrix, the prosecutrix informed her that she would recognize the uncle who was lying over her and would also identify the Warden aunty who forcefully fed her with *dal chawal*. The complaint further contained that the child was taken to the doctor and doctor told her to lodge a complaint but because of some medical problem, she could not lodge the report. On 29.04.2024, Inspector Prakash Rajput visited the hospital and informed her that Modi has sent him with a message to stop the medical

examination of the child because it was a mistake committed by him. But she went to the child and also approached the Misrod Police Station.

4.4 The Police Station proceeded to register an F.I.R. for commission of offence as narrated in the complaint and wanted to start the investigation by medical examination of the prosecutrix but prior to that the mother of the prosecutrix visited the Government Hospital and got the prosecutrix physically examined in absence of the police. The physical examination in the Government Hospital was done before the registration of F.I.R. and that report has been termed as Pre-MLC and it was dated 29.04.2024 which depicted that no definite opinion can be given. Gynecologist and Anaesthetist needed for internal examination. However, the report mentions about redness and disturbance in mucosa. At this juncture, the police was informed by the hospital and N.G.O. named Gauravi was also informed by the treating doctor. From the investigation report, the doctor advised that the prosecutrix be admitted in the hospital for internal examination and symptomatic treatment. Further, the Pre-MLC indicated that the prosecutrix was not cooperative for internal examination and record also reveals that she was not admitted in the hospital and was taken home by her mother. On the next date, the mother of prosecutrix visited the police station and submitted an undated complaint. The police subjected the prosecutrix for medical examination and the report dated 30.04.2024 reflected that as per the history and physical examination, attempt to sexual assault is done. Injury in private part was more than 24 hours old. While doing so, the doctor made two vaginal slides and seized the underwear of the prosecutrix to be sent to the Forensic Science Laboratory. It was also advised that the further internal examination be

done by the Gynecologist and vaginal slides be prepared as existing slides were prepared just from the inside of the private part.

4.5 In continuation of the same, Gynecologist performed internal examination on 01.05.2024 and recorded finding that no sign of external injury, no bleeding, slight redness on *labia minora* and hymen deep seated appeared intact and it was opined that as per history and physical examination, physical/sexual assault might have been done.

4.6 Considering the seriousness and sensitivity in the matter, higher authority took cognizance and constituted a Special Investigation Team (SIT) to oversee the investigation and ensure fair and impartial investigation is done. The SIT noticed that existing Pre-MLC and MLCs have certain inconsistencies and therefore, the medical examination of the prosecutrix was sought to be done by Medical Board consisting of four doctors namely Dr. Abha Jaisani, Gynecologist, Dr. Shraddha Agrawal, Gynecologist, Dr. Nisha Badve, Anaesthetist and Dr. Vandana Oad, Medical Officer.

4.7 Medical Board recorded its opinion that no external injury was there, no bleeding, no tenderness and the hymen was found intact. This report was submitted on 02.05.2024. Thereafter, no concrete steps were taken in investigation upto 10.05.2024. The mother of the prosecutrix wrote a letter dated 10.05.2024 mentioning therein that the prosecutrix was unwell at the time of application 30.04.2024 and after improving her health, she asked to recount the events and now she is in a position to identify the man involved in the incident and according to her, he is the same person to whom they visited prior to her admission in the residential school and as such allegation was made against the present applicant

namely Miny Raj Modi and requested the police to take necessary action. The statement of the mother was recorded under Section 161 of Cr.P.C. on 01.05.2024 then supplementary statement was recorded by the police on 12.05.2024 in which, she reiterated the story as narrated in the letter dated 10.05.2024 then their statement under Section 164 of Cr.P.C. was recorded but they were same with minute variations.

4.8 The police, after receipt of letter dated 10.05.2024 written by mother of the prosecutrix and also on the written request of Bal Kalyan Samiti, arranged to conduct another medical examination of the prosecutrix on 10.05.2024 at Hamidiya Hospital, Bhopal by Dr. Nandini Singh, Assistant Professor, Dr. Varsha Rani Chaudhari, Assistant Professor and Dr. Rajni Shinde, RSO III.

4.9 As per this MLC, there was no sign of use of force, however, final opinion was reserved pending due to the non-availability of the FSL report. Sexual violence could not be ruled out. On 13.05.2024, the DCP, Bhopal received the FSL report including vaginal slides marked as 'A' and 'C' and the underwear of the prosecutrix marked as 'E'. These developments from 10.05.2024, led to arrest of the present petitioner on 13.05.2024 who was then produced before the Special Court, POCSO which took him in judicial custody. Simultaneously, the police forwarded the blood and urine sample of the prosecutrix to Regional Forensic Science Laboratory with a specific query to trace out the existence of any chemical agent which could have acted as sedative on prosecutrix to make her unconscious.

4.10 The DCP, Zone II, Bhopal also received the FSL report dated 17.05.2024 which indicated that the chemical test with respect to the

query made has returned 'Negative'. Further, on 16.05.2024 vide letter No. DNA-32/24, the DCP, Zone II, Bhopal forwarded the sample received from the petitioner herein for DNA profiling to match it with the semen and human sperm found in the vaginal slides as well as the underwear of the prosecutrix. During this period, police arranged for test identification parade (TIP) because in the letter dated 10.05.2024, the mother of the prosecutrix informed that the prosecutrix has recollected the face of the person involved in commission of offence upon her.

4.11 Police received the DNA report along with the letter dated 31.05.2024 indicating that the sample marked as 'A', 'C' and 'E' (in which the FSL report found semen and human DNA) had no presence of Male (Y) DNA Profile. The report indicates that the above samples contain Female DNA Profile.

5. In view of the overall factual circumstances which were collected in view of the different exercises carried out, learned counsel for the petitioners advanced various submissions to convince this Court, which are as under :-

5.1 The petitioners have been falsely implicated in the matter only to extract money from them.

5.2 Mother of the prosecutrix is having past criminal record and is facing several criminal proceedings including offence punishable under Section 182 and Section 211 of IPC for making false complaint of rape and it is stated that the circumstances which is narrated in the petition from paragraph no.11 to 20 would make it clear as to in what manner plan was prepared to implicate the petitioners in the alleged crime to extract money from them.

5.3 Statements under Section 161 of Cr.P.C. of as many as 42 persons were taken. CCTV footages were collected from the cameras installed in the hostel and school premises but presence of accused was found nowhere. This itself indicates that allegation against the petitioners of commission of offence is absolutely false. It is also pointed out that the letter dated 21.06.2024 written by the Station House Officer addressed to District Prosecution Officer clearly mentions that during investigation, the evidence does not indicate commission of offence. As per the DNA report, though from articles seized by the police, semen and human sperm was found present but there was no Male (Y) DNA Profile and semen and sperm found on the articles seized has no male origin. According to learned counsel for the petitioners, police deliberately filed selected statements and statements of 42 persons were omitted which clearly reflect that no offence has been committed by the petitioners.

6. Per contra, learned counsel for the respondent No.2 opposed the arguments advanced by learned counsel for the petitioners that on the basis of material available on record, it can be inferred that proper investigation was done. He submits that investigating team collected the material which can be examined by the Court during the course of trial but at this stage, it is not proper to say that prosecution story is false and it is also not proper to say that false allegations have been made by the mother of the prosecutrix and the case got registered. According to him, the Test Identification Parade (TIP) was done, FSL reports are on record, therefore, statements of 42 persons and CCTV footage would not be enough to exonerate the present petitioner from the charges levelled, therefore, he submits that the petitions deserve to be dismissed.

7. Learned Government Advocate has also supported the submissions of learned counsel for respondent No.2 and perused the record and assisted the Court.

8. After hearing the rival contentions of learned counsel for the parties, I am giving my anxious consideration to the matter after perusing the record.

9. The basic foundation of the case registered against the present petitioners vide Crime No.0155/2024 was the medical examination, FSL reports and the statement of mother of the prosecutrix and prosecutrix herself.

10. Regarding medical examination, considering the prosecution story and the material collected by the prosecution during the course of investigation, on 29.04.2024, the prosecutrix was taken to the hospital first and doctor suggested the mother of the prosecutrix to lodge the complaint. Pre-MLC report was also prepared indicating that no definite opinion regarding the sexual assault could be provided. The police, thereafter, started further medical examination of the prosecutrix on 30.04.2024 and prepared two vaginal slides of the prosecutrix to be sent to the FSL along with the underwear of the prosecutrix. On 01.05.2024, internal examination was performed and it was recorded no evidence of external injury and hymen deep seated appeared intact (though it was opined that as per the history and physical examination physical/sexual assault might have taken place). Considering the sensitivity of the matter, SIT was constituted to facilitate another examination of the prosecutrix by Medical Board comprising two Gynecologists, one Anaesthetist and one

Medical Officer and as per the report dated 02.05.2024, no external injury was found, no bleeding, no tenderness and hymen was found intact.

11. Upon being insisted by the mother of the prosecutrix, further medical examination was done on 10.05.2024 by the team of three medical professionals and as per their report, there was no sign of use of force, however, final opinion was kept reserved till pending availability of FSL report. Thus, it is clear from all medical examinations that no evidence of any external injury in the case was found. It is also unequivocally clear that no penetration or insertion has taken place. Although, things were based upon the FSL report that was received on 13.05.2024 indicating that vaginal slides and underwear of prosecutrix contained presence of semen and human DNA but on a specific query made by the police, the report of blood and urine samples revealed that there was no existence of any sedative chemical agent and the report clarified the query as 'Negative'. On 16.05.2024, samples retrieved from prosecutrix were also sent for DNA Profiling and for matching of semen and human DNA found on vaginal slides and the underwear of the prosecutrix. As per the report dated 30.05.2024, the DNA report clarified no presence of Male (Y) DNA Profile which further indicated that the samples contained Female DNA Profile. Total forensic evidence is available in the present case. However, the first FSL report indicated presence of semen and human DNA but the subsequent report clarified and ruled out presence of male semen since no Male (Y) DNA Profile was found. Not only the medical evidence but other evidences are also available in the case. However, this Court is not making any cascading remarks on the antecedents of the mother of the prosecutrix and also not

impressed by such submission of learned counsel regarding criminal history of mother of prosecutrix but in the over all circumstances when allegations of false implication is made, this Court has to take all the facts available on record in a microscopic manner when statements of 42 persons were recorded but they were not brought on record indicating that no such offence has been committed and even recording of CCTV footage not revealing the presence of the present petitioner at the place of incident, the conduct of the present petitioner from very inception making complaint to the police authorities and providing full cooperation to them in the investigation keeping himself available for the police on each and every occasion whenever he was called and remained present in the police station is also to be taken note of. The TIP is immaterial for the reason that the prosecutrix and petitioner are known to each other. The *prima facie* investigation done by the police and letter written on 21.06.2024 by the Station House Officer to the District Prosecution Officer indicate that no evidence is available to form an opinion about commission of any offence much less the guilt of the present petitioner. Undoubtedly, the Court should not proceed in the manner to form an opinion that no offence has been committed but at the same time, Court has to see to it that no person should be prosecuted when no cogent evidence is available so as to implicate him. This Court cannot ignore the eventuality and the plight of an accused and also of his family members when a seal of rapist is marked on his back and even after acquittal it is very difficult to wash out the said seal. It is not only the accused but the whole family would suffer the prosecution and face the consequence of such false implication. Here in this case, I find no corroborative evidence except the oral allegation made by the mother and also by the prosecutrix. It is a school

where offence is said to have been committed. The CCTV cameras are installed at each and every point of the school. There were number of persons working in the school. Statements of employees of the school, warden and other persons were taken by the Police but nothing was found so as to support the oral allegations made by the complainant.

12. In the case of **State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335**, certain categories have been laid down by the Supreme Court under which criminal proceedings can be quashed, which are as under :-

> "**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 of the Code which we have extracted and reproduced above, we have given 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.
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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.

(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 concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

> **103.** We also give a note of caution to the effect 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; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

13. In view of the above categories, the case of the petitioner falls within the category No.1 and category No.5.

14. Further, the Supreme Court in the case of **Eicher Tractor Ltd. and others v. Harihar Singh and another, (2008) 16 SCC 763** reiterated its observations regarding power of High Court exercising jurisdiction under Section 482 of Cr.P.C. as already observed in **Baijnath Jha v. Sita Ram, (2008) 8 SCC 77** and **R.P. Kapur v. State of Punjab, AIR 1960 SC 866** and held as under :-

> "**13.** "6. Exercise of power under Section 482 of the Code 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 the Code. It 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. 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. 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 course of administration of justice on the principle 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 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 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 such 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 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 complaint, the court may examine the question of fact. When a complaint is

sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

7. In R.P. Kapur v. State of Punjab [AIR 1960 SC 866] 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, para 6)

8. In dealing with the last case, 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 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. Judicial process no doubt, should not be an instrument of oppression, or, needless harassment. 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 of the Code 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] . A note of caution was, however, added that the power should be exercised sparingly and that too in 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.'

9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. 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. … 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. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. 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 the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. 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 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."

15. However, this Court is refraining itself from commenting anything upon the reliability of the evidence collected during the course of investigation but at the same time, the Court has to see the evidence whether at its face value and the offence registered, the prosecution can be permitted to go on or not.

16. Learned counsel for respondent No.2-objector has also relied upon a decision reported in **(2017) 4 SCC 393 Sunil v. State of Madhya Pradesh** in which it is observed by the Supreme Court that DNA Profile and its report is not the sole basis and if that goes against the accused, does not mean offence has not been committed but the Court has to weigh the other material and evidence available on record. The observation made by Supreme Court in para-4 is as under :-

> "4. From the provisions of Section 53-A of the Code and the decision of this Court in Krishan Kumar [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in Krishan Kumar [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] (para 44), Section 53-A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against

> the accused if, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. It is to the other materials brought on record by the prosecution that we may now turn to."

17. Even as per the observation made by the Supreme Court, in this case also, the Court is not only considering the DNA report but also considering the other evidence available on record which is collected by the prosecution.

18. In the present case, considering the other surrounding circumstances and especially the DNA report submitted in respect of Y-STR after conducting a traditional "autosomal-STR" which has been said to be a very scientific method providing a unique way of isolating only the male DNA. The Supreme Court in the case of **Manoj vs. State of M.P.** reported in **(2023) 2 SCC 353** has also considered the DNA Profiling Methodology and also considered as to how Y-STRs are helpful in detection of male profile even in the presence of high level of female portion. The observation made by Supreme Court in this regard is as follows :-

> ***"DNA Profiling Methodology***
>
> DNA profile is generated from the body fluids, stains, and other biological specimen recovered from evidence and the results are compared with the results obtained from reference samples. Thus, a link among victim(s) and/or suspect(s) with one another or with crime scene can be established. DNA profiling is a complex process of analyses of some highly variable regions of DNA. The variable areas of DNA are termed genetic markers.

> The current genetic markers of choice for forensic purposes are Short Tandem Repeats (STRs). Analysis of a set of 15 STRs employing Automated DNA Sequencer gives a DNA profile unique to an individual (except monozygotic twin). Similarly, STRs present on Y chromosome (Y-STR) can also be used in sexual assault cases or determining paternal lineage. In cases of sexual assaults, Y-STRs are helpful in detection of male profile even in the presence of high level of female portion or in case of azoo11permic or vasectomized" male. Cases in which DNA had undergone environmental stress and biochemical degradation, min lSTRs can be used for over routine STR because of shorter amplicon size."

19. The Supreme Court approved this method in the case of **Ravi S/o Ashok Ghumare vs. State of Maharashtra** reported in **(2019) 9 SCC 622** and observed as under :-

> "**35.** The unshakable scientific evidence which nails the appellant from all sides, is sought to be impeached on the premise that the method of DNA analysis "Y-STR" followed in the instant case is unreliable. It is suggested that the said method does not accurately identify the accused as the perpetrator; and unlike other methods say autosomal-STR analysis, it cannot distinguish between male members in the same lineage.
>
> **36.** We are, however, not swayed by the submission. The globally acknowledged medical literature coupled with the statement of PW 11 Assistant Director, Forensic Science Laboratory leaves nothing mootable that in cases of sexual assault, DNA of the victim and the perpetrator are often mixed. Traditional DNA analysis techniques like "autosomal-STR" are not possible in such cases. **Y-STR method provides a unique way of isolating only the male DNA by comparing the Y-chromosome which is found**

> **only in males. It is no longer a matter of scientific debate that Y-STR screening is manifestly useful for corroboration in sexual assault cases and it can be well used as exculpatory evidence and is extensively relied upon in various jurisdictions throughout the world** ["Y-STR analysis for detection and objective confirmation of child sexual abuse", authored by Frederick C. Delfin — Bernadette J. Madrid — Merle P. Tan — Maria Corazon A. De Ungria.] & [Forensic DNA Evidence : Science and the Law, authored by Justice Ming W. Chin, Michael Chamberlain, Amy Rojas, Lance Gima.]. Science and researches have emphatically established that chances of degradation of the "Loci" in samples are lesser by this method and it can be more effective than other traditional methods of DNA analysis. Although Y-STR does not distinguish between the males of same lineage, it can, nevertheless, may be used as a strong circumstantial evidence to support the prosecution case. Y-STR techniques of DNA analysis are both regularly used in various jurisdictions for identification of offender in cases of sexual assault and also as a method to identify suspects in unsolved cases. Considering the perfect match of the samples and there being nothing to discredit the DNA analysis process, the probative value of the forensic report as well as the statement of PW 11 are very high. Still further, it is not the case of the appellant that crime was committed by some other close relative of him. Importantly, no other person was found present in the house except the appellant."
>
> **(emphasis supplied)**

20. It is further pertinent to mention here that the mother of the prosecutrix is facing a case registered against her by the State under Sections 182 and 211 of the Indian Penal Code for the reason that she lodged a report of rape against her but later on she denied that fact and

took a somersault that no rape had been committed on her and police registered a false case. An order passed by the Court on 06.03.2025 in this regard has been placed by the petitioner before this Court. For the purpose of taking surrounding circumstances into consideration, it is apt to reproduce this order, which is as under :-

—:: उपार्पण आदेश ::—
(आज दिनांकः— 06.03.2025 को पारित)

1— अभियुक्त के विरूद्ध भा0द0सं. की धारा 182 एवं 211 के अंतर्गत दाण्डिक कार्यवाही प्रचलित करने हेतु अभियोग पत्र पेश किया गया है।
2— अभियुक्त [redacted] दिनांक 24.02.2025 से जमानत पर है।
3— अभियोजन का प्रकरण संक्षेप में इस प्रकार है कि दिनांक 03.12.2014 को फरियादिया [redacted] की रिपोर्ट पर आरोपी आर.पी. सिंह के विरूद्ध थाना कोलार रोड में अपराध क्रमांक 601/2014 धारा 376(1) भादवि कायम कर विवेचना में लिया गया विवचेना के दौरान [redacted] का मेडीकल परीक्षण कराया गया तथा फरियादी एवं आरोपी के मोबाईल नंबर की कॉल डिटेल निकलवाई गई फरियादी के निवास वाले अपार्टमेंट के अन्य निवास करने वाले लोगों मलखान सिंह राजपूत, विवेक कुमार एवं प्रतीक दीक्षित आदि के कथन लेख किये गये जो सभी ने आरोपी का फरियादी के घर आते जाते न देखना बताया। दिनांक 25.06.2016 को फरियादी [redacted] द्वारा थाना आकर पुनः कथन लेख कराई कि उसने जो दिनांक 03.12.2024 को थाने में जो रिपोर्ट किया वो झूठी है उसके साथ कोई बलात्कार नही हुआ है मानसिक रूप से परेशान होने के कारण आर.पी. सिंह के विरूद्ध झूठी रिपोर्ट की थी इस संबंध में फरियादी के 164 जा.फौ. के कथन लेख कराये गये। विवेचना में फरियादी की रिपोर्ट झूठी पाई गई। जिससे प्रकरण में पुलिस अधीक्षक से अनुमति पश्चात प्रकरण में खारिजी क्र. 9/16 दिनांक 05.08.2016 को पेश किया जो माननीय न्यायालय द्वारा स्वीकृत कर [redacted] के विरूद्ध धारा 182 एवं 211 भादवि के अंतर्गत कार्यवाही करने हेतु निर्देशित किया तत्पश्चात माननीय न्यायालय के आदेश के पालन में [redacted] के विरूद्ध इश्तगाशा क्रमांक 1/18 अंतर्गत धारा 182 व 211 भादवि का तैयार कर न्यायालय के समक्ष पेश किया है।
4— प्रकरण में अभियुक्त के विरूद्ध भा.दं.स. की धारा 182 एवं 211 के अंतर्गत इश्तगासा प्रस्तुत किया गया है। प्रकरण में अभियुक्त के विरूद्ध प्रथम दृष्टया उक्त अपराध गठित किए जाने का एवं विचारण किए जाने का पर्याप्त आधार प्रकट होता है, किन्तु उक्त धारा 211 भादसं का विचारण माननीय सत्र न्यायालय द्वारा ही किया जा सकता है। अतः यह प्रकरण माननीय सत्र न्यायालय द्वारा विचारणीय होने से माननीय सत्र न्यायालय भोपाल को उपार्पित किया जाता है।
5— अभियुक्त के अधिवक्ता को परिवाद पत्र/अभियोग पत्र की नकलें दं.प्र.सं. की धारा 207 के अंतर्गत प्रदान की गई।
6— उर्पापण की सूचना लोक अभियोजक भोपाल को भेजी जावे। अभिलेख सीलबंद केस डायरी के साथ संलग्न कर माननीय सत्र न्यायालय भोपाल, जिला भोपाल की ओर नियत दिनांक 20.03.2025 के पूर्व प्रेषित किया जावे।

7– अभियुक्त जमानत पर है। अभियुक्त को निर्देशित किया जाता है कि आगामी दिनांक 20.03.2025 पर माननीय सत्र न्यायाधीश महोदय भोपाल के न्यायालय में अग्रिम कार्यवाही हेतु आवश्यक रूप से उपस्थित रहें।
8– अभियुक्त की अभिरक्षा अवधि का प्रमाण पत्र अन्तर्गत धारा 428 दं0प्र0सं0 बनाकर प्रकरण में संलग्न किया जावे।
आदेश खुले न्यायालय में उदघोषित कर मेरे आलेख पर टंकित किया गया।
हस्ताक्षरित व दिनांकित किया गया।

हस्ता0/–
(संदीप कुमार नामदेव)
न्यायिक मजिस्ट्रेट प्रथम श्रेणी
भोपाल म0प्र0

हस्ता0/–
(संदीप कुमार नामदेव)
न्यायिक मजिस्ट्रेट प्रथम श्रेणी
भोपाल म0प्र0

21. Learned counsel for the objector has also relied upon a judgment of Karnataka High Court reported in **2022 SCC OnLine Kar 1542, Swamy B. vs. State** but that case is also on the same analogy which has been laid down by the Supreme Court in the case of **Sunil (supra)**.

22. Thus, I am confining myself to conclude the results taking note of the legal position to describe the duty of the High Court and scope under Section 482 of Cr.P.C. and Article 226 of the Constitution of India when case is being taken up for quashing of F.I.R. The Supreme Court in the case of **Achin Gupta v. State of Haryana and another, 2024 SCC OnLine SC 759** has observed as under :-

> "**35.** In one of the recent pronouncements of this Court in Mahmood Ali v. State of U.P., 2023 SCC OnLine SC 950, authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482

> CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines."

23. Therefore, upon cumulative consideration of the above and while discharging the duty exercising the inherent power provided under Section 482 of Cr.P.C., I am of the view that the F.I.R. registered vide Crime No.0155/2024 can be quashed as no offence has been committed and there is no material available on record to implicate the present petitioner in the said offence and as such, question of allegation about the threat to the prosecutrix and her mother so as to refrain from making any complaint is also false. In conclusion, the prosecution of the petitioners in M.Cr.C. Nos. 4367/2025 and M.Cr.C. No.46701/2024 would be quashed.

24. Accordingly, the petitions are **allowed** and impugned F.I.R. registered vide Crime No.0155/2024 is quashed. All consequential proceedings pursuant to registration of F.I.R. are also quashed.

(SANJAY DWIVEDI)
JUDGE

PK